

**Managing use of force in
prisons: the need for better
policy and practice**

A Special Report to Parliament under
s.31 of the *Ombudsman Act 1974*

July 2012

**Managing use of force in
prisons: the need for better
policy and practice**

*A Special Report to Parliament under
s.31 of the Ombudsman Act 1974*

July 2012

**NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000**

**Phone (02) 9286 1000
Toll free (outside Sydney Metro Area): 1800 451 524
Facsimile: (02) 9283 2911
Telephone typewriter: (02) 9264 8050
Website: www.ombo.nsw.gov.au
Email nswombo@ombo.nsw.gov.au**

ISBN 978-1-921884-71-9

© Crown Copyright, NSW Ombudsman, July 2012

This work is copyright, however material from this publication may be copied and published by State or Federal Government Agencies without permission of the Ombudsman on the condition that the meaning of the material is not altered and the NSW Ombudsman is acknowledged as the source of the material. Any other persons or bodies wishing to use material must seek permission.

Foreword

This report concerns how using force on inmates in correctional centres in NSW is managed. My office has done considerable work in this area over the last few years. I have decided to make a public report of our findings and concerns for a number of reasons.

While Corrective Services NSW (CSNSW) has accepted the need to make considerable improvements in how uses of force are managed, its progress in making the required changes has been slow. Over two years have passed since CSNSW agreed with our detailed recommendations for change. While some progress has been made, in practice many of the deficiencies we have identified continue to impact on both staff and inmates every day.

CSNSW is also going through a period of change with a new Commissioner and organisational and other changes. During any period of transition there is a risk some matters will fail to progress. The changes needed to address the problems identified in this report go to some fundamental principals – the need to have staff who are trained in legal and operational requirements, adequate accountability mechanisms for both staff and managers and robust complaint handling and investigative capacity.

Getting these elements right is crucial to the effective operation of CSNSW, not just in relation to the management of uses of force.

I anticipate continuing to work constructively with CSNSW to monitor implementation of the changes required to ensure uses of force are appropriately managed.



Bruce Barbour
Ombudsman

Contents

Chapter 1. Overview	1
Summary of Recommendations	2
Chapter 2. Our investigations	5
2.1 Management of uses of force.....	5
2.2 Individual use of force	5
Chapter 3. Legislative and policy framework for using force on inmates ...	7
3.1 Relevant legislation	7
3.2 Policy and procedure on using force on inmates	7
3.3 Managing video evidence	8
3.4 Training in use of force	8
3.5 Approving arrangements at GEO operated prisons for using force on inmates	9
Chapter 4. Problems with how uses of force are managed	11
4.1 Arrangements for monitoring and scrutinising uses of force	11
4.2 Lack of data collection and analysis	12
4.3 Identification of what is an excessive use of force	13
4.4 Adequacy and appropriateness of training in using force	14
4.5 Using force on visitors	16
4.6 Approval of arrangements at privately operated correctional centres.....	16
Chapter 5. Investigation into individual use of force	17
5.1 Response to the incident	17
5.2 Reporting the incident	17
5.3 Audio-visual recording of the incident	18
5.4 Batons	19
5.5 Training	19
5.6 Management review of uses of force	20
Chapter 6. Progress of change	21
6.1 Current situation	21
6.2 What has been done so far	22
6.3 What is yet to be done	23
Appendix 1. Relevant legislation	25

Chapter 1. Overview

Correctional officers are authorised to use force against inmates in certain circumstances. Over the last three years this office has done considerable work about how uses of force are managed by CSNSW.

We recognise correctional officers work in difficult circumstances and can be required to deal with challenging and potentially dangerous situations. Using force can put officers as well as inmates at risk of physical harm and, as such, it is essential officers have the skills and knowledge to deescalate situations (so force is used only as a last resort) and are trained in how to use force safely when there are no other alternatives.

Between July 2009 and April 2010 we did a major investigation into how CSNSW monitored and scrutinised uses of force, including how it dealt with and investigated complaints about uses of force. We examined policies and procedures, reviewed training, interviewed departmental staff and audited a sample of use of force reports. Our investigation identified deficiencies in how CSNSW manages uses of force across the system. We made a number of recommendations for change which were accepted by CSNSW.

We appreciate that making effective improvements across an entire system is challenging and can take time to do well. We welcomed CSNSW's constructive approach to bringing about the changes and have worked closely with CSNSW to monitor progress. However, over two years since the investigation was concluded, we are concerned at the slow pace of change in what is a crucial area of CSNSW's day-to-day operations.

To compound our concerns in September 2010 we received a complaint from an inmate about a use of force which he alleged had been excessive. The use of force had taken place in August 2010 - four months after our investigation into the systems for managing uses of force had been concluded - at a large regional correctional centre. Our findings in the investigation of this individual use of force reflected the same systemic failings and deficiencies as those identified in the broader investigation.

Essentially, the matters which need addressing are about the good order and security of the correctional system:

- Correctional officers who use force on inmates need to be trained in the lawful and proper use of force, instruments of restraint, recording and reporting of uses of force.
- General Managers need effective tools to ensure trained staff are acting lawfully and appropriately in their management of inmates.
- CSNSW needs functioning systems of accountability to satisfy the community that inmates are being managed lawfully and humanely and that CSNSW are ensuring a safe workplace for their staff.

In our final report of April 2010 we made 17 recommendations for widespread change in how uses of force are managed. The practicalities of a number of the recommendations were developed in conjunction with CSNSW, which accepted all of the recommendations. Despite its constructive involvement in finalising the recommendations and advice it had started developing a project plan for implementation as early as February 2010, over two years later limited change has occurred on the ground in correctional centres.

In December 2011, at the conclusion of our investigation into the individual use of force matter, we reiterated both the need for action on the 17 recommendations already made and also made a number of additional recommendations.

This report brings together the work of our two investigations. It details the problems and deficiencies identified and the progress made by CSNSW to remedy them. It concludes with a summary of the significant amount of work which CSNSW still needs to do.

Summary of recommendations

1.1 Policy and procedure

1.1.1 That policy and procedures for using force on inmates be reviewed to include the following:

- clarification of the forms which are required to be completed following a use of force;
- a specific requirement that the senior officer on duty is required to attend planned and unplanned uses of force as soon as practicable;
- a debrief to be held after a significant use of force with all staff involved, to be conducted by the senior officer on duty, with clear guidance about what constitutes a significant use of force;
- an easy to use check list of requirements to be followed after a use of force;
- more detailed guidance and a clearer definition of the distinction between a planned and unplanned use of force;
- an explicit instruction that staff are required to report all uses of all instruments of restraint (except the routine use of hand-cuffs, ankle cuffs and restraining belts as defined by the Using Force on Inmates policy), irrespective of the manner or circumstances in which those instruments were used.

1.1.2 That the template report form for incidents be reviewed to provide key headings to prompt officers to include essential information about a use of force, as well as what attempts were made before force was used to de-escalate the situation.

1.1.3 That documented operational guidance be developed for the use of force on inmates in court cells and transport respectively, reflecting the particular circumstances and staffing structure of the Court Escort Security Unit.

1.1.4 That a policy and procedure be developed for using force on visitors to correctional centres, making clear the legislative basis for any such action as well as the procedure to be followed.

1.1.5 That a policy and procedure be developed about in what circumstances batons may be used and their appropriate methods of use.

1.2 Reviews

1.2.1 That the policy and procedure for the use of force on inmates be reviewed to provide:

- more detailed guidance about the purpose of reviewing uses of force, including criteria to guide Managers Security or other delegated senior officers in how to conduct reviews;
- guidance about how to evaluate a use of force to ensure it was reasonable and appropriate to the circumstances;
- that Managers Security or other delegated officers cannot sign off on a review until all officer and other reports have been completed;
- that where it is appropriate to give feedback to an officer (positive or negative), Managers Security or other delegated officers be required to record the fact that feedback has been given;
- that the outcome of reviews be documented, including reasons for the conclusions reached;
- that the outcome of reviews of uses of force should be a standing item at Senior Managers Meetings in each centre.

