

**Responses from NSW Ombudsman to questions on notice from**

**Portfolio Committee No. 4 – Legal Affairs**

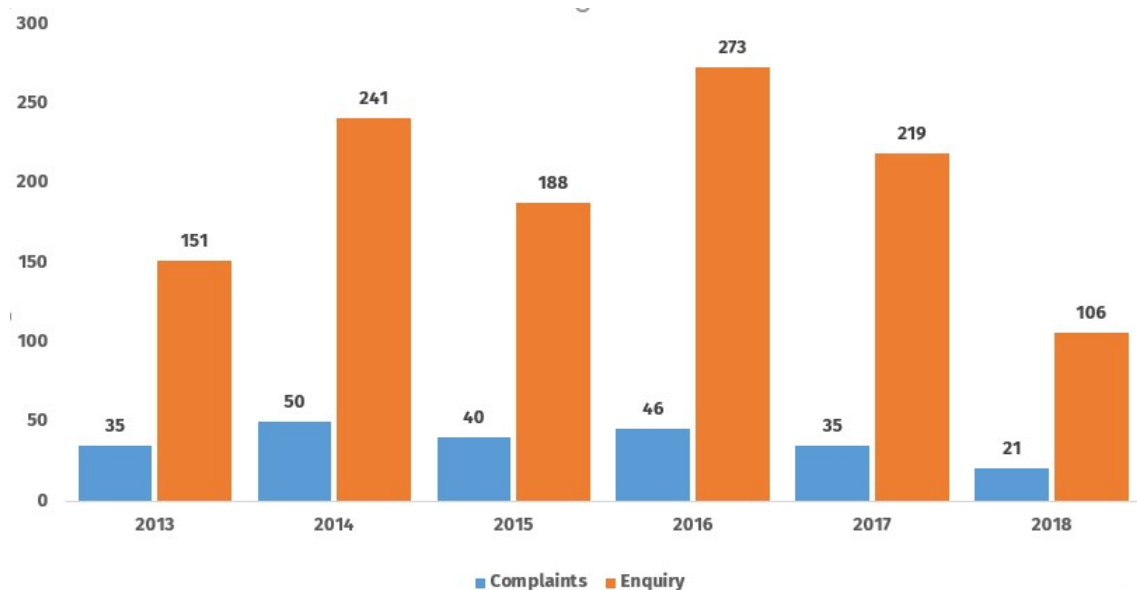
**Inquiry into Parklea Correctional Centre and other operational issues**

**1. What complaints have you been receiving about Parklea Correctional Centre?**

The following data is drawn directly from our complaint database. It covers the reporting years (1 July to 30 June) 2013/14, 2014/15, 2015/16, 2016/17, 2017/18, 2017/18. Contacts are received by phone (most common method), on visits to the centre, and by letter. Contacts from people who are not inmates may also arrive by email or online complaint form. During the last reporting year staff from our office visited Parklea CC on 7 September 2017 and 7 March 2018.

An inquiry is a contact we received about the centre but which we determined did not require further action by us. In most cases we provide the complainant with advice about internal complaint steps they can take, or specific information that answers their complaint based on our expert knowledge, or confirm action already taken by centre management or Corrective Services NSW. We sometimes refer to these as informal contacts.

A complaint is any contact we received on which we took specific investigative action – this is usually contacting the Governor or other senior officer at the centre, or an appropriate area of Corrective Services NSW. This may include writing to the Commissioner seeking documents and information. These are sometimes referred to as formal contacts as they involve some form of investigative inquiry.

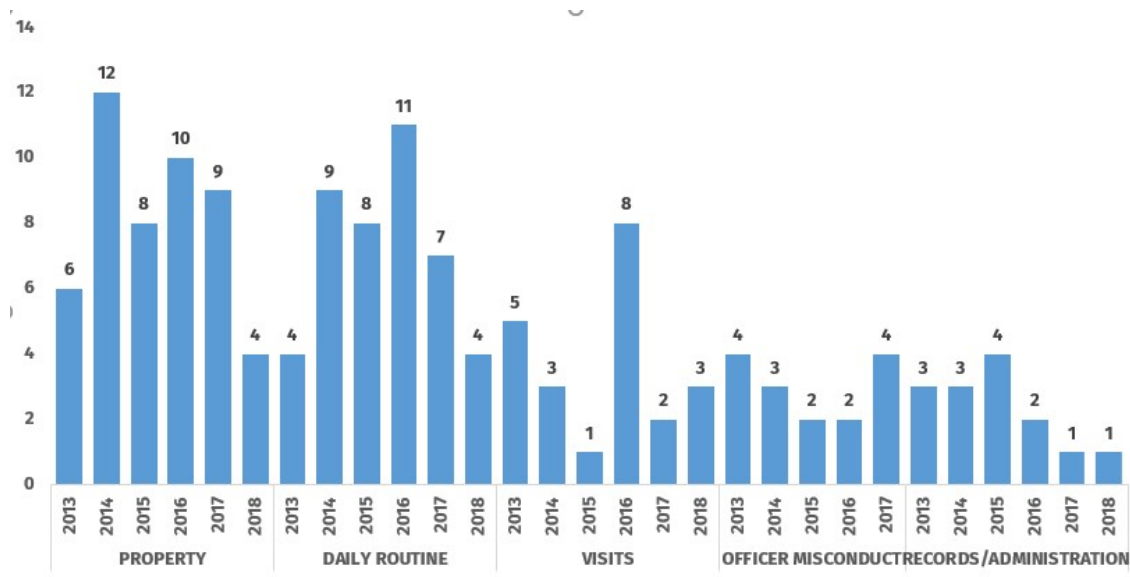


We provide data in our annual report about the rate of contacts from correctional centres based on the security rating of the centre, and the average number of inmates held as at June each year (which we call operational capacity). The following excerpt is from our recently tabled 2017/18 annual report and the Committee will note that we received significantly fