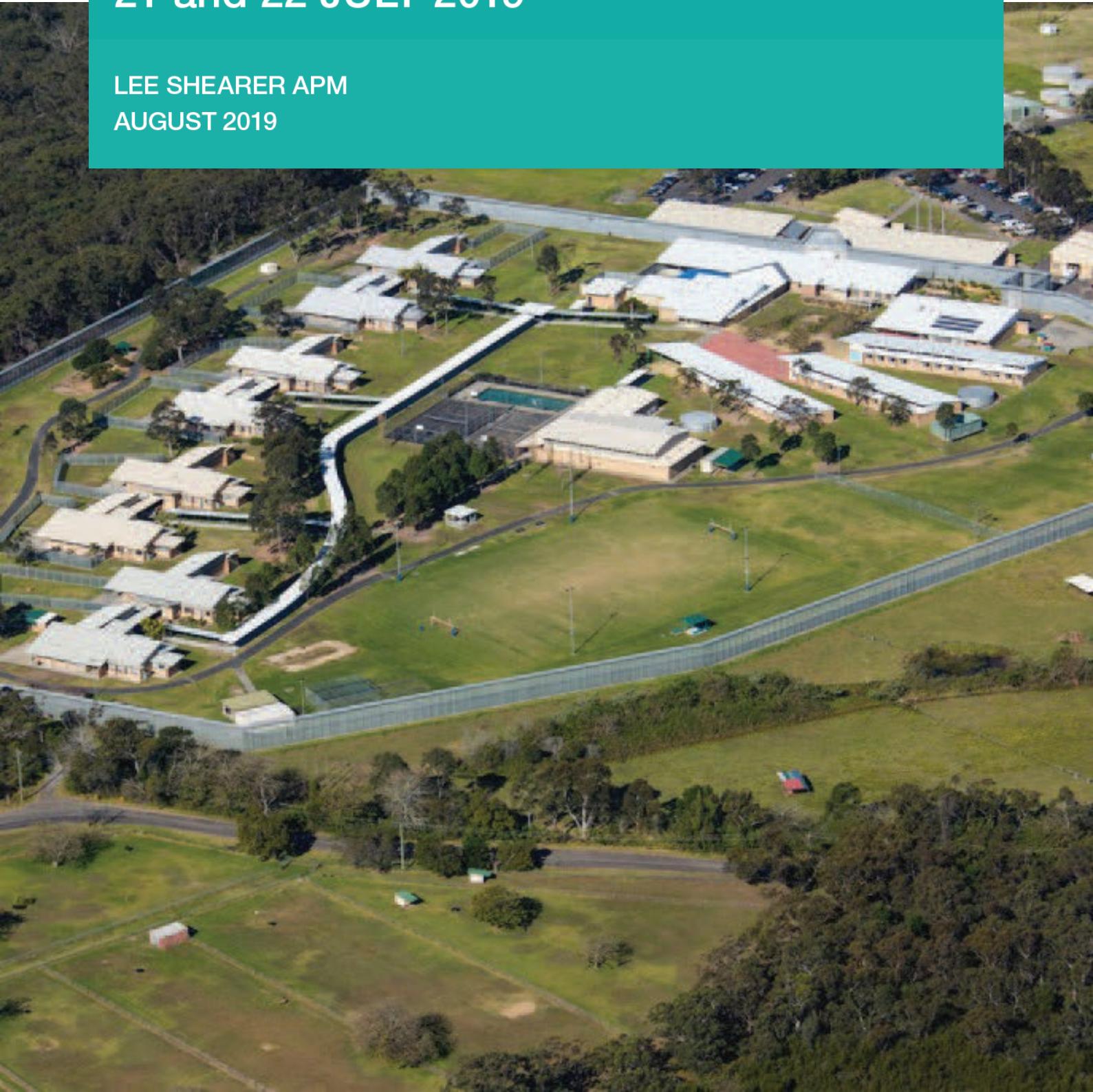


Sections of this document have been redacted by the NSW Department of Communities and Justice for security reasons, and so as not to prejudice the conduct of court proceedings.

MINISTERIAL REVIEW INTO THE RIOT AT FRANK BAXTER DETENTION CENTRE 21 and 22 JULY 2019

LEE SHEARER APM
AUGUST 2019



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Foreword

I am pleased to present this Ministerial Review into a serious incident that occurred at the Frank Baxter Youth Justice Centre on 21 and 22 July 2019.

Within the constraints of a four-week review, we have met and interviewed or tele-conferenced with more than 90 members of staff, detainees and stakeholders of Youth Justice in NSW. All staff across Youth Justice were also offered the opportunity to write to me personally to share their views and I am pleased 37 staff took the opportunity to send messages and information.

We spoke with those responsible for Youth Justice Justice in Victoria, South Australia and New Zealand and reviewed hundreds of pages of documents and research materials. Site visits to the Frank Baxter (see Appendix 1 for an aerial view of this centre) and Cobham (see Appendix 2 for an aerial view of this centre) Youth justice Centres allowed us to observe Detention Centre operations, discuss operating procedures and review CCTV footage from the July incident and other incidents involving assaults on staff and detainees.

A visit to the NSW Government's Forensic Hospital, a 135-bed high-security mental health facility for patients who have been in contact with the criminal justice system, was also instructive. We discussed with patients and specialist adolescent psychiatric staff from NSW Department of Health the issues in caring for adolescents with acute mental health conditions in detention.

Participants were highly engaged in the process, which clearly indicates the significant level of interest this review generated. It also demonstrated the level of passion and commitment to the welfare of juveniles who come into custody and are detained. The dedication we witnessed is supported by a wider juvenile support platform that displays significant success diverting young people from the criminal justice system. This success needs to be acknowledged and built on where opportunities allow.

It would be incorrect to assume the Youth Officers who have the most day to day interactions with detainees are only concerned about their personal security, and therapists or other stakeholders are only concerned about detainee welfare. All parties recognise they need a safe and secure environment for detainees and staff. To this end, it was striking in the interviews that there was unanimous agreement changes need to be made. Views diverge about the types of change required.

From the evidence I have seen, the very best way to manage juveniles in detention is with the least amount

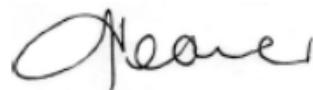
of restriction and to 'keep them busy' in a productive environment. The desired goal for the system should be the majority of detainees which are classified as low to medium risk are managed with reduced restrictions and are actively engaged. This must be the goal going forward for low to medium risk detainees. The present dispersement model, which distributes high risk detainees across the general population within Cobham and Frank Baxter Detention Centres, does not allow for the desired goal for the majority to be implemented and presents significant risks. The dispersement model is a key factor in current problems being experienced within the Centres.

The Youth Justice custodial system is under such strain all parties suffer due to the extreme and often violent behaviour of a small but recalcitrant group of detainees who consistently require the attention of the staff from the units. Additionally I am concerned about the lack of goodwill which is able to be built and maintained between some staff, leaders and detainees given the constant conflict in the system.

While the review recognises our Detention Centres have many successes, it is very clear the current levels of assaults occurring on detainees and staff cannot continue. The review has identified the need for changes to the operating model for Youth Justice Centres, infrastructure improvements, the need for consistent policies and procedures, and significant reform required around people and culture.

The recommendations of this review are intended to ensure every opportunity is afforded to all young people in custody, even the most violent and difficult. The recommendations are intended to strike a realistic balance between therapeutic programs and custodial practice that optimises a safe and secure environment for detainees, staff and the community.

I appreciate the level of honesty, patience and co-operation of all those involved, and I thank them for their invaluable contributions. I understand not all participants will agree with the views expressed in this report. I need to be clear this is not a 'set and forget' model and there will always need to be agile and continue to evolve policy. If we are to recruit the very best staff to help the most vulnerable cohort of young people we have an obligation, both legally and morally, to keep them safe.



Lee Shearer APM

Terms of Reference

The Honourable Gareth Ward, NSW Minister for Families, Communities and Disability Services, asked me to conduct an independent review and provide a report on ‘the incident’ and related matters. The Terms of Reference for the independent review are:

- Review security policies and procedures applied by the Department to manage the Baxter DC to ensure safety, including availability of suitable equipment and the security of items such as keys, lanyards, doors, storage areas, access to fire extinguishers, storage areas and work sheds.
- Review policies and procedures applied by the Department concerning the placement and/or movement of detainees within the Baxter DC, for their own or others safety and for the good order of the centre.
- Review the effectiveness of Communities & Justice’s Immediate Action Team, emergency management, Workplace Health and Safety and other systems to ensure the safety of staff and detainees.
- Review the training and supervision strategies applied by the Department at the Baxter DC to ensure sufficient and appropriate staffing to meet the needs of detainees and others.
- Consider relevant standards and manuals used by NSW Government in the administration of Detention Centres.
- Make recommendations on the measures the Department can implement to minimise the risk of future detainee related disruptions at DCs in NSW to ensure the safety of staff and detainees.

Executive Summary

This review into a serious incident ('the incident') at the Frank Baxter Youth Justice Centre on 21 and 22 July 2019 consulted more than 100 members of staff, detainees and stakeholders of Youth Justice in NSW, and international and interstate practitioners in the field.

While there is uniform passion and expertise for their field, and much to commend in the NSW system, views on required changes to ensure safe environments for detainees and staff diverge greatly.

While ongoing police and court actions limit specific comments about the 'incident', it is clear it was sparked and exacerbated by not one particular stressor but ongoing issues, procedural and leadership failures, some of which can be rectified quickly.

The Youth Justice custodial system is under strain placing all parties, particularly detainees and staff, under duress. This is heightened by the extreme and often violent behaviour of a small but recalcitrant group of detainees. Staff noted the level of violence during 'the incident' was unprecedented at that site. The State has an obligation under law, to eliminate if not reasonably practicable reduce, the current increasing levels of assaults experienced by detainees and staff.

The review has identified the need for changes to the operating model for Youth Justice Centres, infrastructure improvements, the need for consistent policies and procedures, and significant reform required around people and culture. Many of these changes, particularly to infrastructure and introduction of specific Incident Response Teams, are relatively simple and will immediately improve the safety of all while reduce ongoing damage and insurance costs.

While early intervention and rehabilitation of juvenile offenders has been shown to be broadly successful, it leads to a higher concentration of juveniles entering custodial institutions which have been unable or are unwilling to rehabilitate and present a serious risk to themselves, other detainees and custodial staff. The management of high-risk detainees, particularly their dispersement through the general population, is a key issue that demands immediate attention.

This review makes more than 60 recommendations. They include the introduction of a new classification, A1(ob), to identify detainees who have committed serious offences and have significant behavioural issues, practical improvements at the Frank Baxter Centre, procedural improvements and the establishment of a dedicated Incident Response Team for centres holding high risk detainees.

Many issues worthy of attention but beyond the scope or timing of this review were raised during consultation. They are listed in the review.

Matter subject to review – the July incident

As the disturbance at Frank Baxter Youth Justice Centre is now the subject of Police investigations and possible court action, this review will not comment on any specific allegation or activity, nor on the operational management of the incident by the NSW Police.

This report's aim is to assess the safety and security of detainees and staff during such an incident and provide future guidance, in the context of what took place on the night.

Youth Justice staff prepared and provided the review with the timeline of alleged events on 21 and 22 July 2019. I viewed security camera footage of parts of the event. Additionally, I spoke to a number of staff and detainees who were at the centre during the incident. Some staff also made written submissions to the review on these and other matters relevant to Youth Justice NSW, including earlier serious disturbances at the Frank Baxter Detention Centre.

The incident began Sunday 21 July 2019 when a number of detainees at the Frank Baxter Centre at Kariong NSW caused significant disruption, including alleged assaults on detainees and staff (some resulting in serious injuries) and substantial damage to the Centre.

The incident concluded on Monday 22 July 2019 following an intervention by specialist units from the NSW Police Force.

The Frank Baxter Detention Centre comprises a number of buildings including the residential units (Boudji, Peat, Tasman, Nurranga, Katandra, Elliot, Strickland and Penang) and amenities buildings including administration, kitchen, educational, recreational, Chapel and storage sheds.

The incident commenced at about 7:57pm on 21 July 2019 at the end of the southern corridor of the Katandra unit (marked as the South Retreat on Appendix 3) when a group of detainees came together and became agitated. The group were all male, and were aged and classified as follows:

1. Aged 17, classified A2
2. Aged 17, classified A1b
3. Aged 17, classified A1b
4. Aged 17, classified A1b
5. Aged 16, classified A2
6. Aged 18, classified A1b
7. Aged 16, classified A2

This section is redacted by the Department so as not to prejudice the conduct of court proceedings.

The review has been advised Police were on site by about 8.45pm and took command of the site soon after. Over the following hours the Police brought in specialist units to support their activities. A group of detainees took to the roof of a Unit after the arrival of the Police.

Police then managed the incident with Police negotiators progressively securing individual detainees involved in the incident. At 5:22pm on 22 July 2019 the remaining detainees were secured, searched and placed in secure rooms - finalising the incident.

Given the current ongoing investigation, it is not appropriate to provide further details about the incident. The most concerning outcome from the night is six detainees were hospitalised and one staff member was injured and has subsequently had surgery to address the injury incurred. [REDACTED]

This section is redacted by the Department for security reasons.

Images of some of the damage done to the Strickland Unit during this incident are included at Appendix 6 and 7.

My review found that on the night of the incident:

- some operational practices were not followed, which may have contributed to the incident occurring;
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- some of the detainees involved had previously been involved in a significant incident in the Penang Unit in June (see Appendix 4 and 5) but they had come off Detainee Risk Management Plans (DRMPs) put in place to manage their behaviour after that incident.

Furthermore, a number of issues that had accumulated for a period of time contributed to the incident. They include but are not limited to: inconsistency in how units and detainees are managed; frequent deviations from programs; very limited monitoring or tracking of issues to identify ongoing problems; and limited consequences for poor behaviour by detainees.

These are systemic issues in the management of Frank Baxter and other Youth Justice NSW Centres.

These comments are not directed toward any individual or team. This Review recognises that on the evening a number of staff were exceptionally brave and placed concern for other detainees and colleagues before their own safety. Also, some detainees put their personal safety at risk to help other detainees. While this is admirable, the failure in a number of systems and processes that led to the situation developing was unacceptable given the legislative duty of care of the State to protect both staff and detainees.

Many staff commented they believe the extreme level of violence on the night has never before been seen at Frank Baxter Detention Centre. Now it has occurred it should be used as the platform to build the system, policies, procedures, resources and general operating framework to prevent a reoccurrence within the State's Youth Justice custodial system. The lessons from this event must be used objectively to inform the change, which is clearly required to avoid the risk of further harm to staff and detainees.

Context

The management of detainees in these centres is complex and challenging for all involved. Information provided by the Department and other sources provides relevant context to that challenge:

- The six Youth Justice Centres across NSW (Cobham, Frank Baxter, Reiby, Riverina, Acmena, and Orana) have 460 beds.
- Frank Baxter and Cobham Centres are the largest and, according to Justice Department documents, have 120 beds for detainees. Both Centres accommodate male detainees, with Cobham taking them from age 15, Baxter at 16 and both able to accommodate them until they are 21 and 6 months.
- Reiby has 70 beds and primarily accommodates female detainees and male detainees under 16. It also has the Waratah pre release program that can accommodate up to 10 young people that are over the age of 16.
- The remaining three centres are regionally based for detainees on control or remanded in custody.
- Reiby is the only Centre accommodating female detainees for longer periods. The other five centres house female detainees for short stays when required.
- The annual net cost of service of these facilities is approximately \$100 million.
- As at 1 August 2019, 245 young people were detained across these six centres.
- While the detainee population is constantly changing, reports find 68% of detainees have experienced neglect or abuse.
- 28% are reported to have experienced extreme neglect or abuse.
- 47% of detainees identified as Aboriginal, a very significant over-representation relative to the general population.
- Rates of youth crime have fallen across Australia but the percentage of young people in detention who demonstrate a high or medium/high risk of reoffending has increased from 44% in 2010/11 to 74% in 2017/18.

- The review was informed a more concentrated and recidivist cohort of youth are now in Detention Centres, consequently there is need to review the approach to managing current detainees¹.

The 2015 *Young People in Custody Health Survey*² reported on the health of detainees in NSW Detention Centres in 2015, and identified the following:

- 84% of detainees had been in custody at least once before, with an average of 5.3 times.
- The average age of first custody was 15.1 years, although the average age of first custody for Aboriginal detainees is 14.6 years, compared to 15.6 years for non-Aboriginal detainees.
- Detainees suffered from a range of disorders, the most common being attention and behavioural disorders (59%), substance-related disorders (58%), alcohol-related disorders (34%), and anxiety disorders (25%).
- 48% of detainees reported exposure to at least one traumatic event, with the average rate of exposure for female detainees being three times that for male detainees.
- Average full-scale IQ score was 78.7, within the ‘borderline’ range of ability. One in six detainees scored in the ‘extremely low’ range of ability, indicating a potential intellectual disability. Only 2.2% of the general population fall in this range.
- 94% of detainees demonstrated reading comprehension difficulties, with 75% of that segment demonstrating severe reading comprehension difficulties.

¹ Payne J, Brown R & Broadhurst R 2018. *Where have all the young offenders gone? Examining changes in offending between two NSW birth cohorts*. Trends & issues in crime and criminal justice no. 553. Canberra: Australian Institute of Criminology. <https://aic.gov.au/publications/tandi/tandi553>.

² 2015 *Young People in Custody Health Survey: Full Report* Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, 2017 www.justicehealth.nsw.gov.au/publications/2015YPCHSReportwebreadyversion.PDF

Incidents and assaults

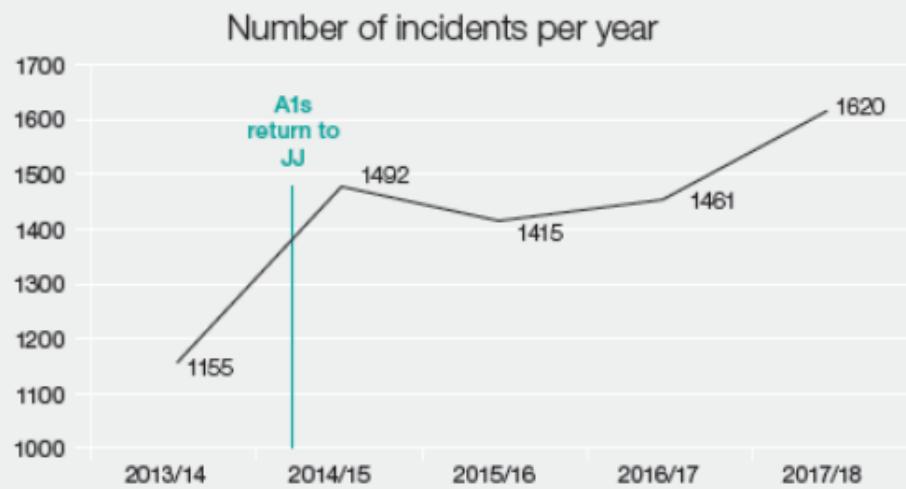
During 2018, 740 incidents of physical assault, 604 incidents of self-harm and 172 listed security breaches were recorded across the system.

According to the Youth Justice strategy papers, in an environment of “*declining custodial numbers, reported incidents within juvenile justice centres have increased over the past five years. As shown below, there was a 10% increase in incidents between 2016/17 and 2017/18 (1461 to 1620). This increase was across all incident areas (e.g. self-harm and staff assaults) with the exception of property damage, which went down. It should be noted that a minority of detainees account for a disproportionate number of these incidents.*”

In the figure below, the green line between 2013/14 and 2014/15 indicates the closure to juveniles of the Kariong Correctional Facility and subsequent high risk detainees returning to JJNSW general custody.

The increasing number of incidents includes significant increases in self-harm. These issues, along with staff assaults, need to be addressed.