1.2.2 That training be provided to Managers Security and other officers who are likely to be delegated to review uses of force in what is required when conducting a review and guidance about how to evaluate a use of force to ensure it was reasonable and appropriate to the circumstances.

1.2.3 That annual audits be conducted at each centre of a sample of reviews of uses of force. The audits to be conducted by an appropriate branch of CSNSW such as the Corrections Inspectorate or Audit and Performance Management Branch.

1.3 Training in use of force

1.3.1 That details about holds and other practices which are prohibited be included in training about use of force.

1.3.2 That refresher training in the use of force be provided to all general duties officers.

1.3.3 That:

- a training needs analysis be conducted of the needs of officers in the Court Escort Security Unit in relation to using force and negotiation skills to identify if they have different or additional training needs to those of officers in correctional centres;
- any additional training identified as a result of the training needs analysis is developed and delivered to Court Escort Security Unit officers.

1.3.4 That:

- an audit of the training completed by Immediate Action Team (IAT) officers in using force be conducted to identify the extent of ongoing training being received by all IAT members;
- any deficiencies identified as a result of the audit be rectified by requiring those officers to attend further training;

1.3.5 That in the review CSNSW is conducting of the operation of IATs it considers:

- the roles, composition, and powers and responsibilities of IATs;
- that eligibility for selection of the lead officer in each IAT unit accounts for IAT experience and not necessarily rank
- including an explicit chain of command in planned and unplanned uses of force.

1.3.6 That additional training in negotiation skills be developed and delivered to officers in correctional centres and the Court Escort Security Unit.

1.3.7 That all custodial staff are trained in the use of hand-held cameras.

1.4 Data collection and analysis

1.4.1 That the current categories of incidents be reviewed to ensure CSNSW can identify and analyse all uses of force in correctional centres and court cells.

1.4.2 That clarification be provided about how uses of force involving more than one inmate are to be reported on the IRM.¹

1.4.3 That:

- the production of annual reviews of incidents involving uses of force be reinstated;
- any issues identified as a result of these reviews are incorporated into CSNSW's policies and procedures.

1.5 Approving arrangements at Junee Correctional Centre

1.5.1 That a review be conducted of:

- the current arrangements for approving policies and procedures for the use of force and for training in the use of force between CSNSW and Junee Correctional Centre to ensure the arrangements comply with the *Crimes (Administration of Sentences) Act 1999* and Regulations and the Management Agreement;
- the contents of the current policies and procedures for the use of force and training in the use of force at Junee Correctional Centre to ensure it has CSNSW's approval and that CSNSW, officers at Junee and at GEO are clear about their respective obligations.

¹ Online Incident Reporting Module

1.6 CCTV

1.6.1 That an audit of all CCTV cameras in every CSNSW facility (including those managed by GEO) is undertaken to identify those which do not record continuous footage, and those which do not record footage of a quality sufficient to meet the standard of evidence in criminal proceedings.

1.6.2 That all faulty equipment and software used to record and extract CCTV footage identified in the audit is replaced within three months of the completion of the audit.

1.6.3 That, upon completion of the audit, CSNSW develops a business case, including appropriate prioritisation, for an agency-wide installation of CCTV cameras and extraction equipment which record continuous footage of a quality sufficient to meet the standard of evidence in criminal proceedings.

1.7 Action in relation to individual General Manager

1.7.1 That the General Manager of the centre where the individual use of force occurred be temporarily suspended from his position and assigned to an alternate position, other than a senior management position within a correctional centre, or overseeing, mentoring or managing other correctional centre General Managers, until he has completed a professional development program developed by CSNSW specifically to address the issues raised by his deficient conduct identified in our investigation.

1.7.2 That when he returns to the position of General Manager at the completion of the professional development program, his conduct and compliance with relevant legislation and CSNSW policies and procedures is closely monitored by the appropriate Assistant Commissioner for a period of 12 months.

Chapter 2. Our investigations

2.1 Management of uses of force

We receive a consistent number of complaints and inquiries about uses of force and/or allegations of officers assaulting inmates.² When we receive such complaints, our general practice is to contact CSNSW and request a copy of officer incident reports and associated documents and video/DVD footage so we can make a preliminary assessment of the complaint. Once we have considered this material, if we determine it warranted we make written inquiries with the Commissioner including a request that the incident be referred to the Professional Standards Committee (PSC) if this has not already occurred. We may ask some specific additional questions.

In 2009 we reviewed complaints made to us about uses of force and identified the following issues of concern:

- The adequacy of investigations into complaints about uses of force, including those which did not reach the criminal standard for an assault but where there were other deficiencies such as the force applied being unwarranted, significant procedural errors, opportunities to de-escalate a situation being missed or videoing being inadequate.
- Guidance for assessing uses of force. It appeared individual Managers Security, who were responsible for reviewing all uses of force, were expected to rely on their experience in determining if a use of force was reasonable and appropriate in the circumstances. This raised questions about consistency in decision making between different managers, as well as departmental investigators, when assessing uses of force.
- Systems for monitoring and scrutinising uses of force. It was unclear if there were sufficiently detailed and robust processes in place to identify problematic uses of force and bring about systems improvements.
- What if any use CSNSW made of complaints about uses of force as a potential risk management tool, to examine, amongst other things, what was happening in different correctional centres, how well or otherwise processes and procedures were functioning, and to identify areas for improvement in training.

We decided to investigate. We required CSNSW to provide us with information and copies of documents including:

- complaints about uses of force it had received in the previous three years;
- the outcome of all investigations into uses of force referred to the PSC³ in the previous three years;
- policies, procedures and operational instructions concerning reporting obligations of departmental staff if they became aware of any concerns about the appropriateness of a use of force;
- any guidance and/or criteria provided to Managers Security and/or departmental investigators to use when considering the appropriateness of a use of force;
- a copy of the sections of the Operations Manual and training program for Junee Correctional Centre⁴ concerning uses of force as approved by CSNSW.

We conducted an audit of all the uses of force which took place in September 2009 in correctional centres and court cells across NSW. We also interviewed a range of operational staff both from CSNSW and GEO Group Australia Pty Ltd (GEO) including Managers Security, a duty officer and relevant CSNSW senior personnel.

2.2 Individual use of force

In early September 2010 an inmate complained to us about what he alleged was an excessive use of force on 11 August 2010 at a large regional correctional centre, four months after the above investigation had been finalised. The inmate alleged that in the course of attempting to transfer him from one unit to another, correctional officers assaulted him with batons, refused his request to record the use of force on a hand-held camera and imposed sanctions on him immediately after the use of force and subsequent strip search.

In accordance with our usual practice we requested copies of the hand-held camera and CCTV footage, and a copy of the use of force package which included an online Incident Reporting Module (IRM), incident reports, Inmate Injury Questionnaire and management review of the use of force. Despite numerous written and verbal requests, six

² 59 in 2006-2007; 46 in 2007-2008; 70 in 2008-2009; 61 in 2009-2010; 53 in 2010-2011

³ When we commenced our investigation this was called the Professional Conduct Management Committee

⁴ Junee was the only privately operated correctional centre in NSW at the time of our investigation. Parklea Correctional Centre is now also operated by GEO under a similar contractual arrangement to that in place for Junee.

months elapsed before CSNSW provided all of this evidence to us. Our first inquiries were made on 20 September 2010. We did not receive the final piece of evidence requested until 31 March 2011.

In addition to the inappropriate delay in responding to our inquiries, we identified a number of particular problems in the material provided to us. These included the failure to properly preserve evidence, poor recording and reporting of the incident, the possible concealment of critical evidence and the failure of the correctional centre's management and CSNSW head office to identify these issues. In combination they left us with little confidence that CSNSW would adequately investigate this complaint. We decided it was in the public interest to directly investigate what had happened.

In May 2011 we notified CSNSW of our decision to investigate the incident. We required CSNSW to provide us with information and copies of documents including policies and procedures about Immediate Action Teams (IAT), all local orders for the particular correctional centre about uses of force and a copy of the floor plan of the unit where the incident took place. We subsequently held formal hearings pursuant to the *Royal Commissions Act 1923* and *Ombudsman Act 1974* to take evidence on oath from officers and managers who were involved in the incident and its review.

