REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS

BUDGET ESTIMATES 2018-2019

At Jubilee Room, Parliament House, Sydney, on Wednesday 19 December 2018

The Committee met at 10:00 am

PRESENT

The Hon. Robert Borsak (Chair)

The Hon. David Clarke
The Hon. Scott Farlow
The Hon. Trevor Khan
The Hon. Shaoquett Moselmane
Mr David Shoebridge (Deputy Chair)
The Hon. Lynda Voltz

RESPONSES TO QUESTIONS ON NOTICE

The CHAIR: Welcome to the second supplementary hearing for the Corrections portfolio for the inquiry into budget estimates 2018-19. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to the elders past and present of the Eora nation and extend that respect to other Aboriginals present. Today the Committee will continue with the examination of the Corrections portfolio, and I welcome Mr Cappie-Wood, Mr Southgate and Ms Rafter to this hearing.

Before we commence I will make some brief comments about procedures for today's hearing. Today's hearing is open to the public and is being broadcast by the Parliament's website. In accordance with broadcasting guidelines, while members of the media may film committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing. So I urge witnesses to be careful about any comments they make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for broadcast of proceedings are available from the secretariat.

There may be questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. I remind witnesses that they are free to pass notes and refer directly to their advisers seated at the table behind them. Transcripts of this hearing will be published on the website once available. To aid the audibility of this hearing, may I remind both Committee members and witnesses to speak into the microphones. In addition, several seats have been reserved near loudspeakers for persons in the public gallery who have hearing difficulties. Could everyone please turn their mobile phones to silent for the duration of the hearing. I declare the proposed expenditure for the portfolio of Corrections open for examination.

ANDREW CAPPIE-WOOD, Secretary, Department of Justice, on former oath

STEVEN SOUTHGATE, Acting Executive Director, Juvenile Justice, Department of Justice, sworn and examined

FIONA RAFTER, Inspector of Custodial Services, on former oath

The CHAIR: Before we begin with questions from the Opposition, I will make a comment on the matters that have brought us back here today. The Committee would like to address some important matters arising from earlier hearings with the Inspector of Custodial Services: the Committee's request for the Secretary of Justice to provide the Solicitor General's advice referred to by the Crown Solicitor; the Committee's request that the inspector reconsider her refusal to answer certain questions on the stated grounds of statutory secrecy; and the inspector's refusal to provide a draft report on the "use of force, separation, segregation and confinement in New South Wales Juvenile Justice centres". I note that the Secretary of Justice has provided a redacted copy of the Solicitor General's advice and that the inspector has provided legal advice from Ms Anna Mitchelmore, SC. Thank you for providing these documents; they have both been very helpful.

Following this hearing, the Committee will be deliberating on whether to pursue the matters of the refusal to answer certain questions and the refusal to produce the draft report. Without pre-empting that decision, I observe that the Committee will no doubt have regard to the following: what happens at this hearing; the two advices provided and to which I have just referred; and whether tabling of the final report of the inspector on 23 November has allowed the Committee sufficient time to consider the matters in the report in order to conclude this inquiry. Regardless of the decision, I note that the advices of the Solicitor General, the Crown Solicitor and Ms Mitchelmore all accept the Legislative Council position for many years regarding statutory secrecy. On the issue of committee power to order documents, all appeared to conclude "more likely than not, if the question were to be the subject of a decision of a court a finding would be made that a committee of the New South Wales Parliament had the power to call witnesses to attend and give evidence, including by the production of a document".

Finally, I note that in the period since our last hearing another committee has received a significant document, the provision of which had earlier been resisted. The document was received after it had been communicated by the committee that if the document were not provided to it the committee would order its production under Standing Order 208C. I note that while the position is qualified in relation to the particular construction of the Inspector of Custodial Services Act 2012, together these various advices and the provision recently of certain documents to committees suggest that the Executive accepts that committees have the power to order documents and to insist upon lawful questions being answered, notwithstanding any general statutory secrecy provisions. The Committee will proceed with questions.

The Hon. SHAOQUETT MOSELMANE: In a recent Inspector of Custodial Services report into the use of forced separation, segregation and confinement in New South Wales Juvenile Justice Centres, 60 recommendations were made. Have any of those recommendations been adopted since then?

Mr SOUTHGATE: The recommendations and the report have just been released, in October. Of the recommendations, we have—

Mr DAVID SHOEBRIDGE: I think it was 23 November, was it not?

Mr SOUTHGATE: Thank you. We have implemented over half of those recommendations; they are going to be implemented. I could give you the specifics on notice.

The Hon. SHAOQUETT MOSELMANE: Do you agree with all the recommendations made in the report?

Mr SOUTHGATE: Of the recommendations, we agree with a large majority of the recommendations; we support a large majority. There are two recommendations that we note, and there are some that we partially agree with. I can provide you with more detail on notice.

I am advised:

The NSW Government's response to the Inspector of Custodial Services' report on use of force, separation, segregation and confinement is available on the Inspector's website at http://www.custodialinspector.justice.nsw.gov.au/Pages/Reports-and-publications.aspx

The Hon. SHAOQUETT MOSELMANE: Are there any recommendations that you disagree with?

Mr SOUTHGATE: There are two recommendations that we note at this time.

The Hon. SHAOQUETT MOSELMANE: Could you tell us what they are?

Mr SOUTHGATE: One recommendation is the use of bad language, and the other recommendation is the two or three units in the Cobham facility. There is no model at this time to either refurbish or remove those units.

The Hon. TREVOR KHAN: They might have formally responded to the report.

Mr SOUTHGATE: All the Government responses to the report are also publicly available.

The Hon. TREVOR KHAN: On the inspector's website?

Mr SOUTHGATE: Yes.

The Hon. SHAOQUETT MOSELMANE: What about the recommendations with regard to reducing the use of force to move on young people? What was your view on those?

Mr SOUTHGATE: In Juvenile Justice we are actively working to reduce restrictive practice for the management of detainee behaviour. However, there are some circumstances where the use of force, segregation and confinement remain appropriate and necessary mechanisms for managing risk, ensuring staff and detainee safety, and punishing unacceptable behaviour. In these instances, uses for such practices are prescribed in the Children's Detention Centre Act as part of a suite of tools for frontline staff. As part of ongoing strategy to build the capability of staff, the Government invested $1 million in 2016 in training programs for Juvenile Justice staff.

Training has been a focus for equipping staff with better knowledge and understanding of detainee behaviour and development of capability to recognise and de-escalate situations before a use of force becomes necessary. To this end, we have developed a new training package called "Connect, Redirect, Resolve". The package was developed in consultation with key stakeholders by an organisation specialising in managing challenging behaviours often associated with people who have experienced childhood trauma. This package is now being run out across all centre custodial staff across New South Wales. There is a three-day version of this course that is being given to new entrants coming into Juvenile Justice. Avoiding a situation of aggression is in the best interests of everybody, especially officers.

The Hon. SHAOQUETT MOSELMANE: With regard to a particular element of reasonable suspicion, what are the risk factors to be considered? What risk factors allow you to have reasonable suspicion and therefore enable you to take action in a particular incident?

Mr SOUTHGATE: Juvenile Justice has a classification assessment process called the "Objective Detainee Classification System", which has recently been reviewed by the University of Technology, New South Wales. It has said that our model for classifying young people in custody is fit for purpose. The review conducted by the university also went across other jurisdictions in Australia. From that review we believe we have one of the best classification systems in Australia. The classification system assigns levels of risk based on some static and other factors that enable us to assign a category of risk for that person. It starts with classification A, "B" is for behaviour and "O" is for offence, all the way down to B3, which is the lowest category of risk for young people in a detention centre. It is those levels of classification that staff can use to better identify potential risk in a centre.

The Hon. SHAOQUETT MOSELMANE: Have the staff been well trained to understand all of these classifications?

Mr SOUTHGATE: The classification system is well known throughout New South Wales. It is a new system that we have adopted over a number of years. The review recently conducted was to see if we were still contemporary. The review has said that the model is still fit for purpose.

The Hon. LYNDA VOLTZ: I refer to recommendation No. 2 and the Government's response. In regard to the use of force against young people, your response was that you supported it in principle. However, you stated that the use-of-force data indicated that force was currently being used appropriately. Do you not agree with what the inspector said about reducing the use of force?

Mr SOUTHGATE: As I said, we are actively working to reduce restrictive practices in the management of detainee behaviour.

The Hon. LYNDA VOLTZ: That is not what your response says. The inspector has raised it as a consideration and has recommended that it be reduced, obviously in response to concerns about its use. Do you not support that view?

Mr SOUTHGATE: A Juvenile Justice officer must not use force against any person in a detention centre except for the following purposes: to prevent a detainee from injuring himself or herself; to protect the officer or other persons from attack or harm; to protect a detainee from inflicting serious damage to property; to prevent a detainee from escaping; to prevent a person from entering a detention centre by force; to search a detainee in circumstances in which the detainee refuses to submit to being searched; and to seize any dangerous or harmful article or substance in the possession of a detainee—

The Hon. LYNDA VOLTZ: That is not my question. I said that the inspector raised concerns about the use of force. The Government's response is that it is being used appropriately. I asked whether you agree with the inspector's view. I am not asking you to read out the Act.

Mr SOUTHGATE: We support the inspector's recommendation in principle.

The Hon. LYNDA VOLTZ: Inspector, what were your concerns in regard to the use of force?

Ms RAFTER: The recommendation is about using force to move young people. Young people are given directions to move when they have placed themselves in a dangerous situation. Of course it is appropriate to use force in those situations, depending upon the circumstances. I have made the recommendation that they reduce the use of force in moving young people in situations where I believe through upskilling staff in de -escalation and negotiation strategies they could avoid using force. I did not find that staff were not complying with the legislation, but I think there are better strategies that can be used by Juvenile Justice to reduce the use of force.

The Hon. LYNDA VOLTZ: Because a reduction in the use of force reduces conflict in the centre and makes management—

Ms RAFTER: It is safer for everybody.

The Hon. LYNDA VOLTZ: Yes.

Mr DAVID SHOEBRIDGE: One of the focuses was routine handcuffing of children in detention at different points in their management, if I can put it that way. Can you explain your concerns about the inappropriate non-tailored use of handcuffing?

Ms RAFTER: Routine handcuffing was the concern I raised. Handcuffing should occur only as a result of an individual risk assessment; it should not be routine.

The Hon. LYNDA VOLTZ: Did you find there has been an increase in this since the removal of the requirement for them to record handcuffing?

Ms RAFTER: It is difficult to know because it is not recorded anymore as a result of the regulation change.

Mr DAVID SHOEBRIDGE: But one of the particular concerns about handcuffing is when young people are placed in separation, segregation and confinement. There is routine handcuffing in the current system when they are being moved or during visits or exercise and they are also required to have non-contact visits without individual risk assessments being done. Mr Southgate, the inspector's recommendation is that that be stopped and that it all be subject to individual assessment and not be routine. The response from the organisation is that it supports that in principle. What does that mean?

Mr SOUTHGATE: Any decision to apply handcuffs is determined on a case-by-case basis through—

Mr DAVID SHOEBRIDGE: That is not the inspector's finding.

The Hon. TREVOR KHAN: Let the witness answer.

Mr DAVID SHOEBRIDGE: The inspector found that it is happening as a matter of routine, not as a result of individual inspections. That is what is identified in the report. Can you address that?

Mr SOUTHGATE: I can talk about our current practice. Our current practice is that any decision to handcuff a young person is based on a risk assessment. That is our current practice today.

Mr DAVID SHOEBRIDGE: Does that mean your practice has changed?

Mr SOUTHGATE: In June 2017, Juvenile Justice clarified the requirement for individualised application of restraints. This came from one of our reviews of detainee risk management plans [DRMP]. Those plans are how we assess risk on an individual basis for a young person. It is important to note that when the Chisholm Behaviour Program closed two and a half years ago, in May 2016, we adopted a different practice in Juvenile Justice centres. Each person, especially a high-risk detainee, is managed under a DRMP. When DRMPs were first adopted in November 2016, the executive director instituted weekly audits. In June 2017, a new DRMP procedure and a template were implemented.