Juvenile Justice NSW incident trends



Source: PSA submission to review 2019 pg 9

Impacts on staff

In the last 12 months there have been 121 assaults on staff by detainees, with all matters being referred to Police unless the staff member involved asked they not be referred. Seventy-one of these incidents took place at Cobham and Frank Baxter Youth Justice Centres. The high numbers of assaults taking place at all Centres confirms the significant amount of personal risk front-line operational staff face in their workplace.

It is concerning a policy is not put in place where criminal acts are committed an immediate referral is made to the Police. I understand ordinarily the views of victims of crime are important however these acts are being committed in a workplace and placing the onus on the staff to make the decision about referral to Police. This places staff in a challenging position where they are also required to build productive relationships with these detainees on a day to day basis. If the policy is set then everyone is obliged to follow the policy. Police can make their own determination, based on NSW DPP guidelines and the *Young Offenders Act 1997* on whether a matter should be prosecuted and this will include the views of the victim but also balances, *inter alia*, the public interest.

Another systemic issue is the number of staff on worker compensation claims, many of which come from staff being assaulted or trying to restrain or prevent physical altercations between detainees. Between 1 January 2016 and 31 July 2019, 658 claims for workers compensation were lodged against the Workers compensation policy. We also heard of a number of staff being moved into new roles due to their inability to continue working in a front-line role.

The use of force

According to a report published by the NSW Inspector of Custodial Services, use of force incidents at Frank Baxter and Cobham Detention Centre have increased year-on-year from 2015/16 years³.

JDC	Count of Use of Force		
	2015-16	2016-17	2018-19
Frank Baxter	313	367	406
Cobham	347	536	589

Damage and repairs

The cost in repairs and maintenance for the six centres for the past three years has been just over \$21.275 million. This number includes planned work required for the general good order of these facilities repairing damage caused by detainees. I understand that the repair bill for detainee damage is at a significant proportion of the unplanned repairs and maintenance budget.

Repairs and maintenance costs at Frank Baxter over the last three years have totalled \$5,114,957 and, in the first nine months of the 2018/2019 financial year, approximately \$480,000 of unplanned repairs and maintenance had to be carried out at this facility.

Over the same three-year time period 140 insurance claims were lodged for malicious damage across all centres. The claims totalled just over \$4 million and approximately \$1.6 million was paid out. The cost of incidents and impacts on the physical structures are significant. The June incident at Frank Baxter left a repair bill of \$175,000 and two units are yet to be returned to service. The final bill for the July incident is forecast to be around \$1.5 million, with units out of operation for many months.

³ 2018 Use of force, separation, segregation and confinement in NSW juvenile justice centres, Inspector of Custodial Services NSW (p.59) – www.custodialinspector.justice.nsw.gov.au/Documents/use-of-force-seperation-segregation-confinement-nsw-juvenile-justice-centre.pdf

Issues raised during interviews

- Management of high-risk detainees – dispersed vs separated.
- Youth Justice has operated a model where units in detention centres utilise a mixture of security classifications. The review found the dispersed approach has unintended consequences for detainees and staff.
- Gaps created for proper management of high risk A1(b) detainees since the closure of the Kariong Juvenile Correctional Centre (administered by Corrective Services NSW) and the Chisholm Behavioural Program.
- Lock-down periods – too long vs too short, or should not occur at all
- Therapeutic approach with a reduced focus on security vs a security focused approach with a reduced therapeutic focus (n.b. all participants interviewed agree a therapeutic approach is required for managing juveniles in custody).
- Security of institutions vs less secure institutions.
- Biometrics and remote electronic shutdown vs key system.
- Infrastructure suitability.
- Properly designated high-risk units that are adequately resourced.
- Incident Response Capability.
- Emergency Management procedures.
- Significant detainee and workers' exposure to violence – WHS management.
- Support for front-line from management.
- Inconsistent leadership.
- Inconsistent application of policy and procedures.
- Bullying in the workplace.
- Reviews and restructures not being progressed in a timely manner.
- Use of Force investigation timeframes.
- Suspension of officers without pay.
- Development of operational policy without front-line input.
- Implementation of operational policy often with minimal or no training.
- Sharing and implementation of best practice.
- Inconsistency in application of routines and rules.
- Use of intelligence in managing institutions.
- The use of incentive schemes in rewarding achievements and good behaviour but not accounting for reversion to poor behaviour.
- Lack of consistency in the management of Detention Centres and Units within Detention Centres.
- Siloed decision-making across Regions, Centres and Units.
- Segregation and separation of detainees.
- Classification system – statutory presumption that classes will be separated.
- Setting standards for detainee behaviour and clear consequences of breach of those standards.
- Inconsistent use and application of the Use of Force Policy.
- Large casual and temporary workforce.
- Agency restructure ongoing for 3 years, leading to acting Managers at most Management levels.
- No Senior Executive staff outside Henry Deane Building.
- No Managers regularly on site on weekends, only on call.
- Removal of a level of management and leadership from units (Assistant Unit Managers) and replaced with Case Officers.
- Level of Centre Manager at Cobham and Frank Baxter.
- Lack of training in emergency management.
- Lack of consistency in training YOCS teams in incident response.

- Lack of consistency in use of YOCS teams.
- Separation from Corrective Services NSW – joint training, sharing best practice, assistance to resolve incidents.
- Inconsistent use of s.28 of the *Children (Detention Centres) Act 1987* to transfer detainees aged over 18 years from a Youth Justice centre to an adult correctional centre.
- Phone calls – limited vs unlimited.
- Recruitment policy and procedures – are the right people being recruited to front-line roles?
- Large volumes of reviews commenced and not completed.
- Length of time workers are out of the workforce on workers compensation before a decision is made on their future, which allows a permanent position to be filled (two years).
- No proactive management making Centres safe despite physical assaults increasing year on year.

NOTE: These are consistent themes raised during the review and given the limited time, further work will need to be conducted on some of the issues to test the information.

Review Findings

I have been grateful for the assistance provided by the Executive of Youth Justice NSW and the access to information I was allowed given the limited time I have had to conduct this review,

I met and interviewed, or teleconferenced, with more than 90 members of staff, detainees and stakeholders of Youth Justice in NSW. All staff across Youth Justice were also offered the opportunity to write to me personally to share their views and I am pleased 37 staff sent me messages and information. The issues raised were consistent across, and within, Detention Centres. I was pleased I was able to speak to staff covering all levels and duty type.

Managing juvenile offenders

The NSW Government is committed to reducing reoffending (see Premier's Priority #6) and is directing resources and programs to achieve this goal. Ongoing intervention with identified Juvenile offenders which remain in the community is proving successful and results achieved over the last few years are impressive in many respects.

This review also recognises the significant challenges faced by the Department with the closure of the Kariong Juvenile Correctional Centre and the Chisholm Behaviour Program in 2016. It is also important to recognise the effective management of Juvenile offenders in detention is fundamental to achieving the Premier's target of reducing recidivism amongst adults and successfully diverting a vast majority of juveniles away from, or out of, the justice system in a timely manner.

What is clear from our research and from other inquiries is Youth Justice NSW is managing what has been described as the 'pointy end of the pointy end'. When a system is geared towards diverting most juvenile offenders away from detention and has been successful in achieving that goal, it means the juveniles who are in custody are going to be the most challenging to manage. NSW is no different to other Australian/New Zealand jurisdictions in this regard.

A minority of juvenile offenders come into Detention Centres with particularly complex and challenging needs. It needs to be recognised that some, albeit a small minority, are not motivated to rehabilitate, have been through many diversion programs/services, and are, at times, extremely violent. This cohort is generally male, over 16 years of age and frequently have the physical attributes of grown men.

The outcomes of this review seek to strike a balance between the objects of the Act⁴ and the statutory functions of the Secretary. On the one hand, providing the very best environment for juvenile detainees to rehabilitate and progress to a life in the community without committing criminal acts and, on the other hand, ensuring Detention Centres are safe for detainees and staff.

Leadership

Significant reform to an organisation or service delivery is difficult. Its complexity is not always appreciated by people who have not undertaken contested reform. It frequently involves resolving challenging issues, particularly in the delivery of some public services and around workplace culture

The issue becomes even more problematic when the people who are being led through the reforms do not follow. This can be due to a variety of reasons, including intractable attitudes, staff not believing in the reform and simple intransigence. It is likely there are staff within Youth Justice NSW who fit all these categories.

What is clear from all the interviews and interactions I conducted this should not be said about the motives of the majority of staff. The leadership of Youth Justice NSW needs to constantly ensure they are genuinely listening to all contributions, even the unexpected or conflicting contributions. It should be remembered frequently people who will not follow reform may have formed the view the reforms are not practical, effective or being well implemented. This is a particular problem which you overlay the increase in physical assaults being experienced by staff in Youth Justice NSW.

⁴ 2018 Use of force, separation, segregation and confinement in NSW juvenile justice centres, Inspector of Custodial Services NSW (p.59) www.custodialinspector.justice.nsw.gov.au/Documents/use-of-force-seperation-segregation-confinement-nsw-juvenile-justice-centre.pdf

One overwhelming conclusion is a large section of the operational staff, including therapeutic providers, are completely disengaged. Some perceive their skill set does not fit into the therapeutic model, while others believe a greater level of security is required. There is a widespread view that front line staff have no voice.

It is very apparent **across all groups**, with few exceptions, that most feel if a view is expressed that is different to management, they are not engaged in further discussions. The volume of complaints made during this review clearly demonstrates this is not just the position of a few disenfranchised staff. A genuine connection with front-line staff must be made urgently because these staff are the key to managing the current risks.

Good leadership is essential to manage any organisation, particularly organisations under the scrutiny and stressors of juvenile custodial institutions in contemporary Australia. The qualities of good leadership include honesty and integrity, ability to inspire others, ability to bring people along with their vision, accountability, delegation and empowerment, empathy and respecting the contributions of others. Given the sheer volume of disengaged staff who participated in this review, it is clear there is a failure of leadership at a number of levels.

Some staff believe there has been a disempowering of the front line workers through structural changes. These staff cited the removals of key of key front-line local management positions. It appears a decision was made to reduce the number of Assistant Unit Managers, and replace them with case officers. This role assisted Unit Managers in the management of an often complex and mixed cohorts of detainees. It was unexpected, given the complexity of the business and volume of staff at particularly Frank Baxter and Cobham Detention Centres, to be informed the most Senior Leadership role (Centre Manager) is equivalent to a grade 11/12. The level of skill and experience required to run these two large Centres requires urgent review.

The Senior Executives in this particular delivery arm of Youth Justice NSW are all centralised in Sydney. Having all the senior leadership located in a Central Sydney office needs to be urgently reviewed.

The various level of leadership in Youth Justice requires a level of skill and experience required to manage the operation. As already stated, these Detention Centres, particularly Cobham and Frank Baxter, are managing juvenile offenders who have particularly complex and challenging needs and leadership levels need to reflect this complexity.

Furthermore at Frank Baxter Youth Justice Centre on most nights and over the weekend the Duty Manager is not always a Centre Manager or Assistant Centre Manager, is frequently on call and does not always personally attend the Centre. Leadership requires being visible and present when key decisions need to be made. In this demanding environment visible leadership is frequently required during the night or over the weekend.

Policy of dispersement of detainees

The current model of dispersement of the highest risk cohort of juvenile detainees (mainly A1(b) classification) across the general population of Frank Baxter and Cobham Detention Centres has not proved to be a successful strategy for managing the risk and safety of staff and other detainees.

The lack of ability to manage the cohort with a higher level of security demands is directly linked to the year-on-year increase in physical assaults. As a general principle, the underpinning philosophy of the therapeutic model of treatment is sound and should be maintained. However, when it is clear a detainee's behaviour is violent and that person is not responding appropriately, there must be a higher security overlay in place.

During this review, we spoke to a number of detainees and an Aboriginal man (who shall be referred to as 'Joe') approached me. Joe told me he was sentenced to a number of years in custody for a serious indictable offence when he was 15 years of age. Since completing his sentence in a juvenile detention centre 'Joe', now in his late 30s, has not returned to any custodial institution. 'Joe' is proud to tell people he is a success story and he openly credits the 'system' for providing him the opportunity to be successfully reintegrated into the community, gainfully employed and with a thriving family of his own. He and his family should be very proud of his achievements.

The message from the detainees and ‘Joe’ was clear and simple. There comes a time when even juvenile detainees need to make the choice of which path they will take in their life. The system has the obligation to ensure it provides an environment that is safe, secure and provides the opportunities to make informed choices.

The other message from ‘Joe’ and the other detainees is it is easier to follow the informal detainee leaders than go down the path of rehabilitation. This can be a reflection of broader society. Detainees told me how they are constantly threatened by the ‘bullies’ while in custody. Additionally, detainees who do not submit to intimidation in custody can face consequences when they leave the institutions as they are often known outside the custodial environment.

An example of how the ‘bullies’ work is the stand over tactic used on other detainees with the use of the telephone in each unit. Previously, detainees were limited to 7 phone calls in any one week. This practice was amended to allow unlimited phone calls but with no increase in the numbers of phones available. Less dominant detainees have been observed foregoing phone calls because they are bullied by the more dominant detainees monopolising the available phone. This leads to frustration although it also penalises the detainees who are not strong enough to stand up for themselves, depriving them of contact with their family.

The review heard of how detainees are picked on by other detainees, including by intimidation and direct threats as they walk through the Centre. Vulnerable detainees have their good behaviour reward ‘buy-ups’ removed by aggressive detainees. In an environment of violence towards staff and detainees, it is unsurprising a culture of anxiety and submission to domineering personalities pervades the Frank Baxter Detention Centre.

Presently, the system is so challenged and dysfunctional it is not providing the type of environment that is safe for some detainees to make informed choices about proper participation in programmes, school and behaviour.

Whilst there are always exceptions to the rule, Youth Justice NSW needs to ensure detainees are placed in the best position, including a safe place, to make informed and beneficial choices whilst in the custodial system. They need to be able to make choices free from influence of other stronger detainees who have often had the benefit of a range of programs and alternatives to custody but still made a choice to continue to be

violent, disruptive and not actively engaged in the programs designed to divert juveniles from the criminal justice system.

Failing to protect detainees from the adverse and subversive behaviours of high-risk detainees reduces the effectiveness of therapeutic measures and programs for other detainees.

It is clear to me and most other people I interviewed that Youth Justice NSW is not currently striking the balance between therapeutic outcomes and safety and security of members of staff and detainees.

The Act provides the Secretary with power to separate detainees according to classifications prescribed by the Regulation. Those classifications include consideration of the risk a detainee presents to the safety, security and good order of a Detention Centres, so the power to separate detainees is, in part, based on those risks. There is a need to ensure decisions concerning separation of detainees who are classified as high risk (classes A1(o), and A1(b)) are appropriately separated from other detainees.

The objects set out in s. 4(2)(a) of the Act that “*the welfare and interests of persons on remand or subject to control shall be given paramount consideration*” and *the functions imposed on the Secretary to “maintain the physical, psychological and emotional well-being of detainees, ...promote the social, cultural and educational development of detainees,... maintain discipline and good order among detainees, and to facilitate the proper control and management of detention centres”* requires detainees be protected from harassment and physical violence by other high risk detainees.

The mixing of high-risk detainees with other detainees fails to give proper consideration to the welfare and interests of lower risk detainees and does not promote good order between detainees. There needs to be more clearly defined and prescribed processes to actively separate detainees who might cause harm to other detainees, and adequate facilities to meet the needs of those high-risk detainees

Creation of intensive therapeutic unit and high-risk management unit

This system requires immediate relief and given the events of 21 and 22 July 2019 changes cannot wait for consideration around the construction of a purpose-built unit - changes must be made now. Youth Justice NSW has the current capacity and capability to provide some units at both Frank Baxter and Cobham Detention Centres with a higher level of security and more intensive management.

The creation of these units will enable a separation and escalation in the management of detainees but will require a greater level of external governance to ensure the units are managed appropriately. The Serious Young Offenders Review Board should be considered as the oversight body. This is seen as an important step because unfortunately Youth Justice NSW do not have a solid track record of implementing and maintaining consistency in application of policy and procedures.

Intensive therapeutic unit

In this escalation model, it is envisaged the cohort of A1(b) classified detainees who have turned 16, are high risk and are showing signs of requiring more intensive therapy should be placed into the intensive therapeutic unit.

These detainees should have increased therapeutic intervention with intensive case management with a Case Worker, Social Worker and Psychologist intervention and be managed by experienced Youth Officers – not newly inducted Youth Officers.

The model envisages these detainees be moved back into the general population at the earliest opportunity but only after direction from the Serious Young Offenders Review Board. Alternatively, if their behaviour is not able to be modified through the intensive therapeutic intervention and the detainee presents a serious risk to staff and other detainees through their violent behaviour, they should be moved to the high risk management unit.

High risk management unit

Should A1(b) detainees not be able to modify their behaviour within the Intensive Therapeutic Unit, these detainees should be moved to the high risk management unit. Cobham Detention Centre has the facilities for these detainees to be managed although the facilities are considered austere and will require refurbishment. The Uralba and Taralga units should be considered for use for the high risk management unit.

The model envisages these detainees be moved back into the Intensive Therapeutic Unit, or into the general population, at the earliest opportunity but only after direction from the Serious Young Offenders Review Board. If the detainee's behaviour is not able to be modified through this escalated approach, they have turned 18 and their behaviour continues to pose a serious risk to staff and other detainees, they should be transferred under S.28 of the *Children (Detention Centres) Act* to an adult corrections institution.

It is the State obligation to build a system that clearly demonstrates to juvenile detainees consequences will follow from their unacceptable behaviour. It is not in the long-term interests of these detainees that they be allowed to commit unlawful acts in custody (including violent assaults) with no consequences – There is evidence that this is happening now – then once they turn 18 be faced with an entirely different system managed by Corrective Services NSW.

Any escalated model must integrate into the case management a bi-monthly review by the externally selected oversight body to enable detainees who are wanting to reform to be reassessed against a lower risk rating at the earliest opportunity. This cannot be a 'set and forget' system.

It is envisaged this model of management will require more experienced staff to work in these escalated intervention units and the ratio of staff to detainee should reflect the complex working environment.

It should also be made clear that even in the escalated intervention units, programs and routines must be provided throughout the day and there should not be a return to the system of locking these detainees in their rooms for most of the day. Extensive criticism from past reviews has identified the mismanagement of programs has led to their closure. The cohort in the high-risk management unit is expected to be under 10 detainees and the aim should be they would be out of their room for at least 6 hours per day unless exceptional circumstances exist.

Routines and programs

What is apparent from all my interviews and discussions is the importance of maintaining good routines and programs within Juvenile institutions. Whilst this is a general statement, it is apparent Juveniles who are not kept busy have the propensity to become bored and unsettled.

The routines and programs at all Youth Justice Centres need to be reviewed to ensure detainees have the opportunity to be kept busy and stimulated for a large part of the day. Given the representation of Aboriginal juveniles in the system, a significant focus should be on connecting these juveniles with country and culture.

Induction Training

Learning and Development staff provided the review with information about the Induction Training and Assessment Program (ITAP) for new Youth Officers. The training is based on six modules over approximately six months and is compulsory for all Youth Officers.

Youth Officers do not require any specific training prior to their appointment and but successful completion of the ITAP program and on the job training can lead to a Certification 4 in Youth Justice.

A significant emphasis of this program is on the job learning which is Centre based and elements that are Centre led. Recent structural changes will those responsible for all parts of this program, including the on the job training components, under the direction of the central Learning and Development team.

We understand that Corrections NSW staff have a three month induction program and Victoria has moved to an eight week initial training program for staff going to work in their Youth Justice Centres. Many argue that two weeks training before staff members are able to take on duties in Centres is insufficient.

The review would agree that this does seem to be inadequate level of training given the risk to staff and detainees of having people not adequately trained operating in Centres.

