



Justice
Inspector of
Custodial Services

Use of force, separation, segregation and confinement in NSW juvenile justice centres



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Table of Contents

| | |
|---|-----------|
| Foreword | 5 |
| Acknowledgements | 7 |
| Glossary | 8 |
| Executive summary | 10 |
| Recommendations | 23 |
| 1. Introduction | 28 |
| 1.1 Role, powers and functions of the Inspector of Custodial Services | 28 |
| 1.2 Background to this inspection | 28 |
| 1.3. Methodology | 30 |
| 2. The NSW context | 32 |
| 2.1 Legislation | 38 |
| 2.2 Relevant standards | 40 |
| 2.3 Management and staffing arrangements | 41 |
| 2.4 Organisational culture | 44 |
| 3. Use of force | 54 |
| 3.1 Standards | 54 |
| 3.2 Legislation and policy | 55 |
| 3.3 Circumstances in which force is used and the types of force used | 58 |
| 3.4 Training | 70 |
| 3.5 Equipment and instruments of restraint | 74 |
| 3.6 Actions taken following use of force | 81 |
| 3.7 Record keeping, reporting and monitoring | 86 |

| | | |
|-----------|---|------------|
| 4. | Separation, segregation and confinement | 96 |
| 4.1 | Standards | 96 |
| 4.2 | Legislation | 97 |
| 4.3 | Separation | 97 |
| 4.4 | Segregation | 101 |
| 4.5 | Confinement | 107 |
| 4.6 | The impact of separation, segregation and confinement | 119 |
| 4.7 | Conditions | 120 |
| 4.8 | Best practice regarding time out of room | 133 |
| 4.9 | Record keeping, reporting and monitoring | 137 |
| 4.10 | The impact of isolation | 139 |
| 4.11 | The management of high risk detainees | 141 |
| 4.12 | Chisholm Behaviour Program | 142 |
| 4.13 | Use of detainee risk management plans | 153 |
| 4.14 | A specialist unit for high-risk young people | 157 |
| 5. | Other related matters | 159 |
| 5.1 | Strip searches | 159 |
| | Appendix A – Terms of Reference | 162 |
| | Appendix B – Ministerial correspondence | 163 |
| | Appendix C – Revised terms of reference | 164 |
| | Appendix D – Legislation in Australian states and territories | 166 |
| | Appendix E – Inquiries, reviews and reports in relation to juvenile justice in other jurisdictions | 167 |
| | Appendix F – Reference list | 169 |

Foreword

The *Inspector of Custodial Services Act 2012* requires all juvenile justice centres in NSW to be inspected every three years.¹ This is in recognition that greater oversight is required of facilities that accommodate young people.

This meant that all six juvenile justice centres were required to be inspected by October 2016. As at April 2016, only one of those centres had been inspected. Reiby and Juniperina Juvenile Justice Centres were inspected in 2015 resulting in the *Making connections: Family and community support to young people in custody* being tabled in 2015. Juniperina Juvenile Justice Centre, which housed young women and girls, was closed in June 2016 and the young women were transferred to the Reiby Juvenile Justice Centre.

Following visits to juvenile justice centres in the first half of 2016, I recommended to the Minister for Corrections that Aboriginal Official Visitors should be appointed to each of the six juvenile justice centres. This was in recognition of the significant over-representation of Aboriginal young people in custody and the need to provide culturally appropriate services to young people. The six positions were in addition to the existing seven Official Visitors appointed to the seven juvenile justice centres at the time. Official Visitors provide an important accountability and oversight measure in Juvenile Justice. Official Visitors are appointed by the Minister for Corrections and report to the Inspector of Custodial Services and the Minister for Corrections. This has resulted in Official Visitors visiting juvenile justice centres weekly since January 2017.

Consultation with Juvenile Justice in relation to the inspection of Frank Baxter, Acmena, Riverina, Orana, and Cobham Juvenile Justice Centres resulted in a decision to focus on use of force in juvenile justice centres. This decision was not made because of any specific concerns or complaints in relation to use of force but in recognition that it is important to ensure force is only used when necessary and appropriate. The terms of reference were issued on 24 June 2016.

The first inspection took place in July 2016 at Frank Baxter Juvenile Justice Centre and the final inspection took place at Cobham Juvenile Justice Centre in October and November 2016. It was then decided to include all six juvenile justice centres in the inspection. This enabled Reiby Juvenile Justice Centre, which now accommodates girls and young women, to be included in the inspection.

In October 2016, the Minister for Corrections asked for consideration to be given to expanding the terms of reference for the inspection to include the use of separation, segregation and confinement of young people in juvenile justice centres, and to cover the length of time spent in rooms and best practice with regard to time out of rooms. On 4 November 2016, the terms of reference were amended accordingly, and included a review of the Chisholm Behaviour Program.

It had already become clear during the inspections that use of force often resulted in young people being separated, segregated or confined and the two were often but not always inter-related. The expansion of the terms of reference in November 2016 to include the use of separation, segregation and confinement has enabled consideration of both use of force and separation, segregation and confinement in this report.

¹ *Inspector of Custodial Services Act 2012*, s. 6(1)(b).

It is important to note that Juvenile Justice closed the Chisholm Behaviour Program in May 2016. This was before the inspection into use of force was announced. However, a review of the Chisholm Behaviour Program has been undertaken as part of the expanded terms of reference to establish lessons learned.

The expanded terms of reference required further visits to centres in the first half of 2017 to enable young people and staff to speak about their experiences relating to separation, segregation and confinement both during and following the closure of the Chisholm Behaviour Program. Consultation with stakeholders, academics and experts from other jurisdictions has occurred, along with research into best practice, which have informed the recommendations made in this report.

It is acknowledged that Juvenile Justice is in a period of reform. Significant organisational, cultural and practice reforms commenced within Juvenile Justice during the course of this inspection. The reforms implemented to date have demonstrated a genuine commitment for juvenile justice centres to be child-safe and rehabilitative environments. However, there is still work to be done.

Juvenile Justice commissioned an internal behaviour management review in September 2016 to guide its future practice. It is hoped that the recommendations in this report, many of which have either been implemented or are in the process of being implemented, will complement the internal behaviour management review. This should assist Juvenile Justice to ensure juvenile justice centres are safe places for both its staff and the young people in its care. When staff and young people feel safe and secure, staff are better able to work with young people to address their often-complex needs and reduce reoffending.

Fiona Rafter
Inspector of Custodial Services

Acknowledgements

The co-operation, assistance and information provided by all Juvenile Justice employees during the inspection requires acknowledgement, as does the assistance of others working in juvenile justice centres, such as principals, teachers, nursing staff and allied health staff. The contribution of Official Visitors who were generous in sharing their knowledge, perceptions and concerns is also greatly appreciated.

A range of government and non-government stakeholders provided information throughout the inspection, including: Juvenile Justice; the Justice Health & Forensic Mental Health Network; NSW Ombudsman; Mental Health Commission of NSW; Legal Aid NSW; Law Society of NSW; NSW Advocate for Children and Young People; Aboriginal Legal Service; National Children's Commissioner, Australian Human Rights Commission; NSW Office of the Children's Guardian; President of the NSW Children's Court; and the Public Service Association. The assistance was invaluable.

The staff of the adolescent ward at Long Bay Forensic Hospital and staff of Bimberi Youth Justice Centre in the Australian Capital Territory hosted visits from the inspection team, which is appreciated.

Particular appreciation goes to the children and young people who spoke to us about their experiences in juvenile detention.

Glossary

- Aboriginal** 'Aboriginal' when used in this report is inclusive of Aboriginal and Torres Strait Islander people.
- Arunta** The phone system used by young people in juvenile justice centres
- Austinmer** The adolescent wing of the Long Bay Forensic Hospital
- CBP** Chisholm Behaviour Program
- CIMS** Client Information Management System
- Confinement** Section 21 of the *Children (Detention Centres) Act 1987* provides that one of the punishments that may be imposed on a detainee found guilty of misbehaviour is exclusion from, or confinement to, a place for a period not exceeding 12 hours, or in the case of a detainee of or over the age of 16 years, not exceeding 24 hours.
- CSNSW** Corrective Services NSW
- Daily Citizenship Requirements** The Chisholm Behaviour Program used a modified version of the Juvenile Justice detainee incentive scheme. Daily citizenship requirements referred to unit rules and expected behaviours in each Chisholm Behaviour Program location that, if followed, contributed towards receiving daily and weekly rewards.
- DBIF** Detainee Behaviour Intervention Framework
- DRMP** Detainee Risk Management Plan
- EPSU** Ethics and Professional Standards Unit
- Holding room** A room where young people may be taken when placed in separation, segregation or confinement. Holding rooms may be in accommodation units, or in a separate part of the centre (such as within the admissions area).
- JH&FMHN** Justice Health & Forensic Mental Health Network
- JJC** Juvenile Justice Centre
- Juvenile Justice** Juvenile Justice New South Wales
- RCIADIC** Royal Commission into Aboriginal Deaths in Custody, 1987–1991

| | |
|------------------------------|---|
| Restrictive practices | In the context of youth justice this refers to restricting a child or young person's freedom for the purpose of modifying a behaviour. |
| Segregation | Section 19 of the <i>Children (Detention Centres) Act 1987</i> provides that a detainee may be placed in segregation in order to protect the personal safety of that or any other detainee, or of any other person. |
| Separation | Section 16 of the <i>Children (Detention Centres) Act 1987</i> provides for detainees or groups of detainees to be detained separately from other detainees for the purposes of ensuring the security, safety and good order of a detention centre. |
| The Act | <i>Children (Detention Centres) Act 1987</i> |
| The ICS Act | <i>Inspector of Custodial Services Act 2012</i> |
| The Regulation | <i>Children (Detention Centres) Regulation 2015</i> |
| Use of force policy | Juvenile Justice, <i>Use of Force, Protective Equipment & Instruments of Restraint Policy</i> , April 2016 |
| Young people | 'Young people' when used in this report is inclusive of detainees aged between 10 and 21 years. |

Australian states and territories are referred to by the following acronyms throughout the report: New South Wales (NSW); Victoria (Vic); Queensland (Qld); South Australia (SA); Tasmania (Tas); Western Australia (WA); Northern Territory (NT); Australian Capital Territory (ACT).

Unless otherwise specified, references to legislation in this report relate to the laws of NSW.

Unless otherwise specified, references in this report to legislation, policies, training materials and other documentation refer to current documents and provisions.

Note

The Inspection considered sensitive information and methodologies. In accordance with section 15 of the *Inspector of Custodial Services Act 2012*, 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 juvenile 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.

When speaking to staff and young people at JJs, we advised that their comments would be confidential and that we would not identify individuals.

Executive summary

This inspection examines the use of force, separation, segregation and confinement in NSW juvenile justice centres (JJC). There are six JJCs in NSW: Reiby, Cobham, Frank Baxter, Acmena, Orana and Riverina. Three are located near Sydney and three are located in regional NSW. Reiby JJC is the only centre that accommodates young women and girls. Reiby JJC also accommodates boys under 16. Each JJC was inspected in 2016 and subsequent visits were undertaken in 2017 and 2018. Staff and young people were interviewed during these inspections. Records, data, literature and legislation were also reviewed and analysed.

Less than 300 children and young people aged between 10 and 21 years are housed within NSW JJCs each day.² The majority of young people in custody have come from backgrounds of significant disadvantage, including experiences of the child protection system, homelessness, neglect, trauma and limited education. Some have engaged in self-harm before being detained and continue to do so while in custody.³

Although the percentage of Aboriginal young people in custody in NSW has declined, Aboriginal young people remain significantly over-represented in the criminal justice system, comprising 47% of the population in JJCs.⁴ Being removed from kin, community and country can also have particularly detrimental impacts on young Aboriginal people.⁵

While recognising the vulnerability and needs of young people in detention, it is acknowledged that some young people in custody engage in challenging and at times violent or dangerous behaviour. This sometimes requires the use of restrictive practices including the use of force, restraints, searches, separation, segregation and confinement for the protection of staff and other young people.

Juvenile Justice staff perform a difficult job in a challenging environment. All jurisdictions grapple with the task of managing high risk young people in detention in the least restrictive way without compromising the safety and security of staff and other young people.

The management of juvenile justice centres is primarily governed by the *Children (Detention Centres) Act 1987* (the Act) and the *Children (Detention Centres) Regulation 2015* (the Regulation). In the administration of the Act, the welfare and interests of young people are to be given paramount consideration.⁶ A range of systems, processes and programs are in place within Juvenile Justice so that the agency can achieve its mandate to ensure young people are detained in a way that ensures their welfare needs are met.

However, the inspection found there were inconsistencies in the way these systems, processes and programs operated across centres. It is acknowledged that Juvenile Justice has been working

² In 2015-16, 251 children and young people in detention in NSW JJCs. *Report on Government Services*, 2018.

³ See Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, *Young People in Custody Health Survey: Full Report*, 2015.

⁴ Bureau of Crime Statistics and Research, *New South Wales Custody Statistics Quarterly Update September 2018*, 2018, p.28.

⁵ Royal Commission into Aboriginal Deaths in Custody, *National Reports*, 1991, vol. 3, 25.2.6.

⁶ *Children (Detention Centres) Act 1987*, s. 14.

towards greater consistency. The Inspector makes a number of recommendations to assist with this process, including that Juvenile Justice consider ways to strengthen the detainee incentive scheme, include minimum requirements for Detainee Risk Management Plans (DRMP) and resolve inconsistencies between legislation and policy.

Use of force

Within a custodial environment the safety and security of young people and staff is paramount. It is for this reason that there is a range of restrictive practices which may be used in certain circumstances in JJC's, including the use of force and use of restraints. This inspection examined why force is used, when it is used and how it is used.

The inspection found many situations when force is used are unavoidable, such as when young people fight, or assault staff or other young people. In NSW, force may also be used to move a young person who refuses to move from one location to another in accordance with an order of a youth officer. There are many occasions when asking a young person to move is necessary for the safety and security of the young person, other young people or staff; or to try and prevent damage to property or force being used.

The inspection team spoke to staff and young people about use of force and reviewed use of force reports and video footage of uses of force. Discussions with staff revealed that the majority of youth officers do not like using force on young people. Many youth officers seem to be genuinely trying to calm young people down and encourage them to comply with directions. The inspection found that force is generally used in situations where it cannot be avoided. However, force is used in some situations where alternative strategies of de-escalation would be more effective.

It is acknowledged that, in many incidents, negotiations may have occurred before a decision is taken to use force and before video recording commences. However, in a number of incidents, the approaches used to engage with young people were not effective. Young people are often angry or upset, they may feel disempowered, or have a history of trauma and abuse. Some may have an intellectual disability. In the circumstances, it may be difficult to reduce the young person's arousal levels.

Although youth officers are frequently dealing with challenging behaviour, the inspection team identified the need for additional training for staff to enhance their ability to understand and manage young people displaying challenging behaviours. Consideration should also be given to when force is used and how force is used with a view to reducing the number of use of force incidents.

Use of restraints

Handcuffing or forcibly restraining a young person without reasonable excuse is prohibited in NSW.⁷ Youth officers in NSW are not authorised to use restraint chairs or spit hoods and are not authorised to use chemical agents, such as capsicum spray, as a method of restraint.⁸ During our

⁷ *Children (Detention Centres) Act 1987*, s.22(2) and *Children (Detention Centres) Regulation 2015*, cl. 62 and 65.

⁸ Clause 62 of the *Children (Detention Centres) Regulation 2015* defines instruments of restraint as 'handcuffs, ankle cuffs, flexi cuffs, restraining belts, riot shields and such other articles, or classes of articles, as are declared by the Secretary, by order published in the Gazette, to be instruments of restraint for the purposes of this Regulation'.

inspection, we did not come across any evidence to suggest these items have been, or are being, used in JJC's.

In NSW young people may be handcuffed in a range of circumstances which are outlined in legislation.⁹ For example, young people may be handcuffed during external movements to prevent escape, or if a young person poses a risk of harm to themselves or others.¹⁰ This should always be on the basis of an individual risk assessment for the safety and security of staff and the young person themselves.

The use of handcuffs to move young people within a JJC is no longer required to be reported following regulatory amendments made in 2016.¹¹ A new policy was implemented as a result of the amendments.¹² The inspection found the policy is not consistent with the legislation and that this resulted in some young people being routinely handcuffed. This practice has since ceased and Juvenile Justice now requires staff to individually risk assess the need for any use of restraints on young people in accordance with the legislation.¹³ The change to the regulation has also made it difficult to monitor the use of handcuffing and the Inspector recommends that Juvenile Justice implement a recording system for the use of restraints that captures when, how and why young people are restrained and the length of time restraints are applied.

After a use of force

Reporting and reviewing use of force provides an important accountability measure to make sure that force is only used when necessary and in accordance with legislation. It is also an opportunity for practice improvement. The inspection found there is some confusion among youth officers about the separate categories used by Juvenile Justice to report use of force, these being 'pre-planned', 'situational' and 'immediate'. Situational or immediate use of force generally occurs in response to the assault of staff or another young person, a fight between young people or self-harm. Pre-planned use of force often occurs after negotiations have not resolved an incident and in response to potentially dangerous situations for staff and young people. It may also be a response to a young person refusing to move, as directed, to their room or to an escort vehicle. Consideration should be given to using two categories of force for reporting purposes.

In reviewing incidents where force was used, the inspection team found many examples of youth officers acting in a calm and professional manner. However, there was one use of force that had not been referred to the Ethics and Professional Standards Unit for review but should have been. This matter was referred immediately to the Executive Director, Juvenile Justice for investigation.¹⁴ There were also a number of practice issues identified and referred to the Executive Director for consideration, for example, when force is used in a manner that poses a risk of injury to young people or youth officers. For those situations where force is unavoidable, further guidance and training should be provided to youth officers about how to minimise risks to staff and young people.

⁹ *Children (Detention Centres) Regulation 2015*, cl. 65.

¹⁰ *Children (Detention Centres) Regulation 2015*, cl. 65(b) & cl. 65(d).

¹¹ *Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation 2016*, cl. 1(2).

¹² Information provided by Juvenile Justice, 2018.

¹³ Information provided by Juvenile Justice, 2018.

¹⁴ Letter to the Executive Director Juvenile Justice, 2017.

Although young people are usually asked if they would like to see the nurse after they have been restrained or involved in a use of force incident, the inspection found that young people are not always seen by the centre's nurse. It is noted that there are a variety of reasons for this, including that some young people refuse medical assistance. In accordance with international standards, it is important that young people in Juvenile Justice are always seen by a nurse as soon as practicable after they have been subjected to force.¹⁵ This is an important protection for both young people and staff to ensure any injuries, visible or otherwise, are treated and recorded. It is equally important to document if there are no injuries.

Staff recruitment and training

The inspection team was impressed by the dedication shown by many youth officers and other professional and specialist staff who work in Juvenile Justice. Staff in JJs are tasked with doing a difficult job in a complex environment. On a day-to-day basis they are required to manage and care for young people, many of whom have complex needs and challenging behaviours. This requires significant skill and expertise.

There are no educational or skills-based pre-requisites for a youth officer. This means that some youth officers commencing employment at Juvenile Justice have little expertise or experience working with young people generally, or in managing the needs of young people who have significant and complex needs.

Recruiting the right staff will enhance the ability of Juvenile Justice to achieve its purpose of working with young people to reduce their reoffending. The Inspector recommends that Juvenile Justice reviews role descriptions and recruitment processes for youth officers with a view to attracting suitably qualified and skilled candidates. Juvenile Justice is currently working to strengthen recruitment processes to increase the likelihood that youth officers have the appropriate skills, qualifications, experience and attributes to work effectively with young people who are in custody.

It is also important that once recruited, staff receive appropriate training to ensure they are able to perform their roles effectively. The inspection identified a number of limitations with the way that training was being provided to youth officers and found it was not always easy to determine the amount, type and frequency of training that each youth officer receives. To address these issues, it is recommended that Juvenile Justice clearly outlines the type and frequency of training that staff and casual staff are expected to complete; and the requisite skills and qualifications of trainers. It is important that there is a system for recording the training that staff have completed, and when they are due to receive refresher training. It is acknowledged that this has commenced and training is being delivered to staff across Juvenile Justice.

Youth officers receive some de-escalation training as part of their induction training. However, in a number of the incidents reviewed, the approaches used to communicate with young people before and during pre-planned uses of force were ineffective. The inspection found Juvenile Justice should focus on up-skilling its staff to reduce the number of incidents where force is used, and work towards minimising pre-planned use of force. The inspection also found there are

¹⁵ *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules), Rule 64; NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, 9.3.

circumstances where pre-planned force is used, where it may be avoided if staff were trained in trauma-informed practice and negotiation skills and de-escalation techniques.

Training is also required in report writing. A number of reports about incidents where force had been used were brief and did not capture all the relevant information. In some circumstances the amount of force used was minimised.

In November 2016, the Minister for Corrections announced \$1 million to train frontline youth officers who deal with high-risk offenders. Juvenile Justice has confirmed that the following reforms have been initiated to enhance the capabilities of staff to provide youth detention environments that are safe, secure and positive:

- A two-day training package was developed to enhance staff knowledge and skills in managing challenging behaviours in young people with an experience of trauma.
- A training module 'Core Effective Practice Skills' for youth officers is currently being piloted.
- A two-day de-escalation and negotiation training package has been developed to enhance staff skills in de-escalation techniques and to reduce the instances where force is used. This is currently being delivered to operational staff across NSW.
- Refresher training that delivers of the Use of Force/Protective Tactics course has been offered to all operational staff with completion of the scheduled due at the end of 2018.
- The Induction Training and Assessment Program for incoming youth officers has been revised with a focus on experiential learning.
- The Operational Training Unit has commenced the development of an annual schedule of mandatory and discretionary training for youth officers to monitor instruction and training across all JJsCs.

Separation, segregation and confinement

In custodial environments, young people may be removed from the general population and general routines of the centre for reasons of good order and security, protection or punishment. A number of standards exist to outline the minimum conditions that should accompany these periods.¹⁶

NSW legislation provides that young people may be placed in separation, segregation and confinement:

- Separation is used for individuals or groups of detainees who are required to be managed separately to the general population for the safety, security or good order of the centre.¹⁷ In practice, separation is generally used to keep young women and girls separate from young men and boys; or young people of different ages or classifications separate from one another. It does not require a young person to be alone but it can result in this occurring.

¹⁶ These include the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules), The Australasian Juvenile Justice Administrators Juvenile Justice Standards 2009, and the NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, 2015.

¹⁷ *Children (Detention Centres) Act 1987*, s. 16(3).

- Segregation is used to protect the personal safety of the person being segregated, or another person;¹⁸
- Confinement is a form of punishment for certain types of misbehaviour.¹⁹ Young people up to the age of 16 years may be held in confinement for up to 12 hours and young people aged 16 years and over may be held in confinement for up to 24 hours.²⁰

The legislative and policy provisions governing separation, segregation and confinement are quite different. In particular, the legislation specifies a number of safeguards for people placed in segregation that do not apply to young people in separation or confinement. For example, that segregation is to be as short as possible and the detainee must be provided with some means of occupying him or herself.

The actual conditions for young people who are placed in separation, segregation and confinement may be similar but are not necessarily the same. Confinement is the only one of these conditions for which the young person will definitely be kept in a room. For separation and segregation purposes, the young person is removed from the general centre routine but may not always be in their room. Young people may be participating in a separation routine, or be segregated in a room for a short period or for an extended period in accordance with the conditions set out in a Detainee Risk Management Plan (DRMP). Some young people who are in separation, segregation or confinement for more than a few hours will be required to eat alone in their room; be unable to associate with their peers; and will have limited access to exercise, programs and meaningful activities.

Legislative safeguards are specified where a segregation period is greater than 24 hours. In such instances, the NSW Ombudsman must be notified, the segregation must be carried out in accordance with a plan that is subject to monitoring by a psychologist, and the detainee is to be visited daily by a JH&FMHN officer.²¹ In practice, the NSW Ombudsman is also notified when a young person is separated for more than 24 hours.

All JJsCs have separation routines which provide for a minimum of six hours out of room each day.²² There is now an expectation that young people in segregation in accordance with a DRMP should be out of their room for six hours a day.²³

NSW legislation also provides statutory limitations on confinement to prevent young people being isolated for more than 24 hours. However, there is no legislative restriction on consecutive confinements or on young people moving between periods of segregation and confinement. Nor is there a requirement to notify the NSW Ombudsman should the cumulative effect result in a young person being alone in their room, or out of a general centre routine, for more than 24 hours.

¹⁸ *Children (Detention Centres) Act 1987*, s. 19(1).

¹⁹ A complete list of misbehaviours and serious misbehaviours can be found in Schedule 1 of the *Children (Detention Centres) Regulation 2015*.

²⁰ *Children (Detention Centres) Act 1987*, s. 21(d).

²¹ *Children (Detention Centres) Act 1987*, s. 19.

²² See Figure 17.

²³ Information provided by Juvenile Justice, 2018.

Different statutory provisions, different delegated decision makers, inadequate record systems and insufficient training about the use of separation, segregation and confinement has led to erroneous reporting and difficulty monitoring the length of time young people have been removed from the general routine. Moreover, it has resulted in young people being removed from the centre routine for more than 24 hours without the statutory protections of notification to the NSW Ombudsman automatically occurring. The Inspector recommends that the NSW Ombudsman is notified of separation, segregation and confinement and all times a young person is removed from the general routine for over 24 hours.

The inspection also found that Juvenile Justice relies on the use of confinement to manage young people who are presenting with challenging behaviours. Although there are a variety of punishments available for misbehaviour in Juvenile Justice, the inspection found confinement is the most prevalent punishment in all JJC's in NSW. This is despite there being no evidence that supports the use of confinement to effect positive behavioural change.²⁴

In accordance with international standards, most jurisdictions in Australia do not use confinement as a punishment. It is recommended that Juvenile Justice reduces the use of confinement over time. Juvenile Justice has committed to moving towards an evidence-based and trauma-informed approach to managing young people in detention, which should reduce the use of confinement. Providing staff with skills to prevent young people from engaging in poor behaviour should be prioritised over punishing young people for misbehaviour. Juvenile Justice has conducted a review into behaviour management with a focus on contemporary practice in positive behaviour management and to identify ways to move away from lengthy periods of time spent in rooms. This has involved Juvenile Justice staff being provided with training in behaviour management.²⁵ This is positive and shows a commitment by Juvenile Justice to practice improvement in this area.

Achieving this outcome will require strong leadership, significant cultural change and the engagement of staff who have a clear understanding about the significant and complex needs of young people in custody, and effective ways of managing challenging behaviour. It also involves providing young people with counselling, therapeutic programs, meaningful connections to family and community, exercise and other activities.

Best practice with regard to time out of room

The NSW Inspector of Custodial Services standards provide that young people should have a minimum 10 hours out of their room each day, and that hours out of room should only be reduced in exceptional circumstances deemed necessary by the centre manager.²⁶ Juvenile Justice routines specify that, generally, young people should be out of their room for between nine and 12 hours per day, which is reduced to six hours for young people placed in separation or segregation.

It is acknowledged that, due to safety and security issues within an operational environment, access to time out of cell must be on the basis of an individual risk assessment for young people in

²⁴ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services, March 2017.

²⁵ Information provided by Juvenile Justice, 2018.

²⁶ NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, January 2015, 10.7.

segregation. It can be challenging for staff to make sure young people in segregation or separation have at least six hours out of their room each day.

Notwithstanding the operational challenges, it is important that this occurs, unless there are circumstances which are clearly documented. This is because of the negative impacts associated with prolonged isolation on the psychological and physical health, and social and educational development of young people.²⁷ While there is limited high-quality empirical evidence regarding the effects of prolonged segregation specifically on young people, there is a broad consensus that the harms will be more acute for young people than adults;²⁸ and more acute for young Aboriginal people.²⁹ Moreover, short term management of risk through restrictive practices may exacerbate the risks posed by these young people in the longer term which will further erode the safety and wellbeing of staff and young people.³⁰

The inspection found that different legislative provisions and different record-keeping systems in Juvenile Justice make it difficult to determine the amount of time that all young people are spending out of their room each day. This is particularly problematic for monitoring how long young people placed in separation, segregation and confinement spend out of their room each day. It also contributed to the poor outcomes of the Chisholm Behaviour Program (CBP). It is recommended that Juvenile Justice develops systems that enable the actual time young people spend out of their room to be monitored. It is further recommended that Juvenile Justice establishes a system for auditing the use of separation, segregation and confinement to ensure that concerns about practice, reporting and reviews are identified and acted upon quickly.

It is recommended that Juvenile Justice conduct a comprehensive review of the management of young people who are engaging in, or threatening, self-harm with input from an expert in forensic mental health. The aim of the review should be to minimise use of force and segregation to manage these young people and keep them safe.

The Chisholm Behaviour Program

As part of the inspection a review of the CBP was conducted. This was to identify what lessons could be learnt about its operation, governance and effectiveness, to inform the appropriate use of separation and segregation to manage the risks posed by certain young people.

²⁷ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services, March 2017, pp 11–16.

²⁸ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services, March 2017, p 11.

²⁹ In relation to young people, see American Academy of Child and Adolescent Psychiatry, Policy statement; Solitary confinement of juvenile offenders (2012); American Psychological Association, Letter to the United States Senate (2015). In relation to Aboriginal people, see Royal Commission into Aboriginal Deaths in Custody, *National Reports*, 1991, vol. 3, 25.7.12. The Commission noted that ‘the broad thrust of the recommendations which have been made relative to prisons (both in this chapter and the chapter which follows) have relevance for juvenile detention centres’ (at 24.6, Issues relating to the detention of Aboriginal youths in juvenile detention centre); Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report*, 17 November 2017, vol. 2A, p 286.

³⁰ LA Gallagher, ‘More than a time out: Juvenile solitary confinement’, *UC Davis Journal of Juvenile Law & Policy* (2014), 18(2), pp 244–266.

The CBP operated at Cobham JJC and Frank Baxter JJC between May 2015 and May 2016, to facilitate the reintegration of detainees from Kariong Juvenile Correctional Centre (managed by Corrective Services NSW) to Juvenile Justice; and to transition all male detainees aged between 16 and 21 years with an A1 classification into the general population. This also included young people already in the system who turned 16 and young people entering the system aged 16 or over with an A1 classification.

Young people were expected to progress through a number of phases with increasing access to association and time out of room, before transitioning into the general population. The early phases involved a minimum of two hours out of room time each day, no association with other detainees, limited access to television, and non-contact visits.

Despite these restrictions Juvenile Justice did not consider young people in the CBP to be in separation or segregation and they were not recorded as such. This meant notifications to the NSW Ombudsman that attach to separation and segregation did not occur. Moreover, a young person could fail to progress or be regressed to an earlier phase of the program because of poor behaviour, or if they were failing to actively work towards the goals identified in their plan.

Juvenile Justice responded to stakeholder concerns and closed the program on 9 May 2016. A directive was given that all A1 classified high-risk young persons were thereafter to be managed using existing policies and procedures.

From its inception to closure, 66 young people were referred to the CBP; 41 of whom were Aboriginal. There were a number of young people who failed to progress through the phases of the program and remained in the early phases of the program for extended periods. Fourteen young people spent in excess of 123 days on the program. Ten of those young people were Aboriginal. Some of the young people spent considerable amounts of time in their rooms, particularly when they were in the early phases of the CBP and when they were re-focused. Young people in the assessment and Phase 0 phase of the program were to have two hours' exercise each day. However, there were times when young people spent less than two hours out of their room each day. The primary rationale for this appears to have been for managing young people who pose a significant risk to themselves or others. In the circumstances, the relevant provisions of the legislation relating to segregation should have been complied with. They were not.

Our review of the CBP identified a number of factors that led to a range of flaws in the operation of the program. The internal governance of the program was inadequate, with no formal reporting structures established to ensure senior officers were informed about the treatment of young people. This led to a situation where senior staff did not know that young people were failing to progress in the program and did not realise the amount of time individual young people were spending in their rooms.

The CBP was intended to provide a secure, therapeutic facility for young people posing a high risk. The Inspection found that the decision of Juvenile Justice to close the Chisholm Behaviour Program in May 2016 was correct. The implementation of the program was extremely problematic, and the outcomes poor. It is important that Juvenile Justice heed the lessons learnt from the CBP.

Detainee Risk Management Plans

DRMPs are individualised plans for managing young people who pose a significant risk to themselves or others, and who are not responding to mainstream routines used in custody. They have been relied upon to manage high risk detainees since the closure of the CBP. The majority of DRMPs provide for segregation, which is either continuous or periodic. The inspection found the fundamental concept of a DRMP is sound; that is, individually risk-assessing each young person and developing a tailored plan to address these specific risks, and meet the needs of the young person.

Following concern that some DRMPs relied heavily on containment, DRMPs became subject to centralised and weekly audit processes in late 2016, including a dedicated weekly review report highlighting both good practice and areas for improvement. The inspection found this resulted in improvements in the design and implementation of DRMPs in relation to individualised risk assessments. However, a review of DRMP records in early 2017 revealed that some but not all young people were receiving six hours out of their room each day.

It is acknowledged that Juvenile Justice has been working since that time to try and strengthen the DRMP process and ensure DRMPs contain achievable goals and outcomes. Juvenile Justice has:

- conducted an internal audit and review of DRMPs
- issued guidance to facilitate better implementation of DRMPs across all centres
- implemented a new policy and procedure which outline the steps for developing a DRMP
- developed a workshop about DRMPs which was delivered at each centre between November 2017 and January 2018.

These are positive initiatives and should help to ensure that youth officers have a comprehensive understanding of the rationale for, and purpose of DRMPs, and that plans are individually tailored to recognise and respond to the individual risks posed to and by each relevant young person.

Despite these improvements, some young people remain on restrictive regimes for extended periods. While it may not always be possible to facilitate some high-risk young people spending six hours a day out of their room, DRMPs should still include a condition of six hours per day out of room, subject to a daily individual risk assessment. Actual hours out of room are now being monitored to ensure senior staff are appraised of how long high risk young people are spending out of their rooms each day. A recent review found that all young people at Cobham JJC in segregation were receiving six hours out of their room. Juvenile Justice advises that DRMP standards were implemented across all centres in July 2018, which includes six hours out of room per day.³¹

The inspection found that DRMPs must be regularly monitored at both centre and senior executive level to ensure young people are subject to the least restrictive regimes possible to manage the risk they pose to themselves or others.

³¹ Information provided by Juvenile Justice, 2018.

Strip searching

The impact and frequency of strip searching was previously raised by the NSW Inspector of Custodial Services in *Making connections: Family and community support to young people in custody*. The former Inspector recommended that Juvenile Justice should not carry out strip searching on a routine basis and should replace this practice with a rigorous risk-based assessment process to target the trafficking of contraband.³² Juvenile Justice partially supported this recommendation at the time, advising that routine strip searches would continue for new admissions from community settings and following leave. A risk-based approach to searches after visits and outings was supported.³³ The Inspector reiterates this recommendation in this report.

At the time of inspection, Juvenile Justice was still strip searching young people in a range of circumstances. Routine strip searches were being conducted on admission, when young people returned to a centre after a court appearance or hospital visit, following leave and following contact visits with family. Strip searches are also conducted in circumstances where youth officers suspect that a young person possesses contraband or an item that may be used to hurt themselves or someone else. The need to prevent a child from self-harming or harming others may necessitate the removal of clothing during a search.

Despite efforts taken by Juvenile Justice staff to ensure that a young person is never fully unclothed, the practice of searching young people by asking them to partially remove their clothes may be humiliating and distressing for young people.³⁴ This is particularly the case given that many young people in detention have experienced abuse.

More recently, the Royal Commission into Institutional Responses to Child Sexual Abuse recommended that state and territory governments should review legislation, policies and procedures to ensure best practice approaches are in place for strip searches and other authorised contact between staff and children, including sufficient safeguards to protect children.³⁵ These recommendations have been accepted by the NSW Government and changes to legislation made.³⁶

Measures to ensure accountability

It is crucial for JJC's to have regular inspection and oversight. Apart from inspections every three years, the Inspector of Custodial Services staff endeavour to visit JJC's twice a year and coordinate the Official Visitor program. Official Visitors visit JJC's each week to take complaints and observe conditions. Young people may also contact the NSW Ombudsman to make complaints and Ombudsman staff visit each centre at least twice a year. The NSW Ombudsman

³² NSW Inspector of Custodial Services, *Making connections: Family and community support to young people in custody*, 2015, recommendation 10.

³³ Correspondence from V Ruis, Executive Director, Juvenile Justice to Dr John Paget, Inspector of Custodial Services, undated.

³⁴ The Office of the Inspector of Custodial Services, Western Australia, *Report of an announced inspection of Banksia Hill Juvenile Detention Centre*, 2015, p. 11.

³⁵ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Contemporary detention environments*, vol. 15, pp 117–188, and Recommendation 15.4.

³⁶ NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse, June 2018, pp 35–36, *Children (Detention Centres) Regulation 2015*, cl. 11A.

also performs an important oversight function for Juvenile Justice as the Ombudsman is advised if a young person is separated or segregated for more than 24 hours.³⁷

Juvenile Justice refers all allegations of misconduct and excessive use of force to the Ethics and Professional Standards Unit for assessment and investigation. The Professional Conduct Committee meets weekly to consider any serious allegations of misconduct including allegations of excessive use of force. These allegations must also be referred to the NSW Ombudsman as reportable conduct.³⁸

The inspection found that oversight, review and complaints processes provide an important mechanism in the system to identify misconduct and poor practice. It is important to ensure legislative requirements are being complied with and poor practices are identified at the earliest possible opportunity. The Inspector makes a number of recommendations aimed at improving governance and accountability of incidents where force is used or young people are separated, segregated or confined.

It is recommended that Juvenile Justice improves the way it records, monitors and analyses information about use of force and separation, segregation and confinement. This includes auditing incidents where force is used to improve reporting, identify practice improvements, and ensure matters are being appropriately referred to the Ethics and Professional Standards Unit. Increased oversight from the NSW Ombudsman is also recommended. The current system of notification to the NSW Ombudsman of segregation (and in practice separation) over 24 hours should be expanded and formalised to include separation and confinement over 24 hours or the cumulative effect of separation, segregation and confinement over 24 hours.

Recommendations and improvements to practice

This report includes a number of recommendations aimed at:

- enhancing staff skills by providing training to handle incidents effectively and safely
- ensuring staff are trained to work in accordance with relevant legislation, policy and procedures
- reducing the use of force and use of confinement over time
- ensuring young people are not placed in rooms for lengthy periods
- enhancing the monitoring and reporting of restrictive practices
- enhancing the internal and external oversight of Juvenile Justice.

The 60 recommendations in this report, many of which have commenced implementation during the course of the inspection, are aimed at enhancing the safety and security of staff and all young people within JJC's. When staff and young people feel safe and secure it is possible to focus on the purpose of Juvenile Justice, that is, to deliver the services and interventions that young people require to take their place in the community as soon as possible, as people who will observe the law.

³⁷ *Children (Detention Centres) Regulation 2015*, cl. 10(2)(a).

³⁸ *Ombudsman Act 1974*, Part 3A.

It is acknowledged that Juvenile Justice is working towards developing and implementing a clear framework to underpin its work, govern recruitment, guide the development of policies and practices and provide training to up-skill its staff. The framework includes a commitment to evidence-based practice, trauma-informed practice, being a child-safe organisation and cultural competency. The inspection found this is vital given that Juvenile Justice is working with children and young people, many of whom are Aboriginal.

Reform initiatives commenced or completed since 2016 include the establishment of a Juvenile Justice Advisory Committee in 2016. The Committee includes a panel of independent and external experts and stakeholders to provide transparency on Juvenile Justice operations and a source of advice to the Juvenile Justice executive relating to current and future practice and operations. A new Juvenile Justice Purpose statement, strategic direction for 2017–20 and a business plan co-designed with staff following consultation have also been finalised.

The implementation of 22 caseworker roles, including six Aboriginal-identified roles in centres from June 2017, is aimed at strengthening rehabilitative and re-integrative practice and access to programs and interventions while in custody. Accompanying training for caseworkers and managers has been provided, along with ongoing practice support. This has included training to strengthen skills. Case workers and custodial programs officers have also been trained in 'My Journey My Life', a dedicated and culturally specific Aboriginal intervention program. JJs also have Aboriginal community consultative mechanisms in place to ensure Aboriginal families and communities have access to centres.

Juvenile Justice has also requested its internal auditors to conduct a review of record-keeping and reporting focusing on detainee records management and reporting processes. It will look at governance, recording, data management, data quality, reporting and continuous improvement.

Since our inspection commenced, a number of reports concerning youth detention have been published. These reports have highlighted the challenges facing all jurisdictions in reducing restrictive practices safely in custodial environments. These reports also stress the value of juvenile justice environments that provide young people with opportunities to engage in education and vocational training, therapeutic and other programs, as well as promoting connections to culture, community and family. The importance of custodial environments being staffed by highly skilled and well-trained personnel, and for strong governance and accountability mechanisms to be in place, is also emphasised. This report focuses on Juvenile Justice in NSW. However, we have drawn on reports from other jurisdictions to inform best practice in reducing restrictive practices.

Recommendations

Legislation and Policy

1. The Inspector recommends Juvenile Justice consider whether to retain the separate categories of pre-planned, situational or immediate use of force, or whether to use only two categories.
2. The Inspector recommends that Juvenile Justice reduces the use of force to move young people.
3. The Inspector recommends that forcible searching of young people should only be conducted on the basis of reasonable suspicion.
4. The Inspector recommends that Juvenile Justice finalise the draft memorandum of understanding with the NSW Police Force.
5. The Inspector recommends Juvenile Justice review the detainee incentive scheme and consults with young people to improve consistency across centres.
6. The Inspector recommends Juvenile Justice have regard to the lessons learned from the Chisholm Behaviour Program in developing future programs and policies.
7. The Inspector recommends consideration is given to amending the *Children (Detention Centres) Regulation 2015* to reflect the Objective Classification System.
8. The Inspector recommends that Juvenile Justice conduct a review to ensure consistent safeguards are in place in relation to separation, segregation and confinement.
9. The Inspector recommends Juvenile Justice regularly reviews delegations to ensure they reflect existing legislative and governance arrangements and level of seniority of youth officers authorised to make particular delegations.
10. The Inspector recommends Juvenile Justice provides copies of records about segregation over 24 hours to the Executive Director of Juvenile Justice.
11. The Inspector recommends Juvenile Justice ensures young people placed in separation, segregation and confinement are not routinely handcuffed to, from or during visits or exercise; or required to have non-contact visits; and that decisions to impose such restrictions are based on an individual risk assessment.
12. The Inspector recommends Juvenile Justice ensures DRMPs include a requirement for six hours out of room each day; and that young people on separation, segregation or subject to a DRMP spend at least six hours out of their room each day, including access to an outdoor area and physical activity for at least one hour each day, and that decisions to limit time out of room are based on an individual risk assessment.
13. The Inspector recommends that Juvenile Justice review the policy and procedure in relation to the use of force, protective equipment, and instruments of restraint and the policy and procedure in relation to DRMPs to ensure consistency with legislation.
14. The Inspector recommends Juvenile Justice should not carry out strip searching on a routine basis and should replace this practice with a rigorous risk-based assessment process to target the trafficking of contraband.

Culture and Practice

15. The Inspector recommends Juvenile Justice develops an organisational framework which is evidence based, trauma informed, and consistent with being a child-safe and culturally competent organisation.
16. The Inspector recommends Juvenile Justice and JH&FMHN conduct a review of the management of young people who are in engaging in or threatening self-harm with input from an expert in forensic mental health.
17. The Inspector recommends that young people are not confined for using bad language that is not abusive or threatening.
18. The Inspector recommends that Juvenile Justice reduces the use of confinement as punishment.
19. The Inspector recommends Juvenile Justice ensures young people are confined or segregated in their room whenever possible, subject to an individual risk assessment; to avoid having to wake young people at night to return them to their room.
20. The Inspector recommends Juvenile Justice ensure that wherever possible, subject to an individual risk assessment, young people on separation or segregation are permitted to eat outside of their room.
21. The Inspector recommends Juvenile Justice regularly reviews the meals available for at risk young people to ensure they meet nutritional standards; and investigate the provision of cutlery that is not able to be used for self-harm.
22. The Inspector recommends Juvenile Justice review the amount and range of items and activities, including watching television that are provided to young people placed in separation, segregation and confinement, in consultation with young people.
23. The Inspector recommends Juvenile Justice works with the Department of Education to ensure that young people in separation, segregation and confinement are provided with educational lessons or materials; and any decisions to exclude young people from school are reviewed regularly.
24. The Inspector recommends Juvenile Justice provides programs and activities as part of the implementation of a structured day, particularly in school holidays.
25. The Inspector recommends Juvenile Justice considers whether and how young people in separation, segregation, and confinement may be provided with programs in a modified format, or with program material.
26. The Inspector recommends Juvenile Justice reviews decisions to exclude young people from programs regularly.
27. The Inspector recommends Juvenile Justice reviews centre routines with a view to reducing routine lockdown periods, and increasing the hours that young people spend out of their room each day.
28. The Inspector recommends Juvenile Justice decommissions or refurbishes the Uralba, Taralga, and Tandarra units which were used for the Chisholm Behaviour Program.