The Hon. LYNDA VOLTZ: What was the new procedure?

Mr SOUTHGATE: It was based on audits of things that were working and things that were not. I can provide the Committee with the new template on notice.

I am advised:

In June 2017, a new Detainee Risk Management Plan (DRMP) procedure and template were implemented. As promised, a copy of the new DRMP template is provided (**Attachment A**).

The Hon. LYNDA VOLTZ: Did those 2017 changes include the regulation that meant you no longer recorded handcuffing?

Mr SOUTHGATE: The weekly audits were replaced by spot audits. In late 2017 and early 2018 DRMP workshops were held in every centre in New South Wales. It was at this time that staff were reminded that the use of handcuffs should be risk assessed on a case-by-case basis.

Mr DAVID SHOEBRIDGE: Inspector, Mr Southgate's statement is that this routine handcuffing of young people in custody was fixed by a regulation and changes that happened in June 2017. That is not how I read your report. What is your view of whether it was fixed by the changes made in June 2017?

Ms RAFTER: At the time of the inspection, it appeared that routine handcuffing was occurring. I agree that Juvenile Justice has done a lot of work in relation to improving handcuffing. It has accepted that handcuffing needs to occur after an individual risk assessment. I believe there was still an issue with its policy and that the policy is not clear enough for the staff. I would like to see that fixed. In their response they say they are reviewing the policy.

Mr DAVID SHOEBRIDGE: It is not just handcuffing that is a concern. One of the other matters identified in your report is routine stripsearching of young people in custody. You quite rightly note that many of the young people in custody have suffered multiple traumas in their life. Tragically, we know often that can involve sexual assault and other violence to their person and therefore routine stripsearching can be deeply re-traumatising for them. What has happened, as best as you understand it, since your recommendation about changes and the removal of routine stripsearching?

Ms RAFTER: Routine stripsearching was first raised by the former inspector in his 2015 report. He made a recommendation at the time. The recommendation that I had made in this report adopts his previous recommendation and that is about risk-based stripsearching. Since that time, Juvenile Justice has introduced a regulation about stripsearching that partially addresses the recommendation and they have also introduced some new policies, which I have reviewed, and the practices in those policies are generally good. However, my preference would be that stripsearching is only ever done on a risk basis, and that is the basis upon which I have made that recommendation.

Mr DAVID SHOEBRIDGE: Mr Southgate, why have you not accepted the very clear position that particularly when you are dealing with this traumatised cohort of children and young people that strip searches not be routine but only be on a risk assessment basis?

Mr SOUTHGATE: Under the children's detention centre Act there are broad powers for us to search young people, but one of the issues that is always going to be at the forefront of our mind is contraband entering a detention centre. Contraband can be extremely dangerous—dangerous for staff and dangerous for detainees— and can cause some really serious security issues. We do not undertake stripsearching. I think that term could envisage that somebody is naked. We are very, very conscious of the complexities and the trauma that some of our detainees have been through in the past, so we undertake a partially clothed body search where a young person is never naked at any one time. They have either the top half of clothing on or the bottom half of clothing on at any one time. We undertake these in a very sensitive way. We only use youth officers obviously of the same sex as the person. One youth officer is conducting the search and another youth officer is observing the other youth officer at all times.

It is important to youth officers to retain the power of search of a detainee when there is reasonable suspicion that the person is carrying contraband or where the search is necessary to maintain the good order and security of all our centres. Contraband is always at the forethought of our mind, so we continue to carry out searches when people come into a centre. But we have changed our policy so that we no longer search young people when they come back from visits and that is done on a risk assessment. It could be intelligence that something may be passed through on a visit or it could be the presentation of a young person at that particular time, so we have changed our policy.

The Hon. LYNDA VOLTZ: What are the number of incidents of contraband in the last year in Juvenile Justice?

Mr DAVID SHOEBRIDGE: Discovered by strip searching?

Mr SOUTHGATE: I need to take that on notice.

I am advised:

In 2017-18, there were 148 instances where contraband was found across Juvenile Justice. This accounts for contraband items found through all search and observation processes, including partially clothed body searches.

Mr DAVID SHOEBRIDGE: Mr Southgate, the inspector's report says that Juvenile Justice conduct routine strip searches on young people. I indicate that I do not understand your semantic challenge of the term "strip search". If a young person is naked from the waist down at one point and naked from the waist up at another point, they are being stripsearched. Do you accept that?

Mr SOUTHGATE: I accept we do not call it "stripsearching". We call it "a partially covered body search".

Mr DAVID SHOEBRIDGE: Do you accept that if a young person is by direction and force made to be naked from the waist down at one point of a search and then naked from the waist up at another point that they are being stripsearched?

Mr SOUTHGATE: We do not call it "stripsearching", we call it—

Mr DAVID SHOEBRIDGE: Do you accept the reality is that young people are being stripsearched in those circumstances? It is a simple question, Mr Southgate.

The Hon. TREVOR KHAN: It might be, and he has responded to it.

Mr DAVID SHOEBRIDGE: Those young people are being stripsearched, Mr Southgate, are they not?

Mr SOUTHGATE: We undertake that process in an extremely sensitive way.

The Hon. SHAOQUETT MOSELMANE: They are stripsearched?

The Hon. LYNDA VOLTZ: I think that is a yes.

Mr SOUTHGATE: They are partially clothed body searches.

Mr DAVID SHOEBRIDGE: Mr Southgate, the report says that Juvenile Justice centres conduct strip searches on young people on admission when they return to a centre after a court appearance or hospital visit, following leave and following contact visits with family. Stripsearching occurs even though young people are required to wear centre-issued coveralls during visits. In which of those circumstances do you still conduct routine strip searches of children?

Mr SOUTHGATE: On 8 October 2018 we implemented a new policy on partially clothed body searches to further strengthen the safeguards in centres. The new policy has been a considerable body of work and has taken into account the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse, the changes for which I recently gave an example that we no longer stripsearch—partially clothed body search, my mistake—when a young person comes back from a visit. We carry out searches of people coming into a detention centre or if they have been away from a detention centre on unsupervised leave. When they come back into a centre we will carry out a partially clothed body search.

Mr DAVID SHOEBRIDGE: Young people are being routinely stripsearched on admission? That is still happening?

Mr SOUTHGATE: Yes.

Mr DAVID SHOEBRIDGE: Young people are being routinely stripsearched when they return after a court appearance?

Mr SOUTHGATE: We carry out a partially clothed body search on admission and if they are away from a centre on unsupervised leave, when they return we carry out a partially clothed body search.

Mr DAVID SHOEBRIDGE: It is a simple question. I say "stripsearched", you say "partially clothed search". We are talking about the same thing. Are young people being routinely stripsearched after a court appearance?

Mr SOUTHGATE: No.

Mr DAVID SHOEBRIDGE: Has that policy changed?

Mr SOUTHGATE: The policy was reviewed on 8 October and we implemented a new policy on partially clothed body searches.

Mr DAVID SHOEBRIDGE: Are young people being routinely stripsearched after a hospital visit?

Mr SOUTHGATE: If a young person is in the supervision of our staff, whether it is on a hospital visit or it is to court, we do not routinely carry out a partially clothed body search when they return.

Mr DAVID SHOEBRIDGE: If at any point a young person is not under direct supervision by Juvenile Justice, when they return they will be routinely stripsearched. Is that how I am to understand the policy?

Mr SOUTHGATE: If they have been outside of a centre.

Mr DAVID SHOEBRIDGE: Regardless of an individual risk assessment, it is a routine policy that is applied?

Mr SOUTHGATE: It is really important to note the issues of contraband coming into a centre.

Mr DAVID SHOEBRIDGE: What is equally important to know, Mr Southgate, and I think it is the difficulty I have with this policy, is you must know the deep trauma, often deep sexual assault trauma, that young people in your care have suffered and the routine application of strip searches without an individual risk assessment can only aggravate that trauma. I am concerned that you are not taking into account the trauma and individual risk.

Mr SOUTHGATE: All our detainees that come into our centres have a very, very complex history, often involving childhood abuse and neglect and trauma. We understand that the experience of trauma can have a direct impact on behaviour. We are also very aware that young Aboriginal people are over- represented in Juvenile Justice within our system and we are working through a number of mechanisms to try to continue to reduce the number of Aboriginal representation and particularly on remand. For young people in custody, Juvenile Justice has a case management framework and approach in strengthening trauma informed care. This has also been supported by a brand-new training package we are rolling out, called core effective practice skills, which is an intensive coaching and development initiative. It has been implemented in Reiby this year, and we are pleased to announce that from next year two other centres, Cobham Detention Centre and the Orana Detention Centre, will also implement core effective practice.

The Hon. SHAOQUETT MOSELMANE: But don't routine strip searches add to those traumas you are talking about?

Mr SOUTHGATE: We are very aware that young people who come in have got some very complex history. That is why whenever—

Mr DAVID SHOEBRIDGE: So you do not routinely stripsearch them. Simple.

Mr SOUTHGATE: Whenever we carry out a partially clothed body search it is done in a very sensitive way.

The Hon. SHAOQUETT MOSELMANE: It is not really partially. If the person is stripped from the waist down they are basically stripped bare. Just because they are wearing a shirt on top and then you swap that with underwear and then remove the shirt they are still stripsearched, are they not?

Mr SOUTHGATE: It is a partially clothed body search.

The Hon. LYNDA VOLTZ: Mr Cappie-Wood, why was the regulation introduced to stop recording handcuffing?

Mr SOUTHGATE: Could I answer that, please? I made a mistake in that the regulation has not changed. That was my mistake.

Mr DAVID SHOEBRIDGE: Then why did the policy change, Mr Cappie-Wood? Surely recording it is the best way of keeping an eye on it, but you do not record it. Why do that?

Mr CAPPIE-WOOD: I might just take some advice as to that.

The Hon. LYNDA VOLTZ: Is the regulatory amendment in 2016 the one that stands or is it not the one that stands?

Mr CAPPIE-WOOD: There have been some routine changes in that. We will take it on notice in terms of the sequence and timing of the routine changes and what that looked like, because still the appropriate recording of activities within centres is necessary. We will give you the sequence, timing and changes within that so you can see what is recorded and in what circumstances.

I am advised:

The *Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation* commenced on 19 February 2016 and remains current.
The amendment provides that a 'use of force' report is not required when force is only threatened, when a detainee is restrained in order to be moved from one location to another or when a riot shield is used only for personal protection.
The intention of this amendment was to clarify the use of force in juvenile detention centres and improve the efficiency of administrative processes.

Mr DAVID SHOEBRIDGE: Do you know why?

Mr CAPPIE-WOOD: I will include that in the response.

The Hon. LYNDA VOLTZ: Is the 2016 regulation, the amendment, in force or not in force? It is the Children (Detention Centres) Amendment (Use of Force and Drug Testing) Regulation 2016, clause 1 [2].

Mr CAPPIE-WOOD: We will just check clause 1 [2] for you. I am advised that it is still in force and we can provide further details for you in that regard.

I am advised:

Yes, the amendment to the regulation remains in force.

The Hon. LYNDA VOLTZ: That no longer requires the reporting of the use of handcuffs to move people?

Mr CAPPIE-WOOD: I said we would include in the response to Mr Shoebridge's question what are the routines associated with recording in association with this.

The Hon. LYNDA VOLTZ: That is good, but what I am asking is why was that 2016 amendment introduced to not record?

Mr CAPPIE-WOOD: Including the causes, which I said we would give to Mr Shoebridge.

The Hon. LYNDA VOLTZ: You do not know why it was introduced? You have got no indication why you stopped recording the use of handcuffs? Given that according to the inspector handcuffing or forcibly restraining a young person without reasonable excuse is prohibited in New South Wales, wouldn't the recording of the use of handcuffs be important in terms of that provision?

Mr CAPPIE-WOOD: In terms of the practical policies on an operational basis, and we have gone through that question about use of handcuffing—

The Hon. LYNDA VOLTZ: Have we?