Chapter 3. Legislative and policy framework for using force on inmates

3.1 Relevant legislation

The Crimes (Administration of Sentences) Regulation 2008 provides that in dealing with an inmate a correctional officer may use no more force than is reasonably necessary in the circumstances. The infliction of injury to an inmate is to be avoided if at all possible. In addition, with the concurrence of the general manager and/or Commissioner, a correctional officer may use specified equipment to restrain an inmate. The relevant sections of the legislation are reproduced in Appendix 1.

3.2 Policy and procedure on using force on inmates

The CSNSW policy and procedure on using force on inmates is contained in 'Part D Serious Incident Response: Using Force on Inmates' issued on 11 June 2008. This was the policy and procedure in force at the time of both of our investigations and is still in place today. This was supplemented on 13 October 2011 by a Commissioner's memorandum issued on 13 Oct 2011 requiring reviewing officer to record details of reviews on the IRM.

The policy states that force must only be used when '**all other options have been exhausted, or those options are not appropriate for example in a life threatening situation**' and that '**in developing situations**' the following may avoid the need to use force:

1. Presence of and frequent patrols by correctional officers;
2. Persuasion and negotiation with inmates; and
3. The presence of, and instruction by more senior officers.⁵

The policy goes on to consider the type and extent of force that can be used:

Correctional officers must only use the minimum amount of force necessary in any situation. That force must be reasonable and appropriate in the circumstances.

Once an inmate has been satisfactorily restrained, no additional force is to be applied apart from that which is necessary to maintain the restraint. If it is no longer necessary to restrain the inmate, the application of force must stop. The continuing application of force past these points is unlawful.⁶

The policy and associated procedure distinguishes between a planned use of force - where there is time to make an assessment of the situation, whether alternatives to using force exist and the type and level of force to be used if it is unavoidable - and an unplanned use of force. The policy summarises these considerations as follows:

1. Force is a tactic of last resort; it must not be used if there are alternatives to its use;
2. The force applied must be reasonable, appropriate, and the minimum necessary in the circumstances; and
3. It must stop when it is no longer required to control the inmate(s) or the circumstances.⁷

The policy also deals with the use of security equipment (firearms, instruments of restraint, chemical aides and riot control equipment) and the requirement to video record uses of force. The policy requires:

When the use of force is expected or planned or when there is a high potential for conflict, a video camera must be brought to the scene. An example is an inmate who is refusing to comply with a lawful instruction and there is no immediate risk to security, personnel, or other inmates. In that and similar situations, force must not be applied until a video camera is on the scene and recording the actions and conversations of all those involved. This is a requirement even if the area is subject to CCTV surveillance and recording.⁸

5 Part D Serious Incident Response: Using Force on Inmates page 1
 6 Part D Serious Incident Response: Using Force on Inmates page 2
 7 Part D Serious Incident Response: Using Force on Inmates page 2
 8 Part D Serious Incident Response: Using Force on Inmates page 4

Personnel who use force, as well as those who witness a use of force, are required to write an independent incident report. The procedure sets out the information that must be contained in an incident report:

- *The time of the use of force*
- *The date*
- *The location*
- *The identity of all persons involved*
- *A detailed description of the incident including what people said or did. Conversations or statements must be reported as: Inmate X said "...", I said, "..."*
- *Describe in detail the nature of the force that was applied. For example, "Using his left hand, X took a hold of Y's upper right arm", and*
- *Any other relevant information/intelligence.*⁹

Uses of force must be reported on the IRM and video evidence must be securely stored. Counselling should be offered to both officers and inmates involved in a use of force.

All reports and video recordings must be reviewed by the Manager Security or other delegated senior officer. A report must be sent immediately to the PSC if the reviewing officer considers the force was:

- *Unwarranted*
- *Excessive*
- *Unethical or there was other inappropriate behaviour on the part of any officer.*¹⁰

A Misconduct Report must be completed for each alleged disciplinary offence committed by an inmate/s but must not be acted on if a police investigation or criminal charges are likely.¹¹

3.3 Managing video evidence

Part C Correctional Centre Security: Managing Video Evidence (issued in November 2008) contains the policy and procedure on the way all video evidence is to be captured, stored, secured and reviewed. It applies to the video evidence required in relation to uses of force, as well as video evidence of other types of incidents. Only one type of video camera is approved for use in correctional centres under the policy – a model that uses a DVD as the recording medium. Video cameras that record to an internal hard drive, tape or memory card are prohibited, as are rewritable DVDs.¹²

Video recordings of a use of force must be reviewed by the Manager Security or another delegated senior manager **'as soon as practicable'**. If the Manager Security was involved in the use of force, then a conflict of interest exists and the General Manager must conduct the review. CCTV footage which captured a use of force must be copied and registered on TRIM.¹³

Each correctional centre must have a register of DVD recordings and arrangements to securely store the recordings.¹⁴

3.4 Training in use of force

All new custodial recruits must successfully complete the Custodial Primary Training Course which is delivered at the Brush Farm Corrective Services Academy. CSNSW told us that all training concerning the use of force, regardless of whether it is primary or advanced, requires recruits to consider what an appropriate response in any given situation is, and emphasises the need to make a judgement about what would be appropriate in the particular circumstances.

New recruits are trained in defensive tactics (stances, stepping, palm strikes and kicks), the course material advising they are only to be used in circumstances where such tactics are justified as **'necessary and reasonable'**.¹⁵ Students are also trained in the use of batons, chemical agents and weapons handling.

⁹ Part D Serious Incident Response: Using Force on Inmates page 11

¹⁰ Part D Serious Incident Response: Using Force on Inmates page 6

¹¹ Part D Serious Incident Response: Using Force on Inmates page 6

¹² Part C Correctional Centre Security: Managing Video Evidence page 1

¹³ Part C Correctional Centre Security: Managing Video Evidence page 2

¹⁴ Part C Correctional Centre Security: Managing Video Evidence page 3

¹⁵ Weapons & Officer Survival Training Participant Guide Version 1.0-2009 page 28

Students are assessed on 'physical restraint skills'¹⁶ at the end of the course. CSNSW told us that while some holds such as wrist holds and leg locks may be taught, they are suggestions and are not required or prescribed holds. CSNSW takes the view all training that is associated with using force is taught in the context of making a judgement about what would be appropriate in the particular circumstances. They did not believe it is possible to be prescriptive. Rather it is important to teach recruits to exercise judgement about the particular circumstance they were in.

We asked if any holds are not permitted. CSNSW told us choke holds are prohibited and are not delivered in training but recruits are not told that these holds are banned as this might suggest the possibility of their use to recruits who would not otherwise be thought of it. We were told that if a student raised the issue in a session (and apparently martial arts trained recruits sometimes do), they would be told such holds are not permitted, but otherwise it is not spoken about. CSNSW takes the view it should be obvious that, as holds are required to be reasonable, blocking an inmate's airways is not appropriate.

An Effective Communication module is also delivered which covers verbal and non-verbal communication, hearing and listening and cultural considerations.¹⁷

Maximum security correctional centres have IATs. IATs used to report centrally but now report to the General Manager of the centre in which they are based. A prerequisite for membership of an IAT is the successful completion of the Security and Emergency Procedures Training Course. It is a one week live-in course with a fitness component. The last day is Scenario Day and includes practical work including a cell extraction. Each course takes 20 people and they are run up to six times a year. IAT members receive additional ongoing training including some weekend training where IATs can be brought together to receive training that cannot be delivered locally.

The Tactical Training Unit produces all training material and courses are delivered by Field Training Officers who are based at maximum security correctional centres.

3.5 Approving arrangements at GEO operated prisons for using force on inmates

Junee was the only privately run correctional centre in NSW at the time of our system wide investigation of uses of force. The Management Agreement between the Commissioner for Corrective Services and GEO for Junee Correctional Centre provides that GEO must comply with all relevant legislation as well as relevant government and CSNSW policies. GEO is required to have an operations manual approved by the Commissioner. The operations manual cannot be varied without the consent of the Commissioner. The Commissioner can also require that variations be made. GEO must also provide training which is approved by the Commissioner. We understand similar provisions are included in the more recent management agreement for Parklea Correctional Centre.