Staff Recruitment and Training

29. The Inspector recommends Juvenile Justice outlines and monitors the type and frequency of training permanent and casual staff are expected to complete, as well as the requisite skills and qualifications of trainers.
30. The Inspector recommends Juvenile Justice should record the training undertaken by youth officers and ensure refresher training is undertaken as required.
31. The Inspector recommends Juvenile Justice reviews its training in protective tactics to provide guidance about the circumstances when force or restraints may be used and best practice in using force and restraint on young people, including when young people are located in elevated positions, non-compliant, or when moving a young person who is non-compliant.
32. The Inspector recommends Juvenile Justice considers whether additional measures need to be put in place to mitigate the risk of injuries to staff occurring when force is used.
33. The Inspector recommends that Juvenile Justice provides training to youth officers about the circumstances in which a young person's room should be entered for the safety of staff and young people.
34. The inspector recommends Juvenile Justice provides training to youth officers about the use of handheld video camera.
35. The Inspector recommends Juvenile Justice develops guidelines in relation to how to use footage for training purposes.
36. The Inspector recommends Juvenile Justice reviews the use and practice of debriefs for staff and young people.
37. The Inspector recommends Juvenile Justice ensure all youth officers receive comprehensive and ongoing training about trauma informed practice; managing challenging behaviours; effective communication and negotiation; effective conflict management; including de-escalation techniques; and incident management, including non-violent crisis intervention.
38. The Inspector recommends Juvenile Justice reviews the role descriptions and recruitment processes for youth officers to attract suitably qualified and skilled youth officers to work with young people.
39. The Inspector recommends Juvenile Justice provides training in report writing to ensure all relevant information is accurate and documented and training to reviewing officers to ensure reports are accurate, and how to identify breaches of legislation and policy; and identify areas of good practice and areas of concern.
40. The Inspector recommends Juvenile Justice provides training to staff in relation to the circumstances in which young people may be criminally charged.
41. The Inspector recommends Juvenile Justice provides training on the difference between separation, segregation and confinement and the circumstances in which a young person should be segregated on the basis of an individual risk assessment.

42. The Inspector recommends Juvenile Justice provides training to youth officers about the importance of making decisions in accordance with their delegated authority.
43. The Inspector recommends Juvenile Justice provides training to staff about when, why and how to conduct reviews of confinement.
44. The Inspector recommends Juvenile Justice provides training to staff on the impact of separation, segregation and confinement on Aboriginal young people.
45. The Inspector recommends Juvenile Justice provide training to officers about the circumstances in which a young person should be placed in a dignity gown to prevent self-harm; and allowing a young person to place the dignity gown on themselves, wherever practicable.
46. The Inspector recommends Juvenile Justice provides training about the circumstances in which a search involving the removal of clothing may occur and best practice processes for conducting these searches.

Monitoring and Reporting

47. The Inspector recommends that Juvenile Justice review the type, number and content of reports to be completed following use of force; who is authorised to review and approve incident and use of force reports; and the role of different approving officers.
48. The Inspector recommends that Juvenile Justice records, monitors, and analyses data about use of force to identify anomalies, gaps and trends, and establishes a system for auditing incidents where force is used to ensure that concerns about practice, reporting and reviews are identified.
49. The Inspector recommends Juvenile Justice implement a system to record the use of restraints and analyse when, how and why individual young people are restrained, and the length of time restraints are applied.
50. The Inspector recommends that Juvenile Justice records, monitors, and analyses the hours that young people spend in separation, segregation, or confinement or a combination of orders to identify anomalies, gaps and trends; and establishes a system for auditing the use of separation, segregation, or confinement to ensure that concerns about practice, reporting and reviews are identified.

Accountability

51. The Inspector recommends that Juvenile Justice notifies JH&FMHN of every young person who is subject to a pre-planned, situational or immediate use of force.
52. The Inspector recommends JH&FMHN assess every young person who is subject to a pre-planned, situational or immediate use of force as soon as practicable and record whether the young person has sustained injuries or not; and take photographs of any injuries with a young person's consent.
53. The Inspector recommends JH&FMHN consider extending the hours that nurses are onsite at Juvenile Justice centres.

54. The Inspector recommends that Juvenile Justice notifies a parent, carer, or other appropriate adult following a use of force against a young person if the young person is injured or there is a related investigation.
55. The Inspector recommends Juvenile Justice ensures that during investigations child complainants and witnesses are interviewed and provided with an appropriate support person; and advised of the outcome.
56. The Inspector recommends Juvenile Justice provides information to staff about the role of the Ethics & Professional Standards Unit; the circumstances in which investigations will be conducted; the process that will be followed during an investigation; and support staff will receive during an investigation.
57. The Inspector recommends Juvenile Justice work with the Department of Justice, Professional Conduct Committee to review its terms of reference to include identification of practice issues or systemic issues.
58. The Inspector recommends Juvenile Justice notifies the NSW Ombudsman if a young person is placed in separation, segregation, or confinement or a combination of orders that results in a young person being removed from the centre routine or alone in a room for over 24 hours.
59. The Inspector recommends Juvenile Justice works with the NSW Ombudsman to develop a system of notification of pre-planned use of force of young people and strip searching of young people.

Report

60. The Inspector recommends that, in accordance with section 16(2) of *the Inspector of Custodial Services Act 2012*, this report be made public immediately upon being tabled in NSW Parliament.

1. Introduction

1.1 Role, powers and functions of the Inspector of Custodial Services

The Inspector of Custodial Services was established in October 2013 by the ICS Act. The ICS Act provides for the independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody, and to promote excellence in staff professional practice. The Inspector is required under the ICS Act to inspect each JJC at least once every three years and to report to Parliament on each such inspection.³⁹ The Inspector may include in a report a recommendation that the report, when tabled, be made public immediately.⁴⁰

The powers of the Inspector are set out in section 7 of the ICS Act, which provides:

The Inspector in the exercise of the Inspector's functions:

- a) *is entitled to full access to the records of any custodial centre (including health records) and may make copies of, or take extracts from, those records and may remove and retain those copies or extracts, and*
- b) *may visit and examine any custodial centre at any time the Inspector thinks fit, and*
- c) *may require custodial centre staff members to supply information or produce documents or other things relating to any matter, or any class or kind of matters, concerning a custodial centre's operations, and*
- d) *may require custodial centre staff members to attend before the Inspector to answer questions or produce documents or other things relating to a custodial centre's operations, and*
- e) *may refer matters relating to a custodial centre to other appropriate agencies for consideration or action, and*
- f) *is entitled to be given access to persons in custody, detained or residing at any custodial centre for the purpose of communicating with them.*

1.2 Background to this inspection

In the first half of 2016, the Inspector of Custodial Services decided to conduct an inspection examining how use of force against detainees in JJC's in NSW is managed. The theme for the inspection was determined in consultation with the then Acting Executive Director of Juvenile Justice. The decision was not made because any specific concerns had been identified in this area, but in recognition that it is good practice to review the use of force in juvenile detention. This is to ensure force is only used when necessary and appropriate, identify practice improvements and ensure systems are in place to identify and deal with inappropriate or excessive use of force.

³⁹ *Inspector of Custodial Services Act 2012*, s. 6.

⁴⁰ *Inspector of Custodial Services Act 2012*, s. 16(2).

The initial terms of reference for the inspection were published on 24 June 2016 and an inspection schedule developed. The terms of reference provided that the ICS would examine how use of force against detainees in JJC's in NSW is managed, with particular reference to:

- relevant standards, legislation, policies and procedures
- training staff receive about the lawful and proper use of force, instruments of restraint, reporting of incidents and record-keeping
- equipment and instruments available to staff
- the circumstances in which force is used and the types of force used
- actions taken in response to force being used, including the provision of medical attention and/or support to detainees and staff
- measures to ensure adequate and appropriate accountability for individual incidents and use of force at the systemic level
- strategies used to improve practice, and
- any other related manner.

The initial terms of reference identified Acmena, Cobham, Frank Baxter, Orana and Riverina JJC's as the centres selected for inspection. On 4 October 2016, a decision was made to also include Reiby JJC in the inspection, meaning that all the JJC's in NSW were included in this inspection.

On 28 October 2016, the Minister for Corrections asked the Inspector to consider expanding the inspection into use of force to include the use of separation, segregation and confinement in JJC's, to consider 'the length of time spent in rooms and best practice with regard to time out of rooms'.⁴¹

On 4 November 2016, the Inspector amended the terms of reference to examine how the use of separation, segregation and confinement of detainees in JJC's in NSW is managed, with particular reference to:

- relevant standards, legislation, policies and procedures
- training staff receive about the lawful and proper use of separation, segregation and confinement
- the circumstances that lead to detainees being placed in separation, segregation or confinement
- the Chisholm Behaviour Program and the use of detainee risk-management plans
- the length of time spent in rooms and best practice with regard to time spent out of rooms
- the conditions for detainees during placement in separation, segregation or confinement
- measures to ensure adequate and appropriate accountability, including delegation, reviews, record-keeping and reporting
- strategies used to improve practice, and
- any other related matter.

⁴¹ Letter from the Hon David Elliott, MP, Minister for Corrections, to Fiona Rafter, Inspector of Custodial Services, 28 October 2016.

1.3. Methodology

1.3.1 Research tasks

For the purpose of this inspection, a range of research tasks were undertaken. In particular, the inspection team:

- reviewed relevant literature and reports
- reviewed legislation in Australian states and territories
- examined applicable standards, legislation, policies, procedures and training material
- visited each JJC
- analysed material and data provided by Juvenile Justice
- interviewed and reviewed material provided by stakeholders
- sought submissions from Juvenile Justice staff
- reviewed a sample of incidents involving use of force at each centre, including all relevant reports and footage where available
- reviewed all the matters referred to the EPSU in the 2015–16 financial year that involved allegations of excessive use of force or physical assault
- observed Juvenile Justice protective tactics training and training about ‘evidence-based practice’
- visited Austinmer, the adolescent ward of the Long Bay Forensic Hospital
- visited Parramatta Children’s Court and spoke to Court Logistics staff, and
- visited Bimberi Youth Justice Centre in the ACT.

A consultant was engaged to conduct a review, together with ICS staff, of the establishment and operation of the Chisholm Behaviour Program. In addition, Professor James Ogloff, Foundation Professor of Forensic Behavioural Science and Director, Centre for Forensic Behavioural Science at Swinburne University of Technology, was engaged to provide a literature review of best practice with regard to the use of separation, segregation and confinement of young people in JJC’s. The material provided by Professor Ogloff has been incorporated into this report.

A draft of this report was provided to Juvenile Justice, in accordance with section 14 of the ICS Act. The NSW Ombudsman, JHFMHN, Department of Justice and the NSW Department of Education were also consulted in accordance with section 14(2) of the ICS Act. The Inspector provided the Minister for Corrections with the draft report and the opportunity to make submissions in relation to the draft report in accordance with section 14(1) of the ICS Act.

1.3.2 Inspection of juvenile justice centres

The inspection team visited each JJC for at least three days in the second half of 2016 and, during each visit, spoke to as many staff and young people as possible. Meetings were held with individuals or in small group settings depending on the different model of staffing at each centre. Meetings were held with:

- the regional director, overseeing the management of the JJC
- the centre manager and assistant managers
- youth officers, including unit managers, shift supervisors and programs staff
- psychologists and counselling staff, including drug and alcohol counsellors
- JH&FMHN staff, including nursing unit managers and nurses
- the school principal and/or deputy principal
- the Official Visitor for the JJC
- young people to provide them with the opportunity to raise any issues or concerns, and to hear about their experiences in detention.

To facilitate our contact with young people, each JJC put up posters about our visit on notice boards; our visit was announced to young people when we arrived; and engagement with young people occurred in a variety of locations, including school classrooms, and units where young people were having lunch.

All people spoken to during visits were informed that the information they provided would be confidential and that they would not be identified in the report. Further visits occurred in 2016, 2017 and 2018.

2. The NSW context

Young people aged between 10 and 21 years may be held in custody in a NSW JJC if they have been remanded in custody after being charged with a criminal offence, or when they have been convicted of an offence and given a custodial sentence.⁴²

Since the June 2016 closure of Juniperina JJC (which had housed female detainees), the six centres in NSW are Reiby, Cobham, Frank Baxter, Orana, Acmena and Riverina JJs.

Approximately 1500 young people are admitted to custody each year in NSW with an average of less than 300 young people in detention in NSW each day.⁴³ This is a decrease in numbers and there are fewer young people in custody than in the past.⁴⁴ The majority of young people in custody have come from backgrounds of significant disadvantage. Many have been removed from their families, lived with a range of caregivers or been homeless. They have literacy and numeracy skills well below what is expected for their age, due to learning difficulties, intellectual disability, mental illness, disengagement from education, or a combination of these factors.⁴⁵

Figure 1: Average daily number of young people in custody, 2015–18⁴⁶

| | 2015–16 | 2016–17 | 2017–18 |
|---|---------|---------|---------|
| Average daily number of young people in custody | 292 | 273 | 286 |
| Average daily number of young women | 21 | 21 | 26 |
| Average daily number of young people of Aboriginal and/or Torres Strait Islander background | 158 | 144 | 134 |
| Average daily number of young people serving custodial sentences | 135 | 118 | 116 |

⁴² Section 5 of the *Children (Criminal Proceedings) Act 1987* establishes the age of criminal responsibility at ten years. Section 9A(1) of the *Children (Detention Centres) Act 1987* states that a person who is of or above the age of 21 years is not to be detained in a detention centre if he or she is the subject of an arrest warrant of any kind. However, if a court sentences a person under 21 years of age to imprisonment in respect of an indictable offence, the court may make an order directing that the whole or any part of the term of the sentence of imprisonment be served as a juvenile offender (that is, in a juvenile justice centre) if the sentence or non-parole period expires within six months of the person turning 21 years old: *Children (Criminal Proceedings) Act 1987*, s. 19.

⁴³ Data provided by Juvenile Justice, 2018.

⁴⁴ The average daily number of young people in detention in NSW in the June quarter was: 375 in 2011; 346 in 2012, 306 in 2014; 312 in 2015; 302 in 2016; and 291 in 2017. Australian Institute of Health and Welfare, *Youth detention population in Australia*, 2015, p 15; Australian Institute of Health and Welfare, *Youth detention population in Australia 2016*, p 14; and Australian Institute of Health and Welfare, *Youth detention population in Australia 2017*, p 15.

⁴⁵ Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, 2017.

⁴⁶ Data provided by Juvenile Justice, 2018.

Figure 2: 2015 Young People in Custody Health Survey: Full Report⁴⁷

There were 227 young people surveyed in 2015. Not all young people answered all questions. However, of respondents:

- 21% had been placed in care before the age of 16
- 54% have had a parent in prison. Aboriginal participants were more likely than non-Aboriginal participants to have had a parent in prison (68% versus 37%)
- 27% were attending school prior to custody
- 27% were working in the 30 days prior to custody; non-Aboriginal participants were more likely than Aboriginal participants (39% versus 15%) to report working during this period
- 13% reported being unsettled or having no fixed place of abode in the four weeks prior to custody
- 26% had moved two or more times in the six months prior to custody, with young women more likely than young men to have done so (58% versus 22%)
- 48% had been exposed to a past traumatic event
- 68% had experienced childhood abuse/neglect
- 28% had experienced severe childhood abuse/neglect
- 39% scored in the Borderline IQ range, and 17% scored in the extremely low range
- 83% were found to have a psychological disorder
- 10.6% reported threshold levels of recurrent thoughts of death, 10.1% suicidal acts with intent, 7.4% suicidal acts with medical lethality, 5.4% self-harm behaviour, and 3.2% suicidal ideation over the past 12 months
- 49% had severe difficulties in core language skills, with Aboriginal young people more likely to have such difficulties (57% versus 39%)
- 78% had severe difficulties in reading comprehension
- The average age at which the first full serve of alcohol was drunk was 13.1 years, with Aboriginal young people initiating alcohol use at a younger age (12.7 years versus 13.6 years)
- 92.5% reported illicit drug use in the past.

⁴⁷ Justice Health & Forensic Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, 2017.

In NSW Aboriginal young people make up approximately 47% of the population in juvenile detention.⁴⁸ The significant over-representation of Aboriginal young people is well documented.⁴⁹ Many Aboriginal young people in custody have experienced greater disadvantage and have more complex needs than their non-Aboriginal counterparts (Figure 1).⁵⁰

The 2015 Young People in Custody Health Survey illustrates the vulnerability and high needs of many young people in detention (Figure 2).

Young offenders often have more complex needs than adult offenders. Although adult offenders experience problems such as substance abuse, mental illness and/or cognitive disability, these issues are compounded by the psychological immaturity of young people.⁵¹ Young people in custody also require a higher duty of care than adult offenders, due to their status as legal minors and the State's duty to provide *in loco parentis* supervision of those in custody.⁵²

While recognising the vulnerability and needs of young people in detention, it is acknowledged that some young people in custody engage in challenging and at times dangerous behaviour. The difficulties of managing a group of young people with such complex needs and who pose risks to the safety of the JJC is compounded by the fact that over half the young people in custody are on remand.⁵³ There is often a high turnover of remand detainees, and young people on remand are generally more unsettled than sentenced detainees. This is because they may be new to custody; have health issues that need addressing; be withdrawing from alcohol or other drugs when they enter custody; and are likely to be uncertain about how long they will remain in custody, where they will be placed, and the outcome of legal proceedings. In addition, when a young person first enters custody, staff will often be unaware of the issues facing and risks posed by the young person.

Young people may display threatening, aggressive and violent behaviour within JJC's. Some commit serious assaults against staff and other detainees or cause significant damage to property. The risks posed by young people who are unwilling or unable to behave in socially acceptable ways cannot be underestimated. Some young people pose significant risks to themselves, other young people in custody, and staff.

There is no doubt that managing such a group of young people in JJC's is extremely challenging. However, unlike some other jurisdictions, NSW has the benefit of having six JJC's. Dispersing these young people across a number of JJC's or units has the benefit of enabling staff to separate

⁴⁸ Bureau of Crime Statistics and Research, *New South Wales Custody Statistics Quarterly Update September 2018*, 2018, p.28.

⁴⁹ Bureau of Crime Statistics and Research, *New South Wales Custody Statistics Quarterly Update September 2018*, 2018, p.28.

⁵⁰ The recent AIHW report on Australia's welfare in 2017 noted that Indigenous children were twice as likely to be developmentally vulnerable, have lower literacy and numeracy and be overrepresented in the child protection and justice systems. Australian Institute of Health and Welfare, Chapter 7.1 – Community factors and Indigenous wellbeing, *Australia's welfare*, 2017 <https://www.aihw.gov.au/reports/australias-welfare/australias-welfare-2017/contents/table-of-contents>.

⁵¹ K Richards, Australian Institute of Criminology, *What Makes Juvenile Offenders Different from Adult Offenders?*, 2011, p 5.

⁵² K Richards, Australian Institute of Criminology, *What Makes Juvenile Offenders Different from Adult Offenders?*, 2011, p 5.

⁵³ Refer to Figure 2.

high-risk young people and share the management responsibilities for high-risk young people.⁵⁴ It also enables Juvenile Justice to accommodate young people closer to their families or communities where possible.

The tables below (Figures 3 – 8) provide information about the population of young people at each centre at the time of inspection.⁵⁵

Figure 3: Frank Baxter JJC (26–28 July 2016)

| Frank Baxter JJC: Maximum capacity of centre: 90 At time of inspection (as of first day of inspection, 26 July 2016) | |
|---|-------------------|
| Total number of detainees | 77 |
| Total number of sentenced detainees | 51 |
| Total number of remand detainees | 34 |
| Total number of Aboriginal detainees | 36 (47%) |
| Age of oldest detainee at centre | 20 years 8 months |
| Age of youngest detainee at centre | 15 years 1 month |
| Average age of detainees | 17.6 years |
| Number of detainees on detainee risk management plan | 3 |
| Number of female detainees | 0 |

We also visited Frank Baxter on 2 and 3 March 2017, with the primary purpose of speaking to young people who had been placed in the CBP and young people who had been on DRMPs. We visited again on 24 May 2017 and 31 August 2018 to consult with staff.

⁵⁴ The Office of the Inspector of Custodial Services, Western Australia has highlighted the need for appropriate options to disperse young people. See, for example, Office of the Inspector of Custodial Services, Western Australia, *Behaviour management practices at Banksia Hill Detention Centre*, 2017, p 6.

⁵⁵ Data provided by JJC's following or at the time of inspection.

Figure 4: Acmena JJC (23–25 August 2016)

| Acmena JJC: Maximum capacity of centre: 45 | |
|--|------------------------------------|
| At time of inspection (as of first day of inspection, 23 August 2016) | |
| Total number of detainees | 36 |
| Total number of sentenced detainees | 22 |
| Total number of remand detainees | 14 |
| Total number of Aboriginal detainees | 30 (counting two in transit) (83%) |
| Age of oldest detainee at centre | 19 years |
| Age of youngest detainee at centre | 13 years |
| Average age of detainees | 15–16 years |
| Number of detainees on detainee risk management plan | 0 |
| Number of female detainees | 1 (in transit at court) |

We also visited Acmena between 7 and 9 March 2017 and in May 2018. During the visit we spoke to management, staff and young people and observed a two-day training course on ‘evidence-based practice’.

Figure 5: Riverina JJC (30 August – 1 September 2016)

| Riverina JJC: Maximum capacity of centre: 45 | |
|--|-------------------------------------|
| At time of inspection (as of first day of inspection, 30 August 2016) | |
| Total number of detainees | 24 (counting one in transit) |
| Total number of sentenced detainees | 11 (counting two in control/remand) |
| Total number of remand detainees | 16 (counting two in control/remand) |
| Total number of Aboriginal detainees | 11 (46%) |
| Age of oldest detainee at centre | 18 years |
| Age of youngest detainee at centre | 14 years |
| Average age of detainees | 16.36 years |
| Number of detainees on detainee risk management plan | 0 |
| Number of female detainees | 0 |

We also visited Riverina in February 2018.

Figure 6: Orana JJC (20–22 September 2016)

| Orana JJC: Maximum capacity of centre: 30 | |
|---|----------|
| At time of inspection (as of first day of inspection, 20 September 2016) | |
| Total number of detainees | 21 |
| Total number of sentenced detainees | 13 |
| Total number of remand detainees | 8 |
| Total number of Aboriginal detainees | 18 (86%) |
| Age of oldest detainee at centre | 19 years |
| Age of youngest detainee at centre | 13 years |
| Average age of detainees | 16 years |
| Number of detainees on detainee risk management plan | 0 |
| Number of female detainees | 0 |

We visited Orana on 28 April 2017 and in May 2018. During these visits, we spoke to management and staff, young people and viewed some records.

Figure 7: Cobham JJC (10–12 October 2016)

| Cobham JJC: Maximum capacity of centre: 90 | |
|---|------------------------|
| At time of inspection (as of first day of inspection, 10 October 2016) | |
| Total number of detainees | 70 |
| Total number of sentenced detainees | 10 |
| Total number of remand detainees | 60 |
| Total number of Aboriginal detainees | 26 (37%) |
| Age of oldest detainee at centre | 18 years and 10 months |
| Age of youngest detainee at centre | 13 years and 11 months |
| Average age of detainees | 16 years |
| Number of detainees on detainee risk management plan | 11 |
| Number of female detainees | 0 |

We also visited Cobham on 1 November 2016, 14 December 2016, 1 March 2017 and in August 2018, to speak with young people, staff and obtain records.

Figure 8: Reiby JJC (7, 9, 11 November 2016)

| Reiby JJC: Maximum capacity of centre: 45 in centre, 10 in Waratah Pre-Release Unit⁵⁶ At time of inspection (as of first day of inspection, 7 November 2016) | | | |
|--|-------------|---------------|--------------|
| | Male | Female | Total |
| Number of detainees | 18 | 17 | 35 |
| Number of sentenced detainees | 6 | 5 | 11 |
| Number of remand detainees | 12 | 12 | 24 |
| Number of Aboriginal detainees | 5 (28%) | 10 (59%) | 15 (43%) |
| Age of oldest detainee at centre | 19 years | 19 years | |
| Age of youngest detainee at centre | 13 years | 14 years | |
| Average age of detainees | 14 years | 16 years | |
| Number of detainees on detainee risk-management plan | 0 | 0 | |

We also visited Reiby JJC on 27 June 2017, primarily to speak to female detainees.

2.1 Legislation

The management of JJC's in NSW is primarily governed by the *Children (Detention Centres) Act 1987* (the Act) and the *Children (Detention Centres) Regulation 2015* (the Regulation).

The objects of the Act are set out in section 4:

(1) *The objects of this Act are to ensure that:*

- a) *Persons on remand or subject to control take their places in the community as soon as possible as persons who will observe the law,*
- b) *In the administration of this Act, sufficient resources are available to enable the object referred to in paragraph (a) to be achieved, and*
- c) *Satisfactory relationships are preserved or developed between persons on remand or subject to control and their families.*

(2) *In the administration of this Act:*

- a) *The welfare and interests of persons on remand or subject to control shall be given paramount consideration, and*
- b) *It shall be recognised that the punishment for an offence imposed by a court is the only punishment for that offence.*

⁵⁶ The Waratah Pre-Release Unit is an annex to Reiby JJC, located outside the secure perimeter. The pre-release unit is aimed at preparing young people for return into the community. Young people in the unit can attend work or study during the day, returning to the centre each night.

The legislation provides that the Secretary shall ensure that adequate arrangements exist to: maintain the physical, psychological and emotional wellbeing of detainees; promote the social, cultural and educational development of detainees; maintain discipline and good order among detainees, and; facilitate the proper control and management of detention centres.⁵⁷

A range of systems, processes and programs are in place within Juvenile Justice so that the agency can achieve its mandate to ensure young people are detained in a way that ensures their welfare needs and interests are met.

Classification

Clause 7 of the Regulation prescribes the following classes of detainees:

- a) *Class A – those detainees who, in the opinion of the Secretary, are potentially dangerous and who should therefore be detained within a secure physical barrier at all times, and*
- b) *Class B – all other detainees.*

The Classification and Placement Unit is responsible for the classification of young people in custody. Juvenile Justice uses the Objective Classification System, which assigns a security rating to the detainee's assessed level of risk. A detainee's classification may be reviewed due to a change in his or her legal status, as the result of an incident or intelligence, due to critical dates or as a scheduled review.⁵⁸

In practice, Juvenile Justice uses two types of 'A1' classification: A1(o) for young people who have an A1 classification because of the seriousness of their offence; and A1(b) who have an A1 classification because of their behaviour in custody. Other classifications used are A2, B1, B2 and B3.

In early 2017, Juvenile Justice engaged academics to conduct a review of the Juvenile Justice Objective Classification System. A report was provided in 2018 which found the current system is fit for purpose.⁵⁹

Provision of education, training and programs

The Regulation provides that the Secretary must take all reasonable steps to ensure that each detainee under 17 years is provided with education at a level appropriate to the detainee's aptitude and potential, and must do so whether or not the detainee so requests. The Secretary must also take all reasonable steps to ensure that each detainee of or above the age of 17 years is provided with education or vocational training that meets the detainee's aptitude, potential and interests. In the provision of education and training, the Secretary must give special attention to the needs of detainees who are illiterate or who have a disability.⁶⁰

⁵⁷ *Children (Detention Centres) Act 1987*, s. 14.

⁵⁸ NSW Government, *Juvenile Justice, Year in Review 2015–16*, p 36.

⁵⁹ Information provided by Juvenile Justice, 2017 and 2018.

⁶⁰ *Children (Detention Centres) Regulation 2015*, cl. 18(1)–(3).

The NSW Department of Education operates schools in each JJC. With the agreement of staff, the schools within JJC's may vote to remain open during the normal gazetted school holiday periods. All schools within Juvenile Justice have determined to remain open for an average three extra weeks per year.⁶¹ This is positive and likely to have many benefits given that over two thirds of young people in custody are not attending school prior to their admission to custody.⁶²

The Regulation also provides that the Secretary may provide the following programs in detention JJC's:

- vocational and education programs
- psychological and social programs
- recreational programs
- alcohol and other drug rehabilitation programs
- culture-specific programs, and
- programs to assist detainees to address the offences for which they are detained.⁶³

Each JJC has a range of programs, and employs external service providers to provide recreational and vocational courses and activities for young people. The term 'program' is used interchangeably to refer to educational and vocational programs as well as recreational programs and activities.

2.2 Relevant standards

The NSW Inspector of Custodial Services has inspection standards for Juvenile Justice.⁶⁴

International standards for Juvenile Justice adopted by the United Nations include:

- *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (the Beijing Rules)
- *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules)
- *Convention on the Rights of the Child*
- *International Covenant on Civil and Political Rights*
- *Standard Minimum Rules for the Treatment of Prisoners* (the Mandela Rules)⁶⁵
- *United Nations Rules for the Treatment of Women Prisoners* (the Bangkok Rules)
- *Convention on the Rights of Persons with Disabilities*.

⁶¹ Information provided by Juvenile Justice, 2018.

⁶² See Figure 2.

⁶³ *Children (Detention Centres) Regulation 2015*, cl. 19.

⁶⁴ NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, January 2015.

⁶⁵ Note, Article 27 of the Beijing Rules provide that the Mandela Rules are applicable to the detention of juveniles.

2.3 Management and staffing arrangements

Each JJC is managed by a centre manager, who is supported by at least two assistant managers. There is some variation in the roles performed and positions filled at each JJC and Juvenile Justice is in the process of implementing a more consistent staffing structure across centres, with clearer governance and accountability.⁶⁶ In May 2017, there were 764 full-time equivalent staff comprising youth officers, unit managers and shift supervisors at JJCs. Of these, 82% had an ongoing role, 6% had a temporary role and 12% were employed on a casual basis.⁶⁷

Youth officers are employed in JJCs to:

- proactively supervise detainees so that their physical, psychological and emotional wellbeing is maintained
- participate proactively in the JJC so that safety, good order and discipline is maintained
- assist in the implementation of programs, activities and routines to promote the social, cultural and educational development of detainees
- prepare and maintain a range of operational records and reports
- implement, record and report on a range of case management activities to assist detainee transition to the community with a reduced risk of reoffending.⁶⁸

Juvenile Justice has recently employed a number of case workers in each JJC to strengthen rehabilitative and re-integrative practice. The primary role of these youth officers is to assist detainees to reintegrate into the community after their release from custody, including assisting with access to housing, education, employment and health services.⁶⁹

There are also a number of specialist and professional staff who are employed to provide services to the young people within JJCs. Nurses, psychologists and drug and alcohol counsellors, for example, attend each centre during the week, as do teachers and education staff working at the centre-based schools. Others, such as psychiatrists and general practitioners, visit regularly.

The inspection team did not hear concerns about a lack of available specialist staff. However, on occasions, at some JJCs, security or operational issues impacted on the ability of youth officers to escort young people to their health and psychological appointments. This may result in young people missing their appointments with specialist staff. It may also result in specialist staff waiting for lengthy periods, unsure whether to expect the young person. It is important that young people are able to attend their appointments.

The centre-based employees are supported by staff that develop policies and procedures, develop and maintain information technology and other systems, and provide quality assurance and training. Policies and procedures provide guidance to staff about how to perform their legislated responsibilities and duties. All Juvenile Justice staff have access to the Client Information Management System (CIMS).

⁶⁶ Information provided by Juvenile Justice, 2017.

⁶⁷ Information provided by Juvenile Justice, 2017.

⁶⁸ Juvenile Justice, Youth Officer role description, provided by Juvenile Justice, 2017.

⁶⁹ Information provided by Juvenile Justice, 16 February 2018.

Recruitment

The *Inspection Standards for Juvenile Justice Custodial Services in NSW* state that recruitment, supervision and retention strategies should be in place to ensure there is sufficient and appropriate staff with experience to meet the needs of the centre and the population of young people at all times.⁷⁰

International standards provide that staff should be selected and recruited based on their integrity, humanity, ability and professional capacity to deal with young people, and that staff should be trained in child psychology, child welfare and international human rights standards, particularly with respect to the rights of the child.⁷¹

There is no doubt that employment as a youth officer is challenging and demanding. Research suggests that when youth officers possess certain characteristics or personality traits, the probability that they will intervene effectively in a crisis is increased and the need for some type of physical force diminishes. These youth officers are assertive and precise; considered team players, who have exceptional listening skills and demonstrate empathy; possess an ability to utilise effective problem-solving skills; and are characterised by their capacity to stay calm and remain in control.⁷²

Currently, there are no educational or skills-based pre-requisites for being employed as a youth officer, and these positions are entry-level. This means that some youth officers commencing work at Juvenile Justice may have no expertise or experience in working with young people generally, or managing the needs of young people who have significant and complex needs. However, most unit managers and shift supervisors have a Certificate IV in youth work.⁷³

In Juvenile Justice, all youth officers commence work as casual employees. Applicants who pass suitability testing, interview and assessment, employment screening/criminal records checks, and a pre-employment medical assessment may be offered a position and invited to undertake the Induction Training and Assessment Program. The total induction and assessment training process lasts for approximately nine months. At the time of inspection, new recruits received four weeks of 'classroom-based' training before commencing work in a centre. However, Juvenile Justice has reviewed this approach and is exploring new ways of delivering its Induction Training and Assessment Program. A new model, interspersing the classroom-based training with more practical on-the-job training in JJs, is being piloted and refined.⁷⁴

⁷⁰ NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales* at 8.1.

⁷¹ *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules), Rules 82 and 85.

⁷² JR Oliva, R Morgan and MT Compton, 'A Practical Overview of De-Escalation Skills in Law Enforcement: Helping individuals in crisis while reducing police liability and injury,' *Journal of Police Crisis Negotiations*, vol. 10, 2010, p 19, citing KJ Richards, 'De-escalation techniques' in MT Compton and RJ Kotwicki (eds), *Responding to Individuals with Mental Illnesses*, pp 160–74, and B Vickers, Memphis, Tennessee, Police Department's Crisis Intervention Team, Bureau of Justice Assistance Report no. NCJ 182501.

⁷³ Juvenile Justice has advised most substantive and acting unit managers and shift supervisors have a Certificate IV in youth work qualification (or equivalent). Information provided by Juvenile Justice, 22 May 2017 (tab 4b).

⁷⁴ Information provided by Juvenile Justice, 7 November 2017.

Following the completion of the Induction and Training and Assessment Program, each casual youth officer can choose to remain as a casual employee or request to be placed on the merit list for a permanent position. Youth officers who request to be placed on the merit list are ranked based on ongoing workplace assessments. When permanent positions become available, they are offered to people at the top of the merit list.

The current approach to recruiting youth officers may limit the number of applicants who apply. The expectation that casual youth officers will be available at short notice may be difficult for people who are retaining a second job while attempting to obtain ongoing work as a youth officer. Others may be deterred from applying for a youth officer position as there is no guarantee of regular shifts.

Many of the youth officers employed in JJsCs work to achieve positive outcomes for young people in custody, and centre managers and young people were quick to identify youth officers who were positive, helpful and engaging. Young people spoke with praise about youth officers who do what they say they are going to do, are consistent in their approach, and who treat young people with respect. However, a number of young people did not feel they were treated with respect by particular youth officers. Recruiting the right staff will enhance the ability of Juvenile Justice to achieve its purpose of working with young people to reduce their reoffending.⁷⁵

Juvenile Justice should work to strengthen processes around recruiting youth officers to increase the likelihood that youth officers have the appropriate skills, qualifications, experience and attributes to work effectively with young people who are in custody. This may include utilising a different model of recruitment and considering whether educational, skills-based or other pre-requisites for employment should be required.

Juvenile Justice has recently upgraded its recruitment system for youth officers to improve the rigour, efficiency and transparency of recruitment practices. Under this model, potential applicants are required to progress through multiple steps before they are employed as a youth officer. In addition, Juvenile Justice has developed a new role description for youth officers. A plan is also being developed to transition existing youth officers to this updated role.⁷⁶

Recommendations:

The Inspector recommends Juvenile Justice reviews the role descriptions and recruitment processes for youth officers to attract suitably qualified and skilled officers to work with young people.

⁷⁵ *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules), Rules 82 and 85.

⁷⁶ Information provided by Juvenile Justice, 2018.

2.4 Organisational culture

During the inspection, a large number of staff working in JJC's were consulted. This highlighted that staff varied greatly in their views about how the centres should be operating, and the best ways of managing young people and their behaviour.

At one end of the continuum are staff who adopt an authoritarian approach to managing young people. They believe young people require strict rules that are rigorously enforced, and punishments that are significant enough to have a deterrent effect. While punitive approaches to managing young people in custody may, at times, be popular, there is no evidence to suggest that using coercive and restrictive practices improves the behaviour of young people, or increases safety within the JJC.⁷⁷ At the other end of the continuum are those who believe young people should be treated with care and support, and who adopt a more welfare-style approach to their work.

The majority of staff likely work in a manner that falls within these two extremes. At most centres we visited there was an acknowledgement by staff about the lack of consistency in approaches by youth officers across teams and shifts.⁷⁸ One youth officer noted this was the hardest part of starting work as a youth officer. Young people who often spoke positively about staff, also talked about the difficulties of living in an environment where individual staff adopt very different styles and approaches to dealing with them. Research shows that perceptions of inconsistent or unfair treatment of people in an institutional setting are a material concern that can lead to instability.⁷⁹ As such, operational inconsistency across the system should be addressed.

It is important for Juvenile Justice to work to develop and implement a clear and coherent organisational vision. This should be evidence-based and recognise the cultural backgrounds of young people in custody. It should also acknowledge the significant trauma that many young people have experienced, as well as their significant and complex needs. This will provide clarity to staff, young people and other stakeholders, and should improve consistency across units and shifts within each centre, as well as greater consistency between centres.

⁷⁷ National Council of Juvenile and Family Court Judges, NCJIFCJ resolves to reduce the use of solitary confinement for youth, 2016, <http://www.ncjfcj.org/Solitary-Confinement-Resolution>; Council of Juvenile Correctional Administrators, Toolkit: Reducing the use of isolation, 2015, <http://dcfs.nv.gov/uploadedFiles/dcfsnv.gov/content/Programs/JJS/CJCA%20Toolkit%20Reducing%20the%20Use%20of%20Isolation.pdf>; Mark W Lipsey, James C Howell, Marion R Kelly, Gabrielle Chapman, Darin Carver, Centre for Juvenile Justice Reform, Georgetown University, *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice*, 2010.

⁷⁸ Concerns about lack of consistency in decision-making was highlighted by staff at most centres in the Juvenile Justice Quality Assurance, Custody Trends Report 2015/2016, provided by Juvenile Justice, 22 May 2017 (tab 23).

⁷⁹ P Armytage and Professor J Ogloff AM, *Youth Justice Review and Strategy: Meeting needs and reducing offending*, Part 2, July 2017, p 254.

Trauma-informed practice

Many young people in custody in NSW have experienced significant, recurrent or ongoing trauma in their lives. It is now well established that exposure to too much stress in childhood may have profound negative consequences.⁸⁰

The effects of toxic stress on brain development in early childhood may include: impaired connection of brain circuits and, in extreme cases, smaller brain development; development of a low threshold for stress resulting in overactivity (chronic hyper-arousal); and high levels of stress hormones, including cortisol, which can suppress the body's immune response. Sustained high levels of cortisol can damage the hippocampus, responsible for learning and memory. Cognitive deficits can continue into adulthood.⁸¹

The behaviour of traumatised children is often described as challenging and confusing. Behavioural outbursts are often seen to 'come out of the blue' or as an over-reaction to seemingly minor issues. Other children may be withdrawn and hard to reach.⁸² In response to signals of threat and stress, traumatised children and young people may:

- act aggressively in order to frighten off the danger, physically stop or diminish it, such as fighting, swearing, acting in an intimidating way and shouting (fight response)
- attempt to put an immediate distance between the threat and them – running away, hiding, screening themselves from view (flight response)
- become immobilised, and pretend not to listen, join a group of others who are experiencing similar threat and use distracting strategies to take attention away from themselves (freeze response), or
- engage a shutdown strategy to communicate that the child is irrelevant to the source of the danger, by responding in what can be perceived as an unmotivated, disinterested or annoyed manner (flop response).⁸³

Those who do not realise that a young person has experienced significant trauma, or understand the consequences of this trauma on brain development and behavioural responses, may believe that a young person acting in an anti-social manner may simply be intentionally and rationally choosing to do so. Many young people in custody have experienced significant trauma; being in custody may be a traumatic experience and the experience of being in custody may be re-

⁸⁰ SL Bloom, 'The Impact of Trauma on Development and Well-being' in KR Ginsburg and SB Kinsman (eds), *Reaching Teens: Strength-based communication strategies to build resilience and support Healthy Adolescent Development*, American Academy of Pediatrics, 2014, p 38.

⁸¹ SL Bloom, 'The Impact of Trauma on Development and Well-being' in KR Ginsburg and SB Kinsman (eds), *Reaching Teens: Strength-based communication strategies to build resilience and support Healthy Adolescent Development*, American Academy of Pediatrics, 2014, p 38.

⁸² Australian Childhood Foundation, *Safe & Secure: A trauma informed practice guide for understanding and responding to children and young people affected by family violence*, Eastern Metropolitan Region Family Violence Partnership, Ringwood, 2013, p 14.

⁸³ Australian Childhood Foundation, *Safe & Secure: A trauma informed practice guide for understanding and responding to children and young people affected by family violence*, Eastern Metropolitan Region Family Violence Partnership, Ringwood, 2013, pp 14–15.

traumatising. It is therefore essential that people working in JJC's understand the impacts of trauma on the brain, and also on behaviour.⁸⁴

While trauma-informed practice may be defined differently in different settings, the NSW Health *Youth Health Resource Kit: An essential guide for workers* advises that the following principles are widely accepted as being at the core of trauma-informed practice:

1. providing a physically and emotionally safe environment
2. sharing power with the young people of the service, maximising their choice and control
3. providing training and education for practitioners about the impacts of trauma and developing safety and crisis plans
4. providing ongoing supervision and support for practitioners to mitigate the impacts of vicarious trauma
5. providing a culturally safe and gender-sensitive service
6. ensuring communication is open and respectful
7. supporting young people's goals and interests
8. referring young people to trauma-specific services and interventions.⁸⁵

The WA Inspector of Custodial Services recommended that a trauma-informed model of treatment for young people in detention should be pursued, as it is grounded in international best practice for dealing with children in detention.⁸⁶

The Royal Commission into Institutional Responses to Child Sexual Abuse highlighted the importance of making youth detention trauma informed. The Royal Commission recommended that state and territory governments ensure that all staff in youth detention are provided with training and ongoing professional development in trauma-informed care to assist them to meet the needs of children in youth detention, including children at risk of sexual abuse and children with harmful sexual behaviours.⁸⁷

Juvenile Justice has communicated that it is committed to improving youth officers' understanding about these issues. It is important youth officers recognise and have the skills and knowledge to effectively maintain a young person's arousal at tolerable levels; understand why young people become hyper-aroused; and effectively de-escalate a situation to reduce arousal when a young person is in a state of hyper-arousal. Juvenile Justice has also conveyed a commitment to improve youth officers' understanding of the importance of communicating with young people after a

⁸⁴ J Atkinson, *Trauma-informed Services and Trauma-specific Care for Indigenous Australian Children*, July 2013 (Resource sheet No. 21 for Closing the Gap Clearinghouse).

⁸⁵ NSW Health, *Youth Health Resource Kit: An essential guide for workers*, section 3.4, p 101. <http://www.health.nsw.gov.au/kidsfamilies/youth/Documents/youth-health-resource-kit/youth-health-resource-kit-sect-3-chap-4.pdf>.

⁸⁶ Office of the Inspector of Custodial Services, Western Australia, *Behaviour Management Practices at Banksia Hill Detention Centre*, June 2017, pp i, 2 and 10.

⁸⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Contemporary detention environments*, vol. 15, pp 130–132, in particular, recommendation 15.8.

stressful event. This is to obtain a better understanding about what happened and how to reduce the likelihood of a similar scenario occurring. Young people can only heal from the effects of trauma when they feel safe.

Vicarious trauma

Vicarious trauma is the transformation in a therapist, or other worker, as a result of working with individuals' traumatic experiences.⁸⁸ It is critical that this risk is recognised and that staff receive appropriate assistance and support so that they can fulfil their role effectively while ensuring their wellbeing is maintained.

The primary support service for Juvenile Justice staff is the Employee Assistance Program. This provides short-term counselling and wellbeing support to all employees and their immediate family members and is provided by an external supplier. Staff who wish to use this service must self-refer. All the staff we spoke to were aware that this program is available. However, there appeared to be some confusion around how the referral process worked. Several youth officers expressed a desire for more support from within Juvenile Justice, with suggestions that a dedicated on-site psychologist for staff at each centre might be useful. It is important for Juvenile Justice to support its staff, both following specific incidents and more generally.

Principles for child-safe organisations

The NSW Office of the Children's Guardian plays an important role in assisting organisations to develop their capacity to be safe for children. According to the Office of the Children's Guardian, features of a child-safe organisation include:

- children's views matter and the organisation asks children about what would make them feel safe
- the organisation acts on children's views and addresses their concerns
- the organisation has a child-friendly complaints process for children and makes it easy for children to raise concerns and provide feedback
- children are consulted before important decisions are made and informed about how the information they provide will be used
- leaders within the organisation make sure that children are given information about their rights and about how adults should behave towards them
- the organisation has a policy about what to do if a child has been harmed and staff and volunteers know what to do when there are concerns about a child's safety, and
- when a child makes a complaint or an allegation, the organisation explains what will happen next.⁸⁹

⁸⁸ Morrison, Z. (2007). *"Feeling heavy": Vicarious trauma and other issues facing those who work in the sexual assault field* (ACSSA Wrap No. 4), Melbourne: Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies.

⁸⁹ NSW Government, *Principles for Child-Safe Organisations*, September 2017, p 7, www.kidsguardian.nsw.gov.au.

The Office of the Children’s Guardian has recently published principles for child-safe organisations.⁹⁰ The four key principles are that the organisation: focuses on what is best for children; respects and values children; welcomes children’s families and communities; and has skilled and caring employees and volunteers. These principles acknowledge the research by the Royal Commission into Institutional Responses to Child Sexual Abuse into what makes organisations child-safe.⁹¹

Juvenile Justice should work to encourage greater input from young people in relation to the operation of JJs, the resolution of issues and concerns, and practice improvement generally.

Cultural competence

The over-representation of Aboriginal young people in custody is well documented. Accordingly, it is critical that Juvenile Justice works towards improving outcomes for Aboriginal young people.

This includes recruiting Aboriginal staff to work in Juvenile Justice. The *NSW Public Sector Aboriginal Employment Strategy 2014–17* has five elements: attract and retain Aboriginal staff; support career development and progression; improve Aboriginal cultural competence in the workplace; and know our Aboriginal workforce and plan for results.⁹² These elements are important for agencies like Juvenile Justice that are required to care directly for Aboriginal young people, and seek to ensure these young people maintain, and enhance, their connections to their family and community.