Mr CAPPIE-WOOD: We have gone through the question about how policy is changing to make sure that there is a reduction in the use of handcuffing.

The Hon. LYNDA VOLTZ: That is a policy to reduce handcuffing. I am asking you about the recording of handcuffing.

Mr CAPPIE-WOOD: Yes, and I have said I will be providing further details for you.

The Hon. LYNDA VOLTZ: Are you saying that a regulation will be introduced to start recording handcuffing?

Mr CAPPIE-WOOD: I did not say that. I said I would be providing details to you about the use and application of that and the reasons why there was a change in the regulation.

Mr DAVID SHOEBRIDGE: Inspector, was it ever explained to you why the regulation changed to no longer record handcuffing?

Ms RAFTER: I believe that the regulation was changed because administratively there was a lot of time taken recording and Juvenile Justice wanted to spend more time engaging with young people.

The Hon. LYNDA VOLTZ: So it was a staffing issue?

Ms RAFTER: However—

The Hon. SHAOQUETT MOSELMANE: Is that what they have said to you?

Mr DAVID SHOEBRIDGE: I think we should let the inspector finish.

Ms RAFTER: However, I believe that all use of restraints should be recorded and that is why I have made the recommendation.

The Hon. LYNDA VOLTZ: Because indeed it would make your job very difficult to monitor what is happening if there is not a record.

Ms RAFTER: Not just my job but also Juvenile Justice.

Mr DAVID SHOEBRIDGE: Mr Southgate, as a matter of practicality, what are the difficulties with recording on each occasion where a use of force is used against a young person in custody?

Mr SOUTHGATE: Use of force?

Mr DAVID SHOEBRIDGE: Yes, whether that is handcuffing or strip searching or some other kind of physical restraint or physical force. If you want to, you can deal with them individually. What are the difficulties? Why not?

The Hon. LYNDA VOLTZ: Let us start with handcuffing. Why would you not record handcuffing?

Mr SOUTHGATE: It is a challenge for frontline staff to carry out their work especially when they are transporting young people from place to place when you remove and when you place on, especially when our policy states that handcuffs should only be used for the shortest time possible. If a young person de-escalates their behaviour and then escalates very, very quickly, the adoption and the use of cuffs can change quite frequently. It is a challenge for frontline staff to be able to record that, especially in an environment where they are outside of a centre, in a vehicle or carrying out their work at an operational level.

The Hon. LYNDA VOLTZ: But if you are only using it sparingly, that would not imply that it is a huge administrative burden. If you are using it routinely as a way of moving people—which is the implication from the report—then, yes, you can understand why it would be. Would that not be correct?

Mr SOUTHGATE: The use of restraints are currently not a matter for routine. They are currently a matter for a risk assessment. Our staff are trained to look at individuals on a case- by-case basis. If operationally they are away from the centre and they believe there is an escalation in behaviour they may apply the restraints. That might be for a very, very short time and then they could take them off again.

Mr DAVID SHOEBRIDGE: Surely the way of—

The Hon. TREVOR KHAN: Let him answer, David.

Mr SOUTHGATE: Therefore the recording of that is a challenge for frontline staff.

Mr DAVID SHOEBRIDGE: But surely if you are doing it on the basis of an individual risk assessment you need to be able to check that it is being done in accordance with a risk assessment. If you do not know when it has happened, there is no record of how often or when it has happened. How can you check that it has been done in accordance with an individual risk assessment if you do not even know it has happened?

Mr SOUTHGATE: Because the presentation of someone could be the risk assessment. If staff believe that a presentation of a young person is escalating, that is part of that risk assessment process.

Mr DAVID SHOEBRIDGE: But if there is no record of it happening, who checks?

Mr SOUTHGATE: We no longer routinely apply handcuffs. It is done on a risk assessment on a case-by-case basis.

Mr DAVID SHOEBRIDGE: You did not answer my question, Mr Southgate. If you are not recording it happening, who checks it was done appropriately?

Mr SOUTHGATE: We always have more than one member of staff dealing with one person, especially if they are outside of the centre. Within a centre we have shift supervisors, unit managers and we also have assistant managers.

Mr DAVID SHOEBRIDGE: But you said a lot of this is happening outside of the centre. It is happening on visits, at court attendance and hospital attendance. There is no supervisor present. If it is not being recorded how do you know it is being done right?

Mr SOUTHGATE: We have got oversight bodies as well, the Ombudsman and the Inspector of Custodial Services.

The Hon. LYNDA VOLTZ: But if it is not recorded how are they going to know?

Mr SOUTHGATE: Also young people are allowed to complain if they feel—

The Hon. SHAOQUETT MOSELMANE: If they do not know their rights, how do they complain? If they do not know that you should be recording whether they are being handcuffed or not, how do they complain?

Mr SOUTHGATE: As soon as a young person comes into custody on their induction they are guided through how to complain. They can complain through the telephone system, they can complain to external bodies such as the Ombudsman and they can also complain to staff internally. They are guided through that on their induction.

Mr DAVID SHOEBRIDGE: You cannot seriously think that transparency is provided by hoping or thinking that traumatised young people in custody will be the primary source of information to the Ombudsman and the inspector. That cannot be your position, Mr Southgate, surely.

Mr SOUTHGATE: We no longer routinely handcuff a person. It is based on an individual risk assessment and staff are given training to understand the process of when and how to apply restraints.

The Hon. LYNDA VOLTZ: How do we know that if you do not record it and the person that we have put in as oversight of Juvenile Justice on behalf of the people of New South Wales has no record of it?

Mr SOUTHGATE: I will have to take that on notice.

I am advised:

To clarify, the use of handcuffs is recorded by Juvenile Justice NSW. However, based on operational constraints, how usage is recorded varies. For example, if a detainee is transported to Court, the application of handcuffs is recorded on the relevant movement form.

These records are able to be accessed and reviewed by oversight bodies, including the Inspector of Custodial Services, Official Visitors and the Ombudsman at any time.

Mr DAVID SHOEBRIDGE: Inspector, you know that a lot of people were waiting for your report. Are you aware of that?

Ms RAFTER: Yes.

Mr DAVID SHOEBRIDGE: Indeed, there was broad media interest, broad interest across the sector and I would suggest there was interest in Parliament to wait for you report. Are you aware of that?

Ms RAFTER: Yes.

Mr DAVID SHOEBRIDGE: From the initial referral it took over two years for your report to be provided?

Ms RAFTER: Yes.

Mr DAVID SHOEBRIDGE: You were aware that there was some disgruntlement about how long it was taking?

Ms RAFTER: I—

The Hon. TREVOR KHAN: From who? You?

Mr DAVID SHOEBRIDGE: From myself, the Opposition, law reform bodies, lawyers and Legal Aid.

The Hon. LYNDA VOLTZ: I even suspect from Trevor.

Mr DAVID SHOEBRIDGE: From the community, from children who had been in detention, from the Chair of the Committee.

The CHAIR: Order!

Mr DAVID SHOEBRIDGE: You were aware that there was disgruntlement about the delay in your report?

Ms RAFTER: I was not aware.

Mr DAVID SHOEBRIDGE: You were not aware of that?

Ms RAFTER: Those organisations did not contact me.

The CHAIR: In your own words in committee you did say that it had taken a long time to produce that report; that it had not yet been produced, and now it has. Yes?

Ms RAFTER: Yes.

Mr DAVID SHOEBRIDGE: You released the report on a Friday after Parliament ceased sitting. Is that right?

Ms RAFTER: I tabled it in the morning of 23 November.

Mr DAVID SHOEBRIDGE: Are you aware that Parliament ceased sitting on 22 November?

Ms RAFTER: I was able to get a table—

The Hon. LYNDA VOLTZ: The 22 November was the last sitting day of Parliament.

Ms RAFTER: Okay, thank you.

The Hon. TREVOR KHAN: I think the answer is, no she was not.

Mr DAVID SHOEBRIDGE: Do you understand inspector that if you are going to table the report to Parliament one of the purposes is for parliamentarians to look at it and test the Government on it in question time and through questions on notice. Are you aware that is one of the reasons why you table a report in Parliament?

Ms RAFTER: I tabled the report in Parliament because that is a requirement under the legislation, and I tabled the report as soon as it was complete.

Mr DAVID SHOEBRIDGE: Do you acknowledge that at least one of the purposes for the statutory requirement for tabling a report in Parliament is so that it can be used during parliamentary processes to hold the Government to account? Are you aware of that?

Ms RAFTER: I am aware that I have tabled the report in the public domain so that parliamentarians will look at the report, the public hopefully will look at the report and all of those stakeholders that you just mentioned will also be interested in the report.

Mr DAVID SHOEBRIDGE: Do you accept that it is hard to ask the Minister questions about your report in Parliament if Parliament is no longer sitting? Do you accept that that is a problem?

The Hon. TREVOR KHAN: Why do you not put to her what you are really implying rather than dancing around?

Mr DAVID SHOEBRIDGE: Do you accept that that is a problem?

Ms RAFTER: If you are inferring something

Mr DAVID SHOEBRIDGE: I am asking you if it is a problem?

Ms RAFTER: I finished this report when it was ready.

Mr DAVID SHOEBRIDGE: Inspector, delivering the report the day after Parliament ceases to sit means that your report cannot be used during those parliamentary processes of question time and questions on notice to ask the Minister questions about that, and that is a major deficiency in you providing your report the day after Parliament ceases to sit. Do you accept that?

Ms RAFTER: The report was tabled as soon as it was ready. I was not concerned about whether Parliament was sitting. I needed to get a tabling date, and that tabling date was available when the report was ready.

Mr DAVID SHOEBRIDGE: Who did you talk to about the tabling date?

Ms RAFTER: The tabling office.

The Hon. TREVOR KHAN: The Clerks. Who are you now going to imply is involved in some dodgy practice, David?

Mr DAVID SHOEBRIDGE: You can ask your own questions, Trevor.

The CHAIR: Order! Everyone will get a fair go.

Mr DAVID SHOEBRIDGE: Inspector, the report was delivered to the Clerks at 9.00 a.m.

Ms RAFTER: Yes, it was.

Mr DAVID SHOEBRIDGE: When was it publicly available on your website?

Ms RAFTER: I was publicly available—I cannot give you the exact time.

Mr DAVID SHOEBRIDGE: I looked at 10 o'clock, 11 o'clock, 12 o'clock, 1 o'clock and continued to refresh your website and I could not find it until significantly after that. When was it published on your website?

Ms RAFTER: I believe it was between 3.00 p.m. and 3.30 p.m. but I would have to get the exact time. It had to be uploaded onto the system after it was tabled.

Mr DAVID SHOEBRIDGE: It cannot possibly take you 6½ hours to upload a PDF onto your website. Do you know the term for putting out reports late on Friday? It is called "putting out the trash" because it is next to impossible for the media and for the public to cover reports that are put out late on a Friday. Why was it published so late?

Ms RAFTER: It was published as soon as it was ready.

Mr DAVID SHOEBRIDGE: No. Inspector, you gave it to the Clerks at 9 o'clock in the morning and you published it on your website at about 3.30 in the afternoon. Are you telling me it takes you 6½ hours to put up a PDF on your website?

Ms RAFTER: It took us that time and we published as soon as it was ready.

Mr DAVID SHOEBRIDGE: Inspector, I put it to you that you did not publish it to the public as soon as it was ready; you delayed until mid -afternoon, even late afternoon and by doing so there was a significant inability for the media and the public to read the report and for it to feature in public reporting.

Ms RAFTER: I published it as soon as it was ready.

Mr DAVID SHOEBRIDGE: You gave it to the Clerks at 9 o'clock in the morning, when was it completed?

The Hon. TREVOR KHAN: Point of order: These questions have been asked and answered now repeatedly. I put it that it is unfair for this independent officer to be subject to this haranguing that she is now receiving.

The CHAIR: There is no point of order. Mr David Shoebridge is entitled to ask questions and explore the answers that he gets. The Hon. Trevor Khan is also entitled to ask questions and to take points of order.