¹⁶ Tactical Training Unit Interactive Training Performance Checklist Version 1.0

¹⁷ From Effective Communication module power point slides

Chapter 4. Problems with how uses of force are managed

Our investigation of how uses of force are managed across CSNSW identified concerns about the following:

- arrangements for monitoring and scrutinising uses of force
- identification of what is an excessive use of force
- arrangements for investigating uses of force
- training in using force
- using force on visitors
- adequacy of procedures for approving use of force arrangements at Junee Correctional Centre.

The following discussion deals with each in turn.

4.1 Arrangements for monitoring and scrutinising uses of force

Using force against an inmate is a significant matter, with associated risks of injury to both inmate and officer. The policy and procedure makes clear force is to be used only as a last resort and, on the whole, provides clear guidance about the various steps to be followed. However, the evidence we considered demonstrated that in many instances there is a significant gap between what is required by the policy and procedure and what is happening in practice.

4.1.1 Identification of problem uses of force

The key responsibility for scrutinising uses of force rests with Managers Security. If the reviews conducted are not adequate, the only other mechanisms to identify inappropriate uses of force are witnesses making reports and inmates making complaints.

While the Crimes (Administration of Sentences) Regulation requires a correctional officer to report misconduct by another officer¹⁸ and there are a number of ways inmates can make complaints including to the Corrective Services Support Line (CSSL), official visitors and to the Ombudsman, these alone are inadequate checks and balances. There are well known challenges, for any organisation, in relying solely on staff reporting inappropriate conduct by their colleagues and the vulnerability of those in custody may discourage some inmates from making complaints. We are aware from our complaint handling work that, despite the complaint mechanisms in place, it can be difficult for inmates to make complaints on occasion.

It is therefore essential that Managers Security are clear about what is required in conducting a review and comply with those requirements.

4.1.2 Adequacy of reviews

Our audit of uses of force cast significant doubt on the adequacy of reviews being conducted. At the time of our investigation there was no requirement for reviews to be documented, except where Managers Security had developed their own forms, there was no record of the Manager's assessment and the conclusion they reached or, indeed, if a review was conducted at all. The documentation we audited was frequently incomplete with officer reports or other required documentation missing and with those officer reports which were supplied often being inadequate. While any video footage would clearly assist the Manager Security understand what had happened, there were many instances where video footage is not available and, under the policy, footage is intended to be a supplement not a replacement for officer reports.

¹⁸ Clause 262 Crimes (Administration of Sentences) Regulation 2008

There is a lack of clarity about the purpose of the review. The policy requires '**all reports written as a consequence of the use of force must be reviewed by the Manager Security or another delegated senior manager as soon as practicable**'.¹⁹ The guidance given about the purpose of the review is that:

A report must be sent immediately to the PSC (through the General Manager) if the reviewing officer believes the force was:

- *Unwarranted*
- *Excessive*
- *Unethical or there was other inappropriate behaviour on the part of any officer.*²⁰

This is repeated in the procedure. Identifying uses of force which are so problematic they require consideration by the PSC is clearly essential. However, the policy does not make clear whether Managers Security should also be identifying failures to comply with the policy and procedure which, while not warranting consideration by the PSC, are important operationally. While there is limited evidence some Managers Security do this some of the time, there is no indication it is widespread or done as a matter of routine. Matters identified in this way could usefully include the failure to de-escalate a situation, the over-use of claims a use of force was spontaneous and so could not be videoed and the submission of inadequate reports – essential requirements of the policy but not matters which necessarily go to the conduct of the actual use of force. It is matters of this kind which, if not addressed, can lead to the proliferation of unacceptable practices over time.

The Managers Security we interviewed told us that if they identified procedural problems or ways in which an incident could have been better handled, they would raise it directly with the officer concerned. However, as reviews are generally not documented, any such conclusions and actions are not recorded. This means that not only is there no record of any follow up action required or taken, but patterns or trends from the findings of reviews cannot be identified. While the Managers Security we spoke to indicated that on occasion they may identify additional training is needed, the lack of documented outcomes of reviews would inhibit more targeted identification of deficiencies.

Even if this information were better documented, there is currently no requirement in the policy and procedure for issues identified as a result of reviews to be disseminated beyond the Manager Security and General Manager in a centre. This is a missed opportunity; information arising from reviews could provide useful information that might identify operational problems such as how movements are being conducted, risk and flash points during the day, which units are unsettled, training needs, staffing issues and so on.

While the policy requires officers involved in a use of force to be offered counselling²¹, there is no requirement for a debrief about what happened. This means there is no opportunity for officers to discuss how the incident was handled and to potentially learn from the incident.

4.2 Lack of data collection and analysis

CSNSW was unable to provide us with information about the numbers of complaints made about uses of force each year, advising this information is not collected centrally.

We also asked for information, statistical or otherwise, on the outcomes of investigations into uses of force referred to the PSC, including deficiencies identified and recommendations made. This information is also not available.

The lack of data collection and statistical analysis about uses of force was criticised by the Use of Force Inquiry conducted by Governor JA Kelly in November 2000. The Inquiry found that:

*Apart from any overview of incidents conducted by the Regional Offices or Correctional Centres, there appears to be no statistical gathering of incidents involving force.*²²

Perhaps in response to this criticism, we are aware that the Strategic Operations Review Branch started conducting annual reviews of incidents involving uses of force in 2001. However, from what we have been able to ascertain, the last review report was produced in October 2004 and not been replaced by anything similar.

¹⁹ Part D Serious Incident Response: Using Force on Inmates page 6

²⁰ Part D Serious Incident Response: Using Force on Inmates page 6

²¹ Part D Serious Incident Response: Using Force on Inmates page 7

²² Use of Force Inquiry November 2002 JA Kelly page 50

The Kelly Inquiry also identified categorisation as a problem, with incidents being grouped into assault and self harm as well as use of force, or categorised based on the reason the force was used or the outcome of the use of force, rather than being identified as uses of force. One of the recommendations of the Inquiry was that the Research and Statistics Branch undertake the collation of use of force information '**as a stand alone statistic**'.²³

From the evidence we have seen the same problems are continuing. We were told a number of times during this investigation that categorisation is a problem. We were told the following incident categories could potentially involve a use of force:

- Assault offender
- Assault offender/use of force
- Assault other person
- Assault staff
- Assault staff/use of force
- Fight
- Fight/use of force
- Self harm offender –actual/use of force
- Self harm offender – threat/assessed use of force
- Use of force

This means CSNSW cannot currently identify with any degree of certainty the number of incidents involving the use of force that occur in its correctional centres and court cell complexes. This prevents analysis of possible patterns, differences between centres, between centres and court cells, identification of high risk locations, high risks times of day and high risk movements and other similar indicators that might provide useful management and operational information.

In addition, while the IRM contains extensive data about all incidents that have occurred across the system, it currently has only a limited capacity to generate reports. While we understand CSNSW is working to extend the IRM's functionality, it seems unfortunate that the IRM's potential in this regard was not recognised earlier.

4.3 Identification of what is an excessive use of force

One of the issues we wanted to understand was how CSNSW assesses if a use of force was excessive. Clause 121 of the Crimes (Administration of Sentences) Regulation 2008 relevantly provides:

- (1) *In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the inmate is to be avoided if at all possible.*
- (2) *The nature and extent of the force that may be used in relation to an inmate are to be dictated by circumstances, but must not exceed such force as is necessary for control and protection, having due regard to the personal safety of correctional officers and others.*
- (3) *If an inmate is satisfactorily restrained, the only force that may be used against the inmate is such as is necessary to maintain that restraint.*

The policy reflects this stating:

Correctional officers must only use the minimum amount of force necessary in any situation. That force must be reasonable and appropriate in the circumstances.