Casual and Temporary Staff

The PSA and numerous staff raised an issue of what they perceived is a significant increase in the use of casual and temporary staff within centres. Data provided to the review by Youth Justice indicates that over the last three years the number of permanent and ongoing roles in centres has trended down, while the number of temporary and causal roles are trending up. The data also shows that the number of people acting up ie working on a temporary basis in another role, normally more senior, has also gone up across nearly all centres.

The review was advised that the only way a staff member can be appointed to a permanent youth worker role is if they have come into the system as a casual. It could be suggested that the systems requirement to have a more flexible work force, to scale up and down according to the increasing or decreasing number of detainees is in part driving this. The unintended consequences of this approach needs to be considered.

Concerns about staff turnover, lack of experienced staff on shifts, casual staff not willing to raise issues as they don't want to be perceived as being difficult, inadequately trained staff, staff not able to build rapport with detainees as they are there infrequently and casual staff are being tasked with activities that they don't have the experience or training to do but they are the only staff member there and able to take on a task.

Recommendations

Recommendations on the juvenile detention operating model

1. As a general principle, the therapeutic model of managing detainees as an underpinning philosophy is sound, but the current model of dispersal of the highest risk cohort of juvenile detainees within the population has elevated the risk of staff and detainees in these Centres. This policy should be ceased immediately for proper separation of high-risk offenders (A1(b)s) into an appropriate custodial environment.
2. The cohort of A1(b) classified detainees who have turned 16, are high risk and show signs of requiring more intensive therapy should be placed into an Intensive Therapeutic Unit. A1(o) detainees will transition through this unit while being assessed.
3. The introduction of a new classification, A1(ob), to identify detainees who have committed serious offences and have significant behavioural issues.
4. If the A1(b) detainees do not modify their behaviour within the Intensive Therapeutic Units, they should be moved into a High Risk Management Unit created at Cobham Detention Centre.
5. A1(b) detainees should be managed within units that only contain detainees with a similar classification and in facilities that have been physically strengthened and have increased staffing levels to manage this population.
6. To support this change, additional governance arrangements must be implemented to ensure detainees are being properly assessed to enter these units and are not remaining in these escalated units for any longer than necessary.
7. A detailed and transparent assessment framework should be developed that includes genuine representation of front-line staff to consistently assess detainees who are to be placed in the escalated units.
8. Each case should be reviewed by an external governance panel on a bi-monthly basis. The Serious Young Offenders Review Panel could be considered for this role.
9. This escalated model must have the capacity to move juvenile offenders back into the general population at the earliest opportunity when their behaviour is modified and where no member of staff or detainee is at risk of physical violence.
10. Given the facilities and experienced management team at Cobham Youth Justice Centre, and the close proximity of Corrective Services NSW special operations group, consideration be given to designating it as the preferred site for the High Risk Management Unit and further consideration as to whether it could be designated as the primary centre for managing all A1(b) detainees.
11. If the Frank Baxter Detention Centre continues to accommodate A1(b) detainees, only the Boudii and Peat units should be used until further strengthening of other units take place or a proper fit for purpose unit is constructed. All units accommodating A1(b)s need to be fit for purpose.
12. If this approach is adopted, the current funding model needs to be modified to recognise the extra staff and programs required to effectively manage this high-risk population.

Recommendations on changes to infrastructure

13. This section is redacted by the Department for security reasons.
14. [REDACTED]
15. The urgent refurbishment of Uralba and Taralga units (which were used for the Chisholm Behaviour Program) to house the High Risk Management Unit.
16. This section is redacted by the Department for security reasons.
17. A separate audit should be done on all Youth Justice centres to identify security gaps where further measures are required to prevent detainee's accessing roofs and elevated structures. The audit should also review the furniture being used in all Centres to determine if it is fit for purpose or if it presents a possible safety risk.
This section is redacted by the Department for security reasons.
18. [REDACTED]
19. In the longer-term, consideration for the installation of non-aggressive anti- climb systems to all units housing juvenile detainees.
20. The garden sheds (see Appendix 1) currently located within the secure perimeter of Frank Baxter Centre be relocated immediately outside the secure perimeter and no garden sheds or storage sheds containing potentially dangerous items be located within the perimeter of any centre.
21. Some detainee programs and operational areas may require equipment that is potentially dangerous within the secure perimeter. A review of all centres should be undertaken to identify such equipment and ensure security measures are in place to restrain or lock down these items and the ability to unlock these items is restricted to authorised staff. This should be considered part of each centre's annual safety audit to ensure compliance.
22. This section is redacted by the Department for security reasons.
23. [REDACTED]
24. [REDACTED]
25. [REDACTED]
26. Masonry encased sliding security draws (see Appendix 18 for this in operation at Cobham) be installed in all staff unit offices in all centres to allow for staff to provide detainees with small items without opening the door to their secure station within Units.
27. Urgent work on the operations holding rooms at Frank Baxter to address the extreme temperature issues.
28. The current review and preliminary business case for the construction of a fit for purpose high intensity unit be expedited.

Recommendations on policies and procedures

- 29.** The establishment of a project team to review and ensure the consistent implementation of Department policies and procedures across all centres. The team should be led by a staff member with significant management experience in an operational role and include staff from policy and front-line roles. Variations to department policies should be by exception and ongoing exceptions need to be approved by the Head of Youth Justice NSW.
 - 30.** It is preferable to limit the use of 'local' procedures to areas that genuinely require a local overlay to a policy or procedure.
 - 31.** The current detainee classification system is complex. Its application is not widely understood by staff. The last review of the classification system undertaken by Associate Professor Garner Clancy from the University of Sydney in 2018 needs to be considered with input and consultation from staff and other stakeholders. Findings from this process should be made available to all staff. Furthermore, staff training on the classification system should be provided. Staff working with detainees should understand their classification and what level of risk this may present when working them.
 - 32.** The overwhelming feedback and research indicates a detention centre with strong programming helps to reduce risk in that centre. To address this on a system basis, a working group consisting of external stakeholders and Youth Justice staff (include front line staff) be tasked with development and introduction of minimum standards for daily programming for all detainees and all classification levels.
 - 33.** The programming working group be asked to ensure programs that support Aboriginal cultural awareness and development be included at all centres and it investigate if detainees who are awaiting sentencing or classification are being restricted from programs and how this can be addressed.
 - 34.** NSW Government bring to the attention of the President of the Children's Court of NSW the adverse impact of extended remand periods. Delays may be caused by courts, legal defence or prosecution processes, but there is an impact on the running of the Youth Justice Centres
 - 35.** New protocols and practices around the movement of detainees between buildings at all centres need to be developed and implemented across all centres.
- This section is redacted by the Department for security reasons.
- 36.** This section is redacted by the Department for security reasons.
 - 37.** The paper-based process for safety and security practices be phased out as soon as possible and replaced with systems that provide clear audit trails to ensure compliance can be monitored. Responsible Work Health and Safety (WHS) staff work with Centre Managers to ensure this process is monitored through the Annual Safety Audit.
 - 38.** Procedures around the number of detainees being allowed to congregate in an area should be introduced, implemented and monitored for consistency across all centres.
 - 39.** A regular forum be established involving the Ombudsman, the Office of the Children's Guardian, Official Visitors, PSA and Youth Justice Executive to ensure greater coordination and oversight of Centres. As part of this process, feedback from detainees be tabled.
 - 40.** The recommendations of the Inspector of Custodial Services in the 2018 report use of force, separation, segregation and confinement in NSW Youth Justice centres be urgently considered and, if appropriate, implemented.
 - 41.** A review be conducted on the current Aboriginal programs focussed on country and culture being delivered in the Detention Centres to assess their effectiveness and frequency.
 - 42.** A debrief process be standard practice after all serious incidents or where a staff member or detainee has been injured.

Recommendations on people and culture

43. The establishment of dedicated Incident Response Teams (IRT) function that is overseen centrally but has teams based in Centres that manage high risk detainees. The team's primary purpose is to support the safety and security of staff and detainees within their centres. Therefore, it is envisaged they are responsible for:

- ⦿ Incident response within the Centres
- ⦿ All movements of high-risk detainees within centres
- ⦿ Room searches based on intelligence or at the request of Unit staff
- ⦿ Searches on detainees as required.

The IRT should also be adequately equipped to deal with emergencies, with all members being provided with individual kits including:

- ⦿ Uniforms that identify them as a member of the IRT

This section is redacted by the Department for security reasons.

- ⦿ Shields

A review should be conducted in 12 months' time and consideration be given to the issue of appointments,

[REDACTED] The use of CSNSW and any deterrent affect or timely resolution of incidents should be included in this review.

Clear policies, procedures and oversight systems will be required to ensure their role, responsibilities and working principles are clear to all parties. The IRT roles, resourcing, and training should be consistent across the centres. IRT staff should not be conducting other duties, ensuring the teams are operationally ready at all times. Staff in an IRT should not be called Support Officers, rather they should be known as the Incident Response Team Officers.

44. The Incident Response Team name reflects its responsibilities and signals to staff and detainees what duties they will perform.

45. Whilst IRTs will be directly applicable to Cobham and Frank Baxter Youth Justice Centres, it is suggested an assessment be made on the other Centres and their requirements.

46. The MOU with Corrections NSW on incident management should be maintained and they should be asked to provide support for the establishment of the IRTs, along with initial and ongoing training of the IRTs. Urgent policy be developed for when this MOU will be used.

47. Consider bringing together the IRT, Transportation, Security and Intelligence, Counter Violence Extremism Unit functions to support a more integrated approach and improve safety and security.

48. A review of how sex offenders are being managed within custodial institutions under Youth Justice NSW needs to be conducted.

49. Incident Managers should be trained and encouraged to invoke the Corrections NSW MOU at the earliest opportunity where it is clear their IRT requires support or specialist skills to resolve the incident in a timely manner.

50. At the start of their working shift, and prior to leaving the secure area, it is mandatory for all staff to perform a daily check of their safety equipment, including key lanyards. No staff member should enter an area with detainees unless all required equipment is in sound working order.