As highlighted in Figure 9, the percentage of Aboriginal staff working in JJs is as high as 26.7% at Orana JJ.

⁹⁰ NSW Government, *Principles for Child-Safe Organisations*, September 2017, www.kidsguardian.nsw.gov.au.

⁹¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Creating Child Safe Institutions*, July 2016. See also K Valentine, I Katz, C Smyth, C Bent, S Rinaldis, C Wade and B Albers, *Key Elements of Child Safe Organisations – Research Study: Final Report* (prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse), Social Policy Research Centre, University of New South Wales, June 2016; Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Making institutions Child Safe*, Vol 6; and Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Contemporary detention environments*, vol. 15, pp 52–54.

⁹² NSW Public Service Commission, *NSW Public Sector Aboriginal Employment Strategy 2014–17*, p 3.

Figure 9: Percentage of Aboriginal staff at each JJC⁹³

| Centre | % of Aboriginal staff |
|------------------|-----------------------|
| Acmena JJC | 18% |
| Cobham JJC | 10% |
| Frank Baxter JJC | 7.1% |
| Orana JJC | 26.7% |
| Reiby JJC | 5.6% |
| Riverina JJC | 13.3% |

There are a number of Aboriginal staff in leadership positions in Juvenile Justice.⁹⁴ Consistent with the *NSW Public Sector Aboriginal Employment Strategy 2014-17*, Juvenile Justice should continue to ensure that workforce planning and development measures are put in place to improve pathways into senior management and executive roles.⁹⁵ Aboriginal young people in custody repeatedly told the inspection team how important it is to them to have Aboriginal staff working with them. Juvenile Justice has successfully undertaken recruitment of Aboriginal employees in a range of roles. Efforts should continue to recruit, retain and promote Aboriginal staff.

It is acknowledged that Juvenile Justice is also working to improve the cultural competence of its staff. For example, in 2016, Aboriginal staff at Acmena JJC developed the Acmena Cultural Awareness Package to educate non-Aboriginal custodial staff about Aboriginal history and the local nations' characteristics. The Department of Justice has also developed a whole-of-department Aboriginal Cultural Respect Training Program that Juvenile Justice staff are expected to complete.

What is needed to ensure agency-wide cultural competence is a sustained focus and reflection on knowledge, awareness, behaviour, skills and attitudes at all levels of service delivery, including at the operational or administrative service level.⁹⁶ Juvenile Justice has advised that development of

⁹³ Data provided by Juvenile Justice, 2017.

⁹⁴ Aboriginal staff comprise 6% of people in leadership positions in the agency. Information provided by Juvenile Justice, 2017.

⁹⁵ NSW Public Service Commission, *NSW Public Sector Aboriginal Employment Strategy 2014–17*, p 1.

⁹⁶ R Bainbridge, J McCalman, A Clifford and K Tsey, *Cultural Competency in the Delivery of Health Services for Indigenous People, Closing the gap clearinghouse*, Issues paper 13, July 2015, pp 2–3.

an organisational framework is underway, which will incorporate principles of best practice in juvenile offender management and intervention including trauma-informed practice.⁹⁷

It is acknowledged that Juvenile Justice is in the process of developing a new Aboriginal Strategic Plan which will seek to ensure that, the needs of Aboriginal young people are systematically addressed and embedded in policy and practice within JJs.⁹⁸ In developing such a strategy, Juvenile Justice should consider the significant volume of existing evidence on this issue, including reports about and strategies being adopted within other Australian jurisdictions. The agency should also consult with Aboriginal organisations and community members.

Recommendation:

The Inspector recommends Juvenile Justice develops a organisational framework which is evidence based, trauma informed, and consistent with being a child-safe and culturally competent organisation.

Training

The *Australasian Juvenile Justice Administrators Juvenile Justice Standards* provide that staff complete induction and mandatory training, and participate in ongoing learning and development.⁹⁹ The *Inspection Standards for Juvenile Justice Custodial Services in NSW* provide (at 8.3):

- All staff must be appropriately trained and receive ongoing development, and re-accreditation where necessary.
- All staff must receive regular training to maintain and upgrade their skills (and qualifications where relevant) and be able to access professional development activities.
- The regular performance appraisal process should include updating staff needs and professional interests.
- All staff should undertake training concerning human rights, Aboriginal issues and cultural awareness, duty of care, child and adolescent development (including gender-specific information), emergency management, drug and alcohol awareness, disability awareness and other relevant areas.
- The centre should have a formal training plan to coordinate the training of staff. Records must be kept of all staff training.
- Custodial staff and staff with direct detainee contact/supervision receive training in 'soft skills' (such as communication and de-escalation) as well as use of force and other security-focused procedural training.

The total induction training for youth officers in NSW is approximately nine months, with over four weeks of classroom-based training. It is vital that officers not only receive comprehensive and

⁹⁷ Information provided by Juvenile Justice, 2018.

⁹⁸ Information provided by Juvenile Justice, 2018.

⁹⁹ *Australasian Juvenile Justice Administrators Juvenile Justice Standards 2009*, standards 8.6 and 8.7.

appropriate training when they commence their role, but that officers receive regular refresher training to ensure their knowledge of legislation, policies and procedures is current and that they have the appropriate skills to undertake their role effectively.

In NSW, centre managers determine how and when officers will receive refresher training. Refresher training may be held face-to-face by regional or centre-based trainers; more informally, at staff meetings; or by means of a skills maintenance session, administered via computer. The training at each centre will generally be determined by the priorities of centre management, the availability of trainers within the centre or region, and whether or not certain staff shifts are allocated for training purposes.

The inspection team reviewed some of the skills maintenance sessions that officers are expected to periodically complete. Completion of these sessions generally requires reviewing a policy or procedure and then answering multiple choice questions; youth officers often complete these sessions at quiet times of the day. Staff provided a variety of opinions about how useful they find the skills maintenance sessions, with some officers telling us that they found it most valuable to complete these sessions together in groups so that ideas could be shared and issues discussed.

Juvenile Justice has advised that an online learning management system is scheduled for rollout across Juvenile Justice in 2018. This will provide an automated training log and automated prompts for training requirements/updates for all staff. The agency has also advised that it is continuing to evolve and strengthen its approach to staff capability development and training with the creation of a dedicated position. The Manager, Operational Training Unit was appointed in November 2018, and is in the process of developing a training framework.¹⁰⁰

Staff at all levels at all JJC's expressed the view that training aimed at enhancing officers' abilities to effectively negotiate with young people and de-escalate situations would be useful and should be prioritised.

Several JJC's have developed their own training courses to meet the perceived needs of staff at that JJC. At Frank Baxter JJC, a Behavioural Management Program was established for staff during 2016. This training, which was also provided to staff at other metropolitan centres, received the Secretary's Commendation Award in 2016¹⁰¹ and staff we spoke to during our inspection consistently told us how useful they had found the training, and how it had a positive impact on the way they conduct their work.

In addition to the training provided at individual centres, there have been a number of training initiatives rolled out more broadly. These include workshops by external providers about communicating with young people and mental health, which have received positive feedback from staff.¹⁰²

In November 2016, the Minister for Corrections announced \$1 million to train frontline officers who deal with high-risk offenders. Since that time, Juvenile Justice has been delivering two days of 'evidence-based practice training' to staff. Training about 'evidence-based practice' was delivered at four centres from November 2016. This training has been adapted from the Behavioural Management Program developed at Frank Baxter JJC. The remaining two centres are participating

¹⁰⁰ Information provided by Juvenile Justice, 2018.

¹⁰¹ Information provided by Juvenile Justice, 2017.

¹⁰² Information provided by Juvenile Justice, 2017.

in a pilot project implementing Core Effective Practice Skills for custodial staff in partnership with Monash University.¹⁰³

The inspection team observed a two-day evidence-based practice training session at a regional centre in March 2017. The training emphasised that:

- The primary goal of Juvenile Justice is to reduce reoffending, and custodial staff can significantly influence and contribute to a young person's outcomes in custody and after release – every interaction is an opportunity.
- It is important for youth officers to work in a way that current research shows is effective, rather than simply continuing to do things the way they have been done in the past.
- Research shows that JJs and adult prisons that have a rehabilitative focus demonstrate better outcomes than those that favour punishment and discipline. JJs with a positive culture are more conducive to rehabilitation.
- It is important to focus on the criminogenic needs of offenders.
- It is important to understand key responsivity considerations, such as the impact of early trauma.
- By engaging in trauma-informed practice, staff can help young people to 're-organise' their brains such that social learning can take place.
- Staff are afforded virtually unlimited opportunity to role model for young people the attitudes and behaviours adults want them to match (for example, by being punctual, doing what you say you are going to do, respecting other people's feelings, demonstrating values and action that support and care for others).
- Effective communication involves a message being sent and received/understood and feedback provided. People speaking have control over what they say, how they say it, where they say it and when they say it. Non-verbal communication (for example, eye contact, posture, gestures, facial expression) makes up the majority of communication.
- Cognitive behavioural therapy is a useful method of challenging young people's thoughts, feelings and behaviours.
- Behaviour can be modified with both positive and negative reinforcement, and praise and encouragement are the simplest and most powerful approaches to increase the likelihood that pro-social behaviour is repeated.¹⁰⁴

During the training, attendees were asked to reflect upon and consider what they currently do well, how things could be improved, and how to implement some of the practical strategies that were discussed. Staff ideas about how centre culture and practice could be improved were collated for the information of centre managers. At some centres, management were keen to act upon suggestions and share their ideas for improvement with other centres. During the inspection staff, visitors, and young people raised the issue of the way some staff speak to young people.¹⁰⁵

¹⁰³ Information provided by Juvenile Justice, 2018.

¹⁰⁴ Juvenile Justice NSW, *Evidence-based Practice Training Participant Workbook*, 2016.

¹⁰⁵ Interviews with young people, staff, and stakeholders, 2016 and 2017.

A youth officer who attended the training said he thought the approach was more professional, observing that “it is harder to be patient and respectful than lock young people up”.¹⁰⁶

One centre manager advised it is vital for casual staff to receive ongoing training.¹⁰⁷ Given that many staff may retain a casual position for a number of years, it is important that these staff receive ongoing and refresher training.

It is important for Juvenile Justice to put in place a clear framework that outlines the amount and type of training that all staff are expected to complete. Where possible, training should be held face-to-face to enable officers to learn in a team environment, discuss scenarios, ask questions and work together. It is important that trainers are appropriately qualified and skilled. Juvenile Justice should also work to strengthen the systems it has for recording the training undertaken by youth officers, so that it is straightforward to determine the amount and type of training that officers have completed, and when permanent and casual staff are due to undertake refresher training.

Recommendation:

The Inspector recommends Juvenile Justice outlines and monitors the type and frequency of training permanent and casual staff are expected to complete, as well as the requisite skills and qualifications of trainers.

¹⁰⁶ Interviews with staff, 2017.

¹⁰⁷ Interviews with staff, 2017.

3. Use of force

Within a custodial environment, the safety and security of staff and young people is paramount. It is for this reason that there is range of restrictive practices which may be used in certain circumstances within juvenile justice settings, including the use of force and use of restraints.

The inspection examined when force is used; why force is used; how force is used; and what action is taken following the use of force.

The circumstances that allow force to be used in Juvenile Justice is prescribed in legislation and officers must use no more force than is reasonably necessary in the circumstances.¹⁰⁸

3.1 Standards

Rule 64 of the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules) make provision for force and 'physical restraint' as follows:

Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

The *Australasian Juvenile Justice Administrators Juvenile Justice Standards 2009* standard 9.3 provides that the least intrusive developmentally appropriate options are to be deployed in responding to security and safety risks posed by children and young people in custody. Standard 9.4 provides that force or instruments of restraint are only used on a child or young person in response to an unacceptable risk of escape or immediate harm to themselves or others, and/or in accordance with legislation, and are used for the shortest possible period of time.

The *Inspection Standards for Juvenile Justice Custodial Services in NSW* provides a framework to examine current practices and approaches. The primary standard relating to use of force is set out at 9.3. It states:

Force (including any form of restraints) must only be used as a last resort and for the shortest time required. Its use must be humanely applied, properly prescribed and monitored, and reported as required by legislation.

- The carrying of weapons by staff is prohibited in the centre.
- Centre policies and practices are consistent with legislation.
- Force is never used as a punishment or to obtain compliance with staff instructions.
- Staff are trained in de-escalation techniques and are encouraged to use these methods instead of using force.

¹⁰⁸ *Children (Detention Centres) Regulation 2015*, cl. 6(3).

- Only approved restraints are kept at the centre.
- The use of force register is up to date and contains comprehensive and accurate details of all incidents.
- All use of force incidents are investigated and reported appropriately.
- Where the use of force is unavoidable, trained staff only use approved techniques for the shortest possible time.
- As soon as possible after a use of force incident, the young person involved sees a healthcare professional.
- Following a use of force incident, the young person is offered the opportunity to discuss it with a staff member who was not involved.
- Parents/carers are notified of incidents of restraint or force where appropriate.
- Cameras are used to record planned interventions including the use of force.¹⁰⁹

3.2 Legislation and policy

In relation to use of force, clause 65 of the Regulation provides:

- (1) *A Juvenile Justice officer must not use force against any person in a detention centre except for the following purposes:*
- to prevent a detainee from injuring himself or herself*
 - to protect the officer or other persons from attack or harm*
 - to prevent a detainee from inflicting serious damage to property*
 - to prevent a detainee from escaping*
 - to prevent a person from entering a detention centre by force*
 - to search a detainee in circumstances in which the detainee refuses to submit to being searched*
 - to seize any dangerous or harmful article or substance that is in the possession of a detainee*
 - to prevent or quell a riot or other disturbance*
 - to protect a dog being used to assist in the detection of prohibited goods in a detention centre from attack or harm*
 - to allow a medical practitioner to carry out medical treatment on a detainee in accordance with section 27 of the Act.¹¹⁰*

¹⁰⁹ NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, 9.3.

¹¹⁰ The provision allowing use of force to allow a medical practitioner to carry out medical treatment on a detainee (clause 65(1)(j)) commenced 19 February 2016. *Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation 2016*, Schedule 1[1].

- (2) *Despite subclause (1), a Juvenile Justice officer may use force in order to move a detainee who refuses to move from one location to another in accordance with an order of that officer, but only if the officer first gives a warning to the detainee of the consequences of failing to comply with the order.*
- (3) *In dealing with a detainee, a Juvenile Justice officer must use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the detainee is to be avoided if at all possible.*

Legislation across Australia generally stipulates three circumstances where force can lawfully be used on a child in custody, these are: for the management, control and security of the detention centre, including prevention of escape; to protect the child or another person; and to prevent damage to the facility.¹¹¹ Specific provisions vary, with Queensland and the ACT expressly providing that force may only be used as a last resort.¹¹² NSW legislation does not currently include a provision that force should be used as a last resort.

Clause 62 of the Regulation provides that force includes the threat to use force or instruments of restraint. Instruments of restraint include handcuffs, ankle-cuffs, flexi-cuffs, restraining belts, riot shields and such other articles or classes of articles, as are declared by the Secretary, by order published in the Gazette, to be instruments of restraint for the purposes of the Regulation.

Section 22(1) of the Act contains a list of 'prohibited punishments' specifying that (among other things) detainees may not be punished by being: struck, cuffed, shaken or subjected to any other form of physical violence.

Section 22(2) of the Act provides that a detainee shall not, without reasonable excuse, be handcuffed or forcibly restrained, and section 22(3) provides that a person who punishes a detainee, or causes a detainee to be punished in a manner prohibited by sections 22(1) or 22(2), is guilty of an offence.

Clause 66 of the Regulation provides:

- (1) *As soon as practicable after force is used by a Juvenile Justice officer against a person, a report must be furnished to the centre manager by each officer involved in the use of force.*
- (2) *The report:*
- a) must be in writing, and*
 - b) must specify the name of each person who has been subjected to force and the name of each officer who was involved in the use of force, and*
 - c) must specify the location where the force occurred, and*
 - d) must describe the nature of the force used and the purpose for which, or the circumstances in which, force was used, and*
 - e) must be signed by the officer making the report.*

¹¹¹ See Australian's Children's Commissioners and Guardians, *Human Rights Standards in Youth Detention Facilities in Australia: The use of restraint, disciplinary regimes and other specified practices*, April 2016, Table 4.

¹¹² *Family and Community Service Regulations 2009* (SA), Division 6.6.5 and s. 195; *Children and Young People Act 2008* (ACT), Part 4, Division 3; *Youth Justice Regulation 2003* (Qld).

This requirement to report use of force does not apply to a threat to use force or an instrument of restraint in circumstances where: the person is restrained for the purposes of being moved from one location to another, and the move and use of the restraint is required to be noted administratively; or the use of a riot shield as personal protection (provided the shield does not come into contact with another person).¹¹³

NSW policies and procedures

The current policy providing guidance to youth officers is the *Use of Force, Protective Equipment & Instruments of Restraint Policy* (use of force policy), which came into effect in April 2016. Some restrictions are outlined in the policy about using force, in particular employees:

- must never use more force than is reasonably necessary in the circumstances
- must not restrict a detainee's airway
- must not strike a detainee (except in self-defence)
- must not intentionally restrain a detainee in the head or neck area
- must not apply pain compliance techniques or holds.¹¹⁴

Consistent with the Regulation, staff are advised to use techniques that avoid inflicting injury to the young person. Rather 'the technique used should quickly restrain the detainee and limit the opportunity of harm to themselves and others.'¹¹⁵ The policy also provides that the techniques conducted in training 'are to be used as a guide to assist employees when using force'.¹¹⁶

The use of force policy provides that force is only justified when all other forms of intervention have been unsuccessful or are not appropriate, and it is both reasonable and necessary in order to resolve the situation and that officers must never use more force than is reasonably necessary in the circumstance.¹¹⁷ The use of force policy outlines a risk-based decision-making process for youth officers.¹¹⁸

Although the guidance is consistent with best-practice principles, it would be preferable for the Regulation, as well as the policy, to include that force should be used as a last resort, and for the shortest amount of time necessary. These are important principles that should always be taken into consideration when force is used.

¹¹³ *Children (Detention Centres) Regulation 2015*, cl. 66(3). This provision was inserted by the *Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation 2016*, Schedule 1[2].

¹¹⁴ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 6.

¹¹⁵ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 6.

¹¹⁶ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 6.

¹¹⁷ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, pp 5 – 6.

¹¹⁸ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 4.

3.3 Circumstances in which force is used and the types of force used

The use of force policy and procedure specifies three types of force that may be used:

- 'Immediate use of force'
- 'Situational use of force'
- 'Pre-planned use of force'.¹¹⁹

Juvenile Justice's *Use of Force Procedure* contains different definitions. It specifies that:

- Immediate use of force: 'When force is required to respond to staff assault or for self-defence'.
- Situational use of force: 'When force is required to respond to an unfolding situation which poses an immediate risk to themselves or others, such as self-harming, fighting or escaping'.
- Pre-planned use of force includes when a detainee refuses to move from one place to another.¹²⁰

The Inspection found that staff had a good understanding of what constitutes a pre-planned use of force. The procedures guiding a pre-planned use of force are also clear and comprehensive.¹²¹

However, staff expressed some confusion about the distinction between situational and immediate uses of force. At most centres, staff stated that situational uses of force occurred when force was used to respond to an incident, but there was a short period of time available for officers to decide when and how to intervene. These officers considered immediate use of force to occur in incidents where the risk was so significant and/or imminent there was no time to consider response options, and that immediate force was the only option available.

Some youth officers, however, distinguished between situational and immediate uses of force, not because of response times, but because of the identity of the person or people at risk during the incident. These youth officers advised us that they would record an incident as a situational use of force if a young person was at risk of harm (for example, an assault by a detainee on another young person) and that they would record an incident as an immediate use of force if an officer was at risk of harm (for example, an assault by a detainee on a staff member). This approach is problematic, as the safety of every person in a JJC is equally important.

The purpose of having distinctions between immediate, situational and pre-planned use of force is to guide officers to act promptly when there is a significant and imminent likelihood of harm to a person or property, and to take more time to consider options when there is no such immediate and significant threat. This is consistent with the principle of using force as a last resort.

¹¹⁹ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 5.

¹²⁰ Juvenile Justice NSW, *Use of Force Procedure*, 20 February 2015, pp 3–4.

¹²¹ Juvenile Justice NSW, *Use of Force Procedure*, April 2016, p 8.

For adults, CSNSW distinguishes only between planned and unplanned uses of force, with the latter defined as 'one with no forewarning and no time for any alternatives to its application'.¹²² The NSW Ombudsman supports this approach.¹²³

Juvenile Justice should consider whether it may be clearer and simpler to use only two categories of use of force, these being 'planned' and 'unplanned'. If Juvenile Justice considers it appropriate to retain three separate categories of use of force – pre-planned, situational and immediate – further clarification should be provided to officers about the meaning of these categories. Juvenile Justice has advised that it is consulting with centre managers in relation to the use of force categories.

Juvenile Justice provided information about incidents where force has been used during a three-year period (1 July 2015 – 30 June 2018). The data included the date of incident; JJC; number of young people involved; number of staff involved; and reason(s) why force was used.¹²⁴ Identification numbers (IDs) reflect each recorded use of force report; a number of reports may be filed for one use of force incident.¹²⁵

Figure 10: Number of use of force identification numbers recorded, 2015–18¹²⁶

| JJC | Count of Use of Forces | | |
|--------------------|------------------------|---------|---------|
| | 2015–16 | 2016–17 | 2017–18 |
| Acmena | 89 | 122 | 106 |
| Frank Baxter | 313 | 367 | 406 |
| Cobham | 347 | 536 | 589 |
| Orana | 218 | 294 | 155 |
| Reiby | 517 | 409 | 465 |
| Riverina | 263 | 161 | 206 |
| Juniperina | 135 | N/A | N/A |
| Transport services | 9 | 9 | 16 |
| Total | 1891 | 1898 | 1943 |

¹²² Corrective Services NSW, *Use of Force (Custodial Operations Policy and Procedures)* 13.7, December 2017, p 14.

¹²³ Advice from NSW Ombudsman, 2017.

¹²⁴ There are limitations with the data reported due to current reporting practices, and the way information is captured in the CIMS. For example, an officer must record a reason for use of force. Multiple officers may prepare use of force reports for one incident involving the use of force. This may have an impact on the numbers recorded.

¹²⁵ Identification numbers refer to individual records in the CIMS. See also previous footnote.

¹²⁶ Data provided by Juvenile Justice, 2016 and 2018.

Figure 11: Reasons for uses of force, 2015–18¹²⁷

| Reason for use of force ¹²⁸ | Total – All centres | | |
|---|---------------------|---------|---------|
| | 2015–16 | 2016–17 | 2017–18 |
| To protect the officer or other persons from attack or harm | 1235 | 1344 | 1411 |
| To move a young person who refused to move from one location to another in accordance with an officer's order | 575 | 552 | 582 |
| To prevent a young person from injuring himself or herself | 207 | 138 | 133 |
| To prevent or quell a riot or other disturbance | 165 | 181 | 179 |
| To prevent a young person from inflicting serious damage to property | 97 | 43 | 28 |

The data indicates the majority of times force is used is to protect a youth officer or young person from harm. The second highest category is to move a young person who refused to move from one location to another in accordance with an officer's order. Youth officers also told us these were the two main reasons why force is used.

Situational or immediate use of force

These types of use of force are generally in response to an assault to protect an officer or young person from harm.

¹²⁷ Data provided by Juvenile Justice, 2016 and 2018.

¹²⁸ Categories for reason of use of force including: to seize any dangerous or harmful article or substance that is in the possession of the young person to prevent a young person from escaping, to search a detainee in circumstances in which the detainee refuses to submit to being searched, to prevent a person from entering a detention centre by force, to protect a dog being used to assist in the detection of drugs in a detention centre from attack or harm, and to allow a medical practitioner to carry out a medical treatment on a detainee included low incident numbers, in order to not identify the young persons involved this data has not been provided in Figure 11.

Figure 12: Assault incidents, 2015–18¹²⁹

| Assault Category | Count of Incidents | | |
|--|--------------------|------------|------------|
| | 2015–16 | 2016–17 | 2017–18 |
| Assault – Physical <i>Includes young person on young person, young person on staff, young person on non-DJJ and police on young person</i> | 321 | 346 | 401 |
| Assault – Verbal <i>Includes young person on young person, young person on staff, and young person on non-DJJ</i> | 64 | 23 | 20 |
| Assault with Weapon <i>Includes threat, young person on young person, young person on staff, and young person on non-DJJ</i> | 8 | 21 | 22 |
| Total¹³⁰ | 393 | 390 | 443 |

Clause 65(b) of the Regulation authorises use of force to ‘protect the officer or other persons from attack or harm’. Staff at centres consistently identified ‘breaking up fights’ as one of the two most common reasons why they use force, which is consistent with data about incidents where force is used. These incidents might involve a young person assaulting another young person, or two or more young people engaged in a physical altercation. The usual approach is for staff to physically separate the young people.

It is important to recognise that some fights or assaults occur spontaneously between young people. In the incidents reviewed by the inspection team, staff have generally responded quickly and have actively sought to minimise the harm to the victim of the assault, and provide immediate assistance to them. Some youth officers spoke of the importance of closely observing young people during recreation periods to ensure that they are able to intervene as soon as they notice a conflict emerging or a group encounter that starts turning hostile.

Youth officers who are actively engaged with young people are generally more successful at defusing escalating situations. This is because they have a clearer understanding of the mood of the group, the relations between the young people and any issues that are causing concern.

The inspection team also heard about, and viewed footage of, several incidents where officers at JJC’s have been seriously injured by detainees. This is of significant concern. Staff are entitled to feel safe in their workplace. When staff are assaulted, or other significant incidents occur within

¹²⁹ Data provided by Juvenile Justice, 2017 and 2018.

¹³⁰ These totals exclude the category ‘Assault – Other’, due to small numbers this category has the potential to identify individuals, similarly a breakdown by centre has been excluded so as to not identify individual young people.

JJCs, it is important that staff receive appropriate support and assistance. At some JJCs, youth officers felt there was a lack of support from centre management and senior officers within Juvenile Justice for their concerns. However, the inspection team spoke to an officer, who had been seriously injured by a young person during an incident, who felt the support provided by centre management and the senior executive was exemplary.¹³¹

Debriefs are one strategy that, if undertaken well, can be utilised to determine how staff are feeling, and whether they need additional support. A 2014 report published by the WA Inspector of Custodial Services into assaults on staff in WA prisons recommended formalising the review of all staff assaults, including documenting triggers for the assault; consequences applied to the prisoner; and developing a targeted approach to improving staff conflict-resolution skills.¹³²

Pre-planned use of force

Pre-planned force may be used to move a detainee who refuses to move from one location to another in accordance with an order of a youth officer. It may also be used in response to violent and dangerous behaviour by high risk detainees, and to prevent self-harm.

The use of force policy states when all peaceful avenues have been exhausted and force is required, this duty must be carried out in a professional and safe manner, ensuring that duty of care and workplace health and safety obligations are adhered to at all times.¹³³ When youth officers are required to move a detainee, youth officers are advised to: follow a plan for the use of force as directed by the unit supervisor; use protective equipment when directed to do so; apply handcuffs as determined by the unit supervisor; and move the detainee to the required location as per the plan.¹³⁴

The Australian Children's Commissioners and Guardians are of the view that 'use of force against a child to facilitate compliance with an order or direction from a detention centre staff member is unreasonable and excessive and is contrary to the requirement that force is only used as a measure of last resort'.¹³⁵ *The Inspection Standards for Juvenile Justice Custodial Services in NSW* at 9.3 also provides that force should never be used to obtain compliance with staff instructions.¹³⁶ Officers working in JJCs in Western Australia, Queensland and the ACT are not permitted to use force for compliance.¹³⁷

¹³¹ Interviews with staff, 2016 and 2017.

¹³² Western Australia, Office of the Inspector of Custodial Services, *Assaults on Staff in Western Australian Prisons*, July 2014, p v.

¹³³ Juvenile Justice NSW, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 5.

¹³⁴ Juvenile Justice NSW, *Use of Instruments of Restraint Procedure*, April 2016, p 3.

¹³⁵ Australian Children's Commissioners and Guardians, *Human Rights Standards in Youth Detention Facilities in Australia: The use of restraint, disciplinary regimes and other specified practices*, p 47.

¹³⁶ NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, 9.3.

¹³⁷ *Western Australia, Young Offender Regulations 1995* (WA) cl. 72(1) and (2); Queensland, *Youth Justice Regulation 2016* (Qld), cl. 16(5); Australian Capital Territory, *Children and Young People (Use of Force) Policy and Procedures 2015* (No.1).

Youth officers explained that they needed to use force on young people who refused to move because lengthy periods of negotiation or letting the person remain where they are, may have a negative impact on other young people in the centre or unit, who may be locked down in their room for the duration of the incident. In some circumstances, this is a valid concern. However, during some incidents the inspection team reviewed, the other young people were already locked in their room, because it was a lockdown period or bedtime. In other situations when young people refuse to go to their room, they may be located in a yard or recreation area that is separate to the accommodation area where other young people are located.

Non-compliance with directions by young people is often a form of protest. Juvenile Justice should also focus on reducing non-compliance. If young people are given more opportunities to be heard; if they perceive that decisions made about their daily life are fair and reasonable; and if they have legitimate ways to air grievances, they may not use non-compliance as a form of protest.¹³⁸

The inspection found that pre-planned use of force to move young people was used in some centres. It is acknowledged there may be a need to use force to move young people for the safety of young people and staff. However, the practice of routinely using force to move young people to a different area of a JJC should be minimised. Given force is commonly used to move young people in NSW, reducing the use of force to move young people will require careful consideration and planning, and up-skilling of staff.

It is important that youth officers are provided with more effective tools for managing young people who are refusing to follow directions. It is also important that they have the support of management to use flexible approaches, and are permitted the time needed to negotiate with young people.

Recommendations:

The Inspector recommends that Juvenile Justice reduces the use of force to move young people.

The Inspector recommends Juvenile Justice consider whether to retain the separate categories of pre-planned, situational or immediate use of force, or whether to use only two categories.

3.3.1 Use of force to search young people

In NSW, youth officers are authorised to use force to search a detainee in circumstances in which the detainee refuses to submit to being searched, and to seize any dangerous or harmful article or substance that is in the possession of a detainee.¹³⁹ This is in recognition that some young people bring dangerous or illegal items into a JJC, or access unauthorised items within the centre, and steps need to be taken to prevent this from occurring. One of the methods used to detect contraband items is searching of young people and their property.

¹³⁸ As the Western Australian Inspector of Custodial Services noted after serious incidents at Banksia Hill Juvenile Detention Centre, idle, bored children will invariably become frustrated and are very likely to act out their frustrations. Correspondence from Neil Morgan, Inspector of Custodial Services, Western Australia to Kathryn McMillan QC, Qld Youth Detention Review, 25 October 2016.

http://www.youthdetentionreview.qld.gov.au/_data/assets/pdf_file/0019/2548/Office-of-the-Inspector-of-Custodial-Services-WA.pdf

¹³⁹ *Children (Detention Centres) Regulation 2015*, cl. 65(1)(f) and (g).

A Juvenile Justice procedure provides that staff may use force to conduct a strip search on a detainee to retrieve a dangerous item, harmful article or substance should only be considered after a wand and clothed body search has been conducted; when there is an immediate and urgent risk to a young person's life; and when all alternatives have been attempted or considered. In particular, the major determinant of the need to use force is urgency. If the detainee can be contained, and the level of risk kept to a minimum, use of force to strip search the detainee should not occur.¹⁴⁰

Staff are informed there will be occasions when a young person refuses to be searched. In such cases, the young person must be treated sensitively because the reasons for refusal may be of a very personal nature. Not every refusal to be searched will be a 'rebellious' act or an attempt to avoid being caught with an illicit object or substance. The procedure also states that continued refusal should be dealt with as misbehaviour, not through use of force.

According to Juvenile Justice data, force was used to search a young person in six incidents in the 2015–16 financial year and 10 times in the 2016–17 financial year. Two of these were reviewed. Neither search involved the removal of clothing. Forcible searching is not a common occurrence in practice and used only when necessary on the basis of risk.

Recommendation:

The Inspector recommends that forcible searching of young people should only be conducted on the basis of reasonable suspicion.

3.3.2 Use of force to prevent self-harm

Clause 65(1)(a) of the Regulation specifies that youth officers may use force to 'prevent a detainee from injuring himself or herself'. It is recognised in the standards and legislation that force may be used to stop a young person from self-harming.

Young people in custody may be at risk of engaging in self-harming behaviours. The *2015 Young People in Custody Health Survey* reported that 5.4% of young people had self-harmed in the past and 10.6% had thought about suicide, with 10.1% previously attempting suicide.¹⁴¹ Juvenile Justice records incidents of actual, attempted and threatened self-harm. Incidents can be tracked by young person or timeframe.¹⁴² Juvenile Justice records indicate that there were 323 incidents of actual self-harm during the 2015–16 financial year, 314 in the 2016–17 financial year, and 359 in the 2017-18 financial year. Data about actual, attempted and threatened self-harm, is included in Figure 13.

¹⁴⁰ Juvenile Justice, *Searching Young People Policy*, 2018. Formerly, *Use of Force (searching detainees)*.

¹⁴¹ Justice Health & Forensic Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, 2017.

¹⁴² Information provided by Juvenile Justice, 2017.

Figure 13: Actual, attempt and threaten self-harm incidents by financial year¹⁴³

| Centre | Self-Harm Category | Count of Incidents | | |
|----------------------------|--------------------|--------------------|------------|------------|
| | | 2015-16 | 2016-17 | 2017-18 |
| All centres ¹⁴⁴ | Actual | 323 | 314 | 359 |
| | Attempt | 73 | 74 | 81 |
| | Threaten | 54 | 42 | 32 |
| Total | | 450 | 430 | 472 |

Youth officers are regularly faced with young people threatening, attempting or engaging in, self-harming behaviour, and it appears that self-harming incidents have increased at some JJC's while decreasing at others.¹⁴⁵ At Cobham JJC, for example, instances of actual self-harm decreased by approximately 16% between the 2016-17 and 2017-18 financial years.

When young people are self-harming in custody, the usual approach is for an officer to speak with the young person. In some instances, a psychologist or a JH&FMHN staff member may be called to assist. However, if these responses are not successful in preventing or stopping self-harm, force may be used to prevent a young person harming themselves. Whether force is pre-planned or situational will depend on the individual circumstances.

Figure 14 illustrates the number of times that force has been used to prevent a person from self-harming. Use of force to prevent a young person from injuring him or herself decreased in both 2016-17, 2017-18 compared to the previous financial year; however, only very slightly between 2016-17 and 2017-18.

Figure 14: Use of force to prevent a young person from injuring him or herself¹⁴⁶

| | 2015–2016 | 2016–2017 | 2017–2018 |
|----------------------------|------------|------------|------------|
| Total¹⁴⁷ | 207 | 138 | 133 |

If a decision is made that a young person should be placed in a dignity gown to reduce the opportunity or likelihood that self-harm will occur, attempts should be made to explain to the young person why this is a reasonable decision, and to seek their compliance to change into the dignity

¹⁴³ Data provided by Juvenile Justice, 2017 and 2018.

¹⁴⁴ All includes Acmena, Frank Baxter, Cobham, Orana, Reiby, Riverina and Juniperina JJC's, as well as transport. Note: Juniperina closed in June 2016 with the young people at Juniperina transferred to Reiby JJC.

¹⁴⁵ Based on 2015–16 and 2016–17 data.

¹⁴⁶ Data provided by Juvenile Justice, 2018.

¹⁴⁷ The total includes Acmena, Frank Baxter, Cobham, Orana, Reiby, Riverina and Juniperina JJC's, as well as transport. Note: Juniperina closed in June 2016 with the young people at Juniperina transferred to Reiby JJC.

gown themselves.¹⁴⁸ Forcibly removing clothing to place a young person in a dignity gown should be avoided where possible.

It is acknowledged that working effectively with a young person who is engaging in or threatening self-harm is challenging and requires officers to possess particular characteristics, skills and knowledge and is ultimately best handled by professional staff with expertise in this area. However, given that so many young people in custody have self-harm histories, it is essential that all staff have knowledge about this issue and can work effectively with young people until professionally trained health care or psychology staff are able to respond. Following self-harming incidents, young people are referred to JH&FMHN and centre psychologists, and checks occur to determine the safety of restraints, for example, that handcuffs are not too tight. It is also important for Juvenile Justice staff whose role it is to manage and assist individuals who self-harm to be provided with appropriate care, support and assistance.

Recommendations:

The Inspector recommends Juvenile Justice provide training to officers about the circumstances in which a young person should be placed in a dignity gown to prevent self-harm; and allowing a young person to place the dignity gown on themselves, wherever practicable.

3.3.3 Use of force to manage serious incidents

Youth officers may use force to prevent or quell a riot or other disturbance and may use force to prevent a detainee from inflicting serious damage to property.¹⁴⁹ There was an increase in force being used for this reason in the 2016–17 financial year.

This is not surprising as there has been a number of serious incidents in JJC's in NSW, where young people have caused significant damage to property. In some instances, there have been hundreds of thousands of dollars worth of damage and units have been out of operation for months. Although the vast majority of incidents are managed by Juvenile Justice staff, it is necessary for Juvenile Justice to have other arrangements in place to respond to serious incidents.

The Commissioner of CSNSW may provide assistance to Juvenile Justice with respect to handling riots and disturbances at JJC's.¹⁵⁰ In such circumstances, the Commissioner of CSNSW has the control and management of the centre, and any authorised correctional officers have the same functions and immunities in relation to the control of young people at the JJC as they have in relation to the control of inmates in a correctional centre. The Act specifically provides that, in such circumstances, dogs may be used to assist in the maintenance of good order in a JJC in the same way they may be used in a correctional centre. The Commissioner of CSNSW has not been

¹⁴⁸ Dignity gowns are gowns that may be used as a protective measure in maintaining the dignity of a detainee. Juvenile Justice, Executive memorandum, 2006.

¹⁴⁹ *Children (Detention Centres) Regulation 2015*, cl. 65(1)(h) and (1)(c).

¹⁵⁰ Section 26, *Children (Detention Centres) Act 1987*; Following machinery of government changes, the two agencies now fall within the same department and assistance will be provided by CSNSW to Juvenile Justice.

requested to assist in dealing with a riot or disturbance and correctional officers have therefore not been called upon to use force on young people.

If required, Juvenile Justice staff may also call the NSW Police Force for assistance in maintaining order within a JJC. There is a draft MoU between the NSW Police Force and Department of Justice which makes provision for a centre manager to formally request police assistance. This provides that the centre manager shall remain in charge and make all attempts to manage the incident until, if necessary, responsibility for resolving the incident is handed over to police.¹⁵¹ Juvenile Justice is currently reviewing the MoU with the NSW Police Force.¹⁵²

Recommendation:

The Inspector recommends that Juvenile Justice finalise the draft memorandum of understanding with the NSW Police Force.

3.3.4 Use of force for other reasons

According to Juvenile Justice data, in the 2015–16 financial year, force was used 20 times to prevent an escape. In the 2016–17 financial year, it was used 32 times for this reason.

Section 27 of the Act provides for young people in detention to be provided with medical treatment and medicine as necessary, according to the opinion of a medical officer, to preserve the health of the detainee, or other people. Such medical treatment may, in certain circumstances, be provided without the consent of the young person.¹⁵³ In February 2016, the Regulation was amended to allow youth officers to use force to facilitate a medical practitioner to carry out medical treatment, in certain circumstances.¹⁵⁴ Reporting has been updated to capture the February 2016 amendment; however, the data did not show force was used for this reason. It may be that officers are unaware they are able to use force for this reason, that it is not being reported, or that it has not yet been used for this purpose. Juvenile Justice should regularly analyse data about incidents where force is used to identify anomalies, gaps, trends and other issues that arise, so they can be addressed.

3.3.5 Review of use of force files

To obtain an understanding of how force is used at the different centres, the inspection team reviewed incidents relating to uses of force with approximately ten from each centre. In addition, the inspection team reviewed material relating to use of force that was mentioned during interviews while inspecting the JJC. These were where young people or staff had raised concerns or staff highlighted good practice.

The examination of incidents where force was used provided an understanding of the types of incidents where force is used, and how force is used in practice. This involved reviewing hard copy

¹⁵¹ Information provided by Juvenile Justice, 18 July 2017.

¹⁵² Information provided by Juvenile Justice, 11 October 2018

¹⁵³ *Children (Detention Centres) Act 1987*, s. 27(2).

¹⁵⁴ See Australian's Children's Commissioners and Guardians, *Human Rights Standards in Youth Detention Facilities in Australia: The use of restraint, disciplinary regimes and other specified practices*, April 2016, Table 4.

material, electronic records and footage where it was available. It is important to acknowledge that footage of the lead-up to use of force is often not captured. Where footage was available, the inspection team considered the steps taken and strategies used by officers to try to avoid using force.

The inspection team found that, of the files reviewed, one use of force should have been referred to the EPSU and immediately referred the matter to the Executive Director of Juvenile Justice for action. A number of other matters revealed practice issues and were referred to the Executive Director for consideration. In some incidents, it was not possible to determine which officers were involved in communicating with the young person or how long was spent trying to negotiate with the young person or de-escalate the situation before force was used. Many of the incidents reviewed included reports where officers stated there were lengthy negotiations with the young person prior to force being used. However, it was difficult to establish the exact length of negotiations before filming commenced. For example, in one incident the inspection team reviewed, one report said 55 minutes and several others said 40 minutes.

In a range of incidents, youth officers who were attempting to engage with the young person did so in a manner that was calm and professional but not effective in de-escalating the situation. The inspection team formed the view that many youth officers would benefit from training in how to effectively de-escalate situations involving young people.

The incidents reviewed suggest that officers are aware of the requirement to provide a warning to young people to follow directions otherwise force will be used. In fact, it appears to be common practice for three warnings to be given before force is used. An incident controller was present for all pre-planned use of force, and provided direction to staff.¹⁵⁵ This is good practice.

During incidents when young people refused to comply with officers' directions to move to another area of the centre, some young people remain non-compliant, resulting in use of force by several officers to move the young person. In these pre-planned uses of force, it is not unusual for a number of officers in protective tactics equipment to be standing in view of the young person, during periods of negotiation. While some officers are of the view that the presence of such officers can avoid use of force, others are of the view that this is not conducive to effective de-escalation or consistent with trauma-informed practice. These practice issues should be considered by Juvenile Justice and guidance provided to staff about issues and risks.

The inspection team found force is sometimes used on a young person who is already restrained to prevent young people hurting themselves or damaging property. Force can also be used on a young person who is handcuffed but refusing to move in accordance with an officer's instructions. To avoid use of excessive force, Juvenile Justice should provide clear guidance to youth officers about the circumstances in which it is reasonable to use force on a young person who is already restrained.

Use of force is sometimes used if a young person is misbehaving in their room. Having officers enter the room can escalate the situation, placing officers and young people at risk of being hurt. If the young person is not causing damage to property or placing themselves or others at risk, it may be more appropriate to leave the young person alone in their room.

¹⁵⁵ Incident controllers are also known as incident supervisors. They are the supervisor or manager who is supervising the incident participant/s at the time of the incident. Juvenile Justice, *Incident Reporting Procedure*, 2015.

Use of force is authorised if the situation poses a risk of harm and there is legislative authority to use force. If it is determined that use of force is necessary, then the least amount of force that will restrain the young person should be used, taking into account the age, size, gender and history of the young person. Sometimes force is required to be used on a young person on an elevated surface such as a bench or table. Given the risk that young people or officers will be injured when force is used on a young person on an elevated surface, this approach should be avoided wherever possible. Youth officers should also be provided with guidance and training about the safest way to lower young people to the ground from a height so that, if needed, they can be lowered safely.

Use of force training provides information and instructions to youth officers regarding restraining a young person on the ground. This includes instructions and demonstrations of the supine position (laying a person on their back), which is the preferred method for stabilising someone on the ground whenever possible; and risk factors and warning signs of positional asphyxia.¹⁵⁶ Contact with the head and neck must be avoided as should placing pressure on the chest or abdomen. Wherever possible, officers should use control of the legs, arms and shoulders to maintain stabilisation. Whenever a young person is restrained in the prone position (laying a person face down), attempts must be made as soon as possible to reposition them into the supine or recovery position (laying a person on their side) and the officer in charge is tasked with the role of communicating and providing instructions to officers involved in the restraint about correct positioning and monitoring potential risks.¹⁵⁷

The use of force policy contains a range of information about positional asphyxia and highlights the dangers of restraining a young person in the prone position. The policy states 'avoid a prone restraint unless absolutely necessary (a detainee must be repositioned from the face down/prone position as soon as possible)' and 'do not sit or lean on the abdomen'.¹⁵⁸ Employees are advised to pay attention to a range of issues, including a detainee stating that he or she cannot breathe.¹⁵⁹

A number of incidents the inspection team viewed involved ground stabilisation in the prone position involving multiple youth officers. On one occasion, the young person who was being restrained in the prone position said they were having difficulty breathing and received a response that if the young person was talking he could therefore breathe. The inspection found that some officers do not seem to fully understand the risks posed by positional asphyxia, the warning signs to look out for, nor the policy requirements of Juvenile Justice. This is despite clear policies and specific training on this issue. Juvenile Justice should review its policy and training to emphasise the dangers of ground stabilisation in the prone position.

Given the dangers of 'ground stabilisation' techniques, the Qld Independent Review of Youth Detention has recently recommended that the relevant policy relating to the use of force, including ground stabilisation, should be amended to emphasise that ground stabilisation is to be used as a last resort, and only if there is no other way of managing the situation and securing the young

¹⁵⁶ Juvenile Justice, *Use of Force, Protective Equipment and Instruments of Restraint Policy*, April 2016, pp 6-7.

¹⁵⁷ Information provided by Juvenile Justice, 2018.

¹⁵⁸ Juvenile Justice NSW, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, 2016, p 7.