The Hon. TREVOR KHAN: And I did.

Mr DAVID SHOEBRIDGE: Inspector, you gave the report to the Clerks at 9 'clock in the morning.

Ms RAFTER: Yes I did.

Mr DAVID SHOEBRIDGE: When did you finish the report? Was it mid-day or 5 o'clock the previous afternoon? You surely did not finish it at 8.59 the next morning.

Ms RAFTER: I was working on that report virtually right up until it was tabled.

Mr DAVID SHOEBRIDGE: Did you finish it the day before?

Ms RAFTER: Yes.

Mr DAVID SHOEBRIDGE: Why did you not take steps the day before to ensure that it was published first thing on Friday?

Ms RAFTER: Because we were still working on the report.

Mr DAVID SHOEBRIDGE: No, you finished it the day before.

Ms RAFTER: Yes.

Mr DAVID SHOEBRIDGE: Once it was finished or even as you were finishing it, why did you not do the obvious thing for accountability and say, "Let's ensure this will be up for the public to see as soon as I hand it to the Clerks?" Why did you not take that basic accountability measure?

Ms RAFTER: Because the people who could do that in the office were available the next day.

The Hon. LYNDA VOLTZ: Did you deliver a copy of the final report to the Minister's office?

Ms RAFTER: I did.

The Hon. LYNDA VOLTZ: When did you deliver it to the Minister's office?

Ms RAFTER: After the tabling.

The Hon. LYNDA VOLTZ: When you said that 22 November was the date provided by the Clerks. When did you seek the advice of the Clerks?

Ms RAFTER: I asked someone in the office to obtain some potential tabling dates. I would have to take that on notice with the exact dates that they spoke to the tabling office because they spoke to the tabling office a number of times.

I am advised:

I understand the independent Inspector of Custodial Services, Ms Fiona Rafter, will be providing a response directly to the Committee.

Mr DAVID SHOEBRIDGE: I am wondering if you did not even finish the report until 22 November why the Clerks provided you with a date of 23 November if you had not completed the report.

Ms RAFTER: Because I was determined to finish the report and have it published and that was the last tabling date available.

The Hon. LYNDA VOLTZ: The Clerks told you that it had to be tabled by 23 November. Is that what you are saying?

Ms RAFTER: Yes.

The Hon. LYNDA VOLTZ: So it was not that the 23rd was the date you were given; 23 November was the final date you could actually table it.

Ms RAFTER: It was both.

The Hon. SHAOQUETT MOSELMANE: Did the Clerk advise you when you were tabling it that you should also put it on the web for the public to see immediately after you had tabled it?

Ms RAFTER: No. I do not believe so.

The Hon. TREVOR KHAN: It is not their job.

The Hon. SHAOQUETT MOSELMANE: I am just asking as part of the inquiry.

Ms RAFTER: I do not think so, but I had somebody else talking to the tabling office. I did not do it personally.

The Hon. LYNDA VOLTZ: Who was the other person talking to the tabling office? Was that someone from your staff?

Ms RAFTER: Yes.

The Hon. LYNDA VOLTZ: You anticipated that you were not going to finish until 22 November, is that right?

Ms RAFTER: I thought that realistically it was going to be during that week, with all the steps that need to be taken to actually get to a point where you can table a public document.

The Hon. LYNDA VOLTZ: Last time we spoke to you, you said that the department had a copy of the draft report and was making amendments to that report.

Ms RAFTER: They were not making amendments to it. The last time I appeared before you I had provided the Minister with a draft report to enable him to make a submission.

The Hon. LYNDA VOLTZ: You also said that the department had been provided with a draft report. Is that correct?

Ms RAFTER: I had provided a draft report to the department and took them through what the recommendations would be.

The Hon. LYNDA VOLTZ: In fact, their evidence to our Committee, if my memory is correct, is that there was more relevant information than what was included in your report and they were providing you with that information so that the report could be amended to include more current information. That is correct, is it not?

Ms RAFTER: I believe they were referring to an earlier occasion. I will take on notice to review the transcript to make sure that I am answering you correctly.

I am advised:

I understand the independent Inspector of Custodial Services, Ms Fiona Rafter, will be providing a response directly to the Committee.

The Hon. LYNDA VOLTZ: You talk about an earlier occasion. Are you implying that they had more than one draft?

Ms RAFTER: Yes, it is a process whereby—

The Hon. TREVOR KHAN: An iterative process.

Ms RAFTER: Yes, an iterative process. That is exactly—

Mr DAVID SHOEBRIDGE: It is nice watching you two go back and forth about the iterative process.

Ms RAFTER: That is exactly what it is.

The Hon. LYNDA VOLTZ: So they had more than one draft of the report?

Ms RAFTER: Yes.

The Hon. LYNDA VOLTZ: On what dates did they receive the second draft?

Ms RAFTER: The second draft was in October, because I met with the department to talk them through the recommendations that I was making in the final report that I was going to submit to the Minister, so I could check a number of matters with them.

The Hon. LYNDA VOLTZ: Did you make changes following that meeting?

Ms RAFTER: I did.

The Hon. LYNDA VOLTZ: And then you went back to them again after those changes were made?

Ms RAFTER: No, I asked them to check some data for me and to check some factual matters for me.

The Hon. LYNDA VOLTZ: But you sent at least two copies of the draft to them?

Ms RAFTER: For the second one I met with them and spoke to them about it.

The Hon. LYNDA VOLTZ: Did you make changes after that second meeting?

Ms RAFTER: Yes.

The Hon. LYNDA VOLTZ: On what date did that meeting occur?

Ms RAFTER: Can I take that on notice, because I have to double-check my diary?

I am advised:

I understand the independent Inspector of Custodial Services, Ms Fiona Rafter, will be providing a response directly to the Committee.

The Hon. LYNDA VOLTZ: Was it close to when you finalised and tabled the report?

Ms RAFTER: No, it was before I sent the final report to the Minister. It is the usual process. It is not different from the usual process.

The Hon. LYNDA VOLTZ: That is fine. When did you send the final report to the Minister?

Ms RAFTER: On 30 October.

The Hon. LYNDA VOLTZ: On 30 October you sent the final report to the Minister. Why did it take so long to table the final report in Parliament?

Ms RAFTER: The reason I sent the report to the Minister on 30 October is to seek a submission. That is a requirement under my legislation, and I am also required to consider that submission.

The Hon. LYNDA VOLTZ: How long did the Minister's office take to get back to you after they received the report on 30 October?

Ms RAFTER: I asked them to provide a submission as soon as possible, and they provided a submission on 7 November.

The Hon. TREVOR KHAN: Seven days—wow!

The Hon. LYNDA VOLTZ: From 7 November to 22 November—

The Hon. TREVOR KHAN: That surprises me!

The Hon. LYNDA VOLTZ: —did you make further changes to the report based on the Minister's response?

Ms RAFTER: Sorry, there was some noise and I did not catch the question.

The Hon. LYNDA VOLTZ: I do understand that it is very difficult when people are talking over other people. From 7 November to 22 November, following sending the final report to the Minister's office, did you make any further changes?

Ms RAFTER: Yes, I did make some further changes.

The Hon. LYNDA VOLTZ: What were those changes in regard to?

Ms RAFTER: There was updating, editorial, edits—any number of changes.

The Hon. TREVOR KHAN: Spell checks.

Mr DAVID SHOEBRIDGE: Were there are any substantive changes? I think that is what the question is directed to.

Ms RAFTER: Sure. I would not regard them as being substantial after that occasion.

The Hon. SHAOQUETT MOSELMANE: It still took about two weeks.

The Hon. LYNDA VOLTZ: They were not substantial changes. After 7 November it took another two weeks to finalise the report, did it?

Ms RAFTER: Yes.

The Hon. LYNDA VOLTZ: Why did it take so long if there were no substantial changes?

The Hon. TREVOR KHAN: You have not done an assignment recently, have you?

Mr DAVID SHOEBRIDGE: Trevor!

The Hon. SHAOQUETT MOSELMANE: Mr David Shoebridge is the Acting Chair now.

Mr DAVID SHOEBRIDGE: The witness said she had difficulty hearing when people were talking over others.

The Hon. TREVOR KHAN: I apologise.

Ms RAFTER: There are a number of steps that we have to go through to finalise a report. There were still minor changes that were made. There were also editing processes that had to happen. There is graphic design, there is layout. We go through a whole lot of processes when we are getting a report ready to be tabled. This was actually the quickest we have been able to do it.

The Hon. LYNDA VOLTZ: When you said you sent the final report to the Minister's office, it was not the final report. It was a text document that was not laid out as a final report; is that what you are saying?

Ms RAFTER: Yes, because the Act requires me to provide a draft for submission and then consider that submission. I do not do a final layout on any report until I have the submission back, so that I am complying with my legislation.

The Hon. LYNDA VOLTZ: The report you sent on 30 October was, indeed, a draft.

Ms RAFTER: Yes.

The Hon. LYNDA VOLTZ: Was it significantly different to the draft the Minister's office had received previously?

Ms RAFTER: It was different, yes.

The Hon. LYNDA VOLTZ: Could you provide us copies of those two drafts?

Ms RAFTER: I would refer you back to the legal advice I have already provided to the Committee.

Mr DAVID SHOEBRIDGE: Just to be clear, are you refusing to provide that draft upon request?

Ms RAFTER: Yes, I am, in accordance with the legal advice that I have received and provided to the Committee.

Mr DAVID SHOEBRIDGE: Inspector, you say, I think on page 13 of the report—and I think many would be surprised to see this—

Ms RAFTER: Can you repeat that?

Mr DAVID SHOEBRIDGE: You say on page 13 of your report—and I think many people would be surprised to know this—that, "There are no educational or skills-based prerequisites for a youth officer." How has that come to be? How do we have a workforce, who are dealing with such highly traumatised young people, but there are no educational or skills-based prerequisites for a youth officer?

Ms RAFTER: I think that is a question that is probably best directed to Juvenile Justice.

Mr DAVID SHOEBRIDGE: Before I go to Mr Southgate, what are the problems with that?

Ms RAFTER: As the report outlines, Juvenile Justice are often dealing with a very disadvantaged and complex cohort, and it is important that Juvenile Justice officers are trained in dealing with those issues. That is why I have made a lot of recommendations around training and upskilling officers who are working in Juvenile Justice. A lot do a tremendous job—that has to be said—in a very difficult and challenging environment, which I said in the report as well.

Mr DAVID SHOEBRIDGE: No-one is suggesting there are not good people. The question is: Are there good systems? That is what you are challenging, is it not?

Ms RAFTER: That is why I have recommended that they review those roles for recruiting in the future. I have also recommended that they really focus on upskilling and training their staff.

Mr DAVID SHOEBRIDGE: Does that include having staff being trauma informed in all their work?

Ms RAFTER: Absolutely.

Mr DAVID SHOEBRIDGE: Would you say that having trauma-informed staff is the primary need for training at this stage?

Ms RAFTER: Trauma informed, yes. I have made those recommendations and they have been providing their staff with that training.

Mr DAVID SHOEBRIDGE: Mr Cappie-Wood, how on earth did we get to the point in 2018 that there are no educational or skills-based prerequisites for a youth officer?

Mr CAPPIE-WOOD: There has been a recent change to the job description and requirements for youth officers, as there has been substantial change in the training provided to youth officers. There has been a marked improvement and a marked step-up in terms of trauma-informed training, de-escalation training, and a wide variety of communication and counselling and other related training that we give to youth officers. We take that very seriously. We will provide the Committee with a copy of the new job description and the training we provide to staff to ensure we provide the best opportunity for rehabilitation and management in a safe environment.

Mr DAVID SHOEBRIDGE: Mr Southgate, does Juvenile Justice now accept that it cannot continue with a system where there are no educational or skills-based prerequisites for a youth officer?

Mr SOUTHGATE: We have changed our recruitment practices. We take people who want to apply for a role in Juvenile Justice through an assessment-based process. That process lets us know whether they have the competencies to be youth officers under the role description. It is only when they pass that they move on the training phase. They can also be pulled out of the training phase if they do not show that competency. We think that is the robust way to bring in staff and to ensure we have the right staff on the front line to work with young people.