51. An emergency management-training program must be developed and rolled out urgently. The program needs to include an annual simulation exercise involving external parties who may be required to resolve incidents. Consideration should be given to using an external agency that can provide independent debriefs to participants and Youth Justice executive.

52. A review of the Emergency Management Procedures manual is undertaken to maximise alignment with any training programs to ensure they are embedded across all Detention Centres.

- 53.** A review of the ITAP program be undertaken that includes benchmarking ITAP against equivalent programs in other states and similar international jurisdictions. The review should test whether ITAP is providing sufficient initial training and its effectiveness in supporting system wide policies and processes.
- 54.** An internal weekly emergency management training program similar to the program in use at Cobham Youth Justice Centre should be implemented urgently.
- 55.** WHS be mandated to ensure all Centres run emergency and evacuation drills as part of the regular training program for all Centre staff.
- 56.** The introduction of uniforms for all staff to support the safety and security of staff and detainees. Uniforms allow for easy of identification of staff in emergency situations and establish an authoritative presence in Centres. Managers to ensure this process is monitored through the Annual Safety Audit.
- 57.** This section is redacted by the Department for security reasons.
- 58.** A broad leadership, culture and capability review needs to be conducted urgently to help address systemic issues impacting the management of centres and directly compromising the safety and security of detainees and staff. This review should include an assessment of the leadership structure and levels of management performing oversight duties within the Agency and considers the appropriateness of the increased use of casual and temporary staff to operate centres.
- 59.** Centres managing complex high risk detainees require a greater level of management support. Consideration should be given to making the Centre Manager's roles at Cobham and Frank Baxter Centre's Director level and they be supported by a Program Manager and Security Manager in addition to other direct reports.
- 60.** An urgent review of the policy and process for managing long term workers' compensation be undertaken to remove the impediments to ongoing permanent positions being filled in a timely manner.
- 61.** The staffing review commenced in 2016 be completed promptly to enable long term vacancies to be filled.
- 62.** An independent whistleblowing process needs to be implemented for Youth Justice staff. As public servants, staff can make Public Interest Disclosures, so this process should be designed to encourage constructive feedback on operational issues so follow up and responses can be provided in a timely manner.
- 63.** This section is redacted by the Department for security reasons.

Legislative context

The six Detention Centres in NSW were established under ⁵the Act. The objects of the Act are:

4 Objects of Act

(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.*

The Secretary's statutory functions include those functions set out in s. 14 of the Act:

14 Functions of the Secretary

(1) *The Secretary shall ensure that adequate arrangements exist:*

- (a) *to maintain the physical, psychological and emotional well-being of detainees,*
- (b) *to promote the social, cultural and educational development of detainees,*
- (c) *to maintain discipline and good order among detainees, and*
- (d) *to facilitate the proper control and management of detention centres.*

(2) *In exercising any function under this section in relation to a detainee who is a forensic patient within the meaning of the Mental Health (Forensic Provisions) Act 1990, the Secretary must consult with, and have regard to the recommendations of, the Secretary of the Ministry of Health*

The Secretary has care and control of all Detention Centres⁶, except where the Secretary has requested assistance from the Commissioner to address a riot or disturbance at a Detention Centre⁷. The Act requires young people on remand or subject to a detention order be detained in a Detention Centre⁸ and it provides very limited power to transfer detainees between a Detention Centre and a Correctional Centre⁹.

The Secretary determines where a detainee is to be detained¹⁰ and whether detainees are to be separated according to the following prescribed classifications¹¹:

- (a) *Class A1(o)—detainees who have been charged with or convicted of a relevant offence¹² and who should therefore be detained within a secure physical barrier at all times unless, in the opinion of the Secretary, the detainee should be classed under paragraph (b), (c), (d), (e) or (f),*
- (b) *Class A1(b)—detainees who, in the opinion of the Secretary, are a high risk to security, safety and good order, and who should therefore be detained within a secure physical barrier at all times,*
- (c) *Class A2—detainees who, in the opinion of the Secretary, are a medium to high risk to security, safety and good order, and who should therefore be detained within a secure physical barrier at all times,*

⁵ S. 5 of the Act.

⁶ Ss. 6 & 26 of the Act

⁷ S. 26 of the Act.

⁸ Ss. 9 & 9A of the Act.

⁹ Ss. 11, 28, 28A, 28B & 28C of the Act.

¹⁰ Ss. 11, 12 & 13 of the Act.

¹¹ S. 16 of the Act and cl. 7 of the Regulation.

¹² Cl. 7(2) of the Regulation: "...murder,... manslaughter,... aggravated sexual assault in company under section 61JA of the Crimes Act 1900,...contaminating or threatening to contaminate goods with intent to cause public alarm or economic loss in aggravated circumstances under section 93O of the Crimes Act 1900,... aggravated sexual assault under section 61J of the Crimes Act 1900 (except in circumstances referred to in subsection (2) (d) of that section),....a terrorism offence within the meaning of the Crimes Act 1914 of the Commonwealth or an offence under section 310J of the Crimes Act 1900,... attempting to commit the offences referred to in paragraph (c) or (e) under section 344A of the Crimes Act 1900".

- (d) *Class B1—detainees who, in the opinion of the Secretary, are a medium risk to security, safety and good order,*
- (e) *Class B2—detainees who, in the opinion of the Secretary, are a low to medium risk to security, safety and good order,*
- (f) *Class B3—detainees who, in the opinion of the Secretary, are a low risk to security, safety and good order,*
- (g) *Unclassified—all other detainees.*

The Act and the Regulation control other aspects of the detention of detainees in Detention Centres¹³, which bind how the Secretary exercises care and control of Detention Centres.

The WHS Act imposes a statutory duty on the Department¹⁴ to ensure the health and safety of those who work in Detention Centres¹⁵, and establishes criminal offences (including officer liability and worker offences) for failing to meet that duty. The WHS Act is not subordinate to the Act – the Department and the Secretary are required to manage detainees and Detention Centres in a manner that complies with both the Act and the WHS Act. This important issue is addressed in more detail below.

¹³ Part 3 Division 2 of the Act and Parts 1-10 & 11-12 of the Regulation.

¹⁴ S. 8 of the WHS Act.

¹⁵ S. 19 of the WHS Act.

Classification system

Children (Detention Centres) Regulation 2015

7 Classification of detainees

- (1) For the purposes of section 16 (1) of the Act, the following classes of detainees are prescribed:
- (a) Class A1(o)—detainees who have been charged with or convicted of a relevant offence and who should therefore be detained within a secure physical barrier at all times unless, in the opinion of the Secretary, the detainee should be classed under paragraph (b), (c), (d), (e) or (f),
 - (b) Class A1(b)—detainees who, in the opinion of the Secretary, are a high risk to security, safety and good order, and who should therefore be detained within a secure physical barrier at all times,
 - (c) Class A2—detainees who, in the opinion of the Secretary, are a medium to high risk to security, safety and good order, and who should therefore be detained within a secure physical barrier at all times,
 - (d) Class B1—detainees who, in the opinion of the Secretary, are a medium risk to security, safety and good order,
 - (e) Class B2—detainees who, in the opinion of the Secretary, are a low to medium risk to security, safety and good order,
 - (f) Class B3—detainees who, in the opinion of the Secretary, are a low risk to security, safety and good order,
 - (g) Unclassified—all other detainees.

(2) In this clause:

relevant offence means any of the following:

- (a) murder,
- (b) manslaughter,
- (c) aggravated sexual assault in company under section 61JA of the Crimes Act 1900,
- (d) contaminating or threatening to contaminate goods with intent to cause public alarm or economic loss in aggravated circumstances under section 93O of the Crimes Act 1900,
- (e) aggravated sexual assault under section 61J of the Crimes Act 1900 (except in circumstances referred to in subsection (2) (d) of that section),
- (f) a terrorism offence within the meaning of the Crimes Act 1914 of the Commonwealth or an offence under section 310J of the Crimes Act 1900,
- (g) attempting to commit the offences referred to in paragraph (c) or (e) under section 344A of the Crimes Act 1900.

Materials used and reviewed

- *Justice Centres Quality Assurance Improvement Framework* NSW Juvenile Justice, August 2008.
- *Review of Effective Practice in Juvenile Justice*, Noetic Solutions, January 2010.
- *Incident Thematic Audit – Frank Baxter Juvenile Justice Centre*, NSW Justice 2017.
- *Indigenous incarceration: Unlock the facts*, Price Waterhouse Coopers, May 2017.
- *Youth Justice Review and Strategy – meeting needs and reducing offending*, Victorian Government, July 2017.
- *Youth Justice – Effective Practice Guide*, Noetic Group, November 2017.
- *Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory*, November 2017.
- *Descriptive Analysis of Incidents relating to Staff Assaults at Frank Baxter JJC*, Juvenile Justice NSW, 2018.
- *Inquiry into youth justice centre in Victoria – final report*, Legal and Social Issues Committee, Legislative Council, Parliament of Victoria March 2018.
- *Review of Objective Detainee Classification System – Final Report*, University of Sydney, August 2018.
- *Report 2/56 – The Adequacy of Youth Diversionary Programs in New South Wales*, Law and Safety Committee, Legislative Assembly of New South Wales, September 2018.
- *Detainee Risk Management Plan Spot Audit – Continuous Improvement Plan* NSW Juvenile Justice, October 2018.
- *Use of force, separation, segregation and confinement in NSW juvenile justice centres*, Inspector of Custodial Services, NSW Justice, November 2018.
- *Public Service Association of NSW, submission to the Lee Shearer Ministerial Review of Incidents at the Frank Baxter Youth Detention centre on July 21 and 22, 2019*
- *NSW Government Response to the Inspector of Custodial Services report on the use of force, separation, segregation and confinement in NSW juvenile justice centres*.
- *NSW Youth Justice Reform Strategy*, Juvenile Justice NSW, June 2019.
- *Justice Infrastructure and Assets: Current State Analysis of Juvenile Justice Facilities*, Communities and Justice NSW, 14 June 2019.
- CCTV footage of various incidents at DCs, including the July Incident at the Baxter DC.
- Various media reports of incidents at DCs, including reports concerning the July Incident at the Baxter DC.
- Various policies, procedures and resources published by the Department or its predecessors, including:
 - *Procedures for Juvenile Justice Centres & Routines for staff and detainees*, NSW Juvenile Justice, 30 June 2009.
 - *Detainee Behaviour Intervention Framework*, November 2009.
 - *Transfer to Adult Corrections Procedure*, NSW Juvenile Justice, September 2011.
 - *Assault – Detainee on Detainee – Procedure*, NSW Juvenile Justice, March 2012.
 - *Assault – Detainee on Staff – Procedure*, NSW Juvenile Justice, March 2012.
 - *Assault – Staff on young person – Procedure*, NSW Juvenile Justice, March 2012.
 - *Incident Reporting Procedure*, Juvenile Justice, 2 October 2015.
 - *Case Management Procedures*, 1 October 2016.
 - *Assistant Manager Client Services CSM Responsibilities Resource*
 - *2019 Quality Assurance Framework Policy*, Juvenile Justice NSW, 2019.
 - *Supervising Detainees in Detention Centres Procedure*, NSW Department of Justice, February 2019.
 - *Rules for Segregation*, Youth Justice NSW (undated).
 - *Standards for separation procedures*, Youth Justice NSW (undated).
 - *NSW Ombudsman October 2011 Kariong Juvenile Justice Centre: Meeting the Challenges*

Legal advice was obtained in respect to material aspects of the Act, the Regulation and the WHS Act.