Once an inmate has been satisfactorily restrained, no additional force is to be applied apart from that which is necessary to maintain the restraint. If it is no longer necessary to restrain the inmate, the application of force must stop. The continuing application of force past these points is unlawful.²⁴

²³ Use of Force Inquiry November 2002 JA Kelly page 50

²⁴ Part D Serious Incident Response: Using Force on Inmates page 2

We asked the Managers Security we interviewed how they would define an excessive use of force and what they looked for when considering a use of force. While all referred to the need for the force used to be proportionate to the circumstances, the examples given about what would be considered excessive varied from a non-compliant but calm inmate being moved by the arm after only one warning, to officers kicking an inmate when he was handcuffed and controlled on the floor. While applying force in each of these circumstances would be unwarranted (and it is difficult to see how the conduct in the latter example could be legitimate in any circumstances), this raises questions about the consistency of the threshold applied by different Managers Security to identifying matters which involved unwarranted, excessive, unethical or inappropriate use of force as per the policy.²⁵

There were certainly examples in the uses of force we audited which began with an apparently calm inmate refusing a direction and the response by officers was to use force, matters which were not identified as problematic on review and not referred to the PSC.

Managers Security are not provided with any guidance and/or criteria to use when considering the appropriateness of a use of force, or training about what is expected when they review a use of force. Rather we were consistently told they are expected to rely on their operational and management experience. This leaves open the very real possibility of different managers applying different criteria for judging what is and what is not acceptable. A number of officers we have spoken to have said words to the effect that 'you know a bad use of force when you see one'. Our audit of use of force reports and our complaint handling experience suggests this may be the case where very significant force was used but not in relation to matters where the actual force used was fairly minor but not proportionate to the particular circumstances, where situations were escalated rather than de-escalated or where force continues to be used after the inmate is restrained.

4.4 Adequacy and appropriateness of training in using force

As set out at above, all new recruits must successfully complete a Custodial Primary Training Course and further training is required for officers who want to become members of IATs. General duties officers can nominate themselves or be nominated to do additional training, including the Security and Emergency Procedures Training Course, even if they do not wish to become IAT members.

Court cells officers and transport staff in the Court Escort Security Unit are not required to have any training in using force over and above the basic training for new recruits.

4.4.1 Ongoing training

There is no compulsory 'refresher' or ongoing training for general duties officers in using force. At the request of the General Manager, Manager Security or Training Officer, Field Training Officers or the IAT may provide refresher training in using force on site as part of general ongoing training. These sessions are generally for one to two hours for about 12 officers. While potentially useful, this does not represent comprehensive refresher training for officers who may have done their primary training many years ago.

Not all correctional centres have IATs. In addition, IATs are not necessarily on duty when incidents occur. We were told that if an incident occurs at a centre where there is no IAT or where they are not on duty, there are designated officers who attend who have done the Security and Emergency Procedures Training Course or similar additional training.

It is difficult to reconcile this advice with what we observed in the audit of use of force reports. The number of incidents which were described by the participants as unplanned meant there were many instances where it was the officers on the spot who used force. Backup may have been given by other officers who arrived at the scene subsequently, but the lack of willingness to withdraw and plan, means force was often used immediately. While documentation about a use of force indicates if IAT officers were involved, there was no indication whether, in centres without IATs, other participants were designated officers or not.

We were unable to ascertain with any certainty how much ongoing training is actually done by IAT officers. While the Tactical Training Unit has a database of which officers have done what training courses, IATs report locally to the General Manager of the correctional centre in which they are based. This means any performance issues are managed locally rather than with any central coordination. We understand IATs go off-site for training with other IATs, which allows them to undertake training they could not do locally, but it is unclear what mechanisms exist in CSNSW to ensure all IAT officers attend such ongoing training to ensure their skills are up to date. We examined this issue in more detail in our investigation of the individual use of force.

²⁵ Part D Serious Incident Response: Using Force on Inmates page 6

4.4.2 Content of training

There have been significant changes in the content of training about use of force over the past twenty years. We understand that since the 1990s the content of training has varied from teaching how to apply chokeholds and use pressure points, to teaching a prescribed series of core holds, to the current situation where other than a limited number of practice holds, the emphasis is on officers using their judgement about what is appropriate in a given situation rather than teaching required holds.

Corrective services in some other jurisdictions, including we understand the United Kingdom and New Zealand, perceive that there are benefits in teaching prescribed holds. Officers are not permitted to improvise, they must use these holds. They also train officers to take on particular roles in any given use of force, so in addition to the lead officer, the second, third and subsequent officers know what their tasks are.

We appreciate there are differing views about how feasible this level of prescription is to apply in practice, due to the fluid and unpredictable nature of incidents. However, in the current absence of effective monitoring and investigative procedures to identify systemic as well as individual problems with uses of force, CSNSW cannot know with any degree of certainty whether the training provided to general duties officers and IATs is adequate, or whether changes are needed.

Even in a training regime which attempts to equip officers with the skills to make the best judgement about how to respond to each particular situation, there are clear benefits in telling officers what they cannot do. Currently although choke holds are banned, this is not taught in training. While we appreciate CSNSW takes the view someone should not need to be taught that restricting a person's airways is not a reasonable or proportionate response, failing to state this explicitly leaves open the risk an officer could mount a defence of ignorance if this were tested.

4.4.3 Court Security Escort Unit officers

Officers in this unit operate in environments different to those in correctional centres. In court cells, people may be detoxing, have mental health issues and are often angry at what has just happened in court. Court cells do not have IATs and often have a small number of staff. This means general duties officers are required to use force when the need arises. They also have off-site Managers Security. Despite these differences there is no specific use of force policy and procedure for court cells, rather they 'adapt' the general policy requirements. Despite the challenging nature of the population they are dealing with, court cells officers are not required to attend any training in using force over and above the training all new recruits receive. Many of these challenges also apply to transport officers.

It is important that the requirements for the use of force by the Court Escort Security Unit in court cells and transport reflect the environment in which they are operating and are properly documented.

4.4.4 Negotiation skills

The regulations make clear using force must be a last resort. This is reflected in the policy and procedures and emphasised in primary training, along with the importance of establishing and maintaining communication. A number of the officers we interviewed emphasised the need for staff to have good negotiation skills and identified this as one of the key factors in avoiding uses of force. They emphasised there must be leadership from the top, with Managers Security and General Managers making it clear that avoiding using force is important and that taking time to negotiate is critical.

The use of force incidents we have scrutinised in our complaint handling work and our audit of uses of force strongly suggest that many officers do not attempt to negotiate before using force in circumstances where this would be a practical option. Often there is little more than a direction to comply, which may be repeated, along with a warning that continued non-compliance will result in force being used. This is immediately followed by the application of force.

While the 'Effective Communications' module appears to be designed to equip officers to better communicate with inmates in difficult situations, specific training on negotiations skills in situations where force will otherwise be used could be a useful and effective addition to the training calendar.

4.5 Using force on visitors

There is no separate policy for using force on visitors to correctional centres. The circumstances surrounding a use of force on visitors are very different to those that apply to inmates. The legal and professional relationships are clearly quite distinct, with clause 121 of the Crimes (Administration of Sentences) Regulation having no application. Despite this, such incidents are reported on the IRM as 'uses of force' and seemingly the only applicable policy and procedure is that contained in **'Part D Serious Incident Response: Using Force on Inmates'**.

4.6 Approval of arrangements at privately operated correctional centres

We asked CSNSW to provide us with a copy of all sections of the Operations Manual for Junee Correctional Centre which it had approved concerning uses of force and a copy of all sections of the training program concerning uses of force approved by the Commissioner for delivery at Junee Correctional Centre.

Our examination of each of the versions of the operating manual which had been in place at Junee since January 2008 indicated that they did not contain all the relevant provisions from the corresponding CSNSW policy, yet were approved by CSNSW for use at Junee. The most significant differences between the Junee procedures and those of CSNSW are the lack of a requirement for uses of force to be reviewed and the lack of a procedure about how problem uses of force are to then be investigated.

Officers at Junee as well as at CSNSW were unsure how, if at all, matters are referred from Junee to the PSC and whether, if GEO conducted an investigation, the PSC would review it.