Mr DAVID SHOEBRIDGE: What are now the minimum educational or skills-based prerequisites for a youth officer?

Mr SOUTHGATE: As I said, we have an assessment -based process, not an educational-based process. The assessment-based process is much more front line; it tells us whether the staff have the competencies and skills—

Mr DAVID SHOEBRIDGE: What competencies and skills?

Mr SOUTHGATE: They are in the role description. We can provide that on notice.

Mr DAVID SHOEBRIDGE: What skills?

Mr SOUTHGATE: We can provide that on notice.

I am advised:

Youth Officers provide direct supervision and daily care to detainees in custody in accordance with legislation, regulations and organisational guidelines, policies and directives. Youth Officers work as part of a multi-disciplinary team, including Caseworkers, Psychologists, Senior Programs Officers and Aboriginal Programs Officers.

On commencement, Youth Officers are placed into an Induction, Training and Assessment Program (ITAP) which provides an intensive two week training and orientation followed by three additional training blocks spread throughout the next five months. Youth Officers receive 31 days of initial formal training (both in the classroom and in the workplace).

Completion of the ITAP program enables participants to claim Recognition of Prior Learning (RPL) for approximately one third of subjects necessary to fulfil the requirements of a Certificate IV in Youth Justice. After completing the ITAP, Youth Officers are supported to develop a portfolio of 'on-the-job' evidence to complete the remainder of the qualification.

In addition to ITAP training, frontline custodial staff also attend regular Skills Maintenance Sessions run by centre management, to maintain familiarity with centre systems, emergency response protocols and key procedures including workplace health and safety. Refresher sessions on the use of protective tactics are regularly provided.

Juvenile Justice also identified de-escalation and negotiation training as a key and ongoing capability development requirement for frontline custodial staff, provided by the NSW Government's $1 million investment in training. A new training package called Connect, Redirect, Resolve was developed, in consultation with key stakeholders and by an organisation specialising in dealing with challenging behaviour associated with experiences of childhood trauma.

Juvenile Justice NSW frontline custodial staff, including use of force trainers, were also

consulted in the development of the training. This package is now being rolled out to all centre staff across Juvenile Justice. A three day version of this course will be delivered to new Youth Officers as part of their induction.

Mr DAVID SHOEBRIDGE: I do not want to minimise the difficulty of the task that Juvenile Justice faces. Over the past few years we have seen a significant and welcome reduction in the Juvenile Justice population; that is, the number of young people being detained. As that population reduces, it is likely the concentration of difficulties will increase; that is, the children and young people in detention are more likely to have very significant behavioural problems and deep trauma histories. That is why they find themselves in juvenile detention. Given that, surely there should be minimum standard educational and training requirements. The population is very likely to be deeply traumatised and to have significant behavioural problems. There will be a desperate need for competency and training.

Mr SOUTHGATE: I think I have already answered that. We on-board our staff through a robust assessment-based process. That gives us the opportunity to look at new staff to see whether they can operate on the front line. We have a robust process.

Mr DAVID SHOEBRIDGE: Inspector, do you accept that with the reduction in the number of young people in detention the concentration of difficulties has increased, which makes managing units more complicated and increases the need for educational and competency-based requirements?

Ms RAFTER: The young people who find themselves in detention do have complex needs. As you know, I have outlined them in the report. That is why it is really important for the staff to have skills and training. There is a combination of both. It is about bringing in those staff who have skills and upskilling the staff who because of the length of time they have been working in the environment have experience and skills and have been exposed to other training.

Mr DAVID SHOEBRIDGE: Are you satisfied with the recruitment changes that have been implemented by Juvenile Justice, which do not seem to have an educational requirement and which seem to focus only on competency and skills?

Ms RAFTER: Staff do go through certificate training. That is an area in which they could probably invest in their staff as well. That is what I would like to see; I would like to see them investing in their existing staff and recruiting staff with the right skills.

Mr DAVID SHOEBRIDGE: Can you provide on notice details about the certification you think is appropriate?

Ms RAFTER: Yes, of course.

I am advised:

I understand the independent Inspector of Custodial Services, Ms Fiona Rafter, will be providing a response directly to the Committee.

The Hon. TREVOR KHAN: What is the certificate they can do now?

Mr SOUTHGATE: It is a certificate IV.

Mr DAVID SHOEBRIDGE: Do all youth officers now have that certification?

Mr SOUTHGATE: When they are on board they are taken through the robust assessment process and go through their training. They then start the work that goes to the certificate IV in the future.

Mr DAVID SHOEBRIDGE: How many of your staff and what proportion have a certificate IV today?

Mr SOUTHGATE: I will take that question on notice.

Mr DAVID SHOEBRIDGE: Would it be a majority?

Mr SOUTHGATE: I will take the question on notice.

Mr DAVID SHOEBRIDGE: I want to get a sense of whether it is a minority or a majority of the staff.

Mr SOUTHGATE: It is important for me to provide accurate information, so I will take the question on notice.

I am advised:

As at 11 January 2019, 343 Youth Officers have a Certificate IV in Youth Justice. This represents approximately 57 per cent of all Youth Officers. All Juvenile Justice Youth officers are afforded the opportunity to obtain a Certificate IV through the Operational Training Unit.

The Hon. TREVOR KHAN: What is the incentive for them to do the certificate IV course? Is there a pay outcome that arises from completing the course?

Mr SOUTHGATE: Yes, there is a pay outcome.

The Hon. SHAOQUETT MOSELMANE: Are juvenile strip searches carried out by a senior officer or a person who does not have the skills? Who conducts juvenile strip searches?

Mr SOUTHGATE: Youth officers conduct partially clothed body searches of young people. Youth officers have been through foundation training, and it is during that training that they are taught how to carry out that practice.

The Hon. SHAOQUETT MOSELMANE: Is it done by one or two officers?

Mr SOUTHGATE: There are two officers at any one time. One officer is of the same sex as the detainee. One officer carries out the search and the other officer observes.

Mr DAVID SHOEBRIDGE: What happens if the young person resists?

Mr SOUTHGATE: There are processes we follow if a young person resists.

Mr DAVID SHOEBRIDGE: Can they have their clothing physically removed?

Mr SOUTHGATE: We can use force.

Mr DAVID SHOEBRIDGE: How often does that happen?

Mr SOUTHGATE: The training we are now giving our staff, which is fundamental, involves de-escalation and negotiation. We are now teaching our staff how to work with people with a background of trauma on a very individual level. That is also why we are bringing in core-effective practice.

The Hon. SHAOQUETT MOSELMANE: Do you recall any juvenile being handcuffed while being stripsearched because they have been aggressive and they needed to be controlled?

Mr SOUTHGATE: We apply handcuffs on a case-by-case basis based on a risk assessment.

The Hon. SHAOQUETT MOSELMANE: While being stripsearched?

Mr SOUTHGATE: We apply handcuffs on a case-by-case basis based on a risk assessment.

The Hon. LYNDA VOLTZ: So they may be used during strip searches?

Mr SOUTHGATE: We are keen to ensure that our staff are safe. We also want to ensure that young people are safe. Sometimes the application of handcuffs prevents young people from harming themselves or the staff. We are muddling two issues. There is a procedure for a partially clothed search. However, if someone tries to assault our staff or to hurt themselves, we have a process to manage that.

The Hon. LYNDA VOLTZ: You said the strip search is conducted by a person of the same sex but that there may be two people in the room. Is it correct that the people in the room may not necessarily both be of the same sex as the detainee?

Mr SOUTHGATE: No, they are always the same sex. There will be two females if it is a female detainee or two males if it is a male detainee.

The Hon. LYNDA VOLTZ: You said earlier that a strip search is undertaken by a person of the same sex. I was not clear that that meant everyone in the room was of the same sex.

Mr SOUTHGATE: Yes.

The Hon. LYNDA VOLTZ: I would have concerns if they were not.

Mr CAPPIE-WOOD: As would we.

Mr DAVID SHOEBRIDGE: Mr Southgate, one of the significant problems for your organisation in this report is how idiosyncratic the application of use of force is. On page 80 of the report it says that in Acmena, for example, in 70 per cent of incidences where use of force is applied that instruments of restraint are used and there are some 106 incidents. Yet in Orana instruments of restraint are used in only 21 per cent of incidents where there are 155 incidents of use of force. Other than inadequate training or inadequate systems, how do you explain that you have such a discrepancy in the use of restraints between these two facilities?

Mr SOUTHGATE: We certainly have not got inadequate training. In fact, the Government invested $1 million in 2016 for us to enhance some of our training in centres. We have refreshed all of our staff in protected tactics training. We are rolling out de-escalation and negotiation training, but we are trialling new training called core effective practice training. We have run out mental health training for all staff. I would not say that training is inadequate at all.

Mr DAVID SHOEBRIDGE: Tell me what explains that. Why in 70 per cent of cases in Acmena restraint is used but in only 21 per cent of instances in Orana is restraint used?

Mr SOUTHGATE: That is on an individual risk assessment at that time for that young person.

Mr DAVID SHOEBRIDGE: Mr Southgate, that is not an adequate explanation for such a vast discrepancy in the use of restraints. You know that. Can you please answer my question?

Mr SOUTHGATE: I can take that question on notice.

I am advised:

Each decision to use force, and/or apply restraints is made on the basis of an in-situ risk assessment, conducted by the staff on duty at the time an incident arises. The variance observed between centres reflects differences in the circumstances of each discrete incident.

Mr DAVID SHOEBRIDGE: Surely Juvenile Justice would have investigated these discrepancies? It is not just those two institutions. At Reiby, there were 465 examples of use of force and 36 per cent of the time— over one-third of the time—restraint is used. At Baxter, there were 406 incidences of use of force but in 66 per cent of the time restraints are used. Surely it is not acceptable to you to have such broad discrepancies and such idiosyncratic application of restraints?

Mr SOUTHGATE: Which is why we welcome the report by the inspector. All external bodies and oversight bodies assist us by changing the way that we work. We are on a journey of continuous improvement, but we have not sat idle for the past two years while the report has been going on. In fact, since the executive director Melanie Hawyes has taken over Juvenile Justice, there has been significant organisational, cultural and practice reforms commenced in Juvenile Justice prior to the inspections. They were advanced throughout the inspections and continue to advance today. One of the first things that Ms Hawyes did after beginning her role was to formalise a stakeholder communication process. Juvenile Justice established a Juvenile Justice Advisory Committee. In February 2017, the committee met for the first time and continued to meet every six months. In October 2016, Juvenile Justice commenced an internal review of the behavioural management practices and this review continued throughout 2017.

We looked at international best practice across custodial portfolios and comparable health and human services portfolios and this review has informed policies and procedures practiced within centres and has led to the development of training programs for staff. In November 2016, Juvenile Justice instituted a review of the detainee risk management plans [DRMPs] and the practices. This encompasses weekly audits of DRMPs, implementation of the new DRMP procedure and a template in June 2017. In November 2017, and January, DRMP workshops were held at each and every centre to better inform staff how to better develop strategies to reduce risk.

Mr DAVID SHOEBRIDGE: Mr Southgate, I do not speak for the rest of the Committee—

The Hon. TREVOR KHAN: No, you do not.

Mr DAVID SHOEBRIDGE: My feeling is that no member of this Committee questions the competence or the professionalism of Ms Hawyes.

The Hon. TREVOR KHAN: Hear, hear!

Mr DAVID SHOEBRIDGE: I think I speak for the whole Committee on that. Nobody questions the competence or professionalism of Ms Hawyes, or the extent of the task in front of her. I am asking you about what you are doing to ensure that we do not have these dramatic discrepancies from facility to facility on the use of instruments of restraint. A whole lot of motherhood statements from you about general reforms is not an adequate response. What are the system-wide checks and balances that you are putting in place to ensure we do not have these type of discrepancies?