¹⁵⁹ HM Inspectorate of Prisons, *Behaviour Management and Restraint of Children in Custody*, 2015, p 20.

person's safety, cooperation or to ensure the safety of another person.¹⁶⁰ Youth workers in the ACT are also restricted from restraining a person using the prone position.¹⁶¹

The use of force policy does not specifically refer to forcibly escorting young people and it is not clear what, if any, guidance is offered to officers about this issue. A small number of incidents show young people being carried by officers, in the prone position and handcuffed to the rear, without support to their head or neck. In two cases, young people were dropped. The review found one incident where a young person behaving violently was restrained in the prone position and handcuffed to the rear before being dragged for several metres. The incident controller directed the officers to stop and allow the young person to walk. If young people do need to be carried, this must be done as safely as possible, and should never involve dragging a young person. This type of response has potential to pose a risk of injury to the young person. Juvenile Justice should review the current approach of carrying young people if they are refusing to follow a direction to move. Training should also be provided to officers about the safest way to forcibly move a young person if it is unavoidable.

Recommendations:

The Inspector recommends that Juvenile Justice provides training to youth officers about the circumstances in which a young person's room should be entered for the safety of staff and young people.

The Inspector recommends Juvenile Justice reviews its training in protective tactics to provide guidance about the circumstances when force or restraints may be used and best practice in using force and restraint on young people, including when young people are located in elevated positions, non-compliant, or when moving a young person who is non-compliant.

3.4 Training

The use of force policy provides that all youth officers, and more senior youth officers, up to and including centre managers, must be trained in the use of protective tactics.¹⁶² Each centre must retain a number of trained employees to deliver the protective tactics training. Training must be scheduled on a regular basis to ensure that new employees are trained in a timely manner. Employees are encouraged to complete refresher training every six months and all employees must participate in refresher training at least once every two years.

Protective tactics training is covered over four days during officers' initial induction training. This training comprises:

- **Day 1** – Understanding conflict and aggressive behaviour, young people and challenging behaviour, techniques for dealing with conflict.

¹⁶⁰ *Queensland Independent Review of Youth Detention*, 2016, Recommendation 17.R7. This recommendation was accepted. See *Queensland Government response to the independent review of youth detention*, p 22. Restraining people on the floor was also raised as a significant concern in HM Inspectorate of Prisons, *Behaviour Management and Restraint of Children in Custody*, 2015, p 6.

¹⁶¹ *Children and Young People (Use of Force) Policy and Procedures 2015 (ACT)*, s. 6.14(c).

¹⁶² Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 13.

- **Day 2** – Detainee Behaviour Intervention Framework, risk-based decision-making, misbehaviour, negotiating with detainees.
- **Day 3** – protective tactics skills practice, formations and squad work, use of force types, instruments of restraint instruction and practice for compliant and non-compliant detainees.
- **Day 4** – duties of the first responding officer, negotiation scenarios, room removal (non-compliant detainee), critical incident debriefing.¹⁶³

Refresher training is provided by officers at each centre who have been trained to deliver protective tactics training. The inspection team viewed two days of protective tactics training, the purpose of which was to train the protective tactics trainers. The training was focused on how to appropriately use force. The training at each centre will generally be determined by the priorities of centre management, the availability of trainers within the centre or region, and whether or not certain staff shifts are allocated for training purposes.

Some staff advised they had received refresher training relatively recently, but others could not recall the last time they received refresher training. Records about the use of force training provided to staff at each centre between July 2015 and December 2017, including face-to-face and online training, were not available. However, Juvenile Justice did provide a sample of training records for 30 officers from across all centres. Of those, there were only two staff members whose records indicated that they had received face-to-face training. The majority of youth officers completed training online.

Juvenile Justice should strengthen the systems it has for recording the training undertaken by youth officers, so that those who have not undertaken training in a reasonable period may be easily identified and required to do so. It is important that all officers who may need to resort to using force are capable and confident in doing so in accordance with legislation, policy and training.

One of the most common issues raised by Juvenile Justice staff was the need for more training about negotiation with young people and de-escalation of incidents. At every JJC visited, officers suggested to us that they would like additional training on negotiation. As each young person will likely have rapport with different staff members, wherever possible staff that are known to work well with the particular young person should be called to help resolve an incident. It appears that staff at most centres try to adopt this flexible approach wherever possible. This is to be commended.

Research suggests that people with certain skills and attributes are particularly effective at de-escalating crisis situations.¹⁶⁴ Where possible, Juvenile Justice should aim to identify officers who demonstrate high-level communication and problem-solving skills and who remain calm in difficult

¹⁶³ Information provided by Juvenile Justice, 2017.

¹⁶⁴ These officers are assertive, precise and considered team-players, who have exceptional listening skills and demonstrate empathy; are able to utilise effective problem-solving skills; and are characterised by the capacity to stay calm and remain in control. JR Oliva, R Morgan and MT Compton, 'A Practical Overview of De-Escalation Skills in Law Enforcement: Helping individuals in crisis while reducing police liability and injury,' *Journal of Police Crisis Negotiations*, vol. 10, 2010, p 19, citing KJ Richards, 'De-escalation techniques' in MT Compton and RJ Kotwicki (eds), *Responding to Individuals with Mental Illnesses*, pp 160–174, and B Vickers, *Memphis Tennessee Police Department's Crisis Intervention Team*, Bureau of Justice Assistance Report no NCJ 182501.

situations. However, it is important for all youth officers to receive this training so they are competent in understanding the key elements of effective de-escalation and negotiation.

The term 'de-escalation' generally refers to the act of moving from a state of high tension to a state of reduced tension.¹⁶⁵ The aim is for officers to assist the individual to regain control emotionally and resolve or reduce the crisis to a manageable state.¹⁶⁶

Much of the research into de-escalation skills and techniques has been conducted in the policing and mental health fields. However, the lessons learned in these fields are likely to be useful for those who work with young people in detention.¹⁶⁷ Young people in custody often have mental health concerns, intellectual disability, histories of substance use, and/or have experienced significant trauma. Price and Baker conducted a literature review to determine the key components of de-escalation techniques. Seven themes emerged from the review, three of which related broadly to staff skills, including: characteristics of effective de-escalators, maintaining personal control, and verbal and non-verbal skills. The remaining four themes relate to the process of intervening and include: engaging with the patient, when to intervene, ensuring safe conditions for de-escalation, and strategies for de-escalation.¹⁶⁸

All jurisdictions in Australia now deliver some form of training in de-escalation strategies.¹⁶⁹ *The Royal Commission into the Protection and Detention of Children in the Northern Territory* recommended that officer induction training should contain, as a baseline, strategies including de-

¹⁶⁵ JR Olivia, R Morgan and MT Compton, 'A Practical Overview of De-Escalation Skills in Law Enforcement: Helping individuals in crisis while reducing police liability and injury,' *Journal of Police Crisis Negotiations*, 2010, vol. 10, p 18, citing KJ Richards, 'De-escalation techniques' in MT Compton and RJ Kotwicki (eds), *Responding to Individuals with Mental Illnesses*, pp 160–174, (Sudbury, 2007).

¹⁶⁶ JR Olivia, R Morgan and MT Compton, 'A Practical Overview of De-Escalation Skills in Law Enforcement: Helping individuals in crisis while reducing police liability and injury,' *Journal of Police Crisis Negotiations*, 2010, vol. 10, p 18.

¹⁶⁷ V Mavandadi, PJ Bieling and V Madsen, 'Effective Ingredients of Verbal De-escalation: Validating an English modified version of the 'De-Escalating Aggressive Behaviour Scale', *Journal of Psychiatric and Mental Health Nursing*, 2016, vol. 23, p 357.

¹⁶⁸ O Price and J Baker, 'Key Components of De-escalation Techniques: A thematic synthesis,' *International Journal of Mental Health Nursing*, 2012, vol. 21, p 310.

¹⁶⁹ In South Australia, officers are trained by a private provider in conflict management, assault reduction, disengagement and holding, and handcuffing. Induction and annual refresher training is provided to all staff involving reviews of incident recordings. In Tasmania, Nonviolent Crisis Intervention (NVCi) is the approach adopted. NVCi is an evidence-based framework of techniques and behaviours, including de-escalation, developed by the Crisis Prevention institute in the USA. Its focus is on prevention and early intervention. Victoria uses a Preventing Occupational Violence (POV) model, which focuses on strategies to defuse and manage potentially aggressive incidents. POV uses a proactive and preventative approach rather than a reactive approach, giving staff access to ongoing skills development. POV is designed to give staff confidence to manage potentially violent or dangerous client situations and help them make better decisions, resulting in fewer or better managed incidents. Australian Children's Commissioners and Guardians, *Human Rights Standards in Youth Detention Facilities in Australia: The use of restraint, disciplinary regimes and other specified practices*, April 2016, pp 43–44.

escalation and mediation, and trauma-informed practice.¹⁷⁰ The Qld *Independent Review of Youth Detention* also recommended that all staff should be trained in de-escalation techniques.¹⁷¹

It is important for officers to receive comprehensive and ongoing training about: managing challenging behaviours, effective communication and negotiation; effective conflict management, including de-escalation techniques; incident management, including non-violent crisis intervention; and report writing to improve outcomes for staff and young people in detention.

Although induction and refresher training in Juvenile Justice has contained de-escalation and negotiation strategies, Juvenile Justice has updated its training package incorporating content specific to managing challenging behaviours, effective communication, conflict management and de-escalation.¹⁷² A tailored de-escalation and negotiation training package has been developed and piloted across metropolitan and regional JJC's. Following external review it is now being rolled out across all centres. This training recognises the need for officers to be conscious of their body language when communicating with young people, and to think about what they say to young people, including how, when and where they say it. It is critical for officers working with young people in detention to have a good understanding of how their own behaviour can impact on the behaviour of young people.

It is acknowledged that Juvenile Justice is continuing to evolve and strengthen its approach to staff capability development and training. Juvenile Justice has advised that a new Manager, Operational Training Unit has been created and will conduct a systematic analysis of all training within Juvenile Justice to ensure that all staff receive the right training at the right time.

Recommendations:

The Inspector recommends Juvenile Justice ensure all youth officers receive comprehensive and ongoing training about trauma informed practice; managing challenging behaviours; effective communication and negotiation; effective conflict management; including de-escalation techniques; and incident management, including non-violent crisis intervention.

The Inspector recommends Juvenile Justice should record the training undertaken by youth officers and ensure refresher training is undertaken as required.

Youth Officer Centre Support Teams

Frank Baxter JJC has a dedicated Youth Officer Centre Support Team comprising of four youth officers who are called as first responders if there is an incident requiring force to be used. They also undertake a range of centre support roles.

Stakeholders were divided about the use of a Youth Officer Centre Support Team model. People supportive of these teams said they are likely to respond to incidents more quickly; are

¹⁷⁰ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report*, 2017, vol. 2B, p 52.

¹⁷¹ *Queensland Independent Review of Youth Detention*, December 2016, Recommendation 17.R8. See also *Queensland Government response to the independent review of youth detention*, p 22.

¹⁷² Information provided by Juvenile Justice, 2018.

experienced in responding to incidents, including using force; and reports written by members of the team are generally of a good quality because officers have more experience in writing reports. Stakeholders not supportive of the model thought response teams should not have a place in juvenile settings, as having a dedicated team responding to all incidents may de-skill other officers.

Juvenile Justice staff were predominantly of the view there is no need for dedicated Youth Officer Centre Support Teams at smaller centres and this model is more useful in the larger centres housing higher risk detainees with an A classification. Members of the Youth Officer Centre Support Team at Frank Baxter JJC said that the young people generally have a good rapport with officers in this role and young people also stated they had no major concerns with the Youth Officer Centre Support Team.

The inspection found, while incidents may be more efficiently dealt with by a Youth Officer Centre Support Team, for example, a young person is restrained more quickly, the approach used by such teams and the reports written by members of the team do not seem substantively different from incidents handled by other officers.

However, if Juvenile Justice is to continue to use Youth Officer Centre Support Teams at particular JJs, or to implement such teams more broadly, it is important that there is clarity around the purpose of these teams. Wherever possible, the composition of teams should be diverse, and attempts should be made to recruit women, Aboriginal people, and officers from different cultural backgrounds to Youth Officer Centre Support Team roles.

3.5 Equipment and instruments of restraint

3.5.1 Protective equipment for officers

Protective equipment is defined in the use of force policy as 'any equipment used to eliminate, minimise or reduce any reasonably foreseeable risk of harm or injury to employees'.¹⁷³ Youth officers in NSW have access to the following types of protective equipment: hard and soft shields, helmets, coveralls, boots, gloves, vests, and knee and elbow pads. Some officers carry small kits on their belt containing items such as handcuffs and sterile gloves.

Surgical masks with a clear plastic panel designed to cover the eyes are also available for officers to wear if they choose. Youth officers may wear these, for example, when dealing with a young person who is known to spit at officers. However, it appears uncommon for officers to use these masks. A youth officer escorting a young person who is known to spit may position themselves to avoid this occurring. Staff also noted that the majority of situations where a young person spits at an officer occurs without warning.

At a JJC, use of protective equipment may be authorised by the centre manager, duty manager, assistant manager, unit manager or an assistant unit manager/shift supervisor. However, the latter is only authorised to approve the use of protective equipment if a more senior employee is not present and the time taken to contact them could place employees or detainees at risk of serious harm.¹⁷⁴

¹⁷³ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 12.

¹⁷⁴ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 13.

Staff at all JJC's seemed generally satisfied with the availability of protective tactics equipment. Some officers noted that when responding to incidents, they have on occasion had difficulty locating the correct size helmet, coveralls or boots. To address this issue, some JJC's have provided a number of officers with their own kit containing protective tactics equipment in the correct size. Youth officers with their own kit advised this system works quite well as it allows them to respond more quickly to incidents, and provides them with the assurance of knowing that the equipment they select will be the correct size.

When there is an incident unfolding where force may need to be used on one or more young people, certain youth officers will usually be asked by a senior youth officer to prepare to respond. Youth officers retrieve shields and other protective equipment, and may dress in coveralls, boots and helmets. At some JJC's, at the beginning of each shift certain officers are identified as responsible for responding if there is an incident, and their role in incident management will be specified (for example, videographer, scribe or first responder). This is a sensible model as youth officers can react quickly if an incident eventuates. However, the location and type of incident is not always possible to predict, and identified 'first response' officers will not always be available. It is therefore imperative that all youth officers are able to respond to an incident if needed.

The inspection team did not identify any significant concerns about the upkeep or condition of the protective tactics equipment and note that each centre had a process in place for regularly checking the condition of equipment and auditing stock.

Instruments of restraint

Clause 65(1) of the Regulation prohibits use of force which includes instruments of restraint by a youth officer in a detention centre except for a limited number of purposes.¹⁷⁵ Instruments of restraint may only be used for the purposes for which force may be used, which includes to prevent a detainee from injuring himself or herself; protect the officer or other persons from attack or harm; to prevent a detainee from inflicting serious damage to property or to move a detainee who refuses to move from one location to another in accordance with an order of that officer, but only if the officer first gives a warning to the detainee of the consequence of failing to comply with the order.¹⁷⁶ Using handcuffs for punishment is prohibited and it is an offence to handcuff or forcibly restrain a young person without reasonable excuse.¹⁷⁷

This is generally consistent with international standards that provide restraining a young person should not occur unless it is to prevent the young person from inflicting self-harm, injuries to others or serious destruction of property that cannot be mitigated by other measures.¹⁷⁸ However, practice varies between jurisdictions about the application of mechanical restraints.¹⁷⁹ The use of

¹⁷⁵ *Children (Detention Centres) Regulation 2015*, cl. 65(1).

¹⁷⁶ *Children (Detention Centres) Regulation 2015*, s. 65(1).

¹⁷⁷ *Children (Detention Centres) Act 1987*, cl. 22(1), 22(2).

¹⁷⁸ *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules), R64, p8 (1990).

¹⁷⁹ The phrase 'last resort' is employed in a range of policy documents and legislative instruments to restrict the use of force. Victorian practice, for example, dictates that handcuffs are only to be used in situations where there is an immediate and serious threat to safety or security and can only be used by staff specifically trained in their use. Further, they are to be used for the shortest conceivable time and removed at the earliest point possible. This is similar to Queensland's practice which authorises the use of restraints

force policy and a 'Use of Instruments of Restraint Procedure' provide guidance about when instruments of restraint can be applied and how to restrain young people, as well as who is able to authorise the use of instruments of restraint.¹⁸⁰ These include handcuffs and flexi-cuffs, restraining belts and ankle-cuffs. Youth officers in NSW are not authorised to use restraint chairs or spit hoods and are not authorised to use chemical agents, such as capsicum spray, as a method of restraint. During our inspection, we did not come across any evidence that these items have been, or are being, used in NSW JJC's.

Handcuffing

In practice, young people are handcuffed in a range of circumstances in NSW in accordance with the use of force policy. Young people are generally handcuffed during external movements; following a use of force while being moved through the JJC; and where the young person poses a risk of harm, or if a young person has been, or is considered to be, at risk of self-harm.

The use of force policy states 'not all use of instruments of restraint with a young person constitutes use of force'. Further, it states, 'Instruments of restraint routinely used on a compliant detainee as part of an approved Detainee Risk Management Plan is not considered use of force'. The policy was drafted following an amendment to the Regulation which provided that a use of force report is not required when a detainee is restrained in order to be moved from one location to another.¹⁸¹ It did not provide that a restraint used on a detainee in order to move the detainee from one location to another is not a use of force.

At the time of inspection, DRMPs often required young people to be placed in handcuffs for each movement and some recreation periods. It is probable that staff relying on the use of force policy did not believe handcuffing was a use of force requiring them to apply the risk-based decision-making model in the policy. It is acknowledged that restraints may be required for young people on the basis of an individual risk assessment in accordance with the legislation for the safety and security of staff and inmates and the young person themselves. Some high-risk detainees will be required to wear handcuffs when out of their room, for movements or during recreation time in accordance with the legislation. However, in accordance with the legislation, young people should never be routinely handcuffed.

within a detention facility only if it is reasonably likely the child will attempt to escape, seriously harm themselves or others or seriously disrupt the order and security of the centre. Queensland legislation clearly stipulates that all reasonable steps must be taken to use restraints in a way that respects the child's dignity and for a period no longer than reasonably necessary (Australian Children's Commissioners and Guardians, *Human Rights Standards in Youth Detention Facilities in Australia: The use of restraint, disciplinary regimes and other specified practices*, April 2016). The 2006 Carlile Inquiry in England recommended that restraint should never be used primarily to secure compliance (The Lord Carlile of Berriew QC, *An Independent Inquiry into the Use of Physical Restraint, Solitary Confinement and Forcible Strip Searching of Children in Prisons, Secure Training Centres and Local Authority Secure Children's Homes, the Howard League for Penal Reform*, 2006, recommendation 18). The HM Inspectorate of Prisons has also recommended that restraint should not be used for reasons relating to good order and security (Her Majesty's Inspectorate of Prisons, *Behaviour Management and Restraint of Children in Custody*, 2015, p 13).

¹⁸⁰ Juvenile Justice, *Use of Instruments of Restraint Procedure*, April 2016.

¹⁸¹ *Children (Detention Centres) Regulation 2015*, cl. 66(3). This provision was inserted by the *Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation 2016*, Schedule 1[2].

If a decision is made that a young person should be handcuffed, this should occur following a risk assessment, and only if the risks cannot be mitigated in any other way. The inspection found that in the majority of instances where a young person was placed in handcuffs during recreation periods, the young person was neither permitted to associate with other young people, nor to leave a secure and relatively confined space, for example, a fully fenced yard attached to an accommodation unit. Many of the potential risks posed by a young person appeared to be mitigated by his or her placement in such an environment. Being restrained in any way poses risks to young people.¹⁸² Young people wearing restraints must always be closely observed to mitigate risks, and restraints should be removed as soon as possible in accordance with Juvenile Justice policy.

Placing a young person in handcuffs limits their ability to engage in most recreational activities. Some young people handcuffed during recreation periods said they have been limited to making phone calls and playing cards. Other young people voiced their experiences of being expected to play table tennis during their recreation periods while in handcuffs. It is not surprising that these young people found this physically difficult as well as humiliating.¹⁸³

Juvenile Justice has advised that the practice of routinely handcuffing young people during movements and recreation periods has ceased and staff are required to conduct a risk assessment before a restraint is used. The policy and procedure relating to handcuffing is scheduled for review. The new policy should be in accordance with the legislation and provide clear guidance to staff.

The use of force policy notes that handcuffing is most dangerous when applying and removing handcuffs, and notes that handcuffs are to be used for the shortest time necessary. The policy specifies that handcuffing young people to the front is the preferred method of handcuffing, however, hands may be cuffed to the rear when detainees behave violently towards themselves or others and where arms in front may be used as a weapon.¹⁸⁴

For safety reasons, youth officers are trained to instruct the young person to kneel on the ground facing away from the officers. This is to enable handcuffs to be applied or removed with the least amount of risk to the young person and to officers. Given some young people in custody have been subject to violence and abuse, care should be used with the way this direction is communicated.

Flexi-cuffs

The policy provides that flexi-cuffs may be used when handcuffs are not available, or when it is deemed to be safer and more secure than the use of handcuffs, such as in the case of young people who are relatively small. The policy makes clear flexi-cuffs must not be used without employee access to a flex-cuff cutting tool to cut the surplus tape after being applied. Staff at different centres confirmed young people placed in flexi-cuffs are subject to frequent checks.

¹⁸² See HM Inspectorate of Prisons, *Behaviour Management and Restraint of Children in Custody*, November 2015, p 5.

¹⁸³ Interviews with young people, 2016 and 2017.

¹⁸⁴ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 10.

Ankle-cuffs

The use of force policy provides that ankle-cuffs may only be used during periods of hospitalisation; when standard handcuffs cannot be used or their use would cause pain or discomfort; when there are not enough standard handcuffs available during an emergency situation; when there is an extreme risk of a detainee escaping or violence during movements outside the centre, so that both handcuffs and ankle-cuffs are required.

The inspection team observed ankle-cuffs being used in a number of incidents where young people have attempted, or engaged in, self-harm. Further guidance should be provided to youth officers to clarify that use of ankle-cuffs on a person who is engaging in or has attempted to engage in self-harm is permitted. If youth officers are of the view that there is justification for use of ankle-cuffs, the use of ankle-cuffs should be clearly documented, together with the reasons for the decision. The appropriateness of the use of ankle-cuffs should then be considered by reviewing officers.

Restraining belts

The use of force policy also provides for the use of restraining belts. Restraining belts are secured around a young person's waist, and a pair of handcuffs is used to secure each of the detainee's hands to a metal loop at the front of the young person's waist. These may only be used to transport a detainee with a history of violence or challenging behaviour during transport and using standard handcuffs would expose employees to risk of harm, injury or accident; to restrain a detainee whose violence and aggression cannot be controlled using standard handcuffs; to assist in managing extreme self-harm behaviour following consultation with a psychologist, where possible; as a last resort, when it is necessary to restrict a detainee's arm or hand movement to prevent them from causing serious injury to themselves or others, and all other intervention methods have not achieved this.

Safety helmets

The use of force policy states that detainee safety helmets must not be used for any other purpose than for the protection of detainees who present with a self-harm risk and other interventions, such as negotiating with the detainee, have not been successful. The policy explicitly provides that such helmets are not to be used for protecting employees from spitting or biting. A risk assessment must also be conducted to determine if use of force and/or other forms of restraint are necessary to control the detainee in order to prevent further harm to the young person.

JJC staff reported only a small number of detainees who engage in this type of behaviour, but that for these particular young people, this type of self-harm can at times occur regularly. Safety helmets may be a useful piece of equipment for keeping these particular young people safe. As with other forms of restraint, it is important for officers to follow policies and procedures and document carefully the reasons for the use of restraints.

Reporting use of restraint

Figure 15A: Restraints used during use of force, 2015–16

| JJC | Use of force IDs | Number of incidents where instruments of restraint used | Percentage of incidents where instruments of restraint used |
|--------------|------------------|---|---|
| Acmena | 89 | 49 | 55% |
| Baxter | 313 | 193 | 62% |
| Cobham | 347 | 206 | 59% |
| Juniperina | 135 | 116 | 86% |
| Orana | 218 | 57 | 26% |
| Reiby | 517 | 215 | 42% |
| Riverina | 263 | 80 | 30% |
| Transport | 9 | 9 | 100% |
| Total | 1891 | 925 | 49% |

Figure 15B: Restraints used during use of force, 2016–17

| JJC | Use of force IDs | Number of incidents where instruments of restraint used | % of incidents where instruments of restraint used |
|--------------|------------------|---|--|
| Acmena | 122 | 77 | 63% |
| Frank Baxter | 367 | 200 | 54% |
| Cobham | 536 | 298 | 56% |
| Orana | 294 | 68 | 23% |
| Reiby | 409 | 143 | 35% |
| Riverina | 161 | 59 | 37% |
| Transport | 9 | 8 | 89% |
| Total | 1898 | 853 | 45% |

Figure 15C: Restraints used during force, 2017–18¹⁸⁵

| JJC | Use of force IDs | Number of incidents where instruments of restraint used | % of incidents where instruments of restraint used |
|--------------|------------------|---|--|
| Acmena | 106 | 74 | 70% |
| Baxter | 406 | 269 | 66% |
| Cobham | 589 | 323 | 55% |
| Orana | 155 | 32 | 21% |
| Reiby | 465 | 169 | 36% |
| Riverina | 206 | 94 | 46% |
| Transport | 16 | 9 | 56% |
| Total | 1943 | 970 | 50% |

In the 2015-16, 2016-17 and 2017-18 financial years the proportion of incidents where instruments of restraint were used remained relatively stable.

Recent changes to reporting have enabled the collection of data about the types of restraints used in incidents where force is used on a young person, which enables more meaningful analysis of data. As use of restraints during a use of force is recorded separately to use of restraints for other reasons, it is not possible to determine how many detainees are subject to restraint on a particular day, or how often individual detainees are restrained.¹⁸⁶

Juvenile Justice should review the way that information about use of restraints is recorded and take steps to ensure that accurate data is kept about when, how and why young people are restrained. This should be kept in a format whereby data may be analysed in relation both to individual young people, and young people generally. It is important for Juvenile Justice to know how often restraints are used at a JJC, who is subject to restraint, the types of restraints used, the reasons why restraints are used and how long restraints are applied. This information should be closely monitored.

¹⁸⁵ Note: more than one instrument of restraint may have been used per use of force identification number. Changes to reporting occurred during the 2016–17 financial year allowing for instrument type to be recorded.

¹⁸⁶ The use of handcuffs is documented on movement forms – when required for external movements, including court; in use of force reports, DRMP records and in absence records on CIMS. Handcuff registers record the allocation and return of handcuffs to and from secure storage (Information provided by Juvenile Justice, 2017).

Recommendations:

The Inspector recommends that Juvenile Justice review the policy and procedure in relation to the use of force, protective equipment, and instruments of restraint and the policy and procedure in relation to DRMPs to ensure consistency with legislation.

The Inspector recommends Juvenile Justice implement a system to record the use of restraints and analyse when, how and why individual young people are restrained, and the length of time restraints are applied.

3.6 Actions taken following use of force

3.6.1 Medical assessment

The use of force procedure specifies that unit managers should inform the JH&FMHN nurse of pre-planned use of force action.¹⁸⁷ This is to enable a young person to be treated by a nurse if they suffer an injury during the use of force. However, it is unclear whether this happens in practice.

Until 2013, it was compulsory for each young person subject to a use of force in NSW to be offered a medical assessment by a nurse. However, in August 2013, the procedure was amended and the requirement for a nurse to attend following a use of force on a detainee was removed.¹⁸⁸ The current use of force policy provides that JH&FMHN does not require the reporting of a use of force unless the young person has requested to see the nurse and/or there are concerns for the detainee's health. It is JH&FMHN policy to see all young people as soon as possible after a use of force, however this relies on Juvenile Justice staff notifying JH&FMHN staff. Regular checks of the detainee are to be maintained in line with clinical instructions and appropriate medical assistance sought when required, as per the use of force procedure.¹⁸⁹

All JJC's have nurses on-site during the day, and some JJC's have nurses into the evening. However, JH&FMHN does not provide a 24-hour on-site service in any JJC. If a young person requires medical attention when a nurse is not on-site, juvenile justice staff will call the JH&FMHN after-hours telephone support line to seek advice and to seek approval for medication to be administered.

At most JJC's, staff said it is usual practice to contact the centre nurses following each use of force, and for a nurse to medically assess the young person. Young people stated that most of the time they are asked whether they would like to see a nurse after force has been used; but this does not always occur and young people may have to ask a youth officer to see a nurse. A young person may not request to see a nurse for many reasons, including not realising they have suffered an injury. Sometimes young people who are offered a medical assessment refuse to be assessed by a nurse immediately after an incident, or when the nurse first attends to see them, but may wish to see the nurse at a later time. It appears that requests to see a nurse are facilitated.

However, it was difficult to establish the frequency with which young people see a nurse following incidents where force is used; the time that the medical assessment occurs; whether a young

¹⁸⁷ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 8.

¹⁸⁸ Information provided by the NSW Ombudsman, 2016.

¹⁸⁹ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 7.

person has complained about an injury, whether injuries are apparent; or the nature of injuries that require treatment.

Medical assessment following use of force is an important protection for both staff and young people to ensure that injuries are identified, treated and documented. It is equally important to document if there are no injuries. The relevant standards suggest that young people in custody should be assessed by a medical officer after every use of force.¹⁹⁰ Reports about use of force in custodial environments also highlight the importance of this.¹⁹¹

CSNSW policy states that medical treatment must be offered to every inmate subject to a use of force. This is irrespective of the observable presence or absence of injury. On duty JH&FMHN medical personnel must be requested to medically assess and treat the inmate as soon as practicable after the use of force. If no JH&FMHN personnel are on duty then the JH&FMHN after hours nurse manager should be called by the senior officer, who will advise the senior officer if an ambulance should be called or if they can wait for a JH&FMHN to assess the inmate.

Young people in JJC's should also be seen by a nurse and offered medical assessment following every use of force. Juvenile Justice should amend its policy to require that JH&FMHN are notified of every young person that is the subject of a pre-planned, situational, or immediate use of force. Juvenile Justice should adopt the approach of CSNSW. In circumstances where JH&FMHN staff are not available, the After Hours Justice Health Nurse Manager should be contacted to seek advice regarding treatment. JH&FMHN should keep records about when the young person is assessed by a nurse, whether injuries have been sustained or not, and any reason why the assessment does not occur.

In some jurisdictions it is policy to require that photographs be taken after incidents of force, and that additional photographs are taken within 24–48 hours, given that some injuries become more apparent over time.¹⁹² Nurses in JJC's do not take photographs of injuries following use of force, however, JH&FMHN acknowledges this may be useful for a range of reasons. In particular, young people who have force used against them, and who feel it was excessive or unreasonable, may not complain about the incident until a later date. They may wait, for example, until the Official Visitor attends the centre. By this time, any apparent injury may not be visible.

Nurses should offer to take photographs if a medical assessment is undertaken with the young person's consent. If a nurse offers to take a photograph of a young person's injury or injuries and the young person refuses to have photographs taken, this should be documented. Any photographs of injuries should be examined by senior officers who review and approve incidents involving uses of force to help Juvenile Justice track, over time and by location, the types of injuries that are being sustained during uses of force.

¹⁹⁰ The *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana Rules), Rule 64; the Inspection Standards for juvenile custodial services in NSW provide at 9.3: 'As soon as possible after a use of force incident, the young person involved sees a healthcare professional.'

¹⁹¹ Queensland Child Guardian Report, Investigation into the Use of Force in Queensland Youth Detention Centres, October 2012, pp 28–29; Her Majesty's Inspectorate of Prisons, *Behaviour Management and Restraint of Children in Custody*, November 2015, recommendation 7, p 13.

¹⁹² A Marin, Ombudsman Ontario, *Investigation into the Ministry of Community Safety and Correctional Services' Response to Allegations of Excessive Use of Force Against Inmates: "The Code"*, 2013, p 86.

Juvenile Justice staff noted that nursing staff often leave the centre before young people are locked in their room for the night. Bedtime requires youth officers to request young people to return to their room for the night; if a young person refuses, force may be used. If a young person is injured they will either have to be taken to hospital or see a JH&FMHN nurse the following morning. It would be preferable for nursing hours to be extended; however, it is recognised that extending the on-site hours of nursing staff will require additional funding from the NSW Government. The feasibility of this should be considered together by Juvenile Justice and JH&FMHN.

Recommendations:

The Inspector recommends that Juvenile Justice notifies JH&FMHN of every young person who is subject to a pre-planned, situational or immediate use of force.

The Inspector recommends JH&FMHN assess every young person who is subject to a pre-planned, situational or immediate use of force as soon as practicable and record whether the young person has sustained injuries or not; and take photographs of any injuries with a young person's consent.

The Inspector recommends JH&FMHN consider extending the hours that nurses are onsite at Juvenile Justice centres.

3.6.2 Debriefing

The use of force policy provides that all employees involved in a use of force must participate in a debrief of the incident as soon as practicable after a use of force.¹⁹³ Staff across all JJs indicated that debriefing generally occurred after uses of force, particularly where multiple staff were involved or where it was a more serious incident. The understanding of many staff about the purpose of debriefing is to discuss what went well, and what could have been done better.¹⁹⁴

Staff at some centres had a positive view of debriefs. Staff who had previously received training on reflective practice felt the process is a valuable way for staff to continually learn and improve practice. Some youth officers at other centres did not find debriefs useful. These youth officers felt debriefs were sometimes used to criticise staff about their handling of a matter.¹⁹⁵ In order to be useful, debriefs should be constructive.

CSNSW uses 'After Action Reviews' for staff following each serious incident. The *Custodial Operations Policy and Procedures* says the review provides all staff who were directly or indirectly involved in any use of force the opportunity to discuss the incident and identify effective responses as well as any deficiencies in the overall outcome of the incident. It also allows staff to make recommendations to improve the response and management of any future incidents. The debriefing is specific to operational matters and is not a counselling session.¹⁹⁶

¹⁹³ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 7.

¹⁹⁴ Interviews with staff, 2016 and 2017.

¹⁹⁵ Interviews with staff, 2016 and 2017.

¹⁹⁶ Corrective Services NSW, *Use of Force (Custodial Operations Policy and Procedures)* 13.7, December 2017, p. 34.

CSNSW has a report form that an officer conducting an 'After Action Review' is to complete in relation to the review. This requires information to be captured about the identity of participants, a summary of the incident, what went well and why, what can be improved and how. The form also provides for follow-up on accepted recommendations for inclusion into future operations, and provision of feedback to relevant staff, as well as the amendment of local operating procedures.¹⁹⁷

It would be useful for Juvenile Justice to further consider: the incidents for which debriefs should be held; the purpose, structure and outcomes that are sought when debriefs are held; and whether the objective is to improve operational practice or provide support to people involved, or both.

There is no requirement in the policy for young people to participate in a debrief after a use of force, and there was no evidence of this occurring. At Austinmer, the adolescent ward at the Long Bay Forensic Hospital, staff always try to talk to young people about any incident and what circumstances led to it. Debriefing with young people following an incident may provide an opportunity for the young person to discuss the restraint itself, their actions that led to the restraint taking place, and how to prevent a restraint in future. This is a key element of effective behaviour management.¹⁹⁸

The 2006 Carlile Inquiry in England noted good practice in one local authority unit. The Inquiry was told that each episode of restraint was reviewed within 24 hours by staff, the young person and a team manager. An independent monitor examines the trends. The same centre had a counsellor on the staff team whose role included conflict resolution and reduction and the staff told the inquiry that they believe the physical interventions had been reduced since he started work.¹⁹⁹

Juvenile Justice should consider introducing a practice of holding debriefs with young people involved in incidents. This approach would be consistent with trauma-informed and child-safe principles, which emphasise the importance of open communication, shared governance and children's participation in decisions that affect them. If debriefs are held with young people it will be important for Juvenile Justice to carefully consider whose role it is to conduct such debriefs, and to ensure such staff have the relevant skills to ensure the debrief is constructive. It may be useful for someone other than youth officers to undertake this role.

If practice improvements are adopted as a result of debriefs, this information should be fed back to staff, to illustrate the value of staff participating in this process. Debriefs, when undertaken in a constructive manner, can be a valuable tool for achieving practice improvement.

Recommendation:

The Inspector recommends Juvenile Justice reviews the use and practice of debriefs for staff and young people.

¹⁹⁷ Corrective Services NSW, *After Action Review Report Template*, version 1.0, December 2017.

¹⁹⁸ Majesty's Inspectorate of Prisons, *Behaviour Management and Restraint of Children in Custody*, November 2015, p 12.

¹⁹⁹ The Lord Carlile of Berriew QC, *An Independent Inquiry into the Use of Physical Restraint, Solitary Confinement and Forcible Strip Searching of Children in Prisons, Secure Training Centres and Local Authority Secure Children's Homes, the Howard League for Penal Reform*, 2006, p 49.

Notifying parents and carers of young people

Juvenile Justice has advised that parents are notified of a use of force in instances where a young person is injured. In some use of force reports, it is apparent that officers have notified, or attempted to notify, a young person's parent or carer about the use of force and outcome. This is because an officer makes a comment on the incident or use of force report about this issue. However, it is not always clear whether parents or carers were contacted about a young person having force used against them. Neither is it clear if the young person would like a parent or other adult to be notified. The Qld *Independent Review of Youth Detention* recommended that parents and guardians should be advised of all incidents occurring in youth detention centres during which their children are subjected to use of force, restrained, separated or as a result of which they may have suffered harm, and the Qld Government has accepted this recommendation.²⁰⁰

It is recognised that young people in custody may be estranged from their families, have been homeless prior to entering custody, or have a range of issues impacting on their family situation or care arrangements. Nevertheless, parents and caregivers should be notified following a use of force if a young person is either injured or there is a related investigation into the use of force. It is also important to obtain a young person's consent to contact their parents, caregivers, or other appropriate adult.

Recommendations:

The Inspector recommends that Juvenile Justice notifies a parent, carer, or other appropriate adult following a use of force against a young person if the young person is injured or there is a related investigation.

Outcomes following use of force

A range of outcomes usually arise out of incidents where force is used. Young people will often receive a misbehaviour report for behaviour preceding, during or following a use of force. Officers sometimes seek to reclassify young people following incidents where force is used. In some circumstances, incidents may result in young people being charged with a criminal offence. This can have significant adverse consequences for the young person and may lead to them moving JJs and further away from their family and community.

Young people and staff may be injured while they are using, or subject to, force. Juvenile Justice estimates the number of workers compensation claims arising from uses of force from 1 January 2012 to 30 April 2017 is 213. A further 21 claims relate to exposure to a detainee's body fluid.²⁰¹ Juvenile Justice should work towards minimising incidents where force is used, and ensure staff are well trained in using methods that are safe and effective when use of force cannot be reasonably avoided.

²⁰⁰ *Queensland Independent Review of Youth Detention*, December 2016, recommendation 17.R14. This was accepted by the Qld Government. See *Queensland Government response to the independent review of youth detention*, p 24.

²⁰¹ Information provided by Juvenile Justice, 2017.

Recommendations:

The Inspector recommends Juvenile Justice provides training to staff in relation to the circumstances in which young people may be criminally charged.

The Inspector recommends Juvenile Justice considers whether additional measures need to be put in place to mitigate the risk of injuries to staff occurring when force is used.

3.7 Record keeping, reporting and monitoring

A range of records and reports are required to be made and retained about incidents where force is used. The inspection highlighted a range of issues about record keeping, and a number of recommendations to strengthen transparency and accountability are outlined below.

3.7.1 Footage from CCTV and handheld cameras

Policies and procedures

The Juvenile Justice *Closed Circuit Television and Radio Communication Policy* states where cameras must be located in a JJC. Cameras must not be installed in amenities areas, including toilets and showers, clinic areas where medical treatment is provided, and areas where strip searches are conducted.²⁰²

The policy states: 'Employees, visitors and detainees should assume that all cameras are operating in recording mode at all times.' It provides that approved employees may access CCTV material to assist with: reviewing incidents and complaints; detecting, investigating or prosecuting any unlawful activity or misconduct; classification and placement decisions; and operational debriefs.²⁰³

CCTV footage may be used for operational debriefs, professional development and promoting best practice. This should occur if there are no outstanding investigations or disciplinary actions in relation to the recorded material. Such review must only be conducted with the employees involved in the event or events subject to review, and with their consent.²⁰⁴

All JJs advised if a use of force was captured on CCTV, the relevant footage would be viewed by at least one officer responsible for reviewing the use of force. However, there was inconsistency among centres about how this footage, once viewed, was retained and how it was stored.

In 2009, Juvenile Justice issued a memorandum reminding centre managers of their obligation to retain non-evidentiary routine footage for a minimum of six months (in accordance with a Board of State Records of Authority of NSW disposal authority). Centre managers were reminded that, any CCTV footage that contains evidence used in the investigation or review of an incident, must be

²⁰² Juvenile Justice, *Closed Circuit Television and Radio Communications Policy*, version 2, July 2015, p 4

²⁰³ Juvenile Justice, *Closed Circuit Television and Radio Communications Policy*, version 2, July 2015, p 3.

²⁰⁴ Juvenile Justice, *Closed Circuit Television and Radio Communications Policy*, version 2, July 2015, p 6.

retained in accordance with a separate disposal authority, with the minimum retention period ranging from ten years to permanent retention.²⁰⁵

Juvenile Justice does not have a policy that governs the use of recording or managing footage recorded on handheld cameras. However, the use of force procedure does suggest that unit managers should instruct staff to video record use of force when time permits.²⁰⁶

Practice

JJCs are covered by CCTV, and centre managers did not identify any issues or concerns with the cameras or systems in place. If there are areas where incidents are common that do not fall within the area covered by existing cameras, steps should be taken to remedy this.

The benefits of handheld footage, as opposed to CCTV footage, is that sound is recorded, the video is of higher resolution, and the video should be directly aimed at the incident. Listening to what occurs during an incident provides insight into what happened, what is said by whom, the tone used during interactions, and the reactions of the young people and staff involved.

When handheld footage has been captured of incidents, footage obtained was sometimes poor. To ensure that high-quality footage of incidents is obtained when a handheld camera is used, it would be useful for guidelines to be developed about the use of handheld cameras, and youth officers to be trained in their use.

Many youth officers suggested that footage of incidents should be used for training purposes. Showing youth officers participating in induction training footage of actual incidents would be valuable as new officers often do not appreciate the types of situations they are likely to have to deal with. Youth officers also suggested that it is very rare for footage of actual incidents to be reviewed during debriefs, to highlight good practice, or suggest practice improvements.²⁰⁷ This is a valuable suggestion from staff and it would be useful for Juvenile Justice to consider how to best use footage from actual incidents for training purposes. Juvenile Justice has communicated that it is now considering how to use footage from actual incidents for training purposes and develop guidelines about this issue. Juvenile Justice is planning to use footage in a training package that is being developed, with pixellation to address privacy issues.

Recommendations:

The inspector recommends Juvenile Justice provides training to youth officers about the use of handheld video camera.

The Inspector recommends Juvenile Justice develops guidelines in relation to how to use footage for training purposes.

²⁰⁵ Information provided by Juvenile Justice , 2017.

²⁰⁶ Juvenile Justice, *Use of Instruments of Restraint Procedure*, April 2016, p 8.

²⁰⁷ Interviews with staff, 2016 and 2017.

Use of force reports

There are several forms and reports that are required to be completed when force is used. These include:

- Incident advice: a summary of the incident completed by the incident supervisor.
- Incident follow-up advice: listing outstanding matters and outcomes completed by the incident supervisor.
- Staff incident report: a summary of the circumstances leading up to the incident and a description of the incident, completed by staff members involved in the incident.
- Misbehaviour report: report of a young person's alleged misbehaviour prior or related to an incident or use of force.
- Use of force report: to be completed by every staff member who uses force on a young person.

The inspection found that because a range of reports require completion following a use of force, some information is recorded multiple times, some information may not be recorded at all, and other information may be recorded inconsistently across reports. For example, incident reports, which are only used for more significant matters, contain fields for describing the incident and the circumstances leading to the incident. However, if a use of force is not related to an 'incident', information about what happened leading up to the use of force may not be captured. A use of force report may be attached to an incident report. Similarly, the incident advice and use of force report do not contain fields relating to medical assessments or injuries. The staff incident report allows for staff injuries or medical treatment to be recorded. Information recorded in reporting forms needs to be accurate and comprehensive. This enables the monitoring and review of individual incidents as well as an analysis of trends and issues over time and across centres.

Juvenile Justice should consider whether the type and number of reports to be completed following a use of force could be rationalised or streamlined. The overall aim of the reporting system and structure should be to ensure that all relevant information is captured and duplication and/or inconsistencies are eliminated wherever possible. There needs to be clarity about the type of information that must be recorded and who is responsible for recording it.

When there has been an incident involving use of force, the incident supervisor will nominate the officers involved in the use of force and an electronic notification will be sent to those youth officers reminding them that they are to complete a use of force report. At some JJC's we heard that, wherever possible, officers are expected to complete the use of force report before they finish their shift. Reports are filled out on the CIMS and submitted electronically. Once they are submitted, they are forwarded to senior officers for review and approval.

Occasionally, youth officers who are present at an incident but who did not use force are nominated by the supervisor to complete a use of force report. In such instances, the youth officer will usually complete the report noting that they did not use force. This is not unreasonable; however, completion of a use of force report will generate data in the CIMS that force has been used by that officer. This means that data captured about the number of officers who have used force in a particular incident and in a particular time period will be inaccurate. Data relating to the number of times a particular officer has used force will also be erroneous.