People Consulted

Interviews, telephone calls and discussions were undertaken with key stakeholders including:

- Rebecca Falkingham, Secretary, Department of Justice and Community Safety, Victoria
- Ben Hannifin, General Manager, Ministry for Children, Oranga Tamariki, New Zealand
- Jodi Henderson, Regional Director, Department of Justice & Community Safety, Victoria
- Micheal Homden, Executive Director Youth Services, SA Department of Human Services
- Dr John Kasinathan, Consultant Forensic, Child, Adolescent and Generalist Psychiatrist and Clinical Director Adolescent Mental Health, JH&FMHN
- Andrew Johnson, Advocate for Children and Young People
- Jennifer Agius, Assistant Ombudsman, NSW Ombudsman
- Joe Cassar Assistant Commissioner, NSW Police Force
- Representatives of the Public Service Association
- Michael Coutts-Trotter, Secretary, Communities & Justice NSW – this cluster includes Youth Justice NSW and Correctives Services NSW
- Simone Czech, Acting Deputy Secretary, Child Protection and Permanency, District and Youth Justice, Youth Justice, Communities & Justice NSW
- Peter Severin, Commissioner, Corrective Services, Communities & Justice NSW
- John Harrison, Acting General Manager - Security Operations Group, Corrective Services, Communities & Justice NSW
- Fiona Ratner, Inspector Custodial Services, Community & Justice NSW
- Melaine Hawyes, former Executive Director, Youth Justice, Communities & Justice NSW
- Kate Alexander, Executive Director, Office of the Senior Practitioner for Community Services, Communities & Justice NSW
- Stephen Southgate, Director Custodial Operations, Youth Justice, Communities & Justice NSW
- Michael Wheaton. Director Policy and Practice, Youth Justice, Communities & Justice NSW
- Michael Vita, Centre Manager, Cobham Detention Centre, Youth Justice, NSW Communities & Justice
- Crosbi Knight – Centre Manager, Frank Baxter Detention Centre, Youth Justice, NSW Communities & Justice
- Phil Krause, Manager Learning & Development, Youth Justice, Communities & Justice NSW
- Daren Waring, Senior HR Advisor WHS Advisor, Youth Justice, Communities & Justice NSW
- Jeffrey Deal, Director Security & Intelligence, Youth Justice, Community & Justice NSW
- Five detainees, including four who were at Frank Baxter on the night of the incident
- Face to face meetings and discussions with approximately 60 members of staff of staff from all centres, the vast majority from Cobham and Frank Baxter Detention Centres
- 37 staff made written submissions that were followed up with calls and emails

Appendices

Appendix 1: Frank Baxter Youth Justice Centre

Appendix 2: Cobham Youth Justice Centre

Appendix 3: Floor plan of the Katandra Unit at Frank Baxter Youth Justice Centre

Appendix 4: Damage from the 10 June incident in the Penang Unit at Frank Baxter Youth Justice Centre

Appendix 5: Damage from the 10 June incident in the Penang Unit at Frank Baxter Youth Justice Centre

Appendix 6: Damage from the July incident in the Strickland Unit at Frank Baxter Youth Justice Centre

Appendix 7: Damage from the July incident in the Strickland Unit at Frank Baxter Youth Justice Centre

Appendix 8: A wing door in the Bouddi Unit at Frank Baxter Youth Justice Centre

Appendix 9: Administration building door opening to the secure perimeter of the Frank Baxter Youth Justice Centre

Appendix 10: Administration building door to a confinement area that opens into the secure perimeter of Cobham Centre

Appendix 11: Confinement area between administration building and the secure perimeter of Cobham Youth Justice Centre

Appendix 12: The equipment room for the incident team at Frank Baxter Youth Justice Centre

Appendix 13: The equipment room for the incident team at Cobham Youth Justice Centre **Appendix**

14: Razor wire in situ on a unit at Frank Baxter Youth Justice Centre

Appendix 15: Razor wire in situ on a unit at Cobham Youth Justice Centre

Appendix 16: Razor wire in situ on a unit at Cobham Youth Justice Centre

Appendix 17: Yellow exclusion zones adjacent to a staff secure room in a unit at Cobham Youth Justice Centre

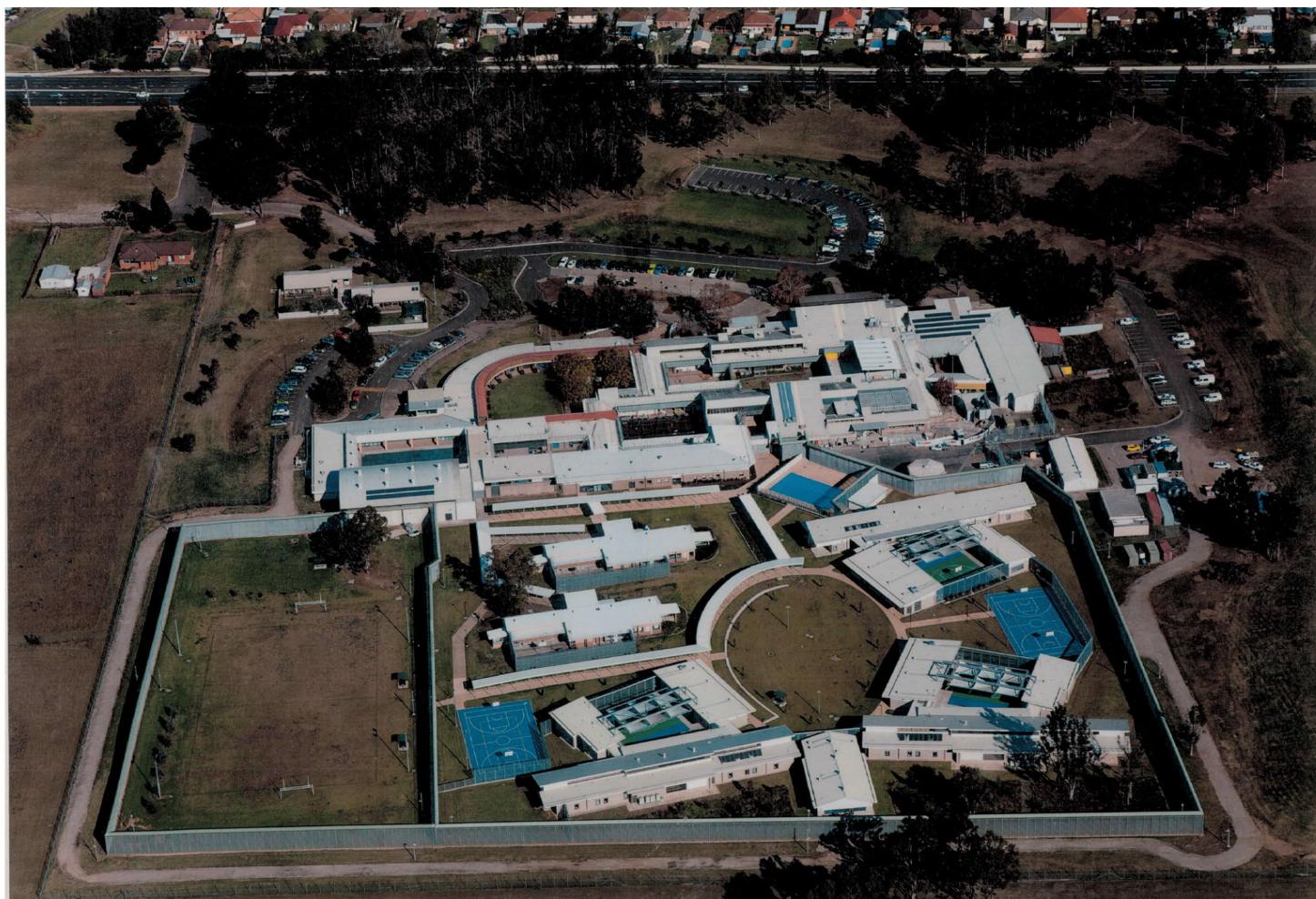
Appendix 18: A masonry encased sliding draw in a unit at Cobham Youth Justice Centre

All images in these appendices were provided to us by Youth Justice NSW.