Mr SOUTHGATE: This is why we welcome the report. This is an opportunity for us to strengthen our practice into the future.

Mr DAVID SHOEBRIDGE: Inspector, are you satisfied with the responses that have been given by Juvenile justice? Are you satisfied that those responses will remove these quite vast discrepancies?

Ms RAFTER: There are probably a couple of clarifications that might be of assistance. The use of force is reported by use of force IDs. These will not be separate instances of use of force. That is just to explain the way—

Mr DAVID SHOEBRIDGE: I understand.

Ms RAFTER: That is for the benefit of the rest of the Committee. This will be the number of reports, so it will depend on the number of individuals who have been involved in the use of force. When I looked at this data as well, yes, of course I share your concerns and that is why I want Juvenile Justice to monitor, analyse and interrogate this data more robustly going forward, to try to work out if there is a way they can reduce it. There will be centres here where the numbers are higher because they are likely to be holding the higher risk detainees. It is more likely that there are going to be these sorts of incidents and those sorts of restraints with higher risk detainees, but they need to be monitored, analysed and interrogated and work needs to be done to try to reduce use of force and reduce the use of restraints, in my view.

Mr DAVID SHOEBRIDGE: Ms Rafter, some of the other data in your report makes it clear that isolation—a series of terms fall under isolation such as confinement, separation, segregation, et cetera, but I will use the term "isolation" to cover the gamut. Do you understand what I am referring to?

Ms RAFTER: I do.

Mr DAVID SHOEBRIDGE: The use of isolation as a punishment is disproportionately used against Aboriginal young people in detention, who are 33 per cent more likely to be punished by isolation than non-Aboriginal young people. Why is that happening?

Ms RAFTER: I cannot explain why that is happening, but I published it in the report because I thought it was really important that it be in the public domain and part of the recommendations is that I would like Juvenile Justice to continue to monitor as to why Aboriginal young people—when you are referring to isolation, you are talking about confinement, so that is confinement as punishment. I want them to continue to monitor that and I am going to continue to monitor it as well.

The Hon. SHAOQUETT MOSELMANE: Is it just monitoring or reducing confinement?

Ms RAFTER: Reducing confinement is the aim but monitoring the overrepresentation of Aboriginal people within that data is what I want them to continue to monitor and I will continue to monitor as well.

Mr DAVID SHOEBRIDGE: Not only are Aboriginal young people more likely to be confined as punishment, but your data makes it clear that Aboriginal people spend more time in confinement than non-Aboriginal people.

Ms RAFTER: Yes, that is right.

Mr DAVID SHOEBRIDGE: Was any explanation given to you about why that happened?

Ms RAFTER: No. I cannot explain the data. I thought it was important that we continue to monitor the data and then the analysis can start to occur.

Mr DAVID SHOEBRIDGE: Mr Cappie-Wood, you are the secretary. You have the titular responsibility for this. What do you say to that data?

Mr CAPPIE-WOOD: I say the data is exceptionally unfortunate. There is a lot more to it than merely saying that it is a question of looking at it through a sole lens. It is time spent in confinement. There is a lot deeper reasoning behind some of these activities.

Mr DAVID SHOEBRIDGE: It is both numbers.

Mr CAPPIE-WOOD: That is right.

Mr DAVID SHOEBRIDGE: The incidences of confinement are disproportionately against Aboriginal young people and the length of confinement is disproportionately against Aboriginal young people.

Mr CAPPIE-WOOD: And as you well know, when you look at that broad bough into presence through the rest of the criminal justice system, we are seeing the same disproportionate level of representation, which we find disturbing and concerning. We have to reflect on our practices to say what can we do to try and minimise that.

Mr DAVID SHOEBRIDGE: Good. So what are you doing?

Mr CAPPIE-WOOD: We are taking on a range of issues. Not only is there, as we have mentioned, all the training and that is all very nice, thank you, but we also say how do we get more Aboriginal staff into the system, into Juvenile Justice, as well as into adult corrections.

Mr DAVID SHOEBRIDGE: Is it not more important to get Aboriginal children out of the system rather than Aboriginal staff into the system? Surely that should be your primary goal.

Mr CAPPIE-WOOD: Thank you for the segue, it is a perfect one, because that issue about trying to make sure they are out of the system—clearly, we cannot influence the sentencing practices but the question of remand and the amount of short-term remand, which is again disproportionately Aboriginal children, we are working very actively to reduce that. As you well know, 50 per cent are remandees. The vast proportion of those are in our custody for less than 24 hours. That means that question about decision points for why they are coming into our centres for a very short period of time and what alternative placements and supports can they be given so they are not traumatised through our system is one of the key issues. I am very happy to talk further about this.

Mr DAVID SHOEBRIDGE: But confinement as a punishment is not being used against young people who are coming in as a general rule for less than 24 hours on remand?

Mr CAPPIE-WOOD: That is correct, yes.

Mr DAVID SHOEBRIDGE: So can we focus on those substantive problems in the Juvenile Justice system that are seeing Aboriginal young people over- punished, over-isolated and over-segregated even just as a proportion of young people in Juvenile Justice? Then if you compare them to the proportion of young people in the population it is an obscene over-representation.

Mr CAPPIE-WOOD: And so that question is there is no inherent bias inside the system. I think that is one of the most important issues. The system is not biased in terms of that. It deals with the question of individuals and the risk they pose or the behaviour that they have.

Mr DAVID SHOEBRIDGE: If you treat two groups of the population equally but the outcome is a substantial disadvantage to one part of the population there is a systemic bias against that population. That is the problem you are not confronting.

The Hon. TREVOR KHAN: That is a systemic bias. That is a different terminology, David.

Mr CAPPIE-WOOD: No, I think we are attacking it from—I think we are both seeing the same problem.

Mr DAVID SHOEBRIDGE: There is systemic bias. I accept the Hon. Trevor Khan's point. There is a systemic bias against Aboriginal young people in the court system and the juvenile detention system and it is playing out badly in these data on confinement and isolation.

The Hon. TREVOR KHAN: Mr Cappie-Wood is agreeing with you. I think you will probably find unanimity of view throughout the room, David.

Mr DAVID SHOEBRIDGE: Apart from saying that it is bad, what is the training that you are giving to staff to ensure that they understand the special needs of Aboriginal young people, the history of trauma, the intergenerational trauma and the like?

Mr CAPPIE-WOOD: I am very happy to provide details in terms of the cultural awareness training that has been stepped up significantly. We are happy to provide details of the additional Aboriginal staff because role models as well as people who—literally, Aboriginal kids want to see their own people and understand their own people in that environment. We are stepping that up significantly, including targeted positions in that system. We have to have that because that has been proved to be one of the best mechanisms of being able to de-escalate stress by Aboriginal kids coming into the system as well as to be able to find role models for kids not to come back.

Mr DAVID SHOEBRIDGE: And some of the cultural inclusion practices like we see at the Waratah Unit and the like, are they going to be expanded across the system, Mr Southgate?

Mr SOUTHGATE: We believe that all custodial centres should have a pre-release side to the centres. Obviously, Cobham is based on remand and so it may not be able to be rolled out to Cobham, but pre-release at all centres that are looking after people on custodial orders is something that is very good and something that we should push.

Mr DAVID SHOEBRIDGE: Do you have the funds for that?

Mr SOUTHGATE: That would cost no more money for that. It is a cost-neutral benefit. It is just a matter of making sure that people leave and go out. Whether they go out on education, they go out on vocational or they go out to educational issues, that is good practice for all centres to adopt.

Mr DAVID SHOEBRIDGE: Do you have a target date for when you will remove this systemic bias against young Aboriginal people in juvenile detention? Is it going to be gone by 2019? Is it going to be gone by 2020? Do you have a target date to remove the systemic bias against Aboriginal young people?

Mr SOUTHGATE: I think it is important to recognise that the over-representation of Aboriginal young people in detention is trending down for Juvenile Justice. In fact, we are below 50 per cent and we have never been below 50 per cent in the past. I think this is a real reflection of Juvenile Justice.

Mr DAVID SHOEBRIDGE: Sorry, Mr Southgate, that is happening at the court point about the number of young Aboriginal people going into the system. That is not Juvenile Justice necessarily. That is mainly in the court system. I am asking about in your practices in Juvenile Justice do you have a target date for removing the systemic discrimination and bias against Aboriginal young people?

The Hon. TREVOR KHAN: That is a misunderstanding of systemic bias.

Mr SOUTHGATE: In 2018 in November we launched a new Aboriginal strategic plan and support and performance framework to build on existing Aboriginal engagement initiatives. We are also working closely with the NSW Coalition of Aboriginal Alliances to examine opportunities to co-design initiatives to reduce the number of Aboriginal young people entering custody for non-violent offences. In June 2017 we introduced 22 new caseworkers into custodial centres, including six identified Aboriginal roles. All Juvenile Justice caseworkers in custody have completed updated Changing Habits and Reaching Targets [CHART] training along with a number of youth officers. We will continue to focus on reducing the number of Aboriginal young people coming into contact with Juvenile Justice, especially for those coming on remand. We have targets in our Juvenile Justice 2022 plan and I can provide you those targets on notice.

I am advised:

Juvenile Justice NSW Strategic Plan 2022 will set a clear target for a reduction in Aboriginal custodial entries by 2022. As this plan is still in draft, a target is still being finalised. The plan will come into effect from 1 July 2019.

The Hon. LYNDA VOLTZ: Can I go back to some of confinements and punishments that are meted out. I noticed in your report that there was a difference between different detention centres in regards to access to pools and gymnasiums and that they are used as incentives for detainees. Is that correct? For example, would access to the gym be denied to someone as a punishment?

Mr SOUTHGATE: Yes, it would. There is a suite of punishments available for unit managers to prescribe to manage behaviour in a custodial setting.

The Hon. LYNDA VOLTZ: I understand why you may deny access to television or games rooms. Why do you deny access to gymnasiums?

Mr SOUTHGATE: Juvenile Justice is not unique. We have young people who misbehave. If you look in a school environment the school has got—

The Hon. LYNDA VOLTZ: I understand it is about them misbehaving. I am just wondering, given that sport and exercise is part of the educational curriculum and anyone who has been involved in sport understands how important exercise is for discipline and wellbeing, which I would have thought would be fundamentally important for young people, particularly those who are used to exercise, why is the gymnasium part of the punishment routine? If they enjoyed studying science you would not deny them the right to study science, would you?

Mr SOUTHGATE: Confinement is for a small period of time.

The Hon. LYNDA VOLTZ: I am not talking about confinement. I am asking about as a punishment denying them the right to attend the gym.

Mr SOUTHGATE: This is a small period of time to reflect on how to manage behaviour in a custodial setting. The staff have a suite of tools available to try and enhance the behaviour of young people.

The Hon. LYNDA VOLTZ: I get all that. I am wondering why of those suites gymnasiums are being included given that sport and exercise is part of the education curriculum and given that sport is important for wellbeing. I am not sure why that is being seen as something that should not be an activity they participate in every day. In fact, I would have thought that it would be something you would want them to be participating in every day, like you would want them to be getting educated every day.

Mr SOUTHGATE: These are a range of options that we use to try to get people back on board in the normal routine of a detention centre.

The Hon. LYNDA VOLTZ: I get all that, but you would not deny them access to schoolteachers and education, would you, as a punishment?

Mr SOUTHGATE: If they misbehave in school the school is entitled to refuse them entry to a school for a certain amount of time. **That is also based on risk, safety and misbehaviour. Misbehaviour has also got a very close coalition to risk, so if someone's misbehaviour is extreme they may not be able to—**

The Hon. LYNDA VOLTZ: I understand. I am not talking about misbehaving. If they are misbehaving and they are being excluded from somewhere because they are misbehaving in the place that is one thing, but this is being used as a punishment when they misbehave. They may not be punished because they are misbehaving particularly in the gymnasium; access to the gym is being used as a punishment to modify other behaviours. I am wondering why for something that is so important the gymnasium is being used in that context.