The material we have reviewed and interviews we have conducted all appeared to be predicated on the basis that Junee's operations should be conducted in the same way as other correctional centres in NSW and that CSNSW should have signed off and be fully aware of the procedures at Junee. While it is possible that CSNSW may have intentionally approved procedures that are slightly different to those used in CSNSW, the lack of clarity on both sides about how uses of force at Junee are reviewed and how problematic incidents are investigated was of significant concern.

As a consequence of our inquiries with GEO, officers at Junee also identified that their procedures for storing footage did not comply with CSNSW requirements. The hand held video cameras they had been using operated with memory sticks, which are not permitted under CSNSW's policy, and they had not been maintaining an adequate register for downloaded footage. Junee's willingness to remedy these deficiencies is commendable but it is of significant concern that such discrepancies were only identified as a consequence of our inquiries, not by CSNSW.

Like CSNSW, Junee does not have a policy and procedure for use of force on visitors.

Use of force training

As a Registered Training Organisation, Junee has its own use of force training package that Junee officers trained by CSNSW as Field Training Officers deliver.

The use of force components of what is called the **'Pre Service Training Course'** appear to be somewhat different to those taught by CSNSW. The course appears more prescriptive than that delivered by CSNSW with new recruits to Junee being required to demonstrate competence in specific techniques including a 'gooseneck', 'reverse gooseneck', 'arm lock behind back', 'forward leg sweep', 'reverse leg sweep', 'straight arm bar take down' and 'full nelson'. They are also taught 'pressure point control tactics'. We understand if an officer used a hold which is not one of those taught, it would be queried.

No comment is made about the relative merits and suitability of either the training delivered by Junee or that delivered by CSNSW. What is somewhat surprising is the difference in what is taught. As indicated above, we are aware that there are different approaches to training officers to use force in different jurisdictions and there may be benefits to be gained by examining some of those different approaches. The issue here is rather the adequacy of the accountability and approval processes that CSNSW has in place in regards to Junee and now also for Parklea Correctional Centre.

Chapter 5. Investigation into individual use of force

Our investigation into the overall management of uses of force was concluded in April 2010. The individual use of force we subsequently investigated took place some four months later, in August 2010. The inmate alleged that in the course of attempting to transfer him from one unit to another, correctional officers assaulted him with batons, refused his request to record the use of force on a hand-held camera and imposed sanctions on him immediately after the use of force and subsequent strip search.

It is evident the deficiencies identified in our investigation of this individual incident reflected the systemic failings identified in the larger investigation.

5.1 Response to the incident

Using Force on Inmates policy distinguishes between procedures for managing planned and unplanned uses of force. In planned uses of force several steps must first be taken before force is applied, including:

- **The Senior Assistant Superintendent (SAS) or most senior officer present must attend the scene and attempt to negotiate with the inmate to avoid the use of force.**
- **Where time allows, the SAS must ensure there is at least one hand-held camera recording the actions and conversations of those involved.**
- **The SAS must clear the area of all uninvolved inmates and staff.**

At the time the IAT were called to execute the cell extraction and transfer the inmate to another unit he was confined to his cell. IAT were briefed concerning the inmate's objections to the transfer but failed to prepare for a planned use of force. Having been made aware of the inmate's objections his resistance during the transfer should have been anticipated. A period of negotiation should have preceded the cell extraction and a hand-held camera should have recorded the incident from the outset.

The officer who led the use of force did so by virtue of his senior rank but was at the time a reserve IAT officer usually responsible for supervising inmates working in the officers' mess. In contrast, one of the other officers involved was an identified IAT officer. Several other experienced unit officers were also present but did not become involved in the use of force. The lead officer failed to instruct staff to retrieve the unit camera once the inmate began to resist force, resulting in a critical hiatus in the evidence.

He also failed to direct non-essential staff and the numerous onlookers to leave the area. At the time baton(s) were used there were 13 correctional officers present, yet only five were involved in the use of force. The presence of eight superfluous staff in a confined space during the use of force increased risks of injury to the inmate and staff.

Evidence obtained during our hearing, and in the course of our assessments of other complaints of excessive use of force, suggests this practice of "rubber-necking" is not uncommon.

5.2 Reporting the incident

The Using Force on Inmates policy also prescribes reporting requirements, including:

- **Written reports are mandatory irrespective of the type or amount of force used. Reports must explain why force was necessary. The report must describe in detail the type of force actually applied; it is unacceptable to describe the force used as 'the minimum necessary'.**
- **Staff must not discuss their report or evidence with other staff, and must not show their report to, or allow it to be read by, other staff.**
- **If staff witness a use of force they must submit an incident report.**

The Serious Incident Reporting policy also states the submission of an IRM report does not remove the obligation of staff to submit incident reports.

The degree of detail recorded in subject officers' incident reports ranged from cursory to entirely inadequate. Despite many independently recalling the use of batons during their evidence at our hearings, not one subject officer was able to explain their failure to report it at the time. The lead officer completed an online IRM but failed to submit a separate incident report as required. He also failed to report the use of batons in the IRM.

None of the officers who witnessed the use of force submitted an incident report. There was some suggestion during our hearing this practice is also common. Two officers' incident reports were almost devoid of detail and nearly identical. During the hearing one of the officers admitted having produced both reports, and acknowledged the purpose of minor differences in the reports was to avoid detection.

5.3 Audio-visual recording of the incident

The Using Force on Inmates policy states:

When the use of force is expected or planned or when there is a high potential for conflict, a video camera must be brought to the scene. An example is an inmate who is refusing to comply with a lawful instruction and there is no immediate risk to security, personnel, or other inmates. In that and similar situations, force must not be applied until a video camera is on the scene and recording the actions and conversations of all those involved. This is a requirement even if the area is subject to CCTV surveillance and recording.

The Managing Video Evidence Policy requires camera operators to take the camera to a safe position that still allows the camera to capture the incident.

A hand-held camera was not used to record the incident from the outset. Some time after the inmate resisted force an officer was directed by the unit SAS to retrieve a camera. The officer is seen in the CCTV footage filming the incident at the time the baton(s) were used, but the hand-held camera footage fails to record any detail of it. In our hearing witnesses variously referred to the quality of the footage as not the best, '**terrible**', '**all that does is show the back of someone's shirt**' and '**for the most part worthless**'.

Of great concern was evidence that hand-held camera footage is often not clear and that there had been several other hand-held camera recordings taken at the same centre since this incident that were of equally poor quality. We were told nothing had been done to address the issue on any of those occasions.

CCTV is a critical tool in the effective management of the correctional system. Sufficient CCTV coverage within correctional centres supports good order and security, improves safety for inmates and staff, and is a vital accountability mechanism. Appropriate CCTV recordings also significantly expedite investigations where inmates allege excessive use of force or assault, to the benefit of all involved parties.

The CCTV footage of this use of force is of poor quality. The frame-by-frame recording (as opposed to continuous feed) produces gaps of several seconds, compromising the utility of this evidence. Such evidence ought to be reliable should a correctional officer be subject to accusations of wrong conduct. The poor quality of CCTV footage was cause for surprise and concern to several subject officers during the hearing:

'I'm actually quite surprised how bad it is'

'see as officers...we believe like 'cause we've got all new cameras in the wings and everything we honestly believe it's top notch quality but obviously we're not right'

'you think oh we're on camera we're, we're right'.

The process of extracting CCTV footage to DVD or the hard-drive is also inadequate. We have on several occasions (in relation to other complaints) been advised CCTV footage at this centre had failed to extract to disc. Witnesses including the General Manager gave evidence during our hearings that staff are not competent to effectively operate the current equipment and the security and safe storage of footage is often subsequently compromised.

5.4 Batons

- We have been unable to identify any policies or procedures which instruct correctional officers in the use of batons (technique), authorised uses, or in which circumstances their various uses should apply.
- Whilst implied, the Using Force on Inmates policy does not explicitly instruct staff to report the use of batons, but does for the non-routine use of hand-cuffs, ankle-cuffs and restraining belts.