The use of force report form requires the completing youth officer to: identify the location where the use of force occurred; describe how force was used; specify whether the force was pre-planned, situational or immediate; and specify whether a video recording was made. Youth officers are also required to select a reason why force was used from a drop-down menu providing 11 options:

- to prevent a young person from injuring himself or herself
- to prevent a young person from escaping
- to prevent a young person from inflicting serious damage to property
- to seize any dangerous or harmful article or substance that is in the possession of the young person
- to move a young person who refused to move from one location to another in accordance with an officer's order
- to protect the officer or other persons from attack or harm
- to prevent or quell a riot or other disturbance
- to search a detainee in circumstances in which the detainee refuses to submit to being searched
- to prevent a person from entering a detention centre by force
- to protect a dog being used to assist in the detection of drugs in a detention centre from attack or harm
- to allow a medical practitioner to carry out certain medical treatment.

If multiple officers are involved in a single incident where force is used, it is possible for each officer to specify a different reason for the use of force. In some instances, this is understandable as some officers might use force to prevent a young person from engaging in self-harm and then other officers may use force to move the young person to a different location. However, sometimes there is confusion by officers about the correct option to select. For example, senior officers noted that if young people are engaged in a fight, this might be categorised by one officer as a riot or other disturbance, and by another officer as protecting a person from harm.

In one incident, 12 officers completed a use of force report in relation to the restraint of a young person. Eight said the reason force was used was to move a young person; two said the reason was to seize a dangerous item; one said it was to prevent or quell a riot or disturbance; and one said it was to protect the officer or others from harm. None of these reasons was inaccurate, but the different reporting approaches make it difficult to usefully analyse the data.

Until recently, the use of force report required officers to also list instruments of restraint. There seems to be some confusion about what items should be listed. Some officers note the instruments of restraint used, for example, handcuffs or flexi-cuffs, and some list the protective tactics equipment worn or used by officers, such as shields and helmets. Others left this section of the report blank. These different approaches make it difficult to obtain a clear picture of how often instruments of restraint are being used, and the types of restraint utilised. The use of force report has been recently amended to include a drop-down menu about protective equipment.

However, the use of force report form does not require information to be recorded about a range of relevant issues, including:

- who authorised the use of restraints, the reasons for this and when they were removed
- whether the young person or staff member was injured
- whether the young person or staff member received medical assessment and/or treatment
- whether a debriefing occurred
- the identity of people wearing helmets and others, such as any scribe or camera operator.

It is important for details about these issues to also be reported.

A review of use of force reports by the inspection team identified a range of areas where the material written by officers in use of force reports could be improved. In particular, many of the reports contained insufficient detail to obtain a good understanding about why force was used, the steps taken to prevent using force, the type of force used, and the outcomes after an incident. In some instances, CCTV or handheld camera footage was viewed as well as reports.

The inspection team found that language used in the use of force reports was sometimes inconsistent with other reports relating to the same incident and some reports minimised the amount or type of force used by youth officers. The use of force policy requires youth officers to write in a concise, clear, objective and professional style.²⁰⁸ The report must not use jargon, acronyms, discriminatory or emotive language. It is common for youth officers to state in their reports that they 'placed' or 'lowered' a young person on the ground, or assisted placing or lowering a young person on the ground. The review of use of force reports also revealed a small number of reports that had replicated text from other reports, with only the young people's names changed.

Of the use of force reports reviewed, many did not mention that a young person had been restrained on the ground and a number of reports did not mention a young person had been carried or moved from an elevated surface, where relevant. This should be identified in use of force reports, and reviewing officers should consider whether such restraint is consistent with legislation and policies, and otherwise reasonable in the circumstances. Similarly, officers sometimes refer to lengthy negotiations. However, it is usually not possible to verify the time periods that officers negotiate with young people as officers often do not start recording footage until officers are preparing to use force.

A range of people are expected to read use of force reports relating to an incident. This may include senior officers at a JJC, officers conducting an investigation into an incident, those engaged in quality assurance, and officers from an oversight agency. Use of force reports may also be used as evidence in criminal proceedings. The majority of people who read a use of force report will not have been at the incident, and it is critical that they are able to obtain a good understanding of why force was used, what happened during the use of force and the outcomes. In short, those reading a use of force report should be able to discern what happened before the use of force, whether steps were taken to avoid using force, the reasons force was used, the type and amount of force used, and what happened after the use of force. The inspection found the

²⁰⁸ Juvenile Justice, *Use of Force, Protective Equipment & Instruments of Restraint Policy*, April 2016, p 8.

quality of use of force reports could be improved. Of note, feedback from many staff at JJC's is that they would welcome extra training on report writing.²⁰⁹

The following should be clear from incident and/or use of force reports:

- what occurred before, during and after the use of force;
- whether handcuffs or other restraints were applied during a use of force, who authorised this decision, the reasons for this, and when the restraints were removed;
- whether a handheld camera was used, or the reasons why it was not;
- the identity of the camera operator and/or scribe; the identity of officers who are wearing numbered protective equipment; any apparent injuries to any person;
- whether medical assessment has been offered and whether and when any medical assessments take place, if no medical assistance was given, the reason why none was given;
- whether or not any debriefings were held, and, if so, who was in attendance, and any outcomes;
- whether and when a young person's parents, carers or nominated adult are notified about the use of force.

Juvenile Justice has requested its internal auditors to conduct a review of record-keeping and reporting focusing on detainee records management and reporting processes. It will look at governance, recording, data management, data quality, reporting and continuous improvement.²¹⁰ It is positive that issues relating to incident reporting have been identified as requiring further analysis and improvement.

Incident review by senior officers

Each use of force report specifies four levels of approver: initial, first-level, second-level and third-level approvers. There is space for each approver to detail their name, the date, comments and whether or not they approve the report. It is not clear which officers are authorised to provide approval at each level, why so many people are required to approve each report, or what each approver is responsible for reviewing. The third-level approval is not linked to the other levels in the CIMS, and is responsible for ensuring reports have been completed, but not reviewing the use of force.

Some youth officers identified that if an approving youth officer identifies an error in the original report, the process for having this rectified can be onerous. This is because once a youth officer submits their report, they are locked out from accessing or amending it. If a senior officer notes an error or anomaly in the report, a request is sent to the CIMS support team to permit the reporting officer access to the report to fix errors, and the report is then re-submitted to each approving officer for endorsement. Some approving youth officers said that because it is time-consuming to go through this process, they do not usually seek to have the reporting officer fix errors, particularly if they are minor.

²⁰⁹ Interviews with staff, 2016 and 2017.

²¹⁰ Information provided by Juvenile Justice, 2018.

Some approving officers advised that although they may not ask an officer to amend a minor error in their use of force report, they may provide feedback to the officer about the error and ask them to ensure it is not repeated. Some approving officers suggested they would note such information in the comments section of their approval. There were very few examples of this in reports reviewed by the inspection team.

However, good practice was identified at one centre, where any outstanding matters identified by an approving officer are documented in an 'incident follow-up advice' which is forwarded to relevant officers to complete. This appears to be a local process that has been developed to enable any issues to be addressed.

The review of use of force reports found a number of other issues with the approvals process. In particular, in a number of instances, an officer involved in the use of force was also responsible for approving the reports. This does not provide an adequate review mechanism. Youth officers approving their own actions should not be occurring.

While it may be time-consuming for an approving officer to review and comment on multiple reports relating to the same event, this is an important aspect of the review process. It is important for approving officers to ensure each report is accurate and that any inconsistencies in a single report, or inconsistencies between reports, are followed up.

The inspection found the reviewing process could be improved. The review process is an important accountability process to identify breaches of legislation and policy and identify and remediate poor practice.

Recommendations:

The Inspector recommends that Juvenile Justice review the type, number and content of reports to be completed following use of force; who is authorised to review and approve incident and use of force reports; and the role of different approving officers.

The Inspector recommends Juvenile Justice provides training in report writing to ensure all relevant information is accurate and documented and training to reviewing officers to ensure reports are accurate, and how to identify breaches of legislation and policy; and identify areas of good practice and areas of concern.

3.7.2 Referral of matters to the Ethics and Professional Standards Unit

In Juvenile Justice, if a young person or staff member alleges excessive use of force or physical assault, the matter is referred to the EPSU for investigation. If a review of an incident reveals potential excessive use of force, the matter should also be referred to the EPSU.

For the purpose of the inspection, a review was undertaken of all the matters referred to the EPSU in the 2015–16 financial year that involved allegations of reportable conduct arising out of incidents where force was used. This included allegations of excessive use of force and allegations of assault during a use of force.

The inspection team reviewed each investigation in order to determine the types of matters that are referred to the EPSU, the frequency with which staff are found to be using excessive force, and whether systemic issues are being identified. The inspection team looked at whether young people who made allegations were interviewed; whether footage was available; what information

and support was provided to young people who made allegations and staff the subject of allegations, as well as witnesses – both staff and young people; whether appropriate risk-management strategies were put in place during the investigation; and whether matters were referred to the police.

In NSW, child-related employers, such as Juvenile Justice, have a legislative requirement to notify the NSW Ombudsman of allegations or convictions of ‘reportable conduct’. Reportable conduct is defined in section 25A of the *Ombudsman Act 1974* and includes excessive use of force. The review found that reporting obligations to the NSW Ombudsman were adhered to in a timely manner and the EPSU was rigorous in clarifying with centres the status of police notification following incidents. In a number of investigations, the JJC did not refer the matter to police until prompted to do so by the EPSU. It is important that police are promptly notified about the allegations to determine whether criminal charges should be laid. Appropriate risk-mitigation strategies following incidents and allegations were, in most cases, put in place by the relevant centre, usually by way of separating the subject of an allegation from the young person, for example, moving the staff member to another unit.

However, during the inspection several young people stated they had made a complaint about a use of force but did not know what happened thereafter. It is important for young people who make a complaint that leads to an investigation, or for young people who are subject to a use of force that somebody else believes is excessive, to be involved in the investigative process and to be kept informed about the progress and the outcome. Any young person who is interviewed for the purpose of an investigation should have a support person of their choice present during an interview.²¹¹

In a number of matters, it was unclear why young people had not been interviewed or whether the young people or their parents and caregivers were notified of the investigation or its outcome. If a young person chooses not to participate in the investigation process, if they choose not to have a support person present during an interview, or they choose not to be interviewed, this should be clearly documented. Wherever possible, the parents or carers of the young person should also be kept informed.

The Qld *Independent Review of Youth Detention* recently recommended the creation of a communication liaison position to manage individual complaints and incidents relating to uses of

²¹¹ The Qld Independent Review of Youth Detention recommends that investigations of alleged staff misconduct by young people should include, where possible, an interview with the complainant in the company of the complainant’s preferred support person. This was accepted by the Qld Government. *Queensland Independent Review of Youth Detention*, December 2016, Recommendation 16.R1. See also *Queensland Government response to the independent review of youth detention*, p 19. The Royal Commission into the Protection and Detention of Children in the Northern Territory also recommended that Police Standing Orders be amended to include provision that when a child is interviewed as part of an investigation following an alleged criminal offence against a person in detention, that communication should be private, and an independent person should be present to support the detainee. Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report*, 17 November 2017, Recommendation 22.1, Volume 2B, p 119. Further, the Australian Government Investigations Standards, 2011, provide that a parent, guardian or responsible adult ‘must’ be present during an interview of a young person under 18 years of age, and should co-sign any statement or affidavit made, p 13.

force and separation to ensure consistent and adequate communication with parents, families and guardians.²¹²

Throughout this inspection, many staff voiced their concerns of being investigated when called upon to use force.²¹³ Juvenile Justice advise that staff from the EPSU are planning to visit all JJC's to provide information to staff about the work of the unit, and the process of investigations. Staff in the EPSU also intend to periodically contact officers who are being investigated during the investigation, to provide updates about the status of the investigation and check on their wellbeing. These are positive initiatives. It may also be valuable for Juvenile Justice to prepare written material, such as a fact sheet about the investigation process and avenues where officers can obtain support, to be provided to any staff member who is the subject of an investigation.

Professional Conduct Committee

All investigations that are conducted or overseen by the EPSU are reviewed by the Department of Justice Professional Conduct Committee and recommendations forwarded to the relevant decision-maker. The focus of the Committee is to review investigations and determine whether allegations of misconduct can be substantiated by the evidence. The Professional Conduct Committee is expected to refer matters to the Employee Risk Assessment Committee where it has been identified that there is some pattern of risk where the employee is engaged.²¹⁴

The Professional Conduct Committee should also be able to identify practice issues and system issues and refer them to the Executive Director of Juvenile Justice for action. Juvenile Justice has advised it will work with the Department of Justice Professional Conduct Committee to review the terms of reference for the Professional Conduct Committee.

Recommendations:

The Inspector recommends Juvenile Justice ensures that during investigations child complainants and witnesses are interviewed and provided with an appropriate support person; and advised of the outcome.

The Inspector recommends Juvenile Justice provides information to staff about the role of the Ethics & Professional Standards Unit; the circumstances in which investigations will be conducted; the process that will be followed during an investigation; and support staff will receive during an investigation.

The Inspector recommends Juvenile Justice work with the Department of Justice, Professional Conduct Committee to review its terms of reference to include identification of practice issues or systemic issues.

²¹² *Queensland Independent Review of Youth Detention*, December 2016, (publicly released April 2017), 17.R13. See also Attorney-General for Queensland, *Government response to the Independent review of youth detention*, 2017.

²¹³ Interviews with staff, 2016 and 2017.

²¹⁴ NSW Juvenile Justice, *Terms of Reference: Professional Conduct Committee*, October 2015.

3.7.3 Quality assurance

For quality assurance purposes, it is important for Juvenile Justice to conduct regular audits of uses of force across all centres to ensure concerns about practice, reporting and reviews are identified and addressed. Juvenile Justice should also consider other options to strengthen the monitoring and analysis of use of force at centre level, as well as across the system.

It is acknowledged that Juvenile Justice has requested its internal auditors to conduct a review of record keeping and reporting.

Recommendations:

The Inspector recommends that Juvenile Justice records, monitors, and analyses data about use of force to identify anomalies, gaps and trends, and establishes a system for auditing incidents where force is used to ensure that concerns about practice, reporting and reviews are identified.

4. Separation, segregation and confinement

A range of restrictive practices are required in juvenile detention settings to ensure the safety of young people and staff. In custodial environments, detainees may be removed from the general population and general routines of the centre for reasons of good order and security, or because of the risk a young person poses to other young people, staff or themselves. In NSW, young people may also be removed from the general population as punishment for misbehaviour.

4.1 Standards

The *Australasian Juvenile Justice Administrators Juvenile Justice Standards 2009* provide that separation or isolation of a child or young person should be used only in response to an unacceptable risk of immediate harm or escape and in accordance with legislation, and is used for the minimum amount of time necessary (Standard 9.5) and that the health and wellbeing of a child or young person is paramount during periods of isolation or separation (Standard 10.6). *The United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (the Havana Rules) specifically prohibits the use of confinement among juveniles for disciplinary purposes.

The *Inspection Standards for Juvenile Justice Custodial Services in NSW* primarily applicable to the separation, segregation and confinement of young people include:

- 3.1 The treatment of young people and the conditions in which they are held must meet contemporary community standards of decency and humanity.
 - Young people are not routinely locked down for extended periods – if they are, there are compensatory measures and increased staff interaction is provided.
- 7.1 Detention centres are not oppressive environments and are designed to be used flexibly to allow young people to feel safe and comfortable.
 - There is good access to natural light and fresh air in all buildings and accessible and safe outdoor areas.
 - Where young people are segregated and confined, the place of confinement is of the same standard as the young person's normal accommodation.
- 9.9 Where it is necessary for a young person to be placed into separation or segregation for their own or others safety or for the good order of the detention centre, it will be for the minimum time necessary.
 - Young people are separated or segregated only in accordance with legislation and only in response to an unacceptable risk to themselves or others.
 - An accurate separation and segregation register recording details of the separation and the young person's routine while in separation is maintained.
 - Staff closely supervise those in separation or segregation and they are not left for long periods of time with nothing to occupy them.
 - The conditions of separation or segregation provide no less amenity than normal accommodation.

- 10.7 Young people should have a minimum ten hours out of cell each day.
 - These out of cell hours are used to promote attendance at education and programs as well as recreation activities.
 - Hours out of cell should only be reduced in exceptional circumstances and deemed necessary by the manager of the centre.
- 10.8 Young people should have daily opportunities for physical and recreational activity as well as a regular structured sport and recreation program.²¹⁵

4.2 Legislation

The Act refers to separation, segregation and confinement, and contains separate provisions relating to these three types of decisions. Separation is used for individuals or groups of detainees who are required to be managed separately to the general population for the safety, security or good order of the centre; segregation is used to protect the personal safety of the person being segregated, or another person; and confinement²¹⁶ is used for punishment purposes.

The conditions for young people who are placed in separation, segregation or confinement may be similar; despite the legislative and policy provisions governing these practices being quite different. Each are subject to different safeguards, reporting and notification requirements.

The Regulation also provides for exclusion from a place, and isolation. The centre manager can order isolation if the detainee in question has an infectious medical condition, there is a risk that other detainees will be infected by it and a medical officer is of the opinion that the condition is sufficiently serious so as to require isolation.²¹⁷ In practice, young people placed in isolation due to a medical condition are treated as if they are in separation.

4.3 Separation

Section 16 of the Act contains provisions relating to the separation of detainees. It states:

- (1) *The regulations may prescribe different classes of detainee for the purposes of this section.*
- (2) *While a regulation referred to in subsection (1) is in force, different classes of detainee shall, so far as is reasonably practicable, be detained separately from other classes of detainee in the same detention centre.*
- (3) *For the purposes of ensuring the security, safety and good order of a detention centre, the Secretary may direct that different detainees or groups of detainees be detained separately from other detainees.*
- (4) *While a direction referred to in subsection (3) is in force, the detainees or groups of detainees identified in the direction shall, so far as is reasonably practicable, be detained separately from other detainees in the same detention centre.*

²¹⁵ NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, January 2015.

²¹⁶ *Children (Detention Centres) Act 1987*, s. 21(1)(d), s. 16(3), s. 19(1).

²¹⁷ *Children (Detention Centres) Regulation 2015*, cl. 8(5).

(5) *Detainees may be dealt with in accordance with this section despite anything to the contrary in the Anti-Discrimination Act 1977.*

The Juvenile Justice Separation Procedure provides that separation is used when an individual detainee or group of detainees need to be separated from the detainee population for the safety, security and good order of the centre. It is considered separation when detainees are:

- placed in a room/area/unit away from the main population, and
- subject to the centre's separation routine that is different from the centre's approved and published normal routines.²¹⁸

Groups of young people may be placed in separation due to group incidents and disturbances; drug dog or unit searches; and industrial action or staff shortages. Individual young people may be separated from the general detainee population based on age, gender or vulnerability, or classification. The following young people would, for example, be placed in separation:

- a female detainee admitted to a centre accommodating male detainees, prior to being transferred to Reiby JJC
- a female detainee transferred from Reiby JJC to a regional centre to facilitate family visits
- a detainee with a medical condition, in accordance with advice from JH&FMHN
- a younger detainee admitted to a centre accommodating older detainees, prior to being transferred to another centre
- a detainee with an A1(o) or A1(b) classification at a centre which accommodates only detainees with lower classifications, prior to being transferred to another centre
- a detainee with an A1(o) or A1(b) classification newly admitted to a centre and awaiting completion of an initial risk assessment, or a detainee admitted on a serious children's indictable offence awaiting classification.

Each centre has a 'Separation Routine'. The routines provide for young people on separation to have six hours out of their room per day. They also specify that young people are to eat their meals in their room by themselves, and that recreation periods are to include appointments with JH&FMHN staff, psychologists, counsellors and legal representatives. Telephone calls to family and friends are also to be made during recreation time. A summary of each centre's separation routine is included at Figure 17.

Young people may be placed in separation and outside of the centre routine for several days or longer. This may occur, for example, if a detainee is subject to a review of classification for alleged poor behaviour and the reclassification means that the detainee may no longer stay at a regional JJC and will be transferred to a metropolitan JJC. When a young person is notified that their classification has been reviewed and upgraded due to misbehaviour, he or she may appeal this decision and has five days to do so. Male detainees will remain separated from other detainees for the five-day period. This is to ensure that they have an opportunity to appeal the reclassification within the five-day period even if they initially state that they do not wish to do so.

²¹⁸ Juvenile Justice, *Separation procedure*, November 2016, p 1.

The conditions for young people placed in separation may be similar to those placed in segregation. For example, girls who are placed in a centre accommodating male detainees may have limited space and will usually be unable to associate with any other young people for the time they are at the centre. The inspection team was told that attempts are made to transfer female detainees to Reiby JJC as soon as possible. However, a girl may be in separation for several days awaiting transfer. Similarly, a girl who is accommodated at a regional JJC during court proceedings or to facilitate family visits may be required to stay at that JJC for a longer time period. This may explain the higher number of separations over 24 hours at regional JJs.

It is not clear why at some centres there have been significant increases in the use of separation. One explanation may be enhanced record-keeping in the most recent reporting period.

Figure 16: Separation duration by financial year, 2015–18²¹⁹

| Count of separation by duration | 2015–16 | 2016–17 | 2017–18 |
|---------------------------------|-------------|-------------|-------------|
| 24 hours or more | 123 | 188 | 220 |
| Less than 24 hours | 1335 | 1036 | 1269 |
| Total for all centres | 1458 | 1224 | 1489 |

²¹⁹ Data provided by Juvenile Justice, 2018.

Figure 17: Centre separation routines, June 2015

| | Acmena JJC | Cobham JJC | Baxter JJC | Riverina JJC | Reiby JJC | Orana JJC |
|--------------------------|---|--|---|--|---|--|
| Hours out of room | 1 + 1.5 + 2 + 1 + 0.5 = 6 hours | 1 + 1.5 + 1.25 + 1.5 + 0.45 = 6 hours | 1 + 2 + 0.5 + 2 + 0.5 = 6 hours | 2 + 2 + 1 + 1 = 6 hours | 1 + 0.5 + 1.5 + 2 + 1 = 6 hours | 3 + 1 + 1 + 1 = 6 hours |
| Wake | 7:30am | 7:15am | 6am | 7:30am | 7:30am | 7:30am |
| Meals | All in room by self | All in room by self | All in room by self | All in room by self | All in room by self | All in room by self |
| Recreation | Access to 'outdoor activities including cards, books, board games, colouring in books, beading, jigsaw puzzles, stress balls'. 'Indoor' activities are all of the above plus movies. May include access to JH&FMHN, psychologist, counsellor or legal visit, etc. Allows access to admissions lounge and admissions courtyard. Arunta access. | Outdoor activities include table tennis and basketball. Indoor activities include Xbox and playing cards. Arunta access. | Access to 'outdoor activities' (not further specified). Access to indoor activities 'including television and educational program pack'. Recreation time will include access to JH&FMHN, psychologist, counsellor or legal visit, if requested. Arunta access. | May access oval, multi-purpose centre, rear courtyard. Indoor activities 'including reading, card games and board games'. Recreation time will include access to JH&FMHN, psychologist, counsellor or legal visit, if requested. Arunta access. | Access indoor activities in the games room (no further details specified). Access to courtyard area. Recreation time will include access to JH&FMHN, psychologist, counsellor or legal visit, if requested. 'Outdoor activities including spin bikes and chin up bars' (no further details specified). Arunta access. | Access oval, multi-purpose centre, secure programs area or rear courtyard area. Outdoor activities. Arunta access. Recreation time will include access to JH&FMHN, psychologist, counsellor or legal visit, if requested. Arunta access. |
| Exercise | Not specified. | In court yard area (no oval). | Allowed access to exercise yard (no oval). | Basketball, football, table tennis, swimming and walking. Can access oval. | Spin bikes and chin-up bars. No mention of oval. | Access to oval, multi-purpose centre, gym, swimming (if in season). |
| Education | 'provide education material' | 'provide educational material' | 'may access education pack' | 'provide educational material' | 'educational material provided' | 'provide educational material' |
| Bed time | 7pm | 7:15pm | 7pm Specifies lights out at 8:30pm | 7pm | 7pm | 7:15pm |

4.4 Segregation

Section 19 of the Act refers to the use of segregation of detainees for protection. It states:

- (1) *If the centre manager of a detention centre believes on reasonable grounds that a detainee should be segregated in order to protect the personal safety of that or any other detainee, or of any other person, the centre manager may, whether or not with the consent of the detainee, direct the segregation of the detainee, subject to the following conditions.*
 - a) *the nature and duration of the segregation shall be reasonable having regard to the age, mental condition and development of the detainee*
 - b) *the duration of the segregation is to be as short as practicable and, in any case, must not exceed 3 hours except with the approval of the Secretary*
 - c) *the detainee shall be provided with some means of usefully occupying himself or herself*
 - d) *the physical environment of the place where the detainee is kept segregated shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the detention centre*
 - e) *the detainee shall be so segregated that at all times he or she is visible to, and can readily communicate with, a Juvenile Justice officer.*
- (2) *A detainee shall not be segregated under this section by way of punishment.*
- (3) *The centre manager of the detention centre shall make a record containing such particulars as may be prescribed by the regulations of any segregation effected under this section and shall forward copies of the record to the detainee and to the Secretary within 24 hours of the segregation.*
- (4) *A detainee shall not be segregated under this section unless the centre manager of the detention centre is satisfied that there is no practicable alternative means to protect the personal safety of the person or persons for whose protection the detainee is to be segregated.*
- (5) *Nothing in this section limits the circumstances in which detainees may be detained separately pursuant to section 16.*

Further guidance about the use of segregation is included at clause 10 of the Regulation. Clause 10 states:

- (1) *For the purposes of section 19 (3) of the Act, the following particulars are prescribed in relation to a detainee who is segregated:*
 - a) *the detainee's name and age*
 - b) *the date and time that the segregation began and ended*
 - c) *a description of the place where the detainee was kept segregated*
 - d) *the means provided to enable the detainee to occupy himself or herself*

- e) *the reason for which the detainee was segregated*
 - f) *the details of any approval given by the secretary under section 19(1)(b) of the Act*
 - g) *the name and official capacity of the person who ordered the segregation.*
- (2) *If, pursuant to an approval referred to in section 19(1)(b) of the Act, a detainee is segregated for more than 24 hours, the centre manager must ensure that:*
- a) *notice of that fact is given promptly to the New South Wales Ombudsman, and*
 - b) *the segregation is carried out in accordance with a plan that is subject to monitoring by a psychologist and the person employed in the Department of Justice as Assistant Manager, Client Services, and*
 - c) *the detainee is visited daily by a JH&FMHN officer, and*
 - d) *if the psychologist or JH&FMHN officer advises the centre manager that the detainee appears to be at risk of self-harm, the detainee is checked on by a Juvenile Justice officer:*
 - i) *if the psychologist or JH&FMHN officer's advice includes a recommendation that the detainee should be checked on by a Juvenile Justice officer more frequently than at least once in any 10-minute period, in accordance with that recommendation, or*
 - ii) *if there is no such recommendation, at least once in any 10-minute period.*

Juvenile Justice has a number of documents that provide guidance to officers about segregation. A procedure, rules and a poster explain the differences between separation and segregation and provide guidance about issues such as the purpose of segregation to manage risk of harm to self, others or both self and others; the expectation that segregation is not to be used as punishment and must be ended as soon as the risk has passed; and that the NSW Ombudsman must be notified if the young person remains in segregation for 24 hours.²²⁰ Despite the legislation and procedure, in practice it is not always clear that young people are segregated for protection. Segregation should only be used to manage young people who pose a risk of self-harm and prevent self-harm from occurring and re-occurring, or to protect the personal safety of any other person.

Juvenile Justice is able to extract incidents of self-harm data from the CIMS. However, there are limitations in the capability of the software. Data sets in relation to self-harm should be treated with caution. For example, the correlation of higher incidents of self-harm and a particular JJC does not necessarily provide insight into the cause of these higher numbers. Each JJC is different in terms of its population, with differences in gender, age, physical location, classification, and the histories and needs of the individual young people. Regard ought to be had to these factors. In addition, in extracting and analysing the data, given the small number of young people in custody care must be taken so as to not identify the young people.

Juvenile Justice records self-harm in the following categories: actual, attempt and threaten self-harm. Between 2016–17 and 2017–18 actual and attempt self-harm resulted in an increase, with the greatest increase being that of incidents of actual self-harm from 314 to 359.

²²⁰ Juvenile Justice, *Operations Procedures Manual, Rules for Segregation*, 2017; *Children (Detention Centres) Regulation 2015*, cl. 10(2)(a).

The data suggests that a small cohort of young people is responsible for a high number of incidents of self-harm. In 2017–18, 12 young people accounted for 182 incidents of self-harm, of these 21 cases of actual self-harm appear to have occurred while a young person was in confinement.

Figure 18: Self-harm and separation, segregation and confinement by year, 2015–18.²²¹

| | Self-harm category | Number of self-harm incidents | Number (%) of incidents whilst in confinement | Number (%) of incidents whilst in separation | Number (%) of incidents whilst in segregation |
|----------------|---------------------------|--------------------------------------|--|---|--|
| 2015–16 | Total | 450 | 20 (4%) | 10 (2%) | 15 (3%) |
| 2016–17 | Total | 430 | 21 (5%) | 16 (4%) | 9 (2%) |
| 2017–18 | Total | 472 | 29 (6%) | 14 (3%) | 12 (3%) |

It is critical that JJC staff are equipped to respond effectively to young people threatening or engaging in self-harm, provide appropriate care and support following incidents, and most importantly, to prevent these incidents from occurring in the first place. Segregation is used to keep young people safe and maintain frequent observation of a young person.

Although the majority of Juvenile Justice staff are focused on minimising the risk of self-harm in JJC's, some staff displayed a lack of understanding of the reasons why young people may self-harm and appropriate responses.²²² The issue of self-harming behaviour is complex and, while not mutually exclusive, behavioural issues are best managed by psychologists and mental illness by psychiatrists.²²³

It is important for Juvenile Justice to focus on reducing incidents of self-harm of young people in custody. Juvenile Justice should work with JH&FMHN to conduct a comprehensive review of the management of young people who are engaging in or threatening self-harm, with input from an expert in forensic mental health, with the aim of minimising the incidence of self-harm and the use of restrictive practices to prevent self-harm.

In his report on the use of seclusion, restraint and observation for consumers with a mental illness in NSW Health facilities, the NSW Chief Psychiatrist outlined six core strategies for preventing the use of seclusion and restraint: leadership for organisational change; use of data to inform practice; workforce development; use of seclusion and restraint prevention tools; consumer and family/carer involvement and roles in inpatient care; and rigorous debriefing.²²⁴

²²¹ Data provided by Juvenile Justice, 2018.

²²² Interviews with staff, 2016 and 2017.

²²³ As advised by Justice Health & Forensic Mental Health Network, 2018.

²²⁴ M Wright, *Review of seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities*, December 2017, p 12, citing KA Huckshorn, 'Reducing seclusion and restraint use in mental health settings: core strategies for prevention', *Journal of Psychosocial Nursing*, 42(9), 2004, pp 22–33; and

The legislation and Juvenile Justice resources provide guidance to youth officers about the issues that should be considered when deciding to place someone in segregation, the conditions of segregation and the records that are to be kept.²²⁵ During the inspection, Juvenile Justice staff expressed different understandings about the meaning of segregation. Some youth officers stated that their understanding of segregation is when the detainee is not mixing with other detainees, regardless of how long they have out of their room; others felt that segregation was when a detainee was no longer abiding by the normal JJC 'routine'.²²⁶

This lack of understanding about the meaning of segregation may have significant implications for the management of a centre, and the management of young people. Young people may only be placed in segregation in order to protect their personal safety or the personal safety of another person, and there is no practicable alternative means to provide protection. Juvenile Justice should provide additional training to staff in relation to the circumstances in which a young person may be segregated.

Recommendations:

The Inspector recommends Juvenile Justice and JH&FMHN conduct a review of the management of young people who are in engaging in or threatening self-harm with input from an expert in forensic mental health.

The Inspector recommends Juvenile Justice provides training on the difference between separation, segregation and confinement and the circumstances in which a young person should be segregated on the basis of an individual risk assessment.

Segregation decisions

Juvenile Justice provides training on the difference between separation, segregation and confinement and the circumstances in which a young person should be segregated on the basis of an individual risk assessment.

Many decisions, including the decision to approve segregation in excess of three hours, are delegated by the Secretary to another officer in Juvenile Justice.²²⁷ At the time of inspection the instrument of delegation, as well as a range of other documents developed to support this instrument was obtained. This revealed that the instrument of delegation, dated 2011, referred to a range of positions that no longer existed, due to machinery of government changes and other reforms. There was also some inconsistency between the instrument of delegation and supporting documents.

KA Huckshorn, 'Re-designing state mental health policy to prevent the use of seclusion and restraint', *Administration and Policy in Mental Health and Mental Health Services Research*, 33 (4), pp 482–491.

²²⁵ Juvenile Justice, *Segregation procedure*, June 2017; Juvenile Justice, *Rules for Segregation*, 2017; Juvenile Justice, Separation and Segregation Unit Poster, no date.

²²⁶ Interviews with staff, 2016 and 2017.

²²⁷ *Children (Detention Centre) Act 1987*, s. 101.

Juvenile Justice has recently updated its instrument of delegation. However, Juvenile Justice should put in place a system to ensure that delegations and supporting documents are regularly reviewed to ensure that they reflect changes to legislation, reflect existing governance arrangements: that the level of seniority of officers authorised to make particular decisions continues to be appropriate, and that guidance to staff is comprehensive, clear and consistent. Juvenile Justice advises that officers are being guided on the importance of making lawful decisions in accordance with their delegated authority.

Recommendations:

The Inspector recommends Juvenile Justice regularly reviews delegations to ensure they reflect existing legislative and governance arrangements and level of seniority of youth officers authorised to make particular delegations.

The Inspector recommends Juvenile Justice provides training to youth officers about the importance of making decisions in accordance with their delegated authority.

In practice, decisions about segregation under three hours are made by shift supervisors or assistant unit managers. Decisions about segregation of between three and 12 hours are made by the centre manager, over 12 hours and up to 24 hours by the Regional Director, and over 24 hours by the Director of Statewide Operations, as the delegate of the Secretary.²²⁸

In relation to segregation, section 19(3) of the Act specifies that the centre manager shall forward copies of records about any segregation of any duration to the detainee and to the Secretary within 24 hours of the segregation.²²⁹ The relevant records, for the purpose of this provision, are set out in clause 10(1) of the Regulation, and include the date and time the segregation began and ended, where the detainee was kept segregated, the means provided to enable the detainee to occupy himself or herself, the reason for segregation; details of any approval given for the segregation; and details of the person who ordered the segregation.

Juvenile Justice has advised that the functions under section 19(3) of the Act are delegated to the role of centre managers, who have access to all segregation records on the CIMS and receive approval notifications when required.²³⁰ It is acknowledged that notification to the centre manager of decisions to segregate under three hours is appropriate. However, notifying the centre manager of his own decision or a decision of the Regional Director or Director of Statewide Operations – defeats the intent of the section. It would be more appropriate to delegate this function to the Executive Director of Juvenile Justice to ensure executive oversight of segregation decisions over 24 hours.

A young person may be placed in segregation for multiple short periods of under three hours in one day. Each of these is recorded as a separate period of segregation and therefore does not require approval by the Secretary or their delegate even if cumulatively the period is greater than three hours.

²²⁸ Juvenile Justice, *Segregation procedure*, June 2017, p 1.

²²⁹ *Children (Detention Centres) Act 1987*, s. 19(3).

²³⁰ Information provided by Juvenile Justice, 2018.

Figure 19: Segregation by duration by financial year²³¹

| Count of segregation | 2015–16 | 2016–17 | 2017–18 |
|------------------------------|-------------|-------------|-------------|
| 24 hours or more | 142 | 163 | 142 |
| Less than 24 hours | 3421 | 7177 | 7038 |
| Total for all centres | 3563 | 7340 | 7180 |

Young people are more likely to be placed in segregation for short periods of less than 24 hours.²³²

Given that young people may spend multiple short periods a day in segregation, meeting the requirements in section 19(3) of the Act may be considered onerous. Juvenile Justice advises that young people placed in segregation for periods under 24 hours are provided with a clear verbal explanation about when and why this has occurred but are not provided with the record, as required. It is important that Juvenile Justice meets its legislative obligations, and that young people are provided with information about decisions made that impact upon them. It is also crucial that executive officers are kept informed about the use of segregation. Juvenile Justice should therefore put in place a system to ensure that the requirements of section 19(3) of the Act are consistently being met.

If a young person is placed in segregation for the protection of themselves or others for more than 24 hours, the centre manager must ensure that the segregation is carried out in accordance with a plan that is subject to monitoring by a psychologist and the centre’s Assistant Manager, Client Services.²³³ A DRMP is used to meet this requirement. At the time of inspection, young people were not being provided with a copy of their DRMP. However, Juvenile Justice has advised this practice has changed to ensure young people on a DRMP are provided with a copy of their plan, which includes periods of segregation.²³⁴

Recommendation:

The Inspector recommends Juvenile Justice provides copies of records about segregation over 24 hours to the Executive Director of Juvenile Justice.

²³¹ Data provided by Juvenile Justice, 2018.

²³² Data provided by Juvenile Justice, 2018.

²³³ *Children (Detention Centres) Regulation 2015*, cl. 10(2)(b).

²³⁴ Information provided by Juvenile Justice, 14 November 2017.

4.5 Confinement

Legislation

Confinement is a form of punishment for misbehaviour which results in a young person being held in their room for up to 12 hours for young people up to the age of 16 years and up to 24 hours for young people 16 years or over.²³⁵

Schedule 1 of the Regulation contains a long list of behaviour that may be deemed misbehaviour, including: refusal to work or participate in activities; lying; disobedience; stealing; bad language; possession of unauthorised articles; smoking; subversive behaviour; harassment; positive returns to tests for drugs or alcohol; refusal to submit to searching; fighting; and damage to property. Serious misbehaviour includes: insubordination; inciting misbehaviour; possession of a mobile phone, camera or recording equipment (or part thereof); attempted escapes, indecency; manufacture, possession or concealment of weapons; detaining a person against their will; lighting fires; and assault.

Punishments, including confinement, that may be imposed for misbehaviour by a detainee are set out in section 21 of the Act.

Section 21 of the Act provides that:

- (1) *Subject to the regulations, the following punishments may be imposed on a detainee found guilty of misbehaviour:*
 - (a) *caution*
 - (b) *restriction from participation in sport or leisure activities*
 - (c) *additional duties for a period not exceeding 7 days, being duties of a constructive nature designed to promote the welfare of detainees*
 - (d) *exclusion from, or confinement to, a place for a period not exceeding 12 hours or, in the case of a detainee of or over the age of 16 years, not exceeding 24 hours*
 - (e) *in the case of misbehaviour declared by the regulations to be serious misbehaviour – extension, by a period that does not exceed 7 days, of the non-parole period of any detention order, or the term of any detention order without a non-parole period, to which the detainee is subject (other than a detention order whose term is cumulative and that has not commenced).*
- (1A) *A detainee may not be restricted from participation in sport or leisure activities for more than 7 days at a time except with the prior approval of the Secretary, whether given generally or in relation to a particular detainee.*
- (2) *Punishment of a kind referred to in subsection 1(d) may only be imposed on a detainee subject to the following conditions:*
 - (a) *the detainee shall be provided with some means of usefully occupying himself or herself*

²³⁵ Children (Detention Centres) Act 1987, s. 21(d).

- (b) *if the punishment consists of confinement to a place, the physical environment of the place where the detainee is confined shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the detention centre*
 - (c) *the detainee shall at all times be visible to, and able to communicate readily with, a Juvenile Justice officer.*
- (3) *A punishment must not be imposed on a detainee so as to interfere with a visit to the detainee by:*
- a) *a barrister or solicitor (or other such classes of persons as may be prescribed), or*
 - b) *any other person, unless the centre manager is of the opinion that the security, safety or good order of the detention centre would be adversely affected if the visit were permitted.*
- (4) *A punishment under subsection (1)(e) may only be imposed, in accordance with this Act and the regulations, by the Children’s Court.*
- (5) *A penalty under subsection (1)(e) that extends the non-parole period of a person subject to control reduces by a corresponding period for the remaining balance of the term of the detention order.*
- (6) *A punishment under subsection (1)(e) may extend a detainee’s period of detention beyond the end of the period of detention imposed by the court or the maximum period of detention which could lawfully be imposed by the court for the offence concerned.*

Section 22 of the Act lists prohibited punishments.

Section 20 of the Act provides that the person by whom a complaint is being heard shall observe the rules of natural justice and, without limiting the generality of those rules, shall ensure that:

- (a) *reasonable notice of the substance of the complaint is given to the person to whom the complaint relates before the hearing commences*
- (b) *reasonable opportunity is given for the making of submissions by or on behalf of the person to whom the complaint relates (including submissions that challenge any allegations made in relation to that person) while the hearing is being conducted, and*
- (c) *any submissions made by or on behalf of the person to whom the complaint relates are taken into consideration in any decision made by the person by whom the complaint is being heard.*²³⁶

If the person hearing the complaint is satisfied beyond reasonable doubt that the person to whom the complaint relates is guilty of the alleged misbehaviour, he or she may take no action or punish the person to whom the complaint relates. This person must make records about any decision regarding whether the person is guilty of the misbehaviour, any punishment that is imposed, any other decision as a consequence of the hearing, and particulars of the facts on which the decision

²³⁶ *Children (Detention Centres) Act 1987, s. 20(3)(a)–(c).*

was based. A copy of the record is to be given to the person to whom the complaint relates within 24 hours after the determination of the complaint.²³⁷

If a young person is excluded from, or confined to, a place:

- (a) the detainee shall be provided with some means of usefully occupying himself or herself
- (b) if the punishment consists of confinement to a place, the physical environment of the place where the detainee is confined shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the detention centre
- (c) the detainee shall at all times be visible to, and able to communicate readily with, a Juvenile Justice officer.²³⁸

Confinement is discussed in the Juvenile Justice *'Misbehaviour Procedure'* and a *'Misbehaviour and Punishment Resource'*. The procedure provides for review of punishments and states, 'Reviews are often effective when a detainee is resistant to punishment and should be undertaken wherever possible. Inquiry officers must also record reason/s why a review is not undertaken'.²³⁹

The inspection team heard that it was common for young people to choose not to participate in the process surrounding misbehaviour reports. Young people often stated that they felt the outcome was a foregone conclusion and that they would be found guilty regardless of what information they provided.²⁴⁰ For all misbehaviour records over the period 1 July 2015 – 31 Dec 2016, the following pleas were recorded: 75% guilty, 6% not guilty, and 19% made no plea.²⁴¹

Punishments may not be imposed so as to interfere with a visit to a detainee by a barrister, solicitor or any other person, unless the centre manager is of the opinion that the security, safety or good order of the detention centre would be adversely affected if the visit were permitted.²⁴²

Many young people use 'bad' language routinely.²⁴³ In these circumstances, rigorous policing of young people's swearing can escalate situations and cause negative outcomes that would be avoided if the young person was reminded to speak respectfully.

However, some young people use bad language which is intended to be offensive, abusive and threatening. The use of abusive or threatening language by young people cannot be condoned and should be addressed. Staff have a right to feel safe in the workplace and not be subjected to abusive or threatening language.

²³⁷ *Children (Detention Centres) Act 1987*, s. 20(5)–(8).

²³⁸ *Children (Detention Centres) Act 1987*, s. 21(2).

²³⁹ Information provided by Juvenile Justice, 2017.

²⁴⁰ Interviews with staff and young people, 2016 and 2017.

²⁴¹ Information provided by Juvenile Justice, 2017.

²⁴² *Children (Detention Centres) Act 1987*, s. 21(3).

²⁴³ NSW Department of Community Services, *Working with Aboriginal People and Communities*, February 2009, p 25.

Punishment

Figure 20: Types of punishment, 2015–18²⁴⁴

| Punishment | 2015–16 | 2016–17 | 2017–18 |
|-------------------------------------|-------------|-------------|-------------|
| Additional duties | 682 (7%) | 656 (8%) | 756 (10%) |
| Caution | 1147 (12%) | 1010 (12%) | 811 (10%) |
| Confinement to a place | 6487 (69%) | 5588 (68%) | 5606 (71%) |
| Exclusion from a place | 15 (<1%) | 11 (<1%) | 4 (<1%) |
| Restriction from leisure activities | 948 (10%) | 816 (10%) | 639 (8%) |
| Restriction from sport activities | 68 (<1%) | 84 (1%) | 106 (1%) |
| Total | 9347 | 8165 | 7922 |

Figure 20 shows that confinement was overwhelmingly the main punishment given to young people during the last three financial years. Confinement was imposed in 69% of matters when a young person was punished during the 2015–16 financial year, in 68% of matters in the 2016–17 financial year, and 71% of matters 2017–18 financial year.

Overall, the data indicates that there were fewer punishments given in 2017–18 compared with 2015–16 and 2016–17. However, confinement remained the most frequent type of punishment across all periods.

Prior to 2006 young people could be placed in confinement for a maximum of three hours in the case of detainees under 16 years old or 12 hours in the case of detainees 16 years or over. The *Children (Detention Centres) Amendment Act 2006* increased these limits to 12 hours and 24 hours respectively. During the Second Reading Speech, it was explained that this change was introduced to ‘enable front-line staff to deal with more severe misbehaviour in an appropriate way’.²⁴⁵ This statement implies that confinement for lengthy time periods was only intended to be imposed for misbehaviour at the most serious end of the spectrum.

The inspection found some staff confine young people in their room for bad language. This includes abusive or offensive language. In 2017–18, there were 86 misbehaviours across the state for bad language. Of these, 27 resulted in confinement being imposed as a punishment. This accounted for approximately 0.5% of all confinements in the period. The maximum period of

²⁴⁴ Data provided by Juvenile Justice, 2018.