Mr SOUTHGATE: I am trying to answer that question because if there is a risk and the misbehaviour is extreme—it is closely aligned with risk—staff have to make sure that they are safe in a hostile environment. They have got a suite of tools that they use to be able to manage misbehaviour and to manage some very complex young people.

The Hon. LYNDA VOLTZ: That does not answer my question in any way. Mr Cappie-Wood, will you explain why that is included in the suite of punishments?

Mr CAPPIE-WOOD: The access to a variety of settings has to be risk assessed and also relative to the nature of their behaviour. If they have been misbehaving generically, and it is seen that there is some form of activity which they value, it is quite often seen that it is beneficial to say there is a temporary stay on their accessing something that they see as valuable as a reminder that their improved behaviour will make sure that that is accessible. We do not deny them this endlessly, but it is something that you have to think about: How do we send messages to them about the nature of their behaviour? We have very few tools available to us. This is one of them. It is thought through very carefully. The psychologists think through this very carefully. Their advice to us is that this is a structured way of trying to send messages about relative behaviour. It is a reward sanction issue and it is seen to have been effective and it is seen to have been effective. It is reviewed and that reward sanction process has proved to be successful in the past. We do not wish to deny them access.

The Hon. LYNDA VOLTZ: I understand the value of the reward system. I have worked in prisons in the military. I get the "you do it our way and it will be a lot easier for you". But I do not understand why something that we would encourage people to do throughout their entire life, just as we would with education, that is, exercise, is being included. I know there is a limited suite of measures but personally I think of the one thing that would keep kids on the right track is the discipline that comes from exercise and sport. And it should be seen as part of their everyday routine.

Mr CAPPIE-WOOD: I definitely encourage that outcome. If, however, their behaviour is such that their participation in that is seen to be risky, then partially there might be temporary denial. We have to look at that very carefully. There might be other forms of physical activity that can be undertaken but it might be temporary denial of access to, say, a particular type of organised sport or a particular part of the facility.

The Hon. LYNDA VOLTZ: I understand that. The other concern raised by the inspector is that it is not consistent across detention centres. In some places they do not automatically get access to the gymnasium.

Mr CAPPIE-WOOD: One of the issues that is facing us is to ensure that there is consistency in the application. That is one of the matters which is actively under management consideration to ensure that we get that consistency across the service.

The Hon. LYNDA VOLTZ: At this point of time does everyone have access to the gymnasium as soon as they go into a detention centre? Is it still at different levels at different detention centres?

Mr SOUTHGATE: I think I can answer this. The work done there we have realised that there is some inconsistencies in daily routines across centres. A number of months ago Juvenile Justice headed up a project to make it very consistent across all of the six centres to make sure that even the time that somebody wakes up in the morning, the time that somebody has their lunch, the time that somebody goes to bed in the evening, it is all consistent across. We are actively negotiating this locally with the unions to make sure that we want to adopt something by 1 July 2019. This will give consistent practice. It is not just consistency around waking up, having breakfast, going to education, having your lunch, going back to education, taking part in purposeful activity. We realise that purposeful activity and recreation in some senses is very different. The project that is underway currently is to make that much more consistent across all the six centres, and that is called the Consistent Structured Day Project.

The Hon. LYNDA VOLTZ: We are talking about consistency and benchmarking. I know the use of language is a very small proportion of those who were in confinement, but how are you going to benchmark it? Anyone who has a teenager know they swear, unless they are a very good teenagers and I do not think many of us have them—

The Hon. SCOTT FARLOW: Maybe they follow their parents.

The Hon. LYNDA VOLTZ: Yes. How do you benchmark against that and take into consideration that in many communities and in different homes language is used in different ways? Bad language may become part of the common vernacular?

Mr SOUTHGATE: Youth officers do have an extremely challenging role. Even in the report the inspector has highlighted the complexity of that role. Our staff should not have to tolerate bad language. Juvenile Justice considers it appropriate to set a standard of respectful conduct within its centres by including bad language as a misbehaviour. You are absolutely right, it is a very small percentage of misbehaviour reports. We have given the staff the skills in managing aggressive young people and de- escalating situations by being able to use a misbehaviour report in a situation when it requires is an extra tool that youth officers use. Bad language is not tolerated at school and in the workplace and it should not be tolerated in a youth justice facility.

Mr DAVID SHOEBRIDGE: Mr Southgate, having a discretionary ability to punish young people because of bad language will inevitably produce bad outcomes, will it not?

Mr SOUTHGATE: We think that is an appropriate tool for staff to continue to use in trying to set a standard in each detention centre.

Mr DAVID SHOEBRIDGE: For young people coming from a traumatised environment—and that is the bulk of the cohort of young people in detention—swearing is common place. Do you accept that?

Mr SOUTHGATE: I do accept that bad language only makes up such a tiny proportion of misbehaviour reports.

Mr DAVID SHOEBRIDGE: Having a discretionary ability when children may at different points have been swearing at different times—saying words like "bullshit", "crap", "fuck" or whatever words are used at different times throughout the course of the day but then choosing one moment to punish a young person because of it—brings the system into disrepute and allows for the kind of discretionary misapplication that is seen in much of the data in this report. Do you accept that?

The Hon. TREVOR KHAN: If there was no discretion you might have a bigger problem.

Mr SOUTHGATE: I do not accept that.

The Hon. TREVOR KHAN: It depends on how it is used, David.

The Hon. SHAOQUETT MOSELMANE: It is the selectivity issue that he is pointing out.

Mr DAVID SHOEBRIDGE: It is subjective and open to abuse and if you want to have respect from the young people in detention, having subjective, open-to-abuse standards will not further your goal.

Mr SOUTHGATE: I do not accept that. The premise that colloquially language is used in each detention centre, if we reflect on the very miniscule proportion of misbehaviour reports coming from bad language, that gives me confidence that staff are utilising the tools available to them in an appropriate way.

Mr DAVID SHOEBRIDGE: Have young people been put in confinement, punished by way of isolation because they have sworn?

Mr SOUTHGATE: I will take that on notice.

I am advised:

Under the *Children (Detention Centres) Act 1987*, the use of confinement is a lawful response for the punishment of misbehaviour, including the use of bad language.
Confinement is not isolation in the sense of deprivation of all meaningful human contact – detainees are always able to communicate with staff.

Mr DAVID SHOEBRIDGE: I will put this proposition to you, Mr Southgate. If so, I think that is a bullshit outcome. It is a terrible outcome. The thought that you would punish a young person with isolation because they swear, given we know how damaging isolation is—it can remove a young person from sport, education and peer engagement—is a terrible outcome. Do you accept that?

Mr SOUTHGATE: I will also say that confinement is not isolation, in the sense of deprivation of all meaningful human contact; detainees are always able to communicate with staff. What we have seen in some instances of confinement is that sometimes it is just the period of time that a young person needs in their room, away from all of their bad peers. Sometimes bad peers can be very agitating and sometimes young people start to try to play up in front of bad peers. By removing them from that area and placing them in their room, it is just the time to de -escalate that situation. Then we can try to find out what is causing that level of misbehaviour and, hopefully, start to work with that young person on a case-by-case basis to understand the mechanisms so that that behaviour is not repeated in the future.

The Hon. SHAOQUETT MOSELMANE: Can I jump in on that question? Mr Southgate, do you not agree with recommendation 17 of the inspector's report that young people not be confined for using bad language that is not abusive or threatening? Do you not agree with the recommendations of the inspector?

Mr DAVID SHOEBRIDGE: We are not talking about instances where a young person is being verbally violent towards an officer. We are talking about incidental use of swearing not directed by anger. That is what we are talking about, Mr Southgate.

Mr SOUTHGATE: We have noted that recommendation. I am quite happy to repeat why we have noted that recommendation. Youth officers should not have to tolerate bad language. Juvenile Justice considers it is appropriate to set the standard for respectful conduct within centres. Misbehaviours can be addressed in a number of ways including additional chores, restriction from leisure and other activities. The New South Wales Government invested $1 million in training for youth officer skills and capabilities to be developed, so we can start to intervene early. That is the crucial issue for us—intervening early—so some behaviour does not turn into misbehaviour or some incident does not turn into an escalated incident.

The Hon. SHAOQUETT MOSELMANE: Can you differentiate between your definition of bad language compared to abusive or threatening language? The recommendation is about bad language; it states that juveniles should not be confined for use of bad language, not abusive or threatening language.

Mr SOUTHGATE: We have noted the recommendation, and our position is that youth officers should not have to tolerate bad language.

Mr DAVID SHOEBRIDGE: Inspector, what do you say about the position of Juvenile Justice simply noting your recommendation and not committing to implementing it?

Mr SOUTHGATE: I—

The Hon. TREVOR KHAN: You do not win every fight?

Ms RAFTER: I am sorry, I missed that.

Mr DAVID SHOEBRIDGE: Mr Khan is trying to give you an answer; he suggests that you do not win every fight, and you can adopt that if you like.

Ms RAFTER: I did not hear the interjection.

The Hon. TREVOR KHAN: I know that from politics; I do not win many.

The Hon. LYNDA VOLTZ: Point of order: It would make it a lot easier for the inspector if everyone stopped talking over the top of her and she could get on with her answer.

The Hon. TREVOR KHAN: I apologise.

Mr DAVID SHOEBRIDGE: Do you remember the question?

Ms RAFTER: Yes, I do. My position is, as stated in the report, that I have a concern about using confinement as a punishment for bad language, where it is not—

The Hon. LYNDA VOLTZ: Threatening.

Ms RAFTER: —threatening or offensive. I accept that youth officers should not have to be subject to threatening and abusive—

Mr DAVID SHOEBRIDGE: We are on a unity ticket on that. It is about incidental, non-threatening swearing.

Ms RAFTER: Yes, and I do not want to see confinement used.

The Hon. LYNDA VOLTZ: You identified 27 as being confined for use of bad language. Did you ascertain whether they used threatening and abusive language or just bad language?

Ms RAFTER: No, I have not interrogated it to the level of whether they were confined for abusive and threatening language or just bad language. I cannot say with certainty that these have been confined for what you describe as incidental bad language or whether it was threatening and abusive language.

The Hon. LYNDA VOLTZ: That is the clear distinction.

Ms RAFTER: I have seen some examples of threatening and abusive language, and I understand why there has been punishment for that language.

Mr DAVID SHOEBRIDGE: Mr Cappie-Wood, do you understand the distinction?

Mr CAPPIE-WOOD: Absolutely, yes.

Mr DAVID SHOEBRIDGE: Do you see the merit in having a policy that differentiates between the two?

The Hon. TREVOR KHAN: I think you might get a good answer, David.

Mr CAPPIE-WOOD: Taking up from the point before, there is obviously incidental swearing, and I think we all recognise that. It is a question of providing clarity to staff to make sure they understand the difference between incidental everyday language. In some households it is a noun, it is a verb, it is a pronoun, it is everything. We have to understand it is a process of communication as opposed to abusive and threatening. We understand that and we will make sure that in the training for and application of this that distinction is made. At the same time, having staff who are threateningly abused and sworn at cannot be tolerated. I think we are on the same page.

Mr DAVID SHOEBRIDGE: I agree.

Mr CAPPIE-WOOD: The stats show that we have very low numbers who are segregated because of bad language, and that would indicate that we are heading in the right direction. Let's make sure that we have the clarity right in terms of how that is operationalised.

The Hon. LYNDA VOLTZ: Would it be possible to check the 27 confinements and come back to us on whether they were for threatening and abusive language or just bad language?

Mr CAPPIE-WOOD: Yes, we are very happy to do that.

I am advised:

A review of the incident reports confirms the 27 instances of confinement were for threatening and abusive language as opposed to just bad language.

Mr DAVID SHOEBRIDGE: The report identifies that the use of isolation and confinement can have a very deleterious impact upon a young person's engagement in educational programs.

Mr CAPPIE-WOOD: Agreed.

Mr DAVID SHOEBRIDGE: Inspector, are you satisfied with the response from Juvenile Justice to those concerns or do you think that more needs to be done to ensure that the education of young people in detention is not being prejudiced by inappropriate use of isolation?