In evidence during our hearings several subject officers independently recalled the use of batons from the outset. These officers gave inconsistent evidence about who used the batons, how the batons were used, and for what purpose. The remaining subject officers could not recall the use of batons but conceded baton(s) had been used once we screened the CCTV footage and presented photographic stills from that footage.

The CCTV footage shows the use of at least one baton, but the quality is insufficient to conclusively determine which subject officer(s) used the baton(s) or whether the baton(s) struck the inmate. Had the use of batons been reported, and had the hand-held camera operator competently recorded the use of force, there would be no such doubt.

Confusion amongst subject officers continued in response to hypothetical questions regarding when and how batons should be used and consequently reported, revealing widely divergent knowledge and practice: some understood they are required to report the use of batons irrespective of how the batons are used, others understood they are only required to report batons when used as a weapon.

5.5 Training

- All correctional officers undergo pre-placement custodial training at the Brush Farm Corrective Services Academy.
- The Tactical Training Unit, established in 2008, delivers security and emergency procedures-focussed training off-site and within correctional centres.
- All correctional centres have designated training sessions (often half or full days) – some spontaneous, others routine and as frequent as fortnightly.
- The centre's IAT standard operating procedure states *'All staff working within IAT must maintain the currency of all qualifications as required within this position'*.

Of the six full-time subject officers involved in the use of force only one recalled having received any relevant tactical training in the past seven years. The lead officer in the use of force told us he undertook IAT training between eight and 10 years ago with no refresher training since. The hand-held camera operator stated he had never been trained in the use of the device. Some officers told us they had received no post-Academy tactical training since commencing employment with CSNSW more than 12 years ago.

In the absence of policies or procedures in relation to the use of batons subject officers are reliant on their recollection of tactical training for instruction. Such recollections are not likely to be instructive up to a decade after the event. Despite the opportunity to meet these training deficiencies during correctional centre 'training days', we were very concerned to hear evidence that these sessions are generally not being used for this purpose at the centre in question.

5.6 Management review of uses of force

The Using Force on Inmates policy and procedures requires the:

- **Manager Security, General Manager or delegated senior manager to review all incident reports and video footage which recorded the use of force. The outcome of the review and any associated action required must be recorded on the IRM.**
- **General Manager to report unwarranted, excessive, unethical force, or the inappropriate behaviour of any officer involved in the use of force, to the Professional Conduct Management Committee (now PSC).**

There was an acting Manager Security on duty the day following the incident. The only documentary evidence of his review of the use of force was a hand-written entry on a copy of the IRM: **'noted'**. When asked to explain how he conducted the review he could not recall and did not even remember whether he had viewed the CCTV or hand-held camera footage at the time of the review. He acknowledged it was possible he had not viewed any footage prior to finalising his review. He also failed to identify the deficiencies in the reports from officers involved. When asked about this he was pessimistic about the utility of raising deficiencies identified in reviews of uses of force telling us:

'...we employ the people we employ. They do the job they do. How you, how I can make someone do their job properly I don't know.'

It was of significant concern to learn correctional officers are not being managed on the basis that it is too difficult to achieve compliance. The officers involved in this incident were not casual staff, but rather very experienced correctional officers.

The General Manager of the centre was the most senior officer to review the incident, noting on the IRM **'use of force reviewed via CCTV no further action required'**. Having conducted the review, and on the basis of the evidence available to him, he should have:

- Identified the significant discrepancies between what subject officers reported and what the CCTV footage revealed.
- Identified the hand held recording of the use of force was deficient.
- Identified that two of the incident reports were nearly identical.
- Identified that none of the many staff who witnessed the use of force submitted an incident report as required by the Using Force on Inmates policy.

He was also unable during our hearing to reasonably explain why he consequently failed to give feedback and/or counsel any or all involved officers for the issues identified above, or to refer the matter to the PSC as required by policy.

We are not able to conclusively determine given his evidence whether the General Manager simply failed to conduct an adequate review of the use of force and therefore failed to identify the abovementioned issues, or whether he did identify these issues in his review but failed, either through incompetence, negligence, or deliberate inaction, to take appropriate action. Notwithstanding, what is clear is that contrary to his administrative obligations as a senior public official, he took no action at all in relation to the matters described above.

The Using Force on Inmates policy and procedures provide ambiguous instruction regarding whether a Manager Security **or** General Manager is responsible for reviewing uses of force. However, irrespective of whether the General Manager was **required** by policy to review the use of force, he did conduct such a review. Having done so, he was then bound by the policy provisions, and at the least, the professional standards which could be reasonably expected of a General Manager to competently undertake the given task. Similarly, and irrespective of who is **required** to conduct such a review, reviewing officers are required to refer potential misconduct to the PSC.

Chapter 6. Progress of change

6.1 Current situation

Over two years since CSNSW accepted major change was needed regarding how uses of force are managed, little is different in practice. The policy and procedure for using force on inmates is the same one in place when we started our investigation in July 2009. The only change has been a Commissioner's memorandum dated 13 October 2011 requiring details of reviews to be recorded on the IRM. While this is a positive development, there is much more that needs to be done.

Having considered our recommendations CSNSW decided to develop a toolkit for staff to use following a use of force. The toolkit contains forms, templates and check lists for use by officers who have used force or witnessed its use, as well as Managers Security and other senior managers reviewing the use of force. While considerable work has been done by CSNSW developing the toolkit, it is yet to be trialled.

We did not recommend the development of a toolkit, rather CSNSW determined this was the most appropriate way to address some of the deficiencies we identified. We acknowledge CSNSW's view that in order to bring about the cultural change required concerning how using force is viewed by many officers and managers in centres, it was necessary to take a consultative approach to developing the toolkit. CSNSW convened a number of workshops to explore what needed to change and to refine various versions of the toolkit.

We appreciate bringing about cultural change is difficult and that involving staff can be a crucial part of that process. However, this has to be balanced against the need to bring about practical change in a reasonable time, particularly in an environment where staff and inmates are at risk of being injured and where it has been demonstrated that basic checks and balances are being ignored.

While it is possible that some change has occurred on the ground due to officers and managers participating in the workshops to develop the toolkit and some limited training that has been delivered, our complaint handling work suggests the extent of any change is limited. The following are case studies from recent complaints made to our office which suggest at least some of the key deficiencies we identified in our investigation work are continuing:

Case Study

An inmate alleged he had been 'hit' by an officer and passed out during an incident at a correctional centre in northern NSW in November 2011.

We asked CSNSW for copies of any video footage, officer reports and associated documents. CCTV did not capture the initial stages of the incident and handheld video footage only captured the aftermath.

Our assessment of the information provided raised concerns about the type of force used; officer reports indicated the complainant lost consciousness and suffered a seizure after pressure was applied to his head by an officer's knee. The Manager Security's review of the use of force consisted of a brief handwritten note on the front of the incident report indicating no further action was required.

We referred the matter to the PSC making clear our concerns about incident and requested the technique used to subdue the inmate be reviewed by the CSNSW Tactical Training Unit.

Case Study

An inmate complained to us that he had been assaulted by officers at a metropolitan correctional centre in March 2012.

The information provided by CSNSW in response to our inquiries showed that force was used to move the complainant from his cell to another part of the centre following his involvement in an alleged assault on an officer. The inmate initially refused to move so force was used to apply handcuffs and move him. The IAT used a hand held video camera but the video operator reported he noticed at the end of the incident that the camera failed to operate correctly.

The Manager Security's review of the incident consisting of a hand written note on the incident reports that there was only eight seconds of video footage and that he had asked for 'hh camera' in the unit to be reviewed. The General Manager had signed off the front page of the use of force documentation with 'NFA'. During one of our office's routine visits to the centre in April 2012 we asked to view the eight seconds of video which was recorded. The video footage could not be located.

Our assessment of the case identified concerns about what follow up action was taken by senior management of the centre once it was known the camera had failed to operate and the failure to secure the footage that was available. We have referred the matter to the PSC for its consideration.

6.2 What has been done so far

6.2.1 Toolkit

CSNSW has developed a toolkit for staff to use following a use of force. The toolkit contains forms, templates and check lists for use by officers who have used force or witnessed its use, as well as Managers Security and other senior managers reviewing the use of force.