²⁴⁵ NSW Parliament, Legislative Assembly, Second Reading Speech – *Children (Detention Centres) Amendment Bill 2006*, Mr Paul McLeay on behalf of Mr Bob Debus, 23 May 2006.

confinement for bad language was 10 hours and 20 minutes, with the next longest period being six hours. Other misbehaviours included bad language as one of multiple behaviour types.²⁴⁶

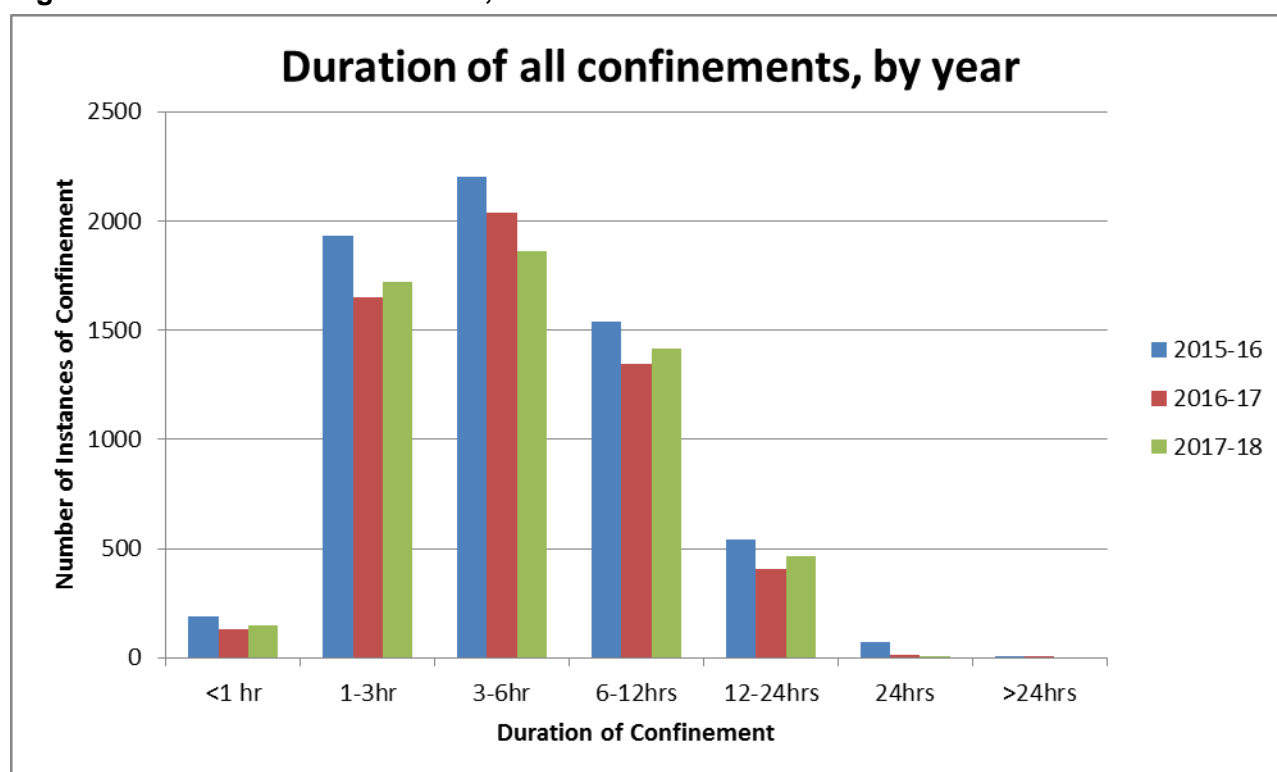
Juvenile Justice provided us with the length of each confinement imposed in the 2015–16, 2016–17 and 2017–18 financial years.

Figure 21: Confinement by duration by financial year²⁴⁷

| Count of confinement by duration | 2015–16 | 2016–17 | 2017–18 |
|----------------------------------|-------------|-------------|-------------|
| More than 24 hours | 1 | 1 | 0 |
| 24 hours | 74 | 12 | 3 |
| Less than 24 hours | 6410 | 5573 | 5602 |
| Total for all centres | 6485 | 5586 | 5605 |

Figure 21 shows the total number of confinements issued and the length of time spent on confinement from July 2015 to December 2017. In 2017–18 the average period of confinement was 5 hours and 20 minutes.²⁴⁸

Figure 22: Periods of confinement, 2015–18²⁴⁹



²⁴⁶ Information provided by Juvenile Justice, 2018.

²⁴⁷ Data provided by Juvenile Justice, 2018.

²⁴⁸ Information provided by Juvenile Justice, 2018.

²⁴⁹ Data provided by Juvenile Justice, 2018.

Given that a confinement usually commences during daytime hours, a young person serving 12 hours or more may lose time out of room for the day, and then be in their room for the night at the completion of the confinement. That is, if a young person serves a period of confinement for 12 hours or more from 7.30am, he or she may be in their room for 24 hours. If a young person is confined for 12 hours at 5pm, the confinement will finish at 5am the next morning. It is possible for young people to be confined on consecutive days for different misbehaviours which may lead to young people spending long periods in their room without technically breaching the 24 hour maximum period of confinement. This should be closely monitored by Juvenile Justice.

A detainee can be taken out of confinement earlier than anticipated following a review of his or her confinement. It is important that Juvenile Justice provides further guidance to staff about when, why and how to conduct reviews of confinement. Juvenile Justice has advised it will add detailed guidance about when, why and how to conduct reviews of confinement to the policies and procedures.

Aboriginal young people

Approximately 63% of young people who were placed in confinement from mid-2015 until the end of 2016 were Aboriginal.²⁵⁰ This is proportionally higher than the average number of Aboriginal young people at JJC's, which is approximately 47%.²⁵¹ The way that Juvenile Justice currently collects data allows for a comparison to be made between the length of confinement periods for Aboriginal young people compared with non-Aboriginal young people. This data is not currently analysed by the agency; however, it would be prudent for Juvenile Justice to do so.²⁵² Overall, it appears Aboriginal young people are confined more often than non-Aboriginal young people.

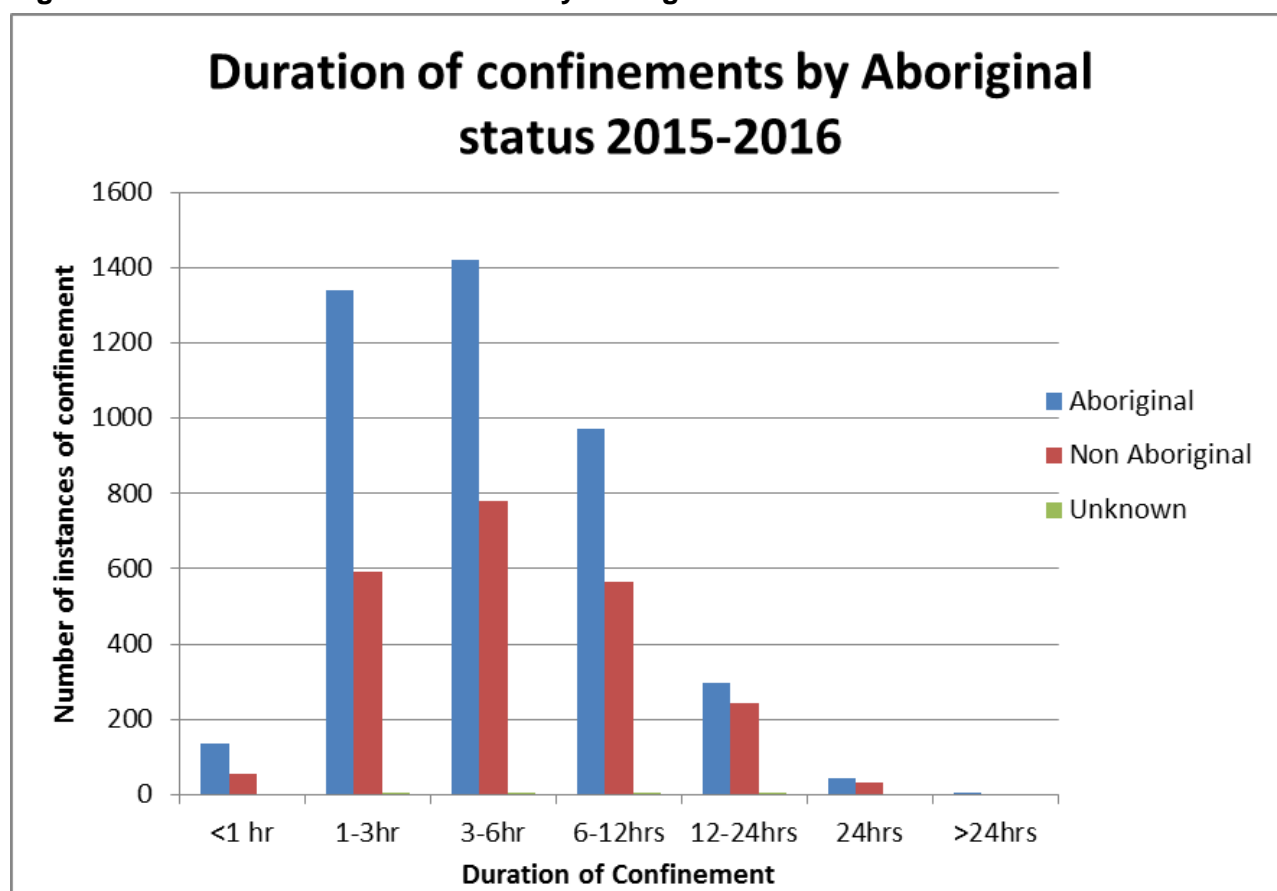
Figure 23A-C shows the length of time spent in confinement by Aboriginal young people and non-Aboriginal young people.

²⁵⁰ Information provided by Juvenile Justice, 2017.

²⁵¹ Bureau of Crime Statistics and Research, *New South Wales Custody Statistics Quarterly Update September 2018*, 2018, p 28.

²⁵² Information provided by Juvenile Justice, 2017.

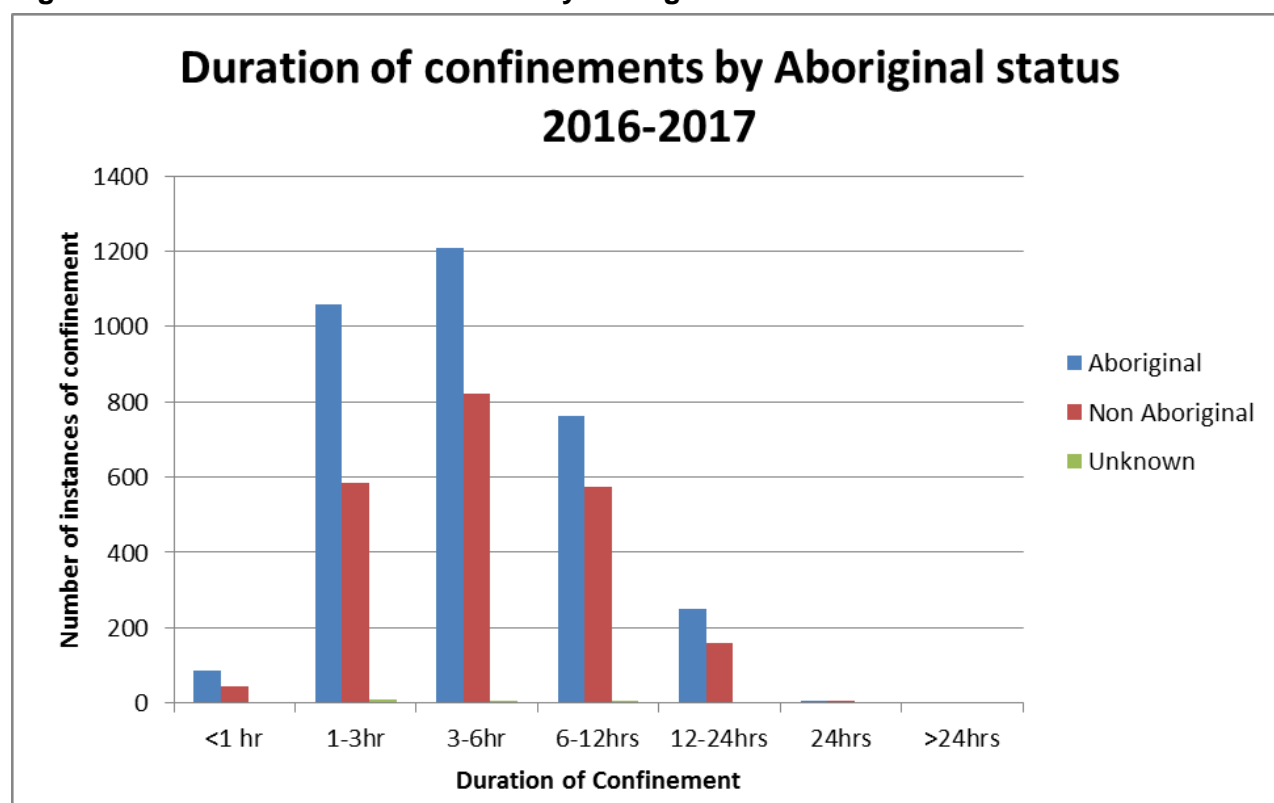
Figure 23A: Duration of confinements by Aboriginal status 2015–16²⁵³



| 2015–16 | Aboriginal | Non Aboriginal | Unknown | Grand Total |
|--------------------|-------------|----------------|----------|-------------|
| <1 hr | 137 | 55 | | 192 |
| 1-3hr | 1340 | 592 | 3 | 1935 |
| 3-6hr | 1422 | 779 | 2 | 2203 |
| 6-12hrs | 972 | 566 | 1 | 1539 |
| 12-24hrs | 296 | 244 | 1 | 541 |
| 24hrs | 42 | 32 | | 74 |
| >24hrs | 1 | | | 1 |
| Grand Total | 4210 | 2268 | 7 | 6485 |

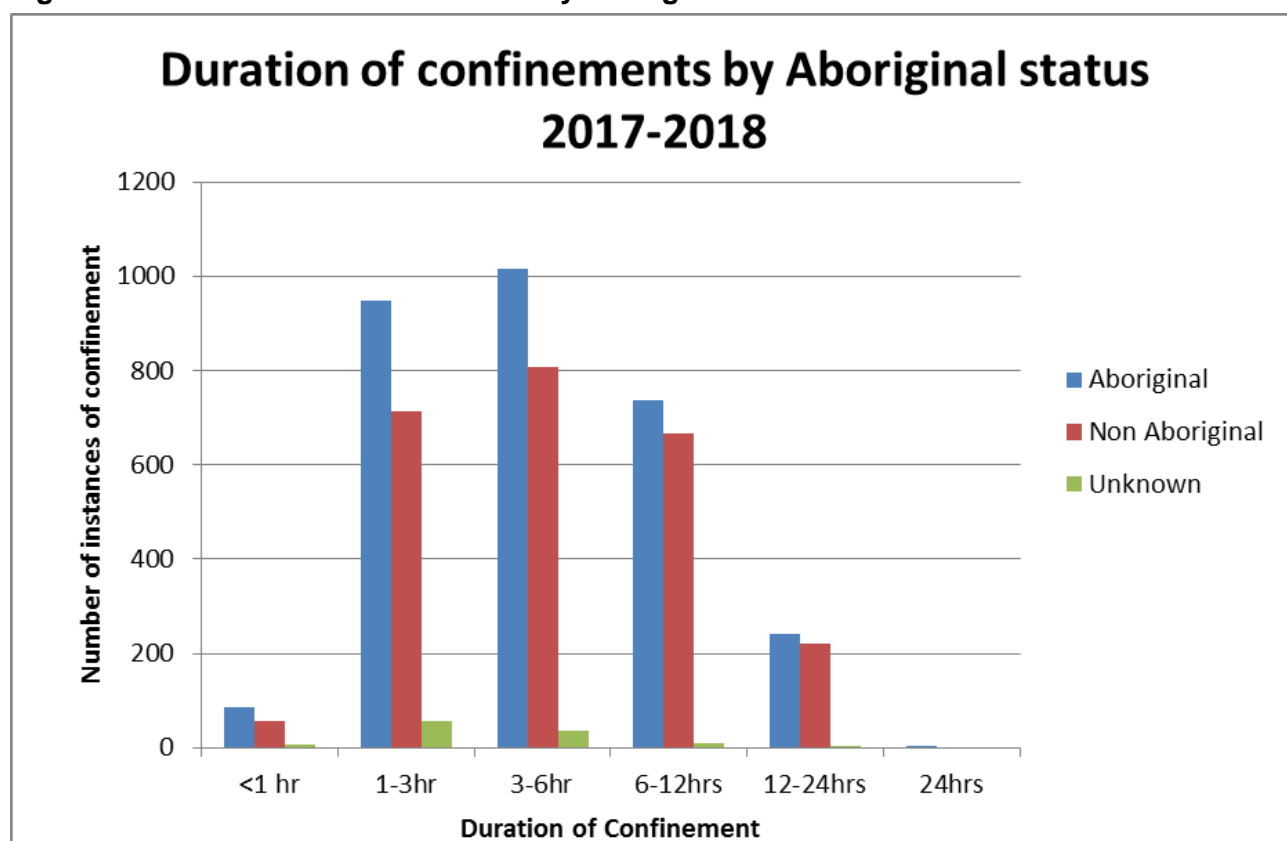
²⁵³ Information provided by Juvenile Justice, 2018.

Figure 23B: Duration of confinements by Aboriginal status 2016–17



| 2016–17 | Aboriginal | Non Aboriginal | Unknown | Grand Total |
|--------------------|-------------|----------------|-----------|-------------|
| <1 hr | 85 | 43 | 1 | 129 |
| 1-3hr | 1060 | 585 | 8 | 1653 |
| 3-6hr | 1208 | 821 | 7 | 2036 |
| 6-12hrs | 764 | 575 | 7 | 1346 |
| 12-24hrs | 249 | 160 | 0 | 409 |
| 24hrs | 6 | 6 | 0 | 12 |
| >24hrs | 1 | 0 | 0 | 1 |
| Grand Total | 3373 | 2190 | 23 | 5586 |

Figure 23C: Duration of confinements by Aboriginal status 2017–18



| 2017–18 | Aboriginal | Non Aboriginal | Unknown | Grand Total |
|--------------------|-------------|----------------|------------|-------------|
| <1 hr | 87 | 55 | 5 | 147 |
| 1-3hr | 950 | 713 | 55 | 1718 |
| 3-6hr | 1016 | 808 | 36 | 1860 |
| 6-12hrs | 737 | 666 | 10 | 1413 |
| 12-24hrs | 242 | 221 | 1 | 464 |
| 24hrs | 3 | | | 3 |
| Grand Total | 3035 | 2463 | 107 | 5605 |

Reducing confinement

During the inspection, young people expressed a range of views about confinement. Some thought it was fair for short periods, or for more serious misbehaviours. Others questioned why young people are not given chores instead of confinement, and several stated that they disliked being locked in their room and having their possessions taken from them. Several mentioned that they found spending long periods of time alone very challenging, and that they felt it negatively impacted on their mental health and wellbeing.²⁵⁴

Despite the challenges, many jurisdictions have proactively set out to reduce the use of confinement. However, there is little relevant research on the most effective way to reduce confinement. There is emerging evidence in support of multi-method approaches to the reduction of confinement.²⁵⁵ A five step toolkit has been developed which involves: adopt a mission statement and philosophy that reflects rehabilitative goals; develop policies and procedures for use and monitoring of confinement; identify data to manage, monitor and be accountable for use of confinement; develop alternative behaviour management options and response; and train and develop staff in agency mission, values, standards, goals, policies and procedures.²⁵⁶

However, reducing the use of confinement may give rise to staff concerns about safety. It is for this reason that reduction should occur over time.²⁵⁷ Staff had very mixed views about confinement, with some officers stating that they would like to use confinement more often, others were of the view that it does not induce positive behaviour change, and some noting that they do not have other options to help manage the challenging behaviour posed by some young people.

Many jurisdictions have proactively set out to reduce the use of confinement as punishment in accordance with international and Australian standards. The inspection found the use of confinement as a punishment in NSW should be reduced through the use of positive engagement and incentivising pro-social behaviour. However, it is acknowledged that implementation of such a recommendation will require considerable care, and is likely to take some time as it is used to respond to serious misbehaviour by high risk and violent detainees.

It is important that Juvenile Justice monitors the use of confinement. Juvenile Justice advises the data in relation to confinement will be reviewed regularly and analysed. The Statewide Operations directorate is creating a daily dashboard that highlights the hours of confinement at each facility, which will direct regional directors to monitor the use of confinement at each centre. This dashboard will also assist in monthly and quarterly analysis. It is expected that this will be implemented in 2018.²⁵⁸

²⁵⁴ Interviews with young people, 2016 and 2017.

²⁵⁵ KR Delaney, 'Evidence base for practice: reduction of restraint and seclusion use during child and adolescent psychiatric inpatient treatment'. (2006) *Worldviews on Evidence-Based Nursing*, 3(1), pp. 19–30.

²⁵⁶ Council of Juvenile Correctional Administrators. *Toolkit: Reducing the use of isolation*. (2015). MA: <http://cjca.net/attachments/article/751/CJCA%20Toolkit%20Reducing%20the%20Use%20of%20Isolation.pdf>.

²⁵⁷ G Gately, *Growing number of states moving away from juvenile solitary confinement*. (2014). <http://jje.org/2014/03/21/growing-number-of-states-moving-away-from-juvenile-solitary-confinement/106550>.

²⁵⁸ Information provided by Juvenile Justice, 14 November 2017.

In addition, Juvenile Justice should undertake a review to ensure consistent safeguards apply to young people in separation, segregation and confinement in relation to record-keeping, notification requirements and conditions.

Recommendations:

The Inspector recommends that young people are not confined for using bad language that is not abusive or threatening.

The Inspector recommends that Juvenile Justice reduces the use of confinement as punishment.

The Inspector recommends Juvenile Justice provides training to staff about when, why and how to conduct reviews of confinement.

The Inspector recommends that Juvenile Justice conduct a review to ensure consistent safeguards are in place in relation to separation, segregation and confinement.

Behaviour management

Behaviour management is the ongoing effort by JJC staff to implement strategies that elicit positive behaviour from young people. Ensuring appropriate behaviour requires the constant attention of staff, and behaviour management is not a one-time response to a troubling incident. An effective approach to behaviour management involves creating a culture within the facility that supports the development of positive relationships between young people and staff that ensures the safe and humane treatment of young people, that provides young people with the treatment and programs they need to learn problem-solving skills and overcome thinking errors and past traumas, and that ensure a consistent and clear message about behavioural expectations for both young people and staff.²⁵⁹

While a behaviour management system must include appropriate consequences for negative behaviours, the objective of these consequences should be behaviour modification rather than punishment.²⁶⁰ Lack of effective behaviour management can be a contributing factor to an increased use of force and restraints, and segregation and confinement.²⁶¹

The Detainee Behaviour Intervention Framework (DBIF) is the primary tool used by Juvenile Justice to manage young people's behaviour. It is designed to underpin staff responses to, and management of, young people's pro-social and inappropriate behaviours in custody. The main

²⁵⁹ M Deitch, 'Behavior Management,' *Desktop Guide to Quality Practice for Working with Youth in Confinement*, National Institute of Corrections, chapter 14, p 1, <http://www.stopsolitaryforkids.org/wp-content/uploads/2016/09/NPJS-Desktop-Guide-on-Youth-in-Confinement.pdf>

²⁶⁰ M Deitch, 'Behavior Management,' *Desktop Guide to Quality Practice for Working with Youth in Confinement*, National Institute of Corrections, chapter 14, p 1, <http://www.stopsolitaryforkids.org/wp-content/uploads/2016/09/NPJS-Desktop-Guide-on-Youth-in-Confinement.pdf>

²⁶¹ Her Majesty's Inspectorate of Prisons, *Behaviour Management and Restraint of Children in Custody*, November 2015, p 11.

goal of the framework is to 'allow staff to implement appropriate interventions to reduce a detainee's risk of re-offending'. Further, it 'aims to provide a context for staff in relation to risk-based decision-making for the management of detainee behaviour which prioritises the safety of staff'.²⁶²

The framework distinguishes responses to young people's behaviour as proactive, active or reactive interventions, in order of desirability. Under the DBIF, negotiation and de-escalation are listed as 'active interventions' and use of force is listed as a 'reactive intervention'. 'Proactive interventions' include centre rules and routines. The DBIF policy document states that interventions 'are usually programs (Juvenile Justice, Department of Education and Communities, and JH&FMHN), referral for services, counselling services that are identified through assessment and outlined in a detainee's intervention plan that assists in reducing the detainee's risk of reoffending'. Interventions can be proactive, active or reactive, and the intervention is based on the young persons identified needs.²⁶³

The DBIF is currently under evaluation in order to 'understand the organisational contexts in which the DBIF is implemented' with the aim of seeking 'to understand the elements of the DBIF that effectively contribute to the improved management of detainees'.²⁶⁴

In September 2016, Juvenile Justice commenced a review into behaviour management to consider 'contemporary practice in positive behaviour management and identify ways to move away from lengthy periods of time spent in rooms'. This has comprised consultation with the Juvenile Justice Advisory Committee, staff consultation workshops and a comprehensive literature review. The work undertaken so far will inform the design, development and implementation of an updated framework.²⁶⁵

Detainee incentive scheme

The Secretary may establish an incentive scheme to encourage detainees to participate in programs, and centre managers are to ensure that the scheme is implemented.²⁶⁶ The incentive scheme is variously referred to in Juvenile Justice policies and procedures as a 'reward system', 'token economy' and 'tool' for behaviour management. The incentive scheme consists of four stages designed to support staff assisting detainees to encourage pro-social behaviours and responses. It 'links detainee's case plan with their day-to-day actions and ensures they attain both custodial and community-based goals'.²⁶⁷ Young people who come into detention start on stage one of the scheme. This provides access to basic items on the incentive scheme and an earlier bedtime than people on higher stages. Weekly Client Assessment Meetings allow young people to develop weekly goals, behaviour targets and tasks in line with their case plan. Performance in the

²⁶² Juvenile Justice NSW, *Detainee Behaviour Intervention Framework Policy*, 2009.

²⁶³ Juvenile Justice NSW, *Detainee Behaviour Intervention Framework Policy*, 2009, p 4.

²⁶⁴ Juvenile Justice NSW,
<http://www.juvenile.justice.nsw.gov.au/Pages/Juvenile%20Justice/research/research.aspx>.

²⁶⁵ Information provided by Juvenile Justice, 2017.

²⁶⁶ *Children (Detention Centres) Regulation 2015*, cl. 19(2)(c).

²⁶⁷ Juvenile Justice, *Incentive Scheme Procedure document*, 2010.

incentive scheme is assessed against displays of effort and willingness to achieve these agreed behaviours and goals.²⁶⁸

Positive 'reinforcers' offered through the incentive scheme may be material items, for example, toiletries and snack foods; activities such as cooking, painting, arts and craft, or gardening; or social rewards such as praise or awards. Young people are required to make a number of points each day. If they do, they are permitted to stay up past the standard centre bedtime. If they make their points each week, they are able to choose from items on the incentive scheme list. Each centre develops its own incentive scheme list, consistent with central guidelines, and with input from staff and young people. Lists should be reviewed at regular intervals.

During the inspections, young people consistently raised concerns with the incentive scheme, and the inspection team found inconsistencies between JJC's. It is not unreasonable that incentives offered to young people as rewards for good behaviour should vary to some degree between centres. The incentives that are appropriate to offer at a JJC accommodating detainees aged 16 years and over are likely to differ to those offered at a centre accommodating mostly young teenagers. However, there should be a similar approach across centres and incentives should generally be consistent. It is unsurprising that a young person will feel frustrated if at one centre the gym, pool or games room is part of the normal routine but, at another centre, such activities are denied to the young person until reaching a particular level of the incentive scheme.

In administering an incentive scheme, Juvenile Justice should ensure that the scheme is administered as consistently as practicable across the different JJC's and the views of young people are periodically sought about what items they would like included on the list of incentives. Juvenile Justice has advised a review of the incentive scheme is currently underway as a component of the behaviour management review. Consultation with young people will be incorporated into this review and used to inform the design and implementation of the scheme. The updated scheme will consistently apply across all centres.

Recommendations:

The Inspector recommends Juvenile Justice review the detainee incentive scheme and consults with young people to improve consistency across centres.

4.6 The impact of separation, segregation and confinement

The Act requires that a detainee shall not be segregated unless the centre manager is satisfied that there is no practicable alternative means to protect the personal safety of the person or persons for whose protection the detainee is to be segregated.²⁶⁹ Therefore, it is not surprising that young people on segregation are restricted from associating with other young people. In many instances, this is the safest and most appropriate management option, even if the young person is prohibited from associating with all of his or her peers.

When young people are placed in confinement for punishment this will usually be for a specific period during which the young person will not be allowed to participate in the normal routine or mix

²⁶⁸ Juvenile Justice NSW, http://opsman/procedures/index.php?option=com_content&view=article&id=145:link-with-the-incentive-scheme&catid=12:case-management&Itemid=138/

²⁶⁹ *Children (Detention Centres) Act 1987*, s. 19(4).

with other young people. The young person may, however, be taken out of confinement earlier than anticipated, for example, because of a review of confinement.

A young person who is separated may be subject to the separation routine in a centre and allowed to mix with other young people. However, in some situations, a young person who has been separated will be kept on their own.

Best practice requires consideration of the conditions of separation, segregation and confinement. This includes whether physical facilities conform with basic standards for juvenile detention, and whether there are opportunities for meaningful interaction with family and access to staff and services, with regular visits by staff, and involvement of medical and mental health staff.

4.7 Conditions

Section 19(1)(a) of the Act specifies that the nature and duration of segregation shall be reasonable having regard to the age, mental condition and development of the detainee. At the time of the inspection, detainees in continuous segregation at some centres were treated substantially the same regardless of their age, mental health concerns and intellectual capacity. Some centres applied a more individual approach to managing young people in segregation. In particular, young people who pose a threat to themselves will generally not be provided with certain items that may be used to cause harm, or will have items removed, forcibly if considered necessary.

Section 19(1)(d) of the Act provides that the physical environment of the place where the detainee is kept segregated shall, unless otherwise appropriate, be no less favourable than the physical environment of other places occupied by detainees in the centre. Young people in segregation or confinement are usually held either in their own room, a camera room or a holding room in a separate part of the centre. Young people placed in separation as a group may be in a separate unit. Individuals who are separated are usually kept in a separate part of the centre from the general population, such as a holding room or the health clinic.

Youth officers aim to keep young people on segregation and confinement in their own room wherever possible, and this is generally what young people prefer. Young people advised they are more comfortable in their own rooms, with their own belongings. Keeping young people in their own room meets the requirements of the legislation with regard to maintaining an equivalent physical environment for young people in segregation.

Juvenile Justice has advised that decisions to keep young people in their own room must be considered on a case-by-case basis as a result of an individual risk assessment. On many occasions it will not be possible or appropriate to segregate or confine a young person in their own room. In some centres, for example, detainees share a room, which makes segregation or confinement in their own rooms unfeasible.

Young people placed in their own room may, in some circumstances, be removed to a holding room in another part of the centre. This will generally occur if the young person is being disruptive and disturbing other young people or if they start damaging their own room.

Some young people do damage property, including their own, and in such circumstances it may be preferable for staff to take them to a camera room or holding room. Young people who are self-harming or at risk of self-harm will also be placed in a camera room for safety reasons, to enable observation.

The holding rooms in JJC's are generally equivalent to young people's rooms in terms of their size and lighting. Most have a built-in television and radio, a bed and toilet. However, some holding rooms do not contain a toilet or shower. While generally the holding rooms we examined appeared to be in a reasonable condition we did, on occasions, see empty holding rooms that did not appear to have been cleaned since being last used. It is important that holding rooms are maintained to an equivalent standard as young people's rooms.

There was evidence that some periods of segregation and confinement are scheduled to end after bedtime. Some young people told us that due to their segregation or confinement period in a holding room ending after bedtime, or a review of confinement being due at such a time, they were woken during the night to be moved back to their own room.²⁷⁰ A review of records showed this was true. It is preferable for periods of confinement and segregation to be reviewed before bedtime to allow young people to sleep in their own rooms without being woken during the night. Alternatively, a young person may be confined or segregated in their own room and the period of confinement or segregation will end while they are asleep.

Otherwise, it may be more appropriate for the young person to remain where they are until morning. It is possible for a detainee to consent to remain in a room at the expiry of segregation to avoid being woken. A similar process was put in place for confinement in October 2016.²⁷¹

Currently, the location of young people in segregation, separation or confinement is recorded in the CIMS within the segregation, separation or misbehaviour record. Location can also be checked through the Record of Checks Log and Unit Log.²⁷² However, data about where young people are placed is not currently able to be extracted, and this information is therefore not monitored in any way.²⁷³ Records should be kept in a manner whereby data about individual detainees, different JJC's and trends over time, may be analysed and monitored.

Recommendations:

The Inspector recommends Juvenile Justice ensures young people are confined or segregated in their room whenever possible, subject to an individual risk assessment; to avoid having to wake young people at night to return them to their room.

4.7.1 Meals

Young people who are placed in separation, segregation or confinement are often required to eat in their room. Sitting at a table to eat, with cutlery and other people present, if only staff, allows young people to interact with other people.²⁷⁴ While young people's bedrooms generally have a bed and stool on which to sit while eating, some holding rooms do not. It is acknowledged that at times the risk posed by a particular young person may be so great that they must eat their meals

²⁷⁰ Interviews with young people, 2016 and 2017.

²⁷¹ Information provided by Juvenile Justice, 2018.

²⁷² Information provided by Juvenile Justice, 2017.

²⁷³ Juvenile Justice confirmed that information about placement during separation, segregation and confinement is not currently kept. Information provided by Juvenile Justice, 2017.

²⁷⁴ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services, March 2017, pp 18–19.

alone in their room. However, it is preferable, wherever possible, for young people to sit at a dining table in a common area subject to an individual risk assessment.

Young people in segregation are risk-assessed to determine whether it is safe for them to use cutlery. The inspection team heard of occasions where young people were provided with rice and curry which they had to eat with their fingers as the young people were not provided with cutlery due to a risk of self-harm.²⁷⁵ In some jurisdictions, 'paperboard spoons' are provided, which have been specifically designed to address concerns relating to self-harm. Juvenile Justice ordered a sample of these spoons to determine their suitability for use.²⁷⁶ Centre managers were of the view this cutlery was inappropriate and potentially demeaning for detainees; however, so is requiring young people to eat meals with their hands. Alternative solutions such as the use of plastic cutlery for detainees on segregation or alternative meals that are suitable to be eaten with hands were preferred.²⁷⁷

Detainees at risk of self-harm will often be provided with an alternate meal which they are able to eat without cutlery. At the time of inspection, young people raised concerns with the lack of variety in the food provided and the nutritional value of the food.²⁷⁸ Hunger was not raised as a concern. To the contrary, some young people said they put on significant amounts of weight while in segregation suggesting it was probably caused by a combination of the type of food and limited physical activity.²⁷⁹ A more recent review of the 'at risk' menu shows an improvement in the variety and nutrition of meals.²⁸⁰

Recommendations:

The Inspector recommends Juvenile Justice ensure that wherever possible, subject to an individual risk assessment, young people on separation or segregation are permitted to eat outside of their room.

The Inspector recommends Juvenile Justice regularly reviews the meals available for at risk young people to ensure they meet nutritional standards; and investigate the provision of cutlery that is not able to be used for self-harm.

4.7.2 Access to exercise

Exercise is critical for maintaining the health of young people. Current guidelines suggest young people receive at least one hour of moderate to vigorous exercise each day, as well as activities that strengthen muscle and bone at least three times per week, and that long periods of sitting are broken up in order to reduce health risks.²⁸¹

²⁷⁵ Interviews with young people, 2016 and 2017.

²⁷⁶ Information provided by Juvenile Justice, 2017.

²⁷⁷ Information provided by Juvenile Justice, 2018.

²⁷⁸ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice, report prepared for the Inspector of Custodial Services*, March 2017, p 14.

²⁷⁹ Interviews with young people 2016 and 2017.

²⁸⁰ Juvenile Justice, Summer 2018 menu, 2018.

²⁸¹ Department of Health, *Australia's physical activity and sedentary behaviour guidelines for young people (13–17 years)*, 2014. <http://www.health.gov.au/internet/main/publishing.nsf/content/health-pubhlth-strateg-phys-act-guidelines#apa1317>.

JJCs include facilities to enable young people to exercise, such as fixed exercise equipment in outdoor yards, an oval, an indoor gymnasium, a pool, basketball court and table tennis tables. Some centres facilitate access to these spaces and equipment more than others and have staff or external providers run gym sessions, boot camps and other fitness programs for young people. These are usually not available to young people on segregation or individual separation or confinement, although some centres adopt a more flexible approach than others in this regard. For example, several young people who had been in the CBP at Frank Baxter JJC told us they had activities and access to the pool.²⁸²

It is acknowledged that it may be challenging under current routines and operational frameworks to ensure young people in segregation and separation have the opportunity each day to engage in physical activity. However, it is important that young people are provided with opportunities to exercise.²⁸³ Not only should Juvenile Justice provide young people with the opportunity to exercise, but staff should actively encourage young people to exercise and find ways to motivate young people to participate in physical activity. DRMPs should specify the amount of exercise time a young person will have access to each day, which should be at least one hour.²⁸⁴

4.7.3 Access to property and meaningful activities

The Regulation states that a detainee may acquire any books, newspapers, magazines or other printed material approved by the centre manager. Religious books, recognised objects of devotion and similar items belonging to a detainee are taken to be approved property. Young people may also acquire any radio or other item of electronic equipment or related accessory approved by the centre manager.²⁸⁵ Generally, if the centre manager considers an item to pose a risk to the safety, security or good order of the centre, he or she may refuse to allow a detainee to use or otherwise have possession of the item and, in some circumstances, items may be disposed of or otherwise dealt with.²⁸⁶

The inspection team visited the rooms of a number of young people throughout the inspection and observed that many had photos, posters, books, toiletries and other personal possessions on their desk and shelving. It was apparent that many young people took pride in their private space and attempted to make it as comfortable as possible. Juvenile Justice has recently put chalk boards in a number of young people's rooms as well as in courtyards, and some young people have brightened up their rooms with colourful chalk drawings and murals. This is a positive initiative and one to be commended.

²⁸² Interviews with young people, 2016 and 2017.

²⁸³ Australia's Physical Activity and Sedentary Behaviour Guidelines for Young People recommend that young people aged 13 to 17 years should accumulate at least 60 minutes of moderate to vigorous intensity physical activity every day, as well as activities that strengthen muscle and bone on at least three days per week. Department of Health, *Australia's physical activity and sedentary behaviour guidelines for young people (13–17 years)*, <http://www.health.gov.au/internet/main/publishing.nsf/content/health-pubhlth-strateg-phys-act-guidelines#apa1317>.

²⁸⁴ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice, report prepared for the Inspector of Custodial Services*, March 2017, pp 17-18.

²⁸⁵ *Children (Detention Centres) Regulation 2015*, cl. 13(1), 12(5), and 14(1).

²⁸⁶ See for example, *Children (Detention Centres) Regulation 2015*, cl. 12(3), 13(2) and 14(2).

Section 19(1)(c) of the Act specifies that young people in segregation are to be provided with some means of usefully occupying themselves. While some young people spend time in segregation in their own room, with their own belongings, items may be removed due to the risk of self-harm. Some young people are placed in a room that is not their own, such as a camera room or holding room. Young people in confinement who are in their own room may have access to their own possessions. However, young people placed in holding rooms have to wait to be provided with something to do. If the young person is visibly angry or upset when placed in segregation or confinement, they will not be provided with any items until they calm down.

When they are calm, they will usually be given one or more items such as a book, magazine, pack of cards, stress ball, puzzle or crossword. Depending on the assessment of risk, young people may be provided with pencils or pens. At one centre, the inspection team observed a chest of drawers, full of puzzles, books and other items to give to young people whenever they were placed in the nearby holding rooms. At the time of inspection, some young people in separation, segregation or confinement had very little to occupy themselves with while alone in their room. It was observed at one centre that some young people had been provided with a pack of cards or a stress ball.

The inspection team formed the view that providing a young person with one item is insufficient and does not meet the intention of the legislation. There is scope for Juvenile Justice to increase the range of materials and activities that young people have access to, and take greater care in providing activities that are appropriate for each young person's age, intellectual capacity, cultural background and interests. Juvenile Justice should liaise with young people and seek their suggestions about what types of activities they would like to do when they are required to spend an extended period of time in their room. The inspection found the options provided were limited, and unlikely to usefully occupy a young person for an extended period of time.

Young people in segregation and separation are usually able to watch television and listen to the radio. Sometimes young people in confinement are permitted to watch television, but many young people reported that televisions are turned off during periods of confinement, as this is considered to be part of the punishment. This practice seems to vary between JJC's, and units within centres. Some staff acknowledged the stress that some young people feel when they are in their room and suggested that watching television is a good way for them to calm down if agitated, and to pass the time.²⁸⁷ For this reason, a consistent approach should be implemented across JJC's.

Recommendations:

The Inspector recommends Juvenile Justice review the amount and range of items and activities, including watching television that are provided to young people placed in separation, segregation and confinement, in consultation with young people.

4.7.4 Access to education

In NSW, the Secretary must take all reasonable steps to ensure that each detainee under 17 years is provided with education at a level appropriate to the detainee's aptitude, potential and interests, and must do so whether or not the detainee so requests. The Secretary must also ensure that

²⁸⁷ Interviews with staff and young people, 2016 and 2017.

each detainee of or above the age of 17 is provided with education or vocational training.²⁸⁸ Each JJC has a school operated by the NSW Department of Education.²⁸⁹

Schooling is critical for all young people, and particularly so for those in detention who have often experienced disrupted schooling and low educational achievement in comparison to other young people of a similar age.²⁹⁰ Engagement in school 'is one of the primary sources of pro-social involvement during adolescence, both peer and pro-social adult, and is fertile ground for the development of positive relationships with authority figures and self-belief in one's capacity for change and growth'.²⁹¹

The young people spoken to during the inspection gave almost universally positive reports about their experiences of school within JJsCs. They spoke of school helping to pass the time, discussed their educational achievements and demonstrated new skills they had been learning.

Teachers were regarded highly by custodial staff and young people. One young person said he liked school because it takes your mind off things and you get to do a lot of activities. Another young person said the day goes much quicker when you go to school. At all centres, staff were of the view that incidents were more likely to occur outside of school time, and during school holidays. Youth officers commented about the difficulty in managing the behaviour of the young people during school holidays.²⁹²

At most JJsCs, young people who are placed in separation, segregation or confinement will generally not attend the centre school.²⁹³ They may instead receive an education pack, consisting of some educational activities they are expected to complete on their own while in their room. One DRMP reviewed by the inspection team stated that a young person in segregation was to be provided with a program and education pack consisting of magazines and a stress ball. These items cannot reasonably be described as educational material. Provision of educational material will depend on the ability of education staff to safely assess the needs of a young person as to whether they are in the right frame of mind to engage with formal education material. Education will support young people during times of non-attendance at school as best suits the situation.²⁹⁴

At one JJC, a number of dedicated education staff are willing to attend the rooms of young people to work with them during education sessions. On one occasion, when working with a very high-risk young person who had a history of significant self-harm, the school principal was required to remove his belt and glasses, and the young person could only have access to crayons and paper.

²⁸⁸ *Children (Detention Centres) Regulation 2015*, cl. 18.

²⁸⁹ Interviews with staff and young people, 2016 and 2017.

²⁹⁰ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice, report prepared for the Inspector of Custodial Services*, March 2017, pp 14–15.

²⁹¹ SM Shepherd, S Luebbers and JRP Ogloff, 'The role of protective factors and the relationship with recidivism for high-risk young people in detention' *Criminal Justice and Behavior*, 2016, vol. 42, no. 7, p 874.

²⁹² Schools in JJsCs stay open on average three weeks longer than regular public schools and have a shorter school holiday period.

²⁹³ Unless a young person is subject to periodic segregation, which allows attendance at the centre school.

²⁹⁴ Information provided by the NSW Department of Education, 2018.

At Cobham JJC, a unit-based school was created for young people who were considered to pose too great a risk to staff and other young people to attend the usual school. In this model, groups of two to three young people work with teaching staff in a classroom, or a young person could work alone with teaching staff. Youth officers supervise in or outside of the classroom, depending on risk. Staff working at this school felt it was a sensible option, and working well.²⁹⁵

NSW is not alone in grappling with the issue of providing education to young people in separation, segregation and confinement. The Victorian Commission for Children and Young People report into segregation, separation and lockdowns in the Victorian youth justice system found:

One of the most serious impacts of locking children and young people in their room for extended periods is their inability to participate in education. Young people in custody often have poor experiences of education. Many of them fall within the age of compulsory education (up to 17 years) but, even for those who are older, engaging in education is an important aspect of rehabilitation and promoting skills for the future.²⁹⁶

The Qld *Independent Review of Youth Detention* also recommended that ‘the Principal or delegate of the educational institution must: ensure that the young person who does not attend classes is provided with educational material that can be completed in the unit’.²⁹⁷

The inspection team formed the view that there is inconsistency in the approach to the provision of education to young people in separation, segregation and confinement across the different JJsCs. It may be useful for the different centres to learn from each other, as well as other jurisdictions, about the approaches being used, what appears to be working, and alternative ways to provide education in a custodial setting.

Juvenile Justice has advised it seeks to provide educational materials for all young people subject to separation, segregation and confinement. The NSW Department of Education works with Juvenile Justice to support students when the young person is in separation, segregation or confinement and it is appropriate to do so based on a risk assessment, the needs of a young person at the time and the nature of work that can be provided to the young person having regard to the length of time the young person is removed from the centre routine.²⁹⁸ Juvenile Justice is working with the NSW Department of Education to standardise and improve the educational materials that may be provided across all centres for young people not participating in the normal centre routines.²⁹⁹ This is an important initiative to ensure that legislative requirements are met.

Recommendation:

The Inspector recommends Juvenile Justice works with the Department of Education to ensure that young people in separation, segregation and confinement are provided with educational lessons or materials; and any decisions to exclude young people from school are reviewed regularly.

²⁹⁵ Interviews with staff, 2016 and 2017.

²⁹⁶ Victorian Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, March 2017, pp 82–83.

²⁹⁷ *Queensland Independent Review of Youth Detention*, December 2016, Recommendation 12.R6, p 24.