Appendix 1: Frank Baxter Youth Justice Centre



Appendix 2: Cobham Youth Justice Centre



Appendix 3: Floor plan of the Katandra Unit at Frank Baxter Youth Justice Centre

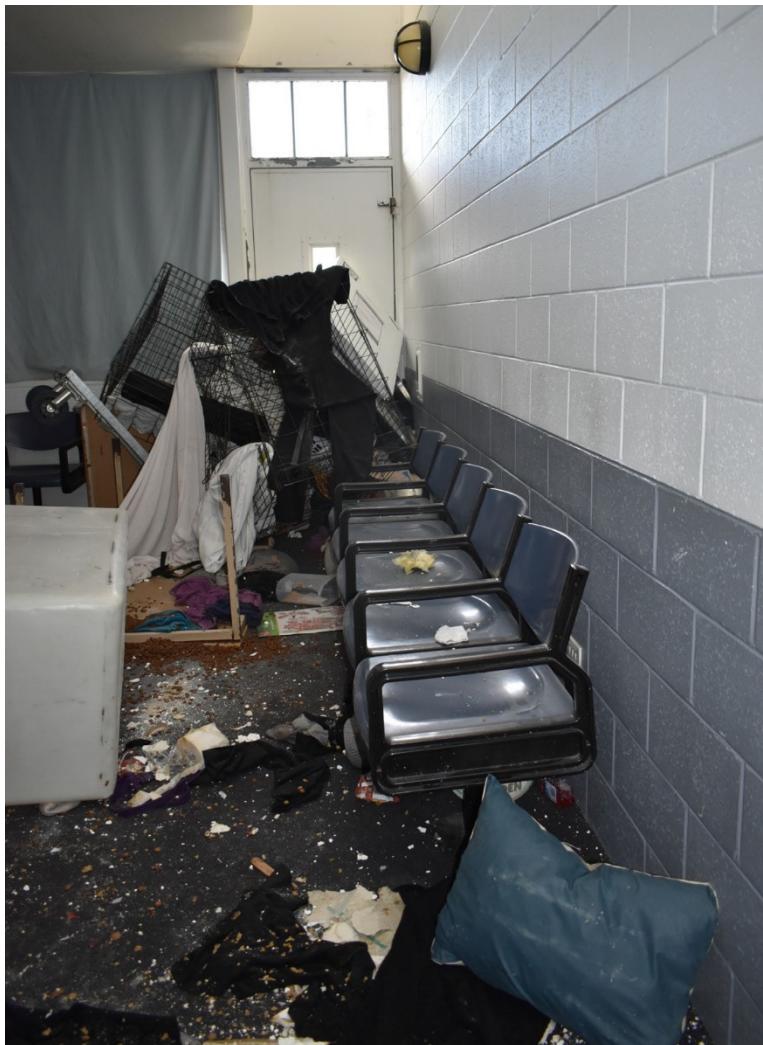
This section is redacted by the Department for security reasons

Appendix 4: Damage from the 10 June incident in the Penang Unit at Frank Baxter Youth Justice Centre



Appendix 5: Damage from the 10 June incident in the Penang Unit at Frank Baxter Youth Justice Centre





Appendix 6: Damage from the July incident in the Strickland Unit at Frank Baxter Youth Justice Centre

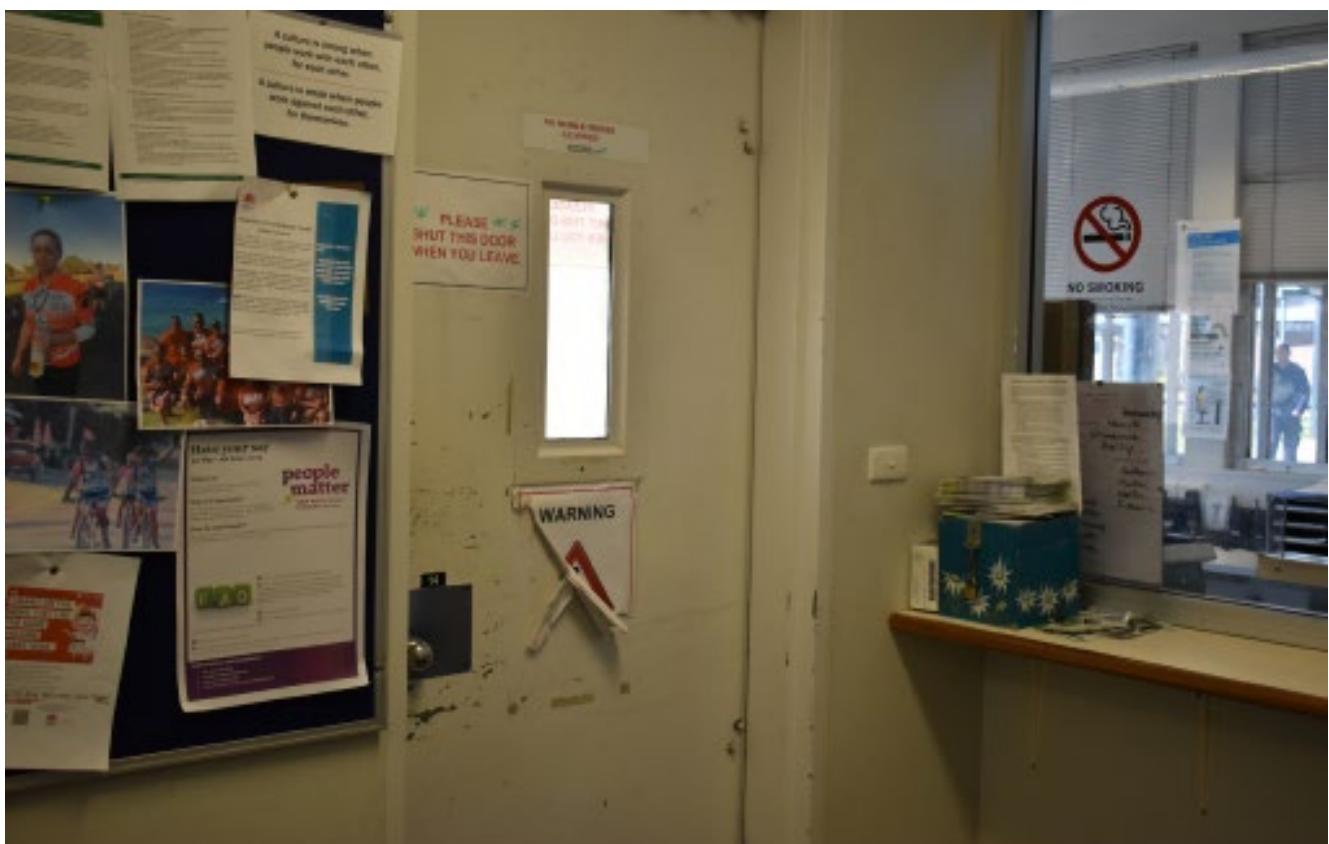


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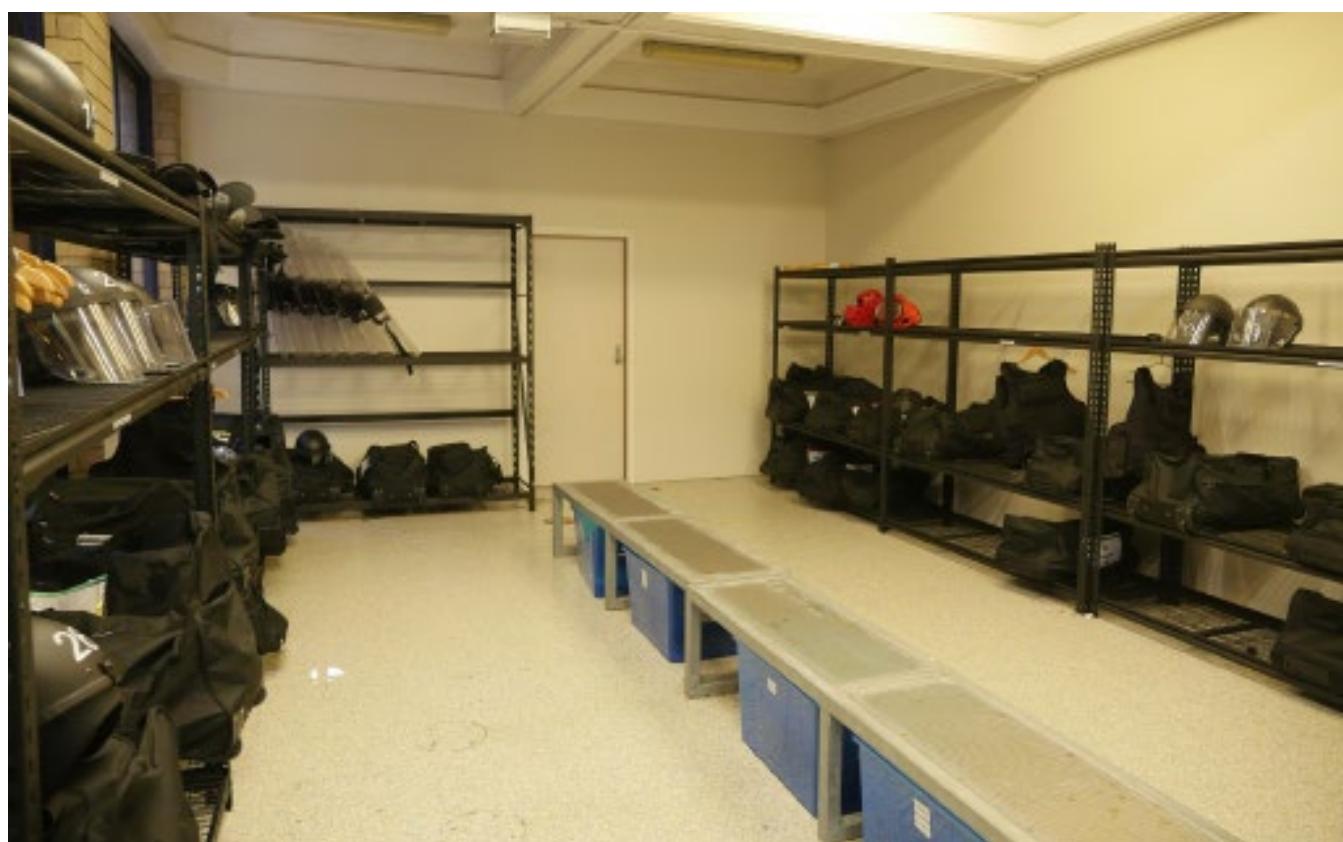
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