The department proposes to pilot the toolkits at Mid-North Coast Correctional Centre, South Coast Correctional Centre and the MRRC. The pilot is subject to final approval and has yet to commence.²⁶

6.2.2 Policy for the use of batons

CSNSW has developed a new policy on the use of batons. It is included in the Operations Procedures Manual and supported by Deputy Commissioner's Memorandum.

6.2.3 Training needs analysis of the IAT and additional training for IAT officers

A training needs analysis has been conducted and IAT officers requiring further training in the use of force identified. Training had been conducted for IAT officers in November and December 2011 at seven correctional centres across the state.

6.2.4 Review of incident types for capture of information about uses of force

The Assistant Commissioner Security and Intelligence has reviewed the incident types and concluded they are adequate for the purpose of analysing use of force data.

6.2.5 Review of incident types for capture of information about uses of force

We have accepted CSNSW submissions that it will be more appropriate and useful for it to produce monthly reports of statistical data on use of force incidents. These will be available to the CSNSW Executive Committee and on the CSNSW intranet. The reports will include a breakdown of the number of uses of force by various categories, video recording of use of force incidents and reviews of uses of force. The first report is due in July 2012 and will be produced monthly thereafter.

²⁶ Compliance report dated 16 May 2012 from CSNSW

6.2.6 Audit of all CCTV cameras

An audit has been conducted of all CSNSW correctional centres and GEO managed centres. The audit identified where an upgrade of CCTV is required.

6.2.7 Individual General Manager

As part of his Professional Development Program the General Manager was taken out of his role as General Manager for two months and assigned a role at head office. Contrary to our recommendation, he was returned to the position of General Manager before he had completed the program. He has, however, continued to be subject to executive monitoring.

6.3 What is yet to be done

While work has been started on a number of the outstanding recommendation, much remains incomplete. No action has been taken at all on some recommendations. The following is a summary of what remains to be done:²⁷

- No explicit instructions have been given to staff requiring them to report all uses of instruments of restraint.
- There is no requirement that the outcomes of reviews of uses of force are a standing item at senior managers meetings at each centre.
- No detailed guidance and a clearer definition of the distinction between a planned and unplanned use of force has been developed.
- No documented operational guidance for the use of force on inmates in court cells or transport has been developed.
- There is still no policy and procedure for using force on visitors to correctional centres. The most recent advice from CSNSW is that 'The Director Offender Policy Unit is in discussion with CSNSW Legal Branch in regard to whether it is possible to provide more specific guidance'.
- Training is still to be developed about what is required when conducting a review of a use of force and how to evaluate if a use of force was reasonable and appropriate in the circumstances.
- Rather than conduct annual audits of a sample of each centre's reviews of uses of force as recommended, CSNSW proposes to report annually on uses of force in those centres it visits under a program of rolling inspections, or may conduct thematic reviews of use of force at identified correctional centres. However, while the Operational Performance and Review Branch has developed a new suite of Security Standards which will form the basis of the new inspection program, implementation of the standards is still pending.
- While a review of the operation of IATs within Correctional Centres was conducted, CSNSW deemed it inadequate to address our recommendations and it is being re-done.
- A review of current training in uses of force is underway but not yet completed. The initial review was concluded in November 2011 with recommendations being made. All training packages are being re-written with some e-learning modules in first draft.
- A training needs analysis of officers in the Court Escort Security Unit in relation to uses of force and negotiation skills is underway but not completed.
- Additional training in negotiations skills for officers in correctional centres and the Court Escort Security Unit is still to be developed.
- Training for all custodial staff in the use of hand held cameras is still under development.
- While this office has been provided with clarification of how uses of force involving more than one inmate can be reported on the IRM (a separate report for each inmate needs to be put on the IRM), in the absence of a new use of force policy and procedure it is unclear how this has been communicated to centres.
- While an audit of CCTV cameras has been conducted, rather than take action within three months to replace faulty equipment and software as we recommended, CSNSW has advised repairs and upgrades will be prioritised in a state-wide five year minor works program. We also remain concerned that CSNSW appears to be satisfied with the guidelines and standards it uses to benchmark CCTV camera in correctional centres in NSW. Not only does this impact on the quality of the footage with the corresponding limitations on its usefulness, but there is no planned maintenance program or storage arrangements, with how long footage is kept varying from centre to centre.

²⁷ From CSNSW compliance report dated 16 May 2012

Appendix 1. Relevant legislation

Crimes (Administration of Sentences) Regulation 2008

121 Use of force in dealing with inmates

- (1) *In dealing with an inmate, a correctional officer may use no more force than is reasonably necessary in the circumstances, and the infliction of injury on the inmate is to be avoided if at all possible.*
- (2) *The nature and extent of the force that may be used in relation to an inmate are to be dictated by circumstances, but must not exceed such force as is necessary for control and protection, having due regard to the personal safety of correctional officers and others.*
- (3) *If an inmate is satisfactorily restrained, the only force that may be used against the inmate is such as is necessary to maintain that restraint.*
- (4) *Subject to subclauses (1)–(3), a correctional officer may have recourse to force for the following purposes:*
 - (a) *to search, where necessary, an inmate or to seize a dangerous or harmful article,*
 - (b) *to prevent the escape of an inmate,*
 - (c) *to prevent an unlawful attempt to enter a correctional centre by force or to free an inmate,*
 - (d) *to defend himself or herself if attacked or threatened with attack, but only if the officer cannot otherwise protect himself or herself from harm,*
 - (e) *to protect other persons (including correctional officers, departmental officers, inmates and members of the public) from attack or harm, but only if there are no other immediate or apparent means available for their protection,*
 - (f) *to avoid an imminent attack on the correctional officer or some other person, but only if there is a reasonable apprehension of such an attack,*
 - (g) *to prevent an inmate from injuring himself or herself,*
 - (h) *to ensure compliance with a proper order, or maintenance of discipline, but only if an inmate is failing to co-operate with a lawful correctional centre requirement in a manner that cannot otherwise be adequately controlled,*
 - (i) *to move inmates who decline or refuse to move from one location to another in accordance with a lawful order,*
 - (j) *to achieve the control of inmates acting in a defiant manner,*
 - (k) *to avoid imminent violent or destructive behaviour by inmates,*
 - (l) *to restrain violence directed towards the correctional officer or other persons by an uncontrollable or disturbed inmate,*
 - (m) *to prevent or quell a riot or other disturbance,*
 - (n) *to deal with any other situation that has a degree of seriousness comparable to that of the situations referred to in paragraphs (a)–(m).*
- (5) *Subclause (4) does not limit the operation of any law with respect to the force that may be used to effect an arrest.*

122 *Use of equipment for restraining inmates*

- (1) *With the concurrence of the general manager, a correctional officer may use handcuffs, security belts, batons, chemical aids and firearms for the purpose of restraining inmates.*
- (2) *With the concurrence of the Commissioner, a correctional officer may also use the following equipment for the purpose of restraining inmates:*
 - (a) *anklecuffs,*
 - (b) *such other articles (other than chains or irons) as may be approved by the Commissioner for use for that purpose.*

123 Report on use of force

- (1) *Any correctional officer who uses force on an inmate must immediately furnish a report about the use of force to the general manager.*
- (2) *The report:*
 - (a) *must be in writing, and*
 - (b) *must specify the name or names of the inmate or inmates and the name or names of the correctional officer or correctional officers involved in the use of force, and*
 - (c) *must specify the location where the use of force occurred, and*
 - (d) *must describe the nature of the force used and the circumstances requiring its use, and*
 - (e) *must be signed by the correctional officer involved in the use of force.*
- (3) *This clause does not require a correctional officer to furnish information in a report if it is impossible or impracticable for the officer to obtain the information.*



NSW Ombudsman
Level 24, 580 George Street
Sydney NSW 2000

General enquiries: (02) 9286 1000
Toll free (outside Sydney Metro Area, NSW only): 1800 451 524
Tel. typewriter (TTY): (02) 9264 8050
Facsimile: (02) 9283 2911
Email: nswombo@ombo.nsw.gov.au

www.ombo.nsw.gov.au