²⁹⁸ Information provided by the NSW Department of Education, 2018.

²⁹⁹ Information provided by Juvenile Justice, 2018.

4.7.5 Access to programs

The term ‘program’ has many meanings within the Juvenile Justice environment. Programs may refer to a range of vocational, education, recreational, alcohol and other drug rehabilitation, culture-specific and offending-based programs. Further, most centre staff and young people refer to recreational activities as programs. When young people refer to programs, they are usually referring to activities that they are able to participate in after school and on weekends such as football. This is unsurprising given that the youth officers who are primarily responsible for organising recreational activities for young people are referred to as ‘programs officers’.

At some JJC’s the recreational programs offered will depend on the particular skills and interests of programs officers, for example, art. The programs officers are also responsible for organising vocational programs, some of which are provided through the school. It is important for young people to exercise, and engage in meaningful activities that keep them occupied, teach them new skills, build on cultural connections and provide opportunities for pro-social engagement.³⁰⁰ Youth officers appeared to be aware of the importance of providing young people with programs and activities.³⁰¹

Information about the purpose and content of programs should be provided to young people, as should information about what is expected of participants and why they might be excluded from participating. Ideally, all programs in JJC’s should have an aim or purpose; a clear outline of what the program entails; and a timeline for completing the program. Young people with the most challenging behaviour often have the greatest need for programs and activities; therefore, access to programs should not be restricted on a behaviour management basis.³⁰² This has been recognised in other jurisdictions.³⁰³

³⁰⁰ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services, March 2017, pp 14–15.

³⁰¹ Interviews with staff, 2016 and 2017.

³⁰² *Queensland Independent Review of Youth Detention*, December 2016, Recommendation 9.R4.

³⁰³ Victoria: The 2017 Victorian Youth Justice Review concluded that ‘a core component of rehabilitating young people is giving them access to quality programs and services to support their reintegration back into the community’ (P Armytage and J Ogloff, *Youth Justice Review and Strategy: Meeting needs and reducing offending*, July 2017, p 247.) Further it recommended that ‘a culture of active program participation should be enshrined in the ethos of the youth justice centres, with a presumption that all young offenders are engaged in programs unless they are sick or in isolation/separation in line with an agreed management plan’ and that ‘program participation and completion should be made key performance indicators for custodial centres’ (P Armytage and J Ogloff, *Youth Justice Review and Strategy: Meeting needs and reducing offending*, July 2017, Rec 8.17)

Queensland: The 2016 Qld Independent Review of Youth Detention also recommended ‘that access to programs, particularly those which relate to education and culture, should not be restricted on a punitive, behaviour management basis’ (*Queensland Independent Review of Youth Detention*, December 2016 (publicly released April 2017), 9.R4.)

Western Australia: The WA Inspector of Custodial Services noted after serious incidents at Banksia Hill Juvenile Detention Centre, idle, bored children will invariably become frustrated and are very likely to act out their frustrations. Bars and grilles will not stop this and it is important that a full and active regime, including rehabilitative programs and recreation, are provided (Correspondence from Neil Morgan, Inspector of Custodial Services, Western Australia to Kathryn McMillan QC, QLD Youth Detention Review, 25 October 2016, http://www.youthdetentionreview.qld.gov.au/data/assets/pdf_file/0019/2548/Office-of-the-Inspector-of-Custodial-Services-WA.pdf. Accessed 15 July 2017). The Western Australian Inspector of Custodial

Generally, young people placed in separation, segregation and confinement do not have access to the same programs as other young people. They may also be restricted from accessing programs as the behaviour that led to them being placed in separation, segregation or confinement may have led to them being reclassified, or otherwise restricted from accessing certain programs due to the risks they pose. It is understandable that young people placed in separation, segregation and confinement are unable to join their peers participating in vocational, cultural or therapeutic programs for the time they are in such a placement. However, there may be scope for young people to be provided with programs in a modified form, or with program material, so that they are not missing out entirely for the duration of their stay in separation, segregation or confinement. Any decision to exclude a young person in segregation from programs should be regularly reviewed.

It is acknowledged that Juvenile Justice has changed the DRMP procedure and training to incorporate an enhanced risk-assessment model whereby participation in each program or activity is individually risk assessed and reviewed in real time, so that disruptions to the standard day, including participation in programs, are minimised. This is to be commended.

Juvenile Justice should ensure that young people are provided with adequate programs and other recreational activities as part of a structured day, particularly during school holiday periods. JJs should be proactive in engaging organisations and individuals from the local community to visit the centre to engage with and provide programs or services to young people. Some JJs do this very effectively and should be acknowledged for their efforts in this regard.

It is acknowledged that Juvenile Justice is committed to increasing the amount and variety of programs and activities available to young people in centres. Juvenile Justice has advised it is distinguishing programs from activities as an outcome of the current review of routines across all JJs. This review will inform standardisation of the Juvenile Justice approach to the composition and implementation of programs and activities included in the structured day of all centres. Identification of additional programs and activities has commenced as part of implementation.³⁰⁴

Recreational programs

A lack of recreational programs and activities was raised as a key area of concern for young people. They reported there was not sufficient meaningful activity available for them outside of school hours; that the most frequent 'programs' were table tennis, cards and touch football; and that desirable activities such as using gym equipment was often restricted to those on a high level of the detainee incentive scheme. Young people highlighted that the number and type of recreational activities offered at different centres is something that has a significant impact on their experience of detention. Young people expressed the view that programs are better at certain centres. One centre has a deliberate strategy of offering young people as many activities as possible after school, and young people spoke particularly highly of this.

Services conducted an audit of custodial roof ascents in 2012. This emphasised that while physical security deficiencies meant that roofs were vulnerable to access by detainees, the main causes of roof ascents were boredom, unhappiness and conflict (Inspector of Custodial Services, Western Australia, *Audit of Custodial Roof Ascents*, December 2012, p 3. See also Professor Y Jewkes, *Submission to Parliamentary Committee Inquiry into Youth Justice Centres in Victoria*, February 2017).

³⁰⁴ Information provided by Juvenile Justice, 16 February 2018.

Most centres offer some excellent programs and activities. For example, some young people in detention have had access to a barista and cooking course; a hair and beauty course; parenting classes; the opportunity to assist training rescue dogs; a program for detainees to learn about radio broadcast and presentation skills; and a project about film production and film-making.

Therapeutic programs

The term ‘program’ is also used to describe rehabilitative or therapeutic programs, such as ‘Changing Habits and Reaching Targets’ and ‘X Roads’, which addresses substance use, as well as cultural programs such as ‘Our Journey to Respect’ and ‘Dthina Yuwali’, which are periodically provided to young people in custody.³⁰⁵

In addition to rehabilitative or therapeutic programs, some young people receive weekly one-on-one sessions with a psychologist. This may be in addition to group programs or as an alternative if a young person is considered too high risk to engage in a group program.

Juvenile Justice has a dedicated ‘Practice Team’ that is responsible for the implementation, training and maintenance of all therapeutic programs. The Risk–Needs–Responsivity Model is one of the most widely used models guiding offender treatment.³⁰⁶ It aims to move away from punitive practices and into more individualised assessment of young people in order to facilitate effective rehabilitation and lower recidivism.³⁰⁷ It is the model used by Juvenile Justice and has been the focus of recent training.³⁰⁸

The Risk–Needs–Responsivity Model involves three main principles: first, ensuring the intervention with the offender is matched to their risk level, with intensive levels of treatment and resources for higher risk offenders and minimal intervention for low-risk offenders (the risk principle); second, targeting intervention with the offender to their particular criminogenic needs – their characteristics, problems or issues that directly relate to offending behaviour (the needs principal); and third, ensuring the mode of intervention matches the offender’s learning style and ability (the responsivity principle).³⁰⁹ By incorporating the social, cognitive and personality characteristics of an individual, this model is able to balance the level of program intensity and specificity to meet the risk levels of an individual.³¹⁰

Programs that have been evaluated as effective in achieving this goal should be prioritised for implementation at centres. In addition, where possible, programs that are offered within Juvenile Justice should be evaluated and young people’s views considered as a standard component of evaluation methodology. This will help to ensure that outcomes achieved are positive and young

³⁰⁵ ‘Changing Habits and Reaching Targets’ also addresses issues other than substance use.

³⁰⁶ DA Andrews, J Bonita and S Wormith, ‘The Risk–Need–Responsivity (RNR) Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention?’ *Criminal Justice and Behaviour*, vol. 38, no 7, 2011, p 735.

³⁰⁷ L Brogan, E Haney-Caron, A NeMoyer and D DeMatteo, ‘Risk Need Responsivity (RNR) Model in Juvenile Justice,’ *Criminal Justice Review*, vol. 40, no 3, 2015, p 277.

³⁰⁸ Juvenile Justice NSW, *Evidence-based Practice Training Participant Workbook*, 2016, p 17.

³⁰⁹ DA Andrews, J Bonta and R Hoge, ‘Classification for Effective Rehabilitation: Rediscovering psychology,’ *Criminal Justice and Behaviour*, vol. 17, 1990.

³¹⁰ J Ogloff and M Davis, ‘Advances in Offender Assessment and Rehabilitation: Contributions of the risk–needs–responsivity approach,’ *Psychology, Crime and Law*, vol. 10, no 3, 2004, p 233.

people remain motivated to participate.³¹¹ Juvenile Justice has advised that core interventions are evidence-based, and internal and external evaluations regularly conducted.

Young people on remand are not able to participate in programs to address their offending behaviour. However, it would be preferable if the small number of young people in custody on remand for extended periods are able to participate in non-offence-specific programs, to ensure they are kept meaningfully occupied.

Cultural programs

It is also vital that programs that maintain and strengthen young people's connection to community and culture are offered in Juvenile Justice. One Aboriginal programs officer talked of the success of working with two Aboriginal young people, who had been posing significantly challenging behaviour for staff. This officer brought some of his own DVDs about Aboriginal history into the centre to share with the young people he was working with, leading to positive outcomes in terms of the behaviour of those Aboriginal young people. This officer believed his success with the young people was achieved because he understood the trauma and disadvantage they had experienced; he took the time to get to know them and what they enjoyed; and he recognised the value of strengthening their connection to culture. This initiative is evidence of good practice and Juvenile Justice should consider how to implement more programs such as this to maintain and strengthen young people's connection to community and culture.

Recommendations:

The Inspector recommends Juvenile Justice reviews decisions to exclude young people from programs regularly.

The Inspector recommends Juvenile Justice provides programs and activities as part of the implementation of a structured day, particularly in school holidays.

The Inspector recommends Juvenile Justice considers whether and how young people in separation, segregation, and confinement may be provided with programs in a modified format, or with program material.

4.7.6 Access to visits

The Inspector of Custodial Services has previously identified that 'positive family contact has been demonstrated to be beneficial to young people in detention' and 'visits with family and significant others are an important part of maintaining a young person's connections'.³¹² It is widely accepted that young people need to have as much human contact as possible with people outside the JJC.³¹³ During this inspection, young people said that, as well as providing a space for maintaining

³¹¹ H Ventura Miller, R Tillyer and M Miller, 'Recognising the Need for Input in Correctional Research: Observing from an in-prison driving while intoxicated reduction program evaluation,' *The Prison Journal*, vol 92, no 2, 2012, p 280; J Crabtree, D Ohm, J Wall and J Ray, 'Evaluation of a Prison Occupational Therapy Information Program: A pilot study', *Occupational Therapy International*, vol. 43, 2016, pp 401–411.

³¹² NSW Inspector of Custodial Services, *Making Connections: Providing family and community support to young people custody*, 2015, pp 19–20.

³¹³ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services, March 2017, p 18.

family and community connections, visits also allowed them to receive gifts from their visitors including religious items, towels, socks, underwear, singlets, magazines, books, gym gloves, and clothes suitable to wear to court.³¹⁴

Section 21(3) of the Act provides that a punishment of confinement must not be imposed on a detainee so as to interfere with a visit to the detainee by a barrister or solicitor (or other such classes of persons as may be prescribed), or any other person, unless the centre manager is of the opinion that the security, safety or good order of the detention centre would be adversely affected if the visit were permitted. There was no evidence suggesting young people are missing out on visits due to serving confinement, and young people at centres did not raise any particular concerns regarding access to visits.³¹⁵

Some DRMPs specify that a young person is required to have non-contact visits. In some circumstances, it may be reasonable for a decision to be made that a young person is only able to have non-contact visits. However, if this is the case, the reasons for this decision should be clearly outlined. Some young people told us that they and their families prefer contact visits over non-contact visits, as they find non-contact visits shameful and humiliating. One young person told us that his father will not visit if he knows it is going to be a non-contact visit.³¹⁶

Several young people told us that their family members have witnessed them walking to the visits area wearing handcuffs, and that this is very upsetting to the visitors. Similarly, one young person told us that he had to wear handcuffs during a non-contact visit with his mother and father, and that this made them all upset.³¹⁷ It is important for decisions in relation to handcuffing during visits to be based on an individual risk assessment. In order to retain the dignity of the young person in front of their visitors, wherever possible, handcuffs should be removed before the visit. It is acknowledged that Juvenile Justice now requires its staff to conduct a risk assessment before a restraint is used to move a young person. It is positive to see that the DRMP workshop developed by Juvenile Justice in 2017 clearly outlines that young people on a DRMP should not be routinely restrained, and that risk should be analysed on every occasion restraint is used.

Recommendation:

The Inspector recommends Juvenile Justice ensures young people placed in separation, segregation and confinement are not routinely handcuffed to, from or during visits or exercise; or required to have non-contact visits; and that decisions to impose such restrictions are based on an individual risk assessment.

³¹⁴ Interviews with young people, 2016 and 2017.

³¹⁵ Interviews with young people, 2016 and 2017.

³¹⁶ Interviews with young people, 2016 and 2017.

³¹⁷ Interviews with young people, 2016 and 2017.

4.7.7 Access to health and psychological services

Due to the potential impact on their physical and mental health, young people in segregation are to be visited daily by a JH&FMHN officer.³¹⁸ DRMPs often specify that the young person will have a weekly session with a centre psychologist. At most centres, it appears that these appointments are facilitated and usually occur.³¹⁹ On occasion, nurses and psychologists speak to young people in a less than ideal clinical environment, such as through a handcuff opening in a door.³²⁰ This may sometimes be unavoidable for safety and security reasons; however, wherever possible appointments and discussions should be held in a private clinical space.

Weekly appointments with a psychologist tend to be the primary mechanism by which young people receive therapeutic support and assistance while in custody. Young people in segregation, separation or confinement, because of their poor behaviour or the risks they pose to themselves or others, often have very complex and chronic needs. It would be beneficial for these young people to have greater access to mental health and allied health professionals and for a multi-disciplinary professional team to work together to determine strategies for managing and working with these young people.

Austinmer is staffed by psychiatrists, psychologists, speech therapists and occupational therapists.³²¹ While it is likely that resourcing issues would prevent such a model being adopted throughout Juvenile Justice, there is scope for consideration to be given to increasing the access young people have to such health professionals. The Qld *Independent Review of Youth Detention* recommended that consideration be given to creating a part-time consultant psychiatrist and full-time psychiatry registrar at each centre and a consultant psychiatrist be available on call after-hours and on weekends.³²²

A specialist unit to manage high risk young people is one option for providing more intensive support to young people who have particularly complex needs or pose a particularly high risk within centres. However, given that the majority of young people in custody have significant health and mental health needs, it is important for Juvenile Justice and JH&FMHN to work together to ensure that all young people have access to health and psychological services that meet their needs.

4.7.8 Legislative safeguards

Section 19 of the Act provides a number of safeguards for young people in segregation. These legislated protections for young people who are placed in segregation are currently not applicable to young people who are placed in separation or confinement.

³¹⁸ *Children (Detention Centres) Regulation 2015*, cl. 10(2)

³¹⁹ Interviews with staff and young people, 2016 and 2017.

³²⁰ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice, report prepared for the Inspector of Custodial Services*, March 2017, p 13.

³²¹ Visit to the Forensic Hospital, April 2017.

³²² *Queensland Independent Review of Youth Detention*, December 2016 (publicly released April 2017), Recommendation 19.R7, p 8.

For example, if a detainee is segregated for more than 24 hours they must be visited daily by a JH&FMHN officer, notification of the segregation must be provided to the NSW Ombudsman, and segregation must be subject to a plan that is monitored by a psychologist and the assistant centre manager.

Despite there being no legislated requirement to notify the NSW Ombudsman, Juvenile Justice as a matter of good practice does currently notify the NSW Ombudsman of young people who are in separation for longer than 24 hours, by means of the system for notifications concerning young people in segregation.

The inspection found there is no clear reason why safeguards, record-keeping and notification requirements are not applicable to any young person who is on separation, segregation or confinement for over 24 hours. Consideration should be given to notifying the ombudsman when a young person is separated, segregated, confined, or a combination of these, for over 24 hours.

Recommendation:

The Inspector recommends Juvenile Justice notifies the NSW Ombudsman if a young person is placed in separation, segregation, or confinement or a combination of orders that results in a young person being removed from the centre routine or alone in a room for over 24 hours.

4.8 Best practice regarding time out of room

The *Inspection Standards for Juvenile Justice Custodial Services in NSW* provide that young people should have a minimum ten hours out of their room each day, and that hours out of room should only be reduced in exceptional circumstances deemed necessary by the centre manager.³²³

Routines are established for the purpose of security and management of a JJC. They serve as a schedule for managing time and activities so that young people can have 'a clear picture of what they'll be doing each day'.³²⁴ Routines will vary between centres and between units within centres depending on the level of security, environment and characteristics of the detainee population (age, gender, legal status) at each unit and/or centre.³²⁵ However, it is intended that routines be as least restrictive as possible.

Separate routines exist exclusively for staff and outline what should be happening at particular times, when and who is responsible for certain tasks, for example, during meal times, internal movements, shift handover, and use of security equipment.³²⁶

³²³ NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, January 2015, 10.7. The HM Inspectorate of Prisons expects prisoners to be outside of their cell for ten hours per day on weekdays. HM Inspectorate of Prisons, *Life in Prison: Living Conditions*, October 2017, p 11.

³²⁴ Juvenile Justice, 'Purpose of routines', no date.

³²⁵ Juvenile Justice, 'Routines for staff and detainees', 2009.

³²⁶ Juvenile Justice, 'Guidelines for staff routines', no date.

We reviewed a number of the general JJC routines to determine how long young people in detention usually spend out of their rooms. Given that some centres have separate routines for each unit, that each centre has different routines for weekdays and weekends, and that routines are written differently at each centre, this was not straightforward. The routines we reviewed suggested that young people would usually be expected to be out of their rooms between approximately nine and 12 hours per day.

At the time of the inspection, separation routines provided that young people should be out of their room for six hours each day. Staff at some centres told the inspection team they also aim to have young people on continuous segregation out of their room for at least six hours each day. During the inspection, one centre specified young people on continuous segregation should receive a minimum of three-and-a-half hours out of their room.³²⁷ The requirement for six hours out of room has now been extended to all young people on continuous segregation.³²⁸

The inspection team heard from staff that it can be difficult for them to meet the recommended six hours out of room each day for young people in segregation. This may be because of the number of young people who are in separation or segregation at the centre. If a number of young people are required to be out of their rooms at different times to prevent them from associating with each other because of the individual risks they present, it will reduce the amount of time each young person may have out of their room. This may result in young people placed in separation or continuous segregation only being brought out of their room for short periods of about 20 minutes each, several times a day, when other young people are in their rooms. At one JJC, young people will be brought out at night time after the other detainees have been locked down for the day.³²⁹ If this is because there is a lack of available staff to ensure adequate supervision of all detainees, Juvenile Justice must look at ways to address this issue.

It is acknowledged that, due to safety and security issues within an operational environment, it can be challenging for staff to make sure young people in segregation have at least six hours out of their room each day, due to the risk a young person may pose to themselves or others. However, it is important that this occurs, unless there are documented reasons based on an individual risk assessment. It is equally important that young people in confinement have time out of their room each day. Although it is not possible to confine a young person for more than 24 hours, there is no barrier to successive confinement periods that may result in lengthy periods in confinement for young people.

Some literature suggests that the time limit for a period of isolation should be measured in minutes while other sources suggest periods ranging from one to five hours.³³⁰ There are few standards relating to the time young people in isolation should spend out of their rooms.³³¹ Across Australia, the time during which young people can be in isolation varies across jurisdictions but, where such limits exist, they generally range from 24 to 48 hours and may depend on the level of approval

³²⁷ Interviews with staff, 2016 and 2017.

³²⁸ Information provided by Juvenile Justice, 2018.

³²⁹ Interviews with staff, 2017 and 2018.

³³⁰ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice, report prepared for the Inspector of Custodial Services*, March 2017, p 17.

³³¹ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice, report prepared for the Inspector of Custodial Services*, March 2017, p 17.

obtained, the age of the young person or the reason for their segregation.³³² Some literature suggests that young people should spend at least 8 hours out of their rooms for every 24 hours in isolation, including at least one hour of large muscle exercise.³³³

Young people in NSW may also be placed in 'periodic segregation'. This may occur, for example, if a DRMP specifies that a young person may participate in the normal routine except at certain times of the day, or for certain activities. A number of DRMPs do not allow a young person to associate with his or her peers in the morning, but state that if the person does not threaten staff he or she will be permitted to associate with others in the afternoon. Gradual reintegration into mixing with peers is good practice for many high-risk detainees, to ensure the safety of the individual young person and other young people and staff.

It is preferable for a young person to be permitted to associate during some periods of the day, and it appears that Juvenile Justice is working to facilitate periodic segregation rather than continuous segregation where appropriate. This also provides an opportunity for young people who are in segregation to achieve six hours out of their room each day.

Lockdowns

Lockdowns are a feature of custodial environments. They involve all the young people in a unit being locked in their rooms for a period of time. This may be for safety and security reasons during the day, for example, if there is an incident in the centre requiring the assistance of staff from other units, in the aftermath of an incident on a unit; or if there are staff shortages. A routine may also include periods of lockdown for staff mealtimes, shift changeover, and client assessment meetings.

There are currently no policies around the management of lockdowns. Record-keeping for lockdowns is that scheduled lockdowns are recorded in the approved routines. Any out of routine lockdowns are recorded in the CIMS in the separation module and also in the daily duty manager note log book. Lockdowns are recorded and tracked through the CIMS via Segregations and Separations, Record of Checks Log and Unit Log.³³⁴

Lockdowns impact actual time out of rooms. Unplanned lockdowns are particularly frustrating for young people, as they spend time in their room at times of the day when they may otherwise be participating in programs or activities. A recent Victorian Commission for Children and Young People report found that 'lockdowns due to staff absences, insufficient staff, daily meetings and lunch lockdowns represent poor workforce management, create significant risks and impact negatively on the operations and culture of the centres'.³³⁵

³³² James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services, March 2017, pp 8–9.

³³³ See Natalie J Kraner et al, *51-jurisdiction survey of juvenile solitary confinement rules in juvenile justice systems* (Lowenstein Centre for the Public Interest and Lowenstein Sandler, 2016) <https://www.safealternativestosegregation.org/resource/51-jurisdiction-survey-of-juvenile-solitary-confinement-rules/> quoted in James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services, March 2017, pp 17–18.

³³⁴ Information provided by Juvenile Justice, 2017.

³³⁵ Victorian Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, March 2017, p 81.

For safety and security reasons, some planned lockdowns are unavoidable. However, Juvenile Justice should work to minimise lockdowns and maximise time out of rooms. Young people who had spent time at a number of different centres commented that lockdowns occurred over staff lunchtime at some centres, while at other centres staff ate lunch with the young people. Young people reported that they enjoyed being able to eat lunch with the staff rather than having to be locked in their rooms while staff eat. Staff are able to use this opportunity to build rapport with young people and model pro-social behaviour. If staff are closely engaged with young people during meals they are more likely to have a clearer understanding of the mood of the group, the relations between the young people and any issues that are causing concern.

At one centre, for safety and security reasons, a decision had been made to lock all young people in the unit after 5pm each day. This would not be recorded as a 'lockdown' as the young people are contained within the unit and not locked within their room. However, responding to a risk by locking young people in a small area provides a short-term solution and potentially enhances frustration, which may lead to other anti-social behaviour.

Some centres, or units within centres, operate with fewer lockdowns. This is even the case for high-risk young people, including those classified as A1(b). Of the routines we examined, the unit that had the most generous time out of room was a unit at Frank Baxter JJC. This unit accommodated young people classified A1(b) because of their high risk behaviours.

In NSW correctional centres, all planned and unplanned lockdowns and variations to operational routines are logged into an incident report module of the offender information management system. A daily synopsis that incorporates this information is generated and provided to senior managers and the NSW Ombudsman's office, which enables lockdowns to be monitored, and complaints about this issue to be appropriately addressed.³³⁶ It is acknowledged that Juvenile Justice is currently undertaking a review of centre routines including in-room time, with a view to increase time out of room and provide consistency between centres. This will be used to inform future modelling of the daily operations in facilities, including the times when young people are spent locked down.³³⁷ This is a complex and large-scale piece of work with implications for staffing establishment and shift patterns. As such, staff consultations and a detailed change management plan will be required to implement this recommendation.

Recommendations:

The Inspector recommends Juvenile Justice reviews centre routines with a view to reducing routine lockdown periods, and increasing the hours that young people spend out of their room each day.

The Inspector recommends Juvenile Justice ensures DRMPs include a requirement for six hours out of room each day; and that young people on separation, segregation or subject to a DRMP spend at least six hours out of their room each day, including access to an outdoor area and physical activity for at least one hour each day, and that decisions to limit time out of room are based on an individual risk assessment.

³³⁶ Information provided by NSW Ombudsman, 20 November 2017.

³³⁷ Information provided by Juvenile Justice, 17 November 2017.

4.9 Record keeping, reporting and monitoring

Juvenile Justice creates a range of records in relation to separation, segregation and confinement and record keeping has improved significantly over time. Despite this, the inspection found a range of issues with record keeping, including gaps, inconsistencies and errors. Current record keeping systems and practices should be strengthened.

Currently, a range of different systems are used to capture information. Some information is recorded in hard copy 'record-of-checks' books or log books kept locally at the centre, and others are recorded, by various means, in the CIMS. For example, a DRMP created in the CIMS should specify the number of hours a young person is entitled to be out of his or her room. However, some DRMPs did not contain this information. The actual hours out of room will be recorded in a record-of-checks book within the unit where the young person is accommodated. Similarly, while the JJC's separation routine will specify the times that a young person ought to be out of his or her room, the records about when the young person is actually out of their room will be kept in unit record-of-checks books.

This approach of recording expected time out of room in an electronic system, and actual time out of room in hard copy documents kept locally, makes it very difficult to determine and track how long young people are actually spending out of their room each day. At the time of the inspection it was apparent that Juvenile Justice did not have a clear picture of the hours that young people were spending out of their room. The inspection team was concerned this meant some young people could be spending lengthy periods in a room or not spending time out of their rooms in accordance with their approved plan. Juvenile Justice should work to capture records about time out of room electronically, ideally in the CIMS, rather than relying on hard copy log books. It is important for records to be made in a manner whereby data can be collated and analysed about individual detainees, different JJCs, and trends over time.

It is important for clear and comprehensive records to be kept so that use of separation, segregation and confinement can be monitored to determine how often, and for how long, these placement options are used at each centre, and also so that the placement of individual young people in separation, segregation and confinement can be monitored and the NSW Ombudsman notified if necessary. It is also important that youth officers are provided with training to ensure they have a good understanding of the differences between segregation and confinement.

While the CIMS has been upgraded and streamlined over time, there are still parts of the system that are confusing and difficult to navigate.

The inspection found an example of a young person who was placed in segregation in a holding room at 7.45am until 9am due to fighting during breakfast. The young person was then placed in confinement in the holding room from 9am until 1.30am the next morning as punishment for fighting. It appears the young person was woken at 1.30am to return to his room. The following morning, the young person came out for breakfast, at 8am, the young person was placed in segregation in the holding room until 11am for the protection of officers after making threats to officers. This was immediately followed by confinement from 11am until 9pm as punishment for swearing at officers. As a result, the young person received limited time out of their room each morning over two days.

The inspection found that some young people may be transferred between segregation, confinement and the general routine in such a way, that in effect, they are in their rooms for lengthier periods.

It is important that correct details are recorded in the CIMS about when a young person first enters segregation, separation or confinement, and when they are removed. It is also critical that information is recorded in the CIMS in a timely manner. When a young person is placed in separation, segregation or confinement this information is to be recorded in the CIMS and when the placement ends, the CIMS should be updated to reflect this. Otherwise staff spend a significant amount of time reviewing information in the CIMS about separation, segregation and confinement; correcting erroneous records; and ensuring that there are no gaps in the records that are kept. Juvenile Justice should continue to work to strengthen the CIMS to ensure relevant information about young people placed in separation, segregation and confinement is captured, monitored and can be analysed to identify trends or practice issues.

The inspection found sometimes there are delays in officers inputting relevant information. This may mean that records suggest a person is still in segregation after the end of the segregation period. During the inspection period, it was not uncommon for erroneous notifications to be sent to the NSW Ombudsman because records suggested a young person was still in segregation after 24 hours, although they had, in fact, been removed from segregation earlier. Of greater concern is if there is delay in entering into the system that a young person has been placed in segregation or separation for over 24 hours. Notification to the NSW Ombudsman is an important accountability mechanism and must be done in a timely manner.

If a notification is sent, in circumstances where a young person has already been removed from segregation, a JJC staff member will usually contact the NSW Ombudsman and advise them that the notification was sent in error. NSW Ombudsman records will then be updated to reflect this. It appears that, in such instances, Juvenile Justice may not always update its own records. This is illustrated by a discrepancy in the data held by the two agencies, with Juvenile Justice records suggesting that in the 2015–16 financial year there were 149 young people placed in segregation for over 24 hours, and NSW Ombudsman data suggesting there were only 123. Similarly, Juvenile Justice records suggest there were 124 young people placed in separation for over 24 hours, compared to the NSW Ombudsman's records suggesting there were 87.

In May 2017, regional directors and centre managers were reminded of the importance of updating records correctly because the NSW Ombudsman had raised concerns about erroneous notifications.³³⁸ The NSW Ombudsman has advised that, subsequently, the number of notifications being sent incorrectly has reduced significantly.³³⁹ It is positive that practice has improved in this area.

Recommendations:

The Inspector recommends that Juvenile Justice records, monitors, and analyses the hours that young people spend in separation, segregation, or confinement or a combination of orders to identify anomalies, gaps and trends; and establishes a system for auditing the use of separation, segregation, or confinement to ensure that concerns about practice, reporting and reviews are identified.

³³⁸ Information provided by Juvenile Justice, 2017.

³³⁹ Meeting between Inspector of Custodial Services and NSW Ombudsman staff, 9 November 2017.

4.10 The impact of isolation

The Mandela Rules define solitary confinement as confinement for 22 hours or more a day without meaningful contact and prolonged solitary confinement is defined as solitary confinement for a time period in excess of 15 consecutive days.³⁴⁰ Indefinite solitary confinement and prolonged solitary confinement are prohibited as they may amount to torture or other cruel, inhuman or degrading treatment or punishment.³⁴¹ Solitary confinement is only to be used in exceptional cases as a last resort for as short a time as possible and subject to independent review, and only pursuant to the authorisation by a competent authority.³⁴²

There is limited high-quality empirical evidence regarding the effect of prolonged seclusion or confinement on young people.³⁴³ However, experts generally consider that evidence on the impacts of such practices on adults is 'equally, if not more applicable' to young people and that the associated harms are likely to be more acute for young people than adults, especially Aboriginal young people.³⁴⁴

The literature and practice standards concerning the use of isolation also suggest that restrictions should apply that prevent its use in relation to particularly vulnerable cohorts of young people including those with psychosocial issues, mental health or who are at risk of suicide or self-harm.³⁴⁵

As the neurological, cognitive and emotional functioning of young people is not yet fully developed they have 'fewer psychological resources to protect them from the stress of seclusion and confinement'.³⁴⁶ As a result, isolation may increase the likelihood that young people will continue to engage in anti-social behaviours.³⁴⁷ A broader range of concerns have also been identified about the impact of isolation, particularly for prolonged periods on the psychological and physical health of young people. These impacts relate to both the experience of isolation and the reduced access young people placed in isolation may have to mental healthcare, exercise, social interaction, visits

³⁴⁰ *Standard Minimum Rules for the Treatment of Prisoners*, Rule 44.

³⁴¹ *Standard Minimum Rules for the Treatment of Prisoners*, Rule 43.

This is also mentioned within *Rules for the Protection of Juveniles Deprived of their Liberty*, Rule 67.

³⁴² *Standard Minimum Rules for the Treatment of Prisoners*, Rule 45.

³⁴³ Human Rights Watch, *Growing up locked down: Youth in solitary confinement in jails and prisons across the United States*, 2012.

³⁴⁴ LC Castillo, 'No child left alone: Why Iowa should ban juvenile solitary confinement', *Iowa Law Review*, (2015), 100(3), pp 1259–1284; and Royal Commission into Aboriginal Deaths in Custody, *National Reports*, 1991, vol. 3, 25.7.12.

³⁴⁵ James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services, March 2017.

³⁴⁶ American Psychological Association, *Letter to the United States Senate* (2015). <http://www.apa.org/about/gr/pi/news/2015/juvenile-confinement.aspx>; see also: Follow-up letter American Psychological Association, *Letter to Senator Booker*, June 2017 <http://www.apa.org/advocacy/criminal-justice/juvenile-solitary-confinement.pdf>

³⁴⁷ LA Gallagher, 'More than a time out: Juvenile solitary confinement' *UC Davis Journal of Juvenile Law & Policy* (2014), 18(2), pp 244–266.

from family, programs and education designed to support their reintegration into the community.³⁴⁸ In addition to these concerns, there is no clear evidence that isolation reduces behavioural incidents in custody or reoffending following release.³⁴⁹ Nor does it recognise the particular difficulties that Aboriginal young people may face when placed in isolation.³⁵⁰

A number of Australian reports attest to the particular impacts of isolation on Aboriginal people. The RCIADIC acknowledged cultural differences in Aboriginal responses to custodial spaces and proximity to outdoors and other Aboriginal detainees, while also recognising the diversity of cultural factors across Aboriginal communities.³⁵¹ It was noted that ‘while the enforced separation from one’s friends, family and domestic environment is undoubtedly traumatic for all prisoners, the greater significance of kin and community relations in Aboriginal cultures exacerbates the trauma of separation for Aboriginal people’.³⁵² The RCIADIC recognised the ‘extreme anxiety suffered by Aboriginal prisoners committed to solitary confinement’ and recommended that ‘it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention’.³⁵³

The particular anxiety suffered by Aboriginal detainees, and known harms associated with isolation of young people, including the impact on brain development, and the triggering or exacerbating of emotional distress, is well documented.³⁵⁴ The Royal Commission into the Protection and Detention of Children in the Northern Territory recommended that, during a period in which a young person is separated, they: must have access to a case worker, counsellor or psychologist within a reasonable time, or when a staff member forms the view that they should be consulted; not be denied access to education including education material to enable private study; must not

³⁴⁸ See American Civil Liberties Union, *Solitary confinement and isolation in juvenile detention and correctional facilities* <https://www.aclu.org/files/assets/5%20%20National%20Standards%20Restricting%20the%20Solitary%20Confinement%20of%20Youth.pdf>; Human Rights Watch, *Growing up locked down: Youth in solitary confinement in jails and prisons across the United States*, 2012; S Simpkins, M Beyer & L M Geis, ‘The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation’ *Washington University Journal of Law & Policy*, 2012, 38, pp 241–287; J Lee, ‘Lonely too long: Redefining and reforming juvenile solitary confinement’ *Fordham Law Review*, 2016, 85(2), pp 845–876; and L A Gallagher, ‘More than a time out: Juvenile solitary confinement’ *UC Davis Journal of Juvenile Law & Policy*, 2014, 18(2) pp 244–266.

³⁴⁹ National Council of Juvenile and Family Court Judges, *NCJIFCJ resolves to reduce the use of solitary confinement for youth*, 2016, <http://www.ncjfcj.org/Solitary-Confinement-Resolution>.

³⁵⁰ Victorian Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, March 2017, pp 56–57. See also Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report*, 17 November 2017, vol. 2A, p 285.

³⁵¹ Royal Commission into Aboriginal Deaths in Custody, *National Reports*, 1991, vol. 3, 24.3.130, 24.3.137.

³⁵² Royal Commission into Aboriginal Deaths in Custody, *National Reports*, 1991, vol. 3, 25.2.6.

³⁵³ Royal Commission into Aboriginal Deaths in Custody, *National Reports*, 1991, vol. 3, 25.7.12. The Commission noted that ‘the broad thrust of the recommendations which have been made relative to prisons (both in this chapter and the chapter which follows) have relevance for juvenile detention centres (at 24.6, Issues relating to the detention of Aboriginal youths in juvenile detention centre).

³⁵⁴ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report*, 17 November 2017, vol. 2A, p 286.

be denied access to lawyers, family members and appropriate peers; be given access to outdoor exercise or recreation at least every three hours if the separation lasts for three hours or longer between 8am and 6pm for at least 15 minutes; and have access to appropriate recreation material such as reading material.³⁵⁵

A Victorian inquiry into isolation, separation and lockdown in youth justice centres echoed the findings of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) that incarceration is fundamentally at odds with Aboriginal cultures, and that isolation is particularly re-traumatising for young Aboriginal people.³⁵⁶ The report found that at one Victorian youth detention centre, Aboriginal young people were being isolated more often than non-Aboriginal young people.³⁵⁷

In Victoria, there is a specific policy regarding isolation of young Aboriginal people, requiring that periods of isolation of an Aboriginal young person, regardless of duration, must be authorised by the general manager, operations manager or a senior manager on call, and that, when considering placing an Aboriginal young person in isolation, staff must contact the cultural support worker as soon as logistically possible.³⁵⁸

The inspection found there was a need for Juvenile Justice staff to be better informed about the impact of detention and isolation on Aboriginal young people and needs of young Aboriginal people who are placed in separation, segregation and confinement. Juvenile Justice is encouraged to consider 'the importance of the matter of access to kin, community and country in the appreciation of the effects of enforced physical isolation on Aboriginal people'.³⁵⁹

Recommendation:

The Inspector recommends Juvenile Justice provides training to staff on the impact of separation, segregation and confinement on Aboriginal young people.

4.11 The management of high risk detainees

From 2004 until early 2015, the responsibility for detainees who were 16 years or over and had received an A classification was transferred from Juvenile Justice to CSNSW. These detainees were housed at Kariong Juvenile Correctional Centre (Kariong). In September 2014, a decision was made for Juvenile Justice to resume the management of young male detainees between the age of 16 to 21 years with an A1(b) or A1(o) classification. The transfer of the young persons to Juvenile Justice was in order to make the Kariong facility available to CSNSW to meet the growing number of adult offenders being incarcerated.

³⁵⁵ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report*, 17 November 2017, Recommendation 14.1.8.

³⁵⁶ Victorian Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, March 2017, p 57.

³⁵⁷ Victorian Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, March 2017, p 56.

³⁵⁸ Victorian Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, March 2017, p 56.

³⁵⁹ Royal Commission into Aboriginal Deaths in Custody, *National Reports*, vol. 3, 25.2.11, Australian Government Publishing Service, 1991.

All aspects of daily life for young people at Kariong were determined by the Behaviour Management Program. The three-stage program purported to use a cognitive behavioural and behaviour modification approach, with the aim that young people could be reclassified and returned to the Juvenile Justice population upon completion of the final stage. Stages were differentiated by access to the privileges and activities, with progress dependent on compliance with centre routines and participation in activities and programs. Young people were to spend a prescribed period of time on each stage and could be regressed at any time to the level below or back to the assessment phase depending on involvement in incidents. In practice, the range of activities, recreation and privileges available at every stage was significantly limited.

In 2011, the NSW Ombudsman published a report to NSW Parliament that identified a number of issues with the operation of the Behaviour Management Program operating at Kariong. This included the failure of inmates to progress through the stages of the program. In particular, the report found that there was no structured response when an inmate failed to progress, and stated:

Our review of inmate records suggests that for some inmates this ordered and consistent regime is sufficient for them to start regulating their own behaviour. However, where this is not sufficient, the Program lacks other form of intervention, relying rather on sanctions and privileges. Again while this may operate as an incentive to inmates who can control and regulate their behaviour, it does not take into account the nature of the particular population at Kariong who, as Justice Health's psychiatrist observed, are adolescents not young adults some of whom have correspondingly different needs.³⁶⁰

4.12 Chisholm Behaviour Program

From April 2014, Juvenile Justice began planning for the proposed transfer of young people from Kariong to Juvenile Justice, with the plan being for these young people to be placed predominantly at Cobham JJC and at Frank Baxter JJC if needed. A Juvenile Justice Steering Committee (the Steering Committee) was established to oversee the transition of the young persons to Juvenile Justice. Extensive building modifications were undertaken at Cobham JJC to create three dedicated units for CBP detainees. The modifications included extensive focus on safety and security. Minor modifications were undertaken to the Bouddi unit, a standard unit at Frank Baxter JJC, so it could be used for the CBP. In addition to addressing the built environment, the Steering Committee was charged with developing a program to manage the young persons who are often described as a 'difficult cohort'.

A plan was developed, including:

- building work would be completed at Cobham JJC by the end of October 2014
- the transfer of young people from Kariong would be a staged process
- CSNSW could assist Juvenile Justice by providing the services of a specific Security Risk Expert
- CSNSW and Juvenile Justice would be undertaking a joint risk assessment on Kariong as well as the programs currently being delivered at Kariong and those being proposed at Cobham JJC

³⁶⁰ NSW Ombudsman, *Kariong Juvenile Correctional Centre: Meeting the Challenges*, 2011, p 10.

- a specific therapeutic program would be developed by Juvenile Justice for managing the young people, and
- new training about the new cognitive self-change program be developed and provided to staff at Cobham JJC and new incident handling training would be provided to the management team.

In September 2014, CSNSW provided a report to Juvenile Justice, following a risk assessment about the proposed transfer of young people. The risk assessment contained 33 risk control measures to supplement the processes already in place at Cobham JJC. The reference in the risk assessment to programs was limited and generalised, and the focus was on the built environment. However, the risk assessment did suggest that the NSW Ombudsman's report into Kariong be reviewed.

During the planning phase, a number of decisions were made by the steering committee that impacted on the subsequent operation of the CBP. These included:

- A decision was made to implement the program by way of 'a unit routine' and legal advice was not sought to determine whether this routine was consistent with existing legislative provisions.
- Not long before the commencement of the CBP, a decision was made not to proceed with the plan to implement a cognitive self-change program, the therapeutic aspect of the CBP. Instead, it was decided that young people would be provided with cognitive behaviour therapy. This impacted on the training that was being developed for staff.
- Not long before the commencement of the CBP, it was decided that Frank Baxter JJC would be used to take some of the young people from Kariong. Until this time, Frank Baxter JJC had minimal input into decisions concerning the program.
- Approval was given to providing Cobham JJC with extra funding to operate the CBP. The majority of this \$2.3 million was to strengthen the physical infrastructure. Frank Baxter JJC was not provided with additional funding.
- A comprehensive risk assessment was not completed prior to the commencement of the program, nor was an evaluation plan.
- A CBP Manual was developed, but it was decided that Cobham JJC and Frank Baxter JJC also develop local processes and routines.

Prior to the commencement of the CBP, staff at Cobham JJC received five days of training from the Juvenile Justice, Learning and Development Unit. Staff at Frank Baxter JJC received a shorter version of this training, as well as training developed locally at Frank Baxter JJC.

On 20 May 2015, a final transition meeting occurred between Juvenile Justice and CSNSW and the program commenced on 25 May 2015. Between 25 and 28 May 2015, young people were transferred from CSNSW to Juvenile Justice. Six were transferred to Frank Baxter JJC and the others to Cobham JJC.³⁶¹

³⁶¹ There are conflicting records about the number of young people who transferred this week, with some stating 16 and others stating 17.

From that time forward, all male detainees aged 16 years or over who were classified as A1(o) upon entering custody, were transferred to the CBP. According to the CBP Manual, a multi-disciplinary Behaviour Review Team was to assess the young person to see whether they were suitable to enter the mainstream custody population, or remain on the program. A recommendation was then to be made to the Director, Operational Standards and Compliance, who was to make a decision regarding early exit from the program.³⁶² Young people whose classification was increased to A1(b) because of poor behaviour in custody were also transferred into the program.

The CBP was made up of five phases. The young people were required to progress through each phase before to being able to integrate into the mainstream juvenile justice population.

Each young person on the CBP was to have a Functional Behavioural Assessment. The purpose of this was to provide information for staff to understand how best to work with the young person. It was also to help determine what 'function' a young person's misbehaviour serves and to set goals to reduce that behaviour and modify the young person's environment to meet their needs. It also informed the development of goals to incorporate into the young person's Phase Progression Plan.

A Phase Progression Plan was to be developed for each young person by the Behaviour Review Team in conjunction with the young person during the Assessment Phase. This plan was intended to track their progress through the CBP against specific goals. The CBP Manual described the program phases but made no reference to young people's out of room time for the respective phases. The plan was to provide young people with more opportunities to mix with each other as they progressed through the phases.

The timeframes for the phases, as outlined in the CBP Manual, were:

- Assessment – one week
- Phase 0 – minimum one week
- Phase 1 – minimum four weeks
- Phase 2 – minimum four weeks
- Phase 3 – four weeks
- Transition (until the young person could be managed in the mainstream population).

While the Assessment Phase of the CBP included screening by a JH&FMHN nurse and a psychologist, it is unclear how often young people were visited by JH&FMHN nurses. Access to psychologists was listed as a 'program' available to young people on the CBP.

While the intention was for young people to progress through the phases, and eventually progress out of the CBP, the program also provided for young people to be 're-focused' to an earlier phase 'if they are not actively working towards the goals identified in their Phase Progression Plan'. The purpose of re-focus was to 'provide the young person with a period of reflection to consider their behaviour motivations and triggers before continuing further through the program'.³⁶³

³⁶² Juvenile Justice, *Chisholm Behaviour Program*, p 6.