Ms RAFTER: I will deal with the question on the basis that it is not inappropriate use of isolation. Any time that a young person is confined or segregated and in some individual circumstances separated can result in them not being able to participate in the schools that exist in each Juvenile Justice centres. That is why I have made a recommendation that Juvenile Justice should continue to work with the Department of Education to ensure that if there is a reason why a young person is placed in any of those situations under any order—and most particularly the segregation because confinement should be for a short period and should not exclude them for a longer period where they might be on segregation for an extended period—they work together to have better educational materials provided.

That must always be subject to risk assessments for the safety of teachers and whether it is appropriate, depending upon the individual circumstances of a young person at the time, for the young person to participate in education at the time. I understand that it is not simple, but I want them to do more work to come up with better strategies so that young people can maximise their ability to engage in education. The research tells us that young people in Juvenile Justice have generally had poor educational contact and outcomes.

Mr DAVID SHOEBRIDGE: Mr Cappie-Wood, do you accept that the Chisholm Behaviour Program was a failed experiment and should never be revisited?

Mr CAPPIE-WOOD: I believe that the Chisholm Behaviour Program was an attempt to manage high-risk detainees coming into the system as a result of Kariong—I will get to your point. I think the outcomes of that program were clearly inappropriate, and as a result of that it was closed down, which in its own way shows that the system was monitoring itself. It was not an external recommendation; the system monitored itself and said that this was inappropriate.

Mr DAVID SHOEBRIDGE: It came after complaints from Legal Aid and others and a review by the Ombudsman. It did not simply magically arise out of Juvenile Justice; at least two external bodies asked what the hell was going on and said that this was routine human rights abuse of young people. I put it to you that it is wrong of you to suggest that the system self-corrected. It came after complaints from Legal Aid and the Ombudsman at least.

Mr CAPPIE-WOOD: I am not saying that those bodies were not there, but I can say that action was underway prior to—

Mr DAVID SHOEBRIDGE: This report states that complaints and concerns raised by staff were ignored; they were not acted upon, but ignored. I can read it for you if you wish.

Mr CAPPIE-WOOD: Hang on. How could they be ignored when we closed down the system? That program was closed down; that was action taken as a result of a management decision.

Mr DAVID SHOEBRIDGE: Page 149 of the report states:

Some staff, for example, raised valid concerns about the program and it is difficult to tell from available records if and how these issues were considered and addressed.

The Hon. TREVOR KHAN: By closing down the system in May 2016.

Mr CAPPIE-WOOD: This is a process. When you have any program and you have active evaluation, you listen to all sources. Those sources were listened to and the program was closed down.

Mr DAVID SHOEBRIDGE: It should never have been started. Do you agree with that?

Mr CAPPIE-WOOD: I think the outcomes of that program were completely inappropriate. Therefore, I concur.

Mr DAVID SHOEBRIDGE: It should never have started.

The Hon. SCOTT FARLOW: He just said he concurred.

Mr DAVID SHOEBRIDGE: It should never have started.

Mr CAPPIE-WOOD: I thought I said yes.

Mr DAVID SHOEBRIDGE: I agree. However, there was a systemic failure from the outset. I will read one extract from the report. It states:

> At the commencement of the program, a review of the relevant literature and evidence-based practices regarding the management of this cohort of young people was not undertaken. The risk assessments undertaken were ad hoc and the risks identified were not addressed. A comprehensive evaluation was neither planned or undertaken at the commencement of the program. A number of decisions were made outside of the committee and there was a lack of transparency about some decisions that were made. Some staff, for example, raised valid concerns about the program and it is difficult to tell from available records if and how these issues were considered and addressed. Many of the documents guiding implementation of the program changed over time.

This was a disaster from the outset; it was an unplanned and ill-considered disaster from the outset. Can you guarantee that it will not be revisited?

Mr CAPPIE-WOOD: There will never be a Chisholm Behaviour Program again.

Mr DAVID SHOEBRIDGE: Or anything of its ilk?

Mr CAPPIE-WOOD: I would like to think that there will never be circumstances where that is required. I would hate to see such a program with such detrimental impacts coming about.

Mr DAVID SHOEBRIDGE: Do you accept institutional responsibility for establishing such an abusive program—they are my words—without any initial evaluation or any initial planning? Do you accept institutional responsibility for that?

Mr CAPPIE-WOOD: In my position you have to accept everything. In so doing, I accept its closure and the actions taken to close it. I also accept the need to have some form of process for managing the high-risk individuals who were coming out of Kariong. It must be remembered that the Kariong system was managed by Corrective Services NSW, not Juvenile Justice. We were bringing juveniles under the management of Juvenile Justice.

Mr DAVID SHOEBRIDGE: Nobody is questioning that it was a difficult transition. However, we all agree that this was a deeply inappropriate way of handling it.

Mr CAPPIE-WOOD: And as a consequence of that and in recognition of the limitations of the program, it was closed down. So the right outcome was achieved.

Mr DAVID SHOEBRIDGE: Inspector, are you satisfied that there has been a sufficient culture change among the staff of Juvenile Justice such that they now see the Chisholm Behaviour Program was a terrible mistake and something that should not be revisited?

Ms RAFTER: I think that Juvenile Justice has accepted that the program had many failings, and that it accepts my recommendation about the lessons learnt from Chisholm. There may be individual staff who support the use of a program such as Chisholm, but they would not reflect the views of Juvenile Justice. I am satisfied that that is the case.

Mr DAVID SHOEBRIDGE: Do you accept that if there is a movement among staff to go down the path of revisiting something like the Chisholm Behaviour Program that would indicate a need to intervene with additional training and education pointing out exactly why it was wrong and such a damaging process?

Ms RAFTER: Yes, and I believe that Juvenile Justice has been doing that as part of those lessons learned. As I said, many of the recommendations in the report are aimed at training and upskilling staff and

providing training about trauma-informed care, negotiation, de-escalation and so on. They are all aimed at avoiding a program like the Chisholm Behaviour Program in the future.

Mr DAVID SHOEBRIDGE: Mr Cappie-Wood, do you endorse the inspector's position, or do you want to delineate yourself from it?

Mr CAPPIE-WOOD: No, I think the inspector has said that correctly. There are staff who are concerned about managing a large cohort of high-risk individuals and who are looking at the mechanisms by which we manage that cohort. As the inspector said, we have stepped up a significant range of training looking at practices. It is a comprehensive process of reviewing and reflecting on the nature of how we can have a trauma-informed practice that also deals—as you have pointed out—with an increasing cohort of high-needs, high-risk kids who have been subject to considerable abuse. That is a constant reflection process, and I am confident we have the systems in place to do that. Look at the number of psychologists we have in the system and the staff training we are undertaking. This is something that cannot be set and forgotten; we need to look at it constantly.

The Hon. SHAOQUETT MOSELMANE: Recommendations 29 to 59 focus intently on staff recruitment, training, upskilling and procedures. If there are internal review processes, why have we needed the inspector to come up with so many recommendations about recruitment, training and upskilling? Why have your processes not identified the need for more training to address the issues you are facing?

Mr SOUTHGATE: Thank you for the question. It certainly has not taken the report for us to look at our own practice. We have been on a journey of continuous improvement for two and a half years, ever since the Chisholm Behaviour Program was closed. That was a long time ago. Since then we have implemented some significant reforms in Juvenile Justice. Our practice every day in a centre is very different from the practice two and a half years ago. Some of the recommendations in the report have already been achieved. I said at the beginning of this process that I would provide on notice exactly how many recommendations have already been completed by Juvenile Justice.

I am advised:

16 recommendations have been completed and 42 recommendations are underway.
The NSW Government's response to the Inspector of Custodial Services' report is available on the Inspector's website at
http://www.custodialinspector.justice.nsw.gov.au/Pages/Reports-and-publications.aspx

The Hon. TREVOR KHAN: But those completions are on the inspector's website.

Mr SOUTHGATE: That information is publicly available, and you will see that those recommendations have been completed. That tells a story that we have not stood still and waited for the report. We have been on a journey of continuous improvement for two and a half years. We have put in place some significant changes in our practice and in the way we look after and manage some very high-risk and complex young people.

The Hon. LYNDA VOLTZ: I refer to management plans for people in confinement. Inspector, you have recommended that people get access to some sort of plan modification while they are in confinement, separation or segregation. Would that be in addition to their management plan and would they revert to their management plan? What do you envisage? Would it be part of the management plan taken and provided? I think it is recommendation 25.

Ms RAFTER: With programs?

The Hon. LYNDA VOLTZ: Yes, modified format with program material.

Ms RAFTER: It is very similar to education, as I explained before, that if a young person is in separation in a circumstance where they might be individually separated due to their particular circumstances, and I have outlined examples of those circumstances, segregation for a period, or confinement, would usually be within that—

The Hon. LYNDA VOLTZ: Sorry, hang on a second.

Ms RAFTER: Sorry, it is a bit hard to hear.

The Hon. LYNDA VOLTZ: Yes, it is a bit hard. I don't know why it happens. I apologise.

Ms RAFTER: Accepted. Thank you. Similarly, if there are programs running then they may not be able to access those programs. It is particularly pertinent for those in segregation. It is about providing them with modified programs and again working with the officers who are delivering programs to make sure it is a safe environment for them, and it is also for a young person who might be in segregation for a number of reasons, that they are able to access those.

The Hon. LYNDA VOLTZ: It will be in addition to the management plan that they can access while they are in there?

Ms RAFTER: Yes. During the review of those detainee risk management plans that are used for segregation, there should be greater consideration of the ability to access modified programs, whether that be on a one-on-one basis or in a particular location within a centre. It is very much an individualised plan.

Mr DAVID SHOEBRIDGE: It may be that the segregation is modified in such a way that the young person partakes in education programs, because there is a risk assessment about the other people in that education program and it can be perfectly appropriate?

Ms RAFTER: Absolutely.

Mr DAVID SHOEBRIDGE: That would a better outcome, would it not?

Ms RAFTER: It will depend on the individual circumstances of the young person. A move towards periodic segregation is being supported in the report where it might be greater mixing an association but on an individual risk assessment so that the other young people are safe or the young person who is subject to segregation is kept safe as well.

Mr DAVID SHOEBRIDGE: You could see how segregation in an unstructured communal setting might be necessary as a last resort, but that would not be necessary in a more structured education setting. Is that kind of differentiation happening?

Ms RAFTER: It would always come down to individual circumstances, depending upon what the risk is that has meant that the young person has gone into segregation. Because it might be a risk to others or it might be a risk to themselves.

Mr DAVID SHOEBRIDGE: Are you satisfied we are moving away from once segregation happens, it is complete, to a more considered and differentiated form?

Ms RAFTER: Yes, I am. I am satisfied that there has been a lot of work and I have continued to monitor that progress over time.

The Hon. TREVOR KHAN: That is a perfect place to stop.

The CHAIR: Thank you very much for attending the hearing today. The Committee has resolved that answers to questions taken on notice will be returned within 14 days. The secretariat will contact you in relation to the questions you have taken on notice. I add that due to time constraints, being it is the end of the term, the Committee will only be able to forward any further questions on notice early in the New Year.

Mr CAPPIE-WOOD: Chair, given the closedown over the Christmas break, can I ask for some small consideration in respect of the timing in response?

The CHAIR: What would you like?

Mr CAPPIE-WOOD: There is a Christmas closedown covering two weeks. If we were given two weeks in advance of that. We are happy to answers questions.

Mr DAVID SHOEBRIDGE: Mid-January?

Mr CAPPIE-WOOD: If we could.

The Hon. LYNDA VOLTZ: Twenty-eight days?

The CHAIR: The correct interpretation is that you need only provide the answers 14 days after you receive the questions in the New Year.

Mr CAPPIE-WOOD: Thank you.

Mr DAVID SHOEBRIDGE: Why do we not give a date—Friday, 18 January?

Mr CAPPIE-WOOD: That would be acceptable.

The CHAIR: We will pass a resolution to that effect.

(The witnesses withdrew)

The Committee proceeded to deliberate.