³⁶³ Juvenile Justice, *Chisholm Behaviour Program*, p 9.

The CBP Manual provided that a young person would be re-focused automatically to Phase 0 because of their involvement in an incident or other serious behaviour referred to police, and automatically to the previous phase for two or more misbehaviours relating to the young person's Phase Progression Plan. The young person could also be re-focused (or have their progression to the next phase delayed) for lack of participation in routines, programs and daily citizenship requirements.³⁶⁴

The CBP Manual did not specify time periods associated with re-focusing a young person. A different approach to re-focus was thus used at each centre. The Cobham JJC local process document specified that 're-focus 0' was a minimum seven days, and re-focus 1 and 2 a minimum of four weeks. The Frank Baxter JJC local process did not elaborate on the CBP Manual regarding time periods associated with re-focusing. In practice, young people at Frank Baxter JJC were re-focused for seven days and at Cobham JJC for 28 days.

Within the CBP, young people could access a modified version of the Juvenile Justice Incentive Scheme. Young people were to have access to entitlements based on their phase and could earn additional daily and weekly rewards for participating and demonstrating behaviours consistent with their Phase Progression Plan. The types of rewards available and the criteria for earning the rewards were specified in the local processes and routines for each program location.

In relation to interaction while on the program, the CBP Manual stated, 'young people are only able to associate in small groups to minimise risks. The level of association is contingent upon which phase they are in and a current risk assessment. Young people may mix with other young people in increased numbers as they progress through the program'.³⁶⁵

The most restrictive phases on the program were Assessment Phase and Phase 0. Young people had to spend a minimum of time of seven days in each of these phases.

Chisholm Behaviour Program – Assessment Phase

The restrictions for the Assessment Phase included:

- to remain on the enclosed side of Uralba (the most secure unit at Cobham JJC)
- a minimum of one-hour recreation period in the morning and evening
- handcuffs to be applied when released from their room
- box visits
- no access to razor/haircuts
- to eat all meals in room
- plastic cutlery (dependent on risk assessment)
- limited access to TV (dependent upon meeting daily citizenship points)

³⁶⁴ Juvenile Justice, *Chisholm Behaviour Program*, p 9. Daily citizenship requirements refer to unit rules and expected behaviours in each program location that, if followed, will contribute towards receiving daily and weekly rewards (see p 24).

³⁶⁵ Juvenile Justice, *Chisholm Behaviour Program*, p 6.

- programs pack – (access to pencil via risk assessment only)
- no access to school
- not to leave the unit for recreation periods
- Arunta calls during recreation period
- no access to mix with other detainees
- no afternoon program session joining another unit.

'Rewards' accessible in this phase included: two box visits, seven ten-minute phone calls, one magazine, limited TV, a radio, a program pack and playing cards. Young people were not permitted photographs, library books, toiletries, extra clothing, school homework items, a stress ball, an Xbox, or to mix with other young people.

Detainees had access to 20 Arunta 'free calls'. The numbers included those for the NSW Ombudsman, U18 Legal Aid, Paramatta Solicitors and Aboriginal Legal Aid.

Programs on the Assessment Phase were listed as:

- Centre Induction A1(b) & A1(o);
- Initial Mental Health Assessment; JH&FMHN Assessment;
- Functional Behaviour Assessment; Visits – two box visits only;
- Alcohol and Other Drug Assessment (as required);
- Case Plan assessment with key-worker;
- Active time on unit;
- Introduction to Classification Officer; and
- introduction to Daily Citizenship Requirements.

Young people on Phase 0/Re-focus 0 had substantially the same restrictions for those on Assessment Phase. However, they also had supervised access to a razor/haircuts and plastic cutlery. Programs listed for Phase 0 include interview with unit manager; individual program begins, introduction to Putland ETU (school); case plan development; initial Behaviour Review Team Review; and Daily Citizenship Requirements.

Operation of the program

During a meeting between Juvenile Justice staff in July 2015, where a number of issues relating to the CBP Manual were discussed, it was noted that the NSW Ombudsman might construe the routines as separation or segregation. Questions were raised about whether, if there was an issue, the CIMS could automate a notification to the NSW Ombudsman for entry to the program and changes to phases. This does not seem to have been further considered at that time.

During August 2015, it was noted that some young people were fast-tracking through the program. It was also noted that certain staff were not suited to the program and would be placed elsewhere;

that an evaluation would be conducted by the Juvenile Justice, Research & Information Unit; and that staff were undertaking a mental health first aid course. During this month, a further risk assessment was conducted at Cobham JJC. This focused on implications for court audio-visual link operations.

In the latter part of 2015, a number of issues arose with regard to the CBP and Juvenile Justice tried to work to address some of these. For example, in late September 2015 there was a significant incident at Cobham JJC where young people caused damage, which necessitated the closure of rooms within units where the CBP was operating. In October a Magistrate of the Children's Court visited Cobham JJC regarding one of the detainees involved in this incident. He raised concerns about the amount of time young people were spending locked in their room.

The JH&FMHN psychiatrists providing treatment to young people in the CBP were requested to provide some input into the program in or around November 2015. On 5 November 2015, one of the psychiatrists advised the CBP was too complex for young people to understand. He also advised that young people had expressed their dislike for the program, found staff to be inconsistent, and felt that the length of time they stayed on Phase 0 was too long.

In mid-November, a consultant was engaged to provide a risk assessment of the 'program' (as opposed to the earlier assessments which focused on physical and security risks). This risk assessment found that a number of identified risks were extreme. It appears that a copy of this assessment was not provided to the Acting Executive Director of Juvenile Justice.

In November 2015, a detainee focus group was conducted in line with the Juvenile Justice Centre Quality Assurance Framework. All young people who participated thought that the lockdown periods were too long and caused stress and anger. In January 2016, young people caused more damage to units at Cobham JJC which resulted in some young people being moved to Frank Baxter JJC.

In January 2016, following feedback from the psychiatrists and young people, a number of changes were made to the CBP. These included:

- The Assessment Phase was removed from the program, meaning young people commenced the program in Phase 0.
- A new timetable was adopted for Re-focus Phase 0 to provide more time out of rooms.
- Young people on Phase 0 now had the opportunity to mix with other detainees, if safe to do so.
- Incentive rewards were increased with due consideration given to ensure that CBP rewards were not viewed as more attractive than those available within the general population.
- Young people on Phases 2 and 3 were able to have morning and/or afternoon tea together (program and risk permitting).
- Young people could start school in Phase 0 rather than have to wait until reaching Phase 1.
- Re-focus Phase 0 would no longer be restricted by a prescribed timeframe, but would be based on the individual responsivity of the young person.

In March 2016, further changes were made to the program, including: a new routine specifying six hours out of room each day; revising the daily incentive scheme to provide more immediate rewards for good behaviour; modification of units to brighten them, adding chalk boards and exercise equipment; and incorporating mentoring for Aboriginal young people.

The decision to increase time out of room to six hours was to ensure the CBP was consistent with the standard for the other separation routines used at Juvenile Justice. It was suggested that the CBP would be reviewed for a three-month period from 7 March 2016 and a research project plan was developed.

NSW Ombudsman staff made further visits to JJC's during early 2016 to meet with young people in the CBP, as well as management. They noted some incremental improvement and were informed that the CBP was to be formally evaluated to determine if it was meeting its objectives. A decision was made to suspend inquiries pending the evaluation. NSW Ombudsman staff asked to be given access to the outcome as soon as it was available.³⁶⁶

In mid-March, some issues highlighted within Juvenile Justice included that the CBP: lacked clear case management processes; lacked a therapeutic focus; lacked a rationale for the concepts of phases and re-focus; and was more complicated and harsher than the Kariong program.

It was noted:

From a brief review of the literature and research, the process of 'Re-Focus' or 'regression' is not supported. There is an increasing body of work on positive behaviour management that supports trauma informed practice, i.e. youth are supported and reinforced for doing things right, rather than punished for doing things wrong ... It is of particular concern that behaviours possibly arising from mental health problems and prior trauma may be responded to merely as behavioural infractions and that Re-Focus practices – which includes a loss of association, reduction of privileges and segregation – may result.

On 9 May 2016, a decision was made to close the program. A directive was given that all A1 classified young persons were to be managed using existing policies and procedures relating to high-risk young people. Those existing policies and procedures included the use of DRMPs.

Oversight of the program

The internal oversight mechanisms of the CBP were ineffective.

The primary external oversight of the program included the NSW Ombudsman and the Inspector of Custodial Services, both of which had been briefed on the program. On 28 May 2015, the NSW Ombudsman attended Cobham JJC to receive a briefing on the program and was provided copies of operational documents. A visit was conducted. On 29 June 2015, the Inspector of Custodial Services was provided an overview of the CBP.

On 21 September 2015, the former Inspector was asked by Juvenile Justice to review the CBP. However, this did not occur due to his retirement in October 2015. The current Inspector commenced in April 2016 and visited Cobham JJC on 16 May 2016. This coincided with the decision by Juvenile Justice to close the CBP.

³⁶⁶ NSW Ombudsman, *Annual Report 2015–16*, p 74.

Concerns about the program

During the operation of the CBP, a number of concerns were raised by stakeholders about the conditions in which the young people were placed. In particular, concerns were raised about the length of time that young people were out of their rooms each day. Concerns were also raised about the lack of progression of young people through the program.

Towards the end of 2015, the NSW Ombudsman received several complaints about the CBP alleging many boys were being kept isolated for lengthy periods, and regularly being returned to lower stages of the program where they had little or no chance to associate with others or attend school. The NSW Ombudsman reviewed the data in the CIMS and saw evidence of lengthy periods of separation and regression to lower phases by some boys noting, 'while we usually receive direct notification from the database any time a detainee is held separate or segregated for a period of 24 hours or more, the CBP data was not captured by these notifications'.³⁶⁷ The NSW Ombudsman again visited Cobham JJC in December 2015 and spoke to staff and management and discussed changes that could be made to the program.³⁶⁸

4.12.1 Findings of the review of the program

At the time the announcement was made that the young people were to be transferred from Kariong to Juvenile Justice, Juvenile Justice was aware that the transfer would present significant risks to the organisation. It was clear they would be receiving a cohort of young persons which the organisation had previously had difficulties managing.

A number of factors led to a range of flaws in the operation of the CBP and Juvenile Justice should take heed of these factors in the future.

Governance

Despite the intentions of the Steering Committee, there were some serious failings in the development of the CBP. This was due to its reliance on the Kariong Behaviour Management Program. At the outset, the Steering Committee was advised to review the 2011 NSW Ombudsman's report, *Kariong Juvenile Correctional Centre: Meeting the Challenges*, however, this does not seem to have occurred in any detail. This resulted in a number of similar issues identified by the NSW Ombudsman in 2011 at Kariong occurring in the CBP.

At the commencement of the program, a review of the relevant literature and evidence-based practices regarding the management of this cohort of young people was not undertaken. The risk assessments undertaken were ad hoc and the risks identified were not addressed. A comprehensive evaluation was neither planned or undertaken at the commencement of the program. A number of decisions were made outside of the committee and there was a lack of transparency about some decisions that were made. Some staff, for example, raised valid concerns about the program and it is difficult to tell from available records if and how these issues were considered and addressed. Many of the documents guiding implementation of the program changed over time. Some were undated and it was difficult to determine when particular decisions were made and when policies and practices changed.

³⁶⁷ NSW Ombudsman, *Annual Report 2015–16*, p 74.

³⁶⁸ NSW Ombudsman, *Annual Report 2015–16*, p 74.

Despite the CBP Manual providing that all employees working in the CBP must adhere to all Juvenile Justice policies, a number of policies were not incorporated into the CBP including DRMPs.

Several senior staff advised they did not know that young people were failing to progress in the program and that they did not realise the amount of time individuals were spending in their rooms. This is likely because, although the program document provided for two hours exercise each day, expectations about time out of room was not captured in the CBP Manual. Combined with a lack of appropriate record-keeping, it was difficult to determine the amount of time young people were spending out of their rooms each day. Further, there were no formal reporting structures established to ensure senior officers were informed about the progress of young people. The only reference to elevating information to a senior level is that the centre manager was to inform the regional director of contentious matters and incidents.³⁶⁹

Overall, the review found the governance of the program was inadequate.

Legislative and policy framework

The Act and the Regulation contain specific provisions relating to classes of detainees and the separation or segregation of detainees.

The Act prescribes Class A and B detainees, the former being those who are potentially dangerous and should be detained within a secure physical barrier at all times. The Reference to Class A and Class B is a reference to the classification system used by Juvenile Justice prior to the implementation of the Objective Classification System in or around 2004. The Objective Classification System has six categories including A1(o) and A1(b) indicating high security/safety requirements. Juvenile Justice were of the view that because all detainees in CBP were A classification detainees, the Act and delegations allowed for their separation from the general population. However, A1(b) and A1(o) are not strictly prescribed by the Regulation as a different class of detainee for the purpose of section 16 of the Act.

Section 16(3) provides that for the purpose of ensuring the security and safety and good order of the detention centre, the Director-General may also direct that different detainees or groups of detainees be detained separately from other detainees. There was no directive made to separate a young person prior to their transfer and it is possible that Juvenile Justice was unintentionally in contravention of the provision for separation for each detainee who commenced CBP.

In particular, the provisions require that if young people are to be segregated to protect the personal safety of that person or any other person, this should be as short as practicable. Safeguards and notification requirements are outlined in legislation.

However, Juvenile Justice did not consider young people in the CBP to be in segregation and the instruments of delegation in operation at the time were out of date and did not reflect current governance arrangements. Given that the young people on the Assessment Phase, Phase 0 and Re-focus Phase 0 were allowed very little time out of their room and were not permitted to mix with any other detainee, and that the primary rationale for this appears to have been for 'protection', the

³⁶⁹ Juvenile Justice, *Chisholm Behaviour Program*, p 19.

provisions of section 19 of the Act and clause 10 of the Regulation should have been complied with. They were not.³⁷⁰

Inconsistency of operation between centres

As outlined above, there were some differences between the application of CBP at Frank Baxter JJC and Cobham JJC regarding the implementation of the program. This was primarily in relation to the use of 're-focus' but also in relation to the provision of certain activities. Young people at Frank Baxter JJC, for example, were able to use the pool if they exhibited positive behaviours; this was not permitted at Cobham JJC. The inconsistency between approaches adopted by the centres was not resolved and each centre was allowed to implement the program as they interpreted it. This inconsistency led to frustration for both young people and staff. This inconsistency may have been due in part to the fact that the Cobham local process was signed off in April 2015 before the CBP Manual was approved and endorsed. This meant the CBP at Cobham JJC was not implemented in accordance with the endorsed program.

Frank Baxter JJC was not provided with a purpose-built facility or any additional funding to implement the CBP and there has been a suggestion that they had to rely on dynamic security rather than static security. They invested in their staff with additional training to manage the young people and it seems were attempting to implement the program in accordance with the principles referred to in the CBP Manual. Despite purpose-built infrastructure, Cobham JJC was more punitive in its approach. Some staff noted that this is because of the different cultures between the two centres, which have developed over time, and due to the different cohorts of offenders they were usually responsible for managing. Cobham JJC was responsible for remand detainees and Frank Baxter JJC responsible for sentenced detainees.

Conditions for young people

The three units at Cobham JJC used for the CBP had been modified and refurbished specifically for the program. Prior to the CBP, the units had been decommissioned: they were over 30 years old. The focus of the building works was safety and security and included significant capital works involving fencing, grills and gates, and the installation of CCTV cameras. Purpose-built classrooms were constructed to provide schooling to the young persons on the CBP. The Uralba Unit, used for Assessment and Phase 0, had no grass area. It had an austere concrete courtyard, which was surrounded by buildings and grills. The rooms were dark and had little natural light. The Carter Unit was generally less austere and had an open grassed exercise area. The rooms were more modern. In contrast, the unit used at Frank Baxter JJC for the CBP was the Bouddi Unit. It was a standard unit with a grassed area and an open plan recreational area.

From its inception to closure, 66 young people, of whom 41 were Aboriginal, were referred to the CBP. Fifty did not progress beyond Phase 2. This may in part be explained by their release prior to the conclusion of the program or the closure of the program before the detainee had progressed.

³⁷⁰ In expressing opinions about the interpretation and application of the law, this conclusion has been reached in light of the evidence available to the inspection team, including information provided by Juvenile Justice and others. However, it is important to note that the Inspector of Custodial Services is not a court of law and does not have the benefit of counsel, the power to examine or cross-examine witnesses under oath, and is not bound by the rules of evidence. It is possible that some of the matters we examine in this report will be raised in future court cases. If that is the case, the court may adopt a different interpretation of the law and facts.

Fourteen young people spent in excess of 123 days on the program. Ten of those young people were Aboriginal. The longest period being 45 weeks, of which 23 weeks was spent in the Assessment Phase, Phase 0 or Re-focus Phase 0.

Some of the young people spent considerable amounts of time in their rooms, particularly when they were in the early phases of the CBP and when they were re-focused. Young people in the assessment and Phase 0 phase of the program were to have two hours' exercise each day. However, there were times when young people spent less than two hours out of their room each day.

During Phase 2 and the higher phases of the program, detainees spent six hours out of their rooms on weekends and five hours 40 minutes out of their rooms on weekdays, except for Wednesday when they had three hours 40 minutes out of their rooms. For the most part, these young people spent between 18 hours and 20 hours 20 minutes in their rooms, with interaction with other detainees only permitted during daytime education sessions and exercise time.

The inspection team sought to understand why many participants in the program were unable to progress through the phases and examined records relating to some young people. The functional behaviour assessments and psychological assessments prepared at the commencement of participation in the program appeared to identify and predict typical behaviour/responses that were displayed by the young people during their time in the program. Young people were often issued with misbehaviour reports for behaving in ways that the assessments suggested were typical and predictable.

On one occasion, self-harm contributed towards a young person being re-focused and confined as punishment. There was an absence of therapeutic approaches used in managing and assisting the young people, which is likely to have impacted on the young people's ability to change the challenging behaviours outlined in the functional behavioural assessments and psychological assessments. Therapeutic and medical staff were not always present at meetings where decisions were made to re-focus young people.

The inspection team spoke to many of the young people who participated in the CBP. They were very open about how difficult they found their time in the CBP. Many said that they found their experience in the CBP more difficult than the time they spent at Kariong. However, many were positive about individual staff they worked with during their time in the CBP and they overwhelmingly reported that their current conditions in detention had improved since the closure of the CBP.

Conclusion

Various external stakeholders identified a number of concerns with the program. The issues primarily related to limited time out of room, limited mixing with other detainees, long periods of segregation particularly in the early phases of the program, and the inability of a number of the young persons to successfully progress through the program.

The concerns of the external stakeholders were justified. The review revealed a number of young people failed to progress through the program, which resulted in young people spending long periods in segregation with limited time out of room.

Ultimately, there were significant failings by Juvenile Justice. They include not adhering to relevant legislative provisions including those related to separation, segregation and punishment of the

young persons; relying on invalid delegations to exercise a number of powers pursuant to the relevant legislation; not considering the literature pertinent to the cohort of offenders for which the CBP was being developed; not employing evidence-based practice in the CBP; not undertaking and managing a dynamic comprehensive risk assessment for all elements of the CBP at the outset of the program; and not ensuring a robust governance system was in place to support what was viewed, at the outset, as a contentious program for Juvenile Justice to implement.

The inspection team's review of the program found that Juvenile Justice made the correct decision to close the program. Moreover, there are significant lessons to be learnt from the operation of the CBP to inform future practice. It is acknowledged that Juvenile Justice has implemented a series of reforms since its closure that demonstrate a commitment to improve its practice in the management of high risk young people. The recommendations throughout the report are intended to prevent the failings associated with the program occurring in the future.

Recommendations:

The Inspector recommends Juvenile Justice have regard to the lessons learned from the Chisholm Behaviour Program in developing future programs and policies.

The Inspector recommends Juvenile Justice decommissions or refurbishes the Uralba, Taralga, and Tandarra units which were used for the Chisholm Behaviour Program.

The Inspector recommends consideration is given to amending the *Children (Detention Centres) Regulation 2015* to reflect the Objective Classification System.

4.13 Use of detainee risk management plans

DRMPs are individualised plans for managing young people who pose a significant risk to themselves or others, and who are not responding to mainstream routines used in custody such as the incentive scheme, case management and misbehaviour processes.

While not all DRMPs will involve segregation, DRMPs are the primary mechanism through which longer periods of segregation are managed. Since the closure of the CBP in May 2016, DRMPs have been the main tool to manage young people who display high-risk behaviours. The majority of DRMPs provide for segregation, which is either continuous or periodic. If segregation continues beyond 24 hours, this must be achieved by way of a DRMP. In practice, there is now an expectation that young people on segregation orders should be out of their room for six hours a day. Time out of room is not always included in DRMPs but should be.

Each DRMP is a separate document, the content of which is usually determined in a weekly Client Services Meeting attended by key staff who work with the young person, including the assistant manager, Client Services; relevant unit manager; psychologists, school principal; and nursing staff. Young people do not attend the DRMP meetings but they may have input into their plan.

DRMP reviews occur each week at the Client Services Meeting. A young person's progress will be evaluated against the DRMP strategies and goals based on input from youth officers, education staff (if the young person enrolled in school) and others who work with the young person. If the risks posed to, or by, the young person are considered to have reduced, the young person may be taken off a DRMP, or the provisions of the DRMP may be altered or relaxed. Depending on the

review, the DRMP may remain unchanged for another week, or different provisions may be included.

The average length of a DRMP is approximately 19 days. In the 2017–18 there were 120 young people on DRMPs a small number of whom were on a DRMP for over four weeks.

DRMPs are distributed to centre staff via email and a copy is printed and kept in a book on each unit. Juvenile Justice has recently taken steps to provide young people with a simplified version of their DRMP and this practice is commended.

When the inspection team visited Cobham JJC in October 2016 there was concern that some of the young people placed on DRMPs were experiencing similar conditions to young people who had been placed in the CBP. Young people claimed that they were in their rooms for lengthy periods each day, with little to do, and minimal therapeutic intervention. A subsequent review of their DRMPs found that a number of young people were on similar conditions to young people in the assessment phase of the CBP. This included access to two periods of one hour recreation periods per day.³⁷¹

Juvenile Justice commenced a weekly desktop audit of DRMPs in November and December 2016. The fundamental concept of a DRMP – that of individually risk-assessing each young person and developing a tailored plan to address these specific risks, and meet the needs of the young person – is sound. In February 2017, the inspection team undertook an examination of a sample of DRMPs for young people at Cobham JJC and Baxter JJC, some of whom had previously been subject to the CBP. The review found that the DRMPs were all developed on the basis of an individual risk assessment with conditions and strategies to address the risk posed by an individual young person.

The review found the majority of DRMPs identified a young person posed a risk to other young people, staff or themselves; however, in a small number it was not clear that the need for segregation was for protection. DRMPs by their nature are restrictive. Some DRMPs required handcuffing for movements and recreation, and non-association with other young people. Others had no requirement for handcuffing and young people attended school.

The DRMPs reviewed from Cobham JJC all required 6 hours out of room, but no out of room time was specified in the DRMPs from Frank Baxter JJC. It was not possible by examining the DRMPs from either JJC to determine how long young people were spending out of their room each day.

Juvenile Justice confirmed that while JJCs are able to extract information about time out of room, this needed to be done by reviewing hard copies of record-of-checks books and manually counting the hours each young person had spent out of their room. Juvenile Justice provided the inspection

³⁷¹ There is current civil litigation in relation to one young person being placed on a DRMP. The inspection has not analysed the allegations relating to that young person or made findings in relation to the allegations or circumstances relating to that young person. The opinions expressed in the report are based on a sample of DRMPs provided by the Department. It is possible that some of the issues raised in this report will be raised in future court cases. It must be noted the Inspector of Custodial Services is not a court of law, and does not have the benefit of counsel, or the power to examine or cross-examine witnesses under oath, and is not bound by the rules of evidence and a court may adopt a different interpretation of the law and facts.

team with details of hours out of room for young people on DRMPs during the two week period requested.³⁷²

Reliance on log book records meant that information about particular days of one young person's DRMP was missing and in some of the records it was unclear how long the young person had spent out of their room. The records confirmed that some young people were receiving six hours out of their rooms each day, and others were not.

It is acknowledged that there may at times be individual detainees who are posing too high a risk to allow them to come out of their room and centres may have a range of constraints that may impact on their ability to enable individual young people out of their room for recommended periods. However, it is important that young people are not segregated from the general population alone in their rooms for extended periods.

Young people's time out of room was sometimes reduced because they misbehaved, they declined recreation periods offered to them early in the morning, immediately after waking, or because they declined recreation periods with other young people.

The inspection found that some young people on DRMPs may be confined for misbehaviour when they are already segregated.

The segregation rules provide:

Segregation and confinement are interventions that are not in any way related (other than in their effect, which is to remove a detainee to a room and at times the same room), it is not allowable to use segregation to extend a period of confinement or vice versa.

Segregation may, of course, immediately follow confinement if the detainee due to be released from confinement is behaving in a manner that would normally justify segregation.

Conversely, confinement may closely follow upon segregation if, for example, the risk presented by the misbehaviour that led to the segregation is adjudicated through misbehaviour procedure to deserve a punishment of confinement. Detainees placed in segregation prior to staff conducting misbehaviour inquiry based on risk should NOT routinely receive confinement. The immediate risk of being placed in segregation should be considered separately to a punishment response for behaviour.³⁷³

Juvenile Justice has acknowledged that its record-keeping was not adequate to monitor time out of room for young people on DRMPs. JJsCs have started recording actual out of room hours for young people on a DRMP by manually entering it into a spreadsheet. These local initiatives are supported. Capturing this kind of information in a consistent and systematic manner will allow Juvenile Justice to better monitor the time young people in segregation spend out of their rooms.

³⁷² Not all centres had young people on DRMPs for over two weeks in the timeframe we chose, and with these centres, we specified that information be provided in relation to the entire period the young person was on a DRMP. The two-week period selected was different for each young person and was dependent on the dates they were on a DRMP. The inspection team reviewed material on the CIMS and chose two young people at each centre who had been on a DRMP involving continuous segregation during the first few months of 2017. Juvenile Justice provided information about the number of hours each of these young people had spent out of their room each day over a two-week period.

³⁷³ Juvenile Justice, *Operations Procedures Manual, Rules for Segregation*, 2017.

Many staff considered DRMPs provided insufficient therapeutic intervention for young people and were implemented inconsistently by different staff members.

In recognition of the particular and diverse needs of Aboriginal young people, Juvenile Justice has advised that DRMPs now identify if a young person is Aboriginal and this is used to inform culturally appropriate risk-mitigation strategies.

It is acknowledged that Juvenile Justice has been working to try and strengthen the DRMP process and ensure DRMPs are clear, coherent and contain measurable and achievable goals and outcomes. Between November and December 2016 the Juvenile Justice Operational Standards and Compliance Unit conducted a weekly desktop audit of a sample of DRMPs. Many of the findings of this audit were consistent with the inspection findings, including comments made about inconsistencies in how DRMPs are administered in different JJs. The audit found that the CIMS records of segregation do not always accurately reflect actual participation in mainstream routines or time spent in room; specific goals are not always built into the plans, making it difficult for young people and staff to understand the pathways for progression off a DRMP; and strategies are not implemented in a consistent manner by staff. Good practice identified by the audit included the involvement of family members to motivate the young person; identifying clear and defined steps expected of the young person; and the completion of case notes detailing how time out of room is spent, including in relation to the goals of the DRMP.³⁷⁴

Juvenile Justice also conducted a comprehensive examination of a small number of DRMPs, which identified that provision of an education pack to a young person in a room is not an effective teaching strategy, and that psychological strategies are often not included in DRMPs and the role of the psychologist not clearly articulated.³⁷⁵ The inspection team shared these concerns.

In June 2017, a memorandum was issued to centre staff detailing changes to the CIMS to facilitate better implementation of DRMPs across all centres. Changes included clearer headings throughout the DRMP template to prompt explicit descriptions of the risks posed by young people; clearer questions throughout the template to ensure DRMP identifies obvious links between behavioural causes and proposed interventions; and the creation of printable versions of the DRMPs for more accessible viewing by young people and staff. In October 2018, Juvenile Justice has also finalised a new DRMP policy and a procedure which outlines the steps for developing a DRMP; however, there is further work required to ensure the policy is consistent with legislation.³⁷⁶

Juvenile Justice has recently developed a workshop about DRMPs which has been delivered at every centre. The workshop 'emphasised the alignment between safety and security, as well as the potentially negative implications of overly punitive approaches and restrictive practices'.³⁷⁷ The agency is also continuing to review DRMPs on a weekly basis in order to highlight good practice and areas for improvement.

These are positive initiatives and should help to ensure that officers have a comprehensive understanding of the rationale for and purpose of DRMPs. Plans should be individually tailored to

³⁷⁴ Juvenile Justice, *Operational Standards and Compliance Unit desktop quality assurance audit*, December 2016.

³⁷⁵ Information provided by Juvenile Justice, 2018.

³⁷⁶ Information provided by Juvenile Justice, 2018.

³⁷⁷ Information provided by Juvenile Justice, 2018.

recognise and respond to the individual risks posed to and by each young person. This should include ongoing monitoring and analysis of DRMPs.

4.14 A specialist unit for high-risk young people

Some stakeholders have called for the implementation of a secure unit in which to place young people who pose significant risks within JJC's. This is often suggested on the basis of the seriousness of some young people's offending.³⁷⁸ However, many of the young people who are considered to pose the highest risks within centres, are not necessarily those whose offences are the most serious.

In addition, the risks posed by individuals change over time depending on a range of factors, and therefore it is not always straightforward to identify 'high risk' young people. The inspection team was told about several young people who had previously been considered the most high-risk and difficult to manage, and who failed to progress in the CBP, but who have, for the most part, progressed well since the closure of this program.

The Victorian review of youth justice recognised there are two related challenges facing the youth justice centres in Victoria. First, no high-intensity violence intervention residential program exists for young offenders who have committed violence offences and pose a high risk of violent reoffending. Second, existing youth justice centres have been unable to manage the challenging and violent behaviour of difficult young people:

To control and remediate violent behaviour in youth justice centres, it is necessary to have a secure unit in which intensive rehabilitation can be provided to improve the outcomes of young people and to help maintain the good order of the centres.

As a result of both the high risk of violent reoffending that some young offenders in custody pose, and the volatile and aggressive behaviour in which some young people engage while in custody, these young people require a higher level of intervention than is presently available. Group or individual programs delivered in mainstream living units is not sufficient to meet the level of risk and need those groups of young offenders pose.

Harsher treatment and greater deprivation will not help solve this problem; rather, intensive intervention with highly skilled professional and Youth Justice staff working together in a highly structured environment can have some benefit.³⁷⁹

When the CBP was introduced, it was intended to provide this type of secure, therapeutic facility for young people posing a high risk. However, the implementation of the CBP was extremely problematic and the outcomes poor. It is important that the lessons learnt from the CBP are heeded if a secure therapeutic unit for high-risk young people in custody is ever considered in the future.

An intensive intervention unit should create a safe and secure place for intervention to reduce aggression and violence. Such a unit should be a physically secure environment but not look austere. It would also require all staff, irrespective of roles, to work with the young people towards

³⁷⁸ Conversations with stakeholders, 2017.

³⁷⁹ P Armytage and J Ogloff, *Youth Justice Review and Strategy: Meeting needs and reducing offending*, Executive Summary – July 2017, p 17.

reducing aggression and violence. Intensive intervention must be provided in a supportive therapeutic environment to young offenders in custody who have engaged in serious violence, have a high level of risk for violent offending, engage in ongoing or serious violent behaviour while in custody, or who have more complex needs. Success is dependent upon tailoring to individual formulation of violence and address a broad range of criminogenic needs and responsivity issues, Unit staff should also be selected based on their experience and skills, while a specialist multidisciplinary team should provide violence intervention.³⁸⁰

³⁸⁰ P Armytage and J Ogloff, *Youth Justice Review and Strategy: Meeting needs and reducing offending*, Part 2 – July 2017, pp 105–106

5. Other related matters

5.1 Strip searches

The Act provides that regulations can be made with respect to the circumstances in which a body search may be conducted on a detainee, the procedures to be followed in conducting a body search and the persons by whom, or in whose presence, a body search is to be conducted.³⁸¹ At the time of inspection, Juvenile Justice was conducting strip searches in accordance with policy and procedure as there were no regulations in force. Regulations providing for searches in Juvenile Justice in NSW commenced in October 2018.³⁸²

The *Inspection Standards for Juvenile Justice Custodial Services in NSW* state at 9.5:

- Young people are subject to searching measures that are appropriately assessed and proportionate to risk.
- Unclothed searches are only used as a last resort and are based on intelligence. Prior to this, other means of searching such as pat searches, metal detectors and increased surveillance are used.
- Staff are appropriately trained to conduct unclothed searches in a discreet and sensitive manner, and are the same sex as the young person.
- The search is conducted as quickly as possible, the young person is allowed to remain partly clothed, and permitted to dress as soon as it is complete.
- A register is kept of all searches, the reasons for them, who conducted the search and the outcomes.
- The centre must have in place standard operating procedures for refusal to comply with an unclothed search or pat search.
- Strip searching is not routinely conducted on entry and exit to a centre where a young person has been transported in a secure vehicle.³⁸³

The 2015 NSW Inspector of Custodial Services report *Making connections: Family and community support to young people in custody* recommended that Juvenile Justice should not carry out strip searching on a routine basis and should replace this practice with a rigorous risk-based assessment process to target the trafficking of contraband.³⁸⁴ Juvenile Justice partially supported this recommendation, advising, 'Routine strip searches will continue for new admissions from community settings and following leave. A risk-based approach to searches for after centre visits

³⁸¹ *Children (Detention Centres) Act 1987*, s. 32A(r).

³⁸² *Children (Detention Centres) Amendment Regulation 2018*.

³⁸³ The NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, January 2015, p 40.

³⁸⁴ NSW Inspector of Custodial Services, *Making connections: Family and community support to young people in custody*, 2015, recommendation 10.

and outings is supported.³⁸⁵ Juvenile Justice advised in response that a process to improve risk assessment and appropriate identification of mitigation strategies is being explored.³⁸⁶

Despite this, at the time of inspection, Juvenile Justice was still routinely strip searching young people in a range of circumstances. JJs conduct routine strip searches on young people on admission, when they return to a centre after a court appearance or hospital visit, following leave and following contact visits with family. Strip searching occurs even though young people are required to wear centre-issued coveralls during visits.³⁸⁷ Strip searches are also conducted in circumstances where officers suspect that a young person possesses contraband or an item that may be used to hurt them or someone else. The need to prevent a child from self-harming or harming others may necessitate a strip search.

Strip searches are conducted by an officer of the same sex as the person being searched. Another officer must be present in order to observe the searching officer. When officers conduct a strip search, the young person is usually asked to remove the items of clothing from the top half of their body, and, when replaced, to remove clothing items from the bottom half of their body. This is to ensure the young person is never totally unclothed. At some centres, a table is placed between the young person and the officers in an attempt to afford the young person some dignity. The young person is asked to place their clothing on the table and officers may search the clothing. Officers do not touch the young person.³⁸⁸

Despite efforts taken by Juvenile Justice staff to ensure that a young person is never fully unclothed, the practice of searching young people by asking them to fully or partially remove their clothes may be humiliating and distressing for young people. A young person may be issued with a misbehaviour report for refusing to submit to a search of his or her person or possessions.³⁸⁹

The Royal Commission into Institutional Responses to Child Sexual Abuse recommended that state and territory governments should review legislation, policies and procedures to ensure best practice approaches are in place for strip searches and other authorised contact between staff and children, including sufficient safeguards to protect children such as:

- adequate communication between staff and the child before, during and after a search is conducted or other physical contact occurs
- clear protocols detailing when such practices are permitted and how they should be performed. The key elements to these protocols should be provided to children in an accessible format

³⁸⁵ Correspondence from V Ruis, Executive Director, Juvenile Justice to Dr John Paget, Inspector of Custodial Services, undated.

³⁸⁶ Information received from Juvenile Justice, 28 July 2017.

³⁸⁷ The NSW Inspector of Custodial Services, *Inspection Standards for Juvenile Justice Custodial Services in New South Wales*, January 2015, states at 9.4 that '[a]dditional measures such as use of overalls or increased supervision of visits is promoted as an alternative to searches'.

³⁸⁸ Juvenile Justice, *Searching Young People Procedure*, October 2018, pp 6–8; Juvenile Justice, *Searching Young People Policy*, October 2018, p 6.

³⁸⁹ *Children (Detention Centres) Regulation 2015*, Schedule 1, cl. 16.

- staff training that highlights the potential for strip searching to re-traumatise children who have been sexually abused and how the misuse of search powers can lead to sexual humiliation or abuse.

The Royal Commission also recommended that state and territory governments consider implementing strategies for detecting contraband, such as risk assessments or body scanners, to minimise the need for strip searching children.³⁹⁰

These recommendations have been accepted by the NSW Government and are currently being implemented.³⁹¹ This includes amendments to the Regulation.

Recommendations:

The Inspector recommends Juvenile Justice should not carry out strip searching on a routine basis and should replace this practice with a rigorous risk-based assessment process to target the trafficking of contraband.

The Inspector recommends Juvenile Justice provides training about the circumstances in which a search involving the removal of clothing may occur and best practice processes for conducting these searches.

The Inspector recommends Juvenile Justice works with the NSW Ombudsman to develop a system of notification of pre-planned use of force of young people and strip searching of young people.

³⁹⁰ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Contemporary detention environments*, vol 15, pp 117–188, and Recommendation 15.4.

³⁹¹ NSW Government, *NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, June 2018.

Appendix A – Terms of Reference



Terms of reference

The Inspector of Custodial Services will examine how use of force against detainees in juvenile justice centres in NSW is managed, with particular reference to:

- relevant standards, legislation, policies and procedures
- training staff receive about the lawful and proper use of force, instruments of restraint, reporting of incidents and record-keeping
- equipment and instruments available to staff
- the circumstances in which force is used and the types of force used
- actions taken in response to force being used, including the provision of medical attention and/or support to detainees and staff
- measures to ensure adequate and appropriate accountability for individual incidents and use of force at the systemic level
- strategies used to improve practice, and
- any other related manner.

The following centres have been selected for this inspection:

- Acmena Juvenile Justice Centre
- Cobham Juvenile Justice Centre
- Frank Baxter Juvenile Justice Centre
- Orana Juvenile Justice Centre
- Riverina Juvenile Justice Centre.

Appendix B – Ministerial correspondence



The Honourable David Elliott MP

**Minister for Corrections
Minister for Emergency Services
Minister for Veterans Affairs**

IM16/30085

Inspector of Custodial Services
GPO Box 6
Sydney NSW 2001

Dear Ms Rafter

I write in regards to your current review into the use of force against detainees in Juvenile Justice Centres in NSW. You have previously provided Terms of Reference for this investigation. I ask that you consider expanding this investigation to include the use separation, segregation and confinement in Juvenile Justice Centres. In line with your current Terms of Reference, this could cover:

- relevant standards, legislation, policies and procedures regarding time spent in room, including, but not limited to confinement and segregation as defined by the *Children (Detention Centres) Act 1987*
- the length of time spent in rooms and best practice with regards to time out of rooms
- training staff receive about the lawful and proper use of separation, segregation and confinement
- governance, accountability and delegation
- reporting systems and record keeping
- strategies used to improve practice, and
- any other related matter.

I understand the following centres will be inspected as part of this review:

- Acmena Juvenile Justice Centre
- Cobham Juvenile Justice Centre
- Frank Baxter Juvenile Justice Centre
- Orana Juvenile Justice Centre
- Riverina Juvenile Justice Centre
- Reiby Juvenile Justice Centre.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Elliott'.

David Elliott MP
**MINISTER FOR CORRECTIONS
MINISTER FOR EMERGENCY SERVICES
MINISTER FOR VETERANS AFFAIRS**

18 October 2016

GPO Box 5341, SYDNEY NSW 2001

Phone: (02) 8574 6290 Fax: (02) 9339 5564 Email: office@elliott.minister.nsw.gov.au

Appendix C – Revised terms of reference

Terms of reference

The Inspector of Custodial Services will examine how use of force against detainees in juvenile justice centres in NSW is managed, with particular reference to:

- relevant standards, legislation, policies and procedures
- training staff receive about the lawful and proper use of force, instruments of restraint, reporting of incidents and record-keeping
- equipment and instruments available to staff
- the circumstances in which force is used and the types of force used
- actions taken in response to force being used, including the provision of medical attention and/or support to detainees and staff
- measures to ensure adequate and appropriate accountability for individual incidents and use of force at the systemic level
- strategies used to improve practice, and
- any other related manner.

The Inspector of Custodial Services will also examine how the use of separation, segregation and confinement of detainees in juvenile justice centres in NSW is managed, with particular reference to:

- relevant standards, legislation, policies and procedures
- training staff receive about the lawful and proper use of separation, segregation and confinement
- the circumstances that lead to detainees being placed in separation, segregation or confinement
- the “Chisholm Behaviour Program” and the use of detainee risk management plans.
- the length of time spent in rooms and best practice with regard to time spent out of rooms
- the conditions for detainees during placement in separation, segregation or confinement
- measures to ensure adequate and appropriate accountability, including delegation, reviews, record keeping and reporting

- strategies used to improve practice, and
- any other related matter.

The following centres have been selected for this inspection:

- Acmena Juvenile Justice Centre
- Cobham Juvenile Justice Centre
- Frank Baxter Juvenile Justice Centre
- Orana Juvenile Justice Centre
- Riverina Juvenile Justice Centre
- Reiby Juvenile Justice Centre.*

* The terms of reference relating to use of force were initially published 24 June 2016, with five centres selected for inspection. Reiby Juvenile Justice Centre was added to the inspection schedule on 4 October 2016. The terms of reference were amended on 4 November 2016 to include inspection of issues relating to separation, segregation and confinement.

Appendix D – Legislation in Australian states and territories

Australian Capital Territory

Children and Young People Act 2008 (ACT)

Human Rights Commission Act 2005 (ACT)

Northern Territory

Youth Justice Act 2017 (NT)

Youth Justice Regulations (NT)

Queensland

Youth Justice Act 1992 (Qld)

Youth Justice Regulation 2016 (Qld)

South Australia

Youth Justice Administration Act 2016 (SA)

Youth Justice Administration Regulations 2016 (SA)

Tasmania

Youth Justice Act 1997 (Tas)

Youth Justice Regulations 2009 (Tas)

Victoria

Children, Youth and Families Act 2005 (Vic)

Children, Youth and Families Regulation 2017 (Vic)

Western Australia

Young Offenders Act 1997 (WA)

Young Offenders Regulations 1995 (WA)

Appendix E – Inquiries, reviews and reports in relation to juvenile justice in other jurisdictions

National

The Royal Commission into Institutional Responses to Child Sexual Abuse was established in 2012 to inquire into and report upon responses by institutions to instances and allegations of child sexual abuse in Australia.³⁹² The final report was made public on 15 December 2017.³⁹³ Volume 15 examines what was learnt about institutional responses to child sexual abuse in contemporary detention environments, including youth detention.³⁹⁴

Northern Territory

The Royal Commission into the Protection and Detention of Children in the Northern Territory was established in July 2016. The Commissioners submitted a report³⁹⁵ to the Governor General and Chief Minister of the Northern Territory, including recommendations, in November 2017.

Queensland

The Queensland Attorney General announced an independent review into the treatment of young people in Queensland youth detention centres in August 2016. The Qld report was released in April 2017 and contained 83 recommendations.³⁹⁶

Victoria

In October 2016 the Victorian Government announced a review of youth support, youth diversion and youth justice. The primary aim of the review was to create an overarching policy framework for the development of a contemporary youth justice program and accompanying service delivery model.³⁹⁷ The final report was released in July 2017 and contained a number of recommendations.

In November 2016 a parliamentary inquiry into youth justice centres in Victoria was established to examine issues at Parkville and Malmsbury Youth Justice Centres. The report, containing 33 recommendations was published March 2018.³⁹⁸

³⁹² Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report: Preface and Executive Summary*, 2017, p 1.

³⁹³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final report*, 2017, <https://www.childabuseroyalcommission.gov.au/final-report>, viewed 2 November 2018.

³⁹⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, *Volume 15: Contemporary detention environments*, 2017, p 7.

³⁹⁵ Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report*, 2017.

³⁹⁶ *Queensland Independent Review of Youth Detention*, December 2016, (publicly released April 2017).

³⁹⁷ Victoria State Government, *Review of Youth Support, Youth Diversion and Youth Justice Services: Terms of reference*, October 2016.

³⁹⁸ Victorian State Government, *Inquiry into youth justice centres in Victoria: Final Report*, March 2018.

In March 2017 the Victorian Commission for Children and Young People released a report into the use of isolation, separation and lockdowns in the Victorian youth justice system. Twenty-one recommendations were made to address the issues identified.³⁹⁹

Western Australia

In February 2018, the WA Inspector of Custodial Services released a report into the behaviour-management practices of Western Australia's sole juvenile detention facility, Banksia Hill containing 16 recommendations.⁴⁰⁰

In June 2018, the WA Inspector of Custodial Services released a directed review of allegations made by Amnesty International Australia about the ill-treatment of young people at Banksia Hill Detention Centre.⁴⁰¹

United Kingdom

In December 2016, a report was released on the Youth Justice System in England and Wales. It contained 36 recommendations.⁴⁰²

³⁹⁹ Victorian Commission for Children and Young People, *The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, March 2017.

⁴⁰⁰ Office of the Inspector of Custodial Services Western Australia, *2017 Inspection of Banksia Hill Detention Centre*, February 2018.

⁴⁰¹ Office of the Inspector of Custodial Services Western Australia, *Directed Review of Allegations made by Amnesty International Australia about ill-treatment at Banksia Hill Detention Centre*, June 2018.

⁴⁰² C Taylor, *Review of the Youth Justice System in England and Wales*, 2016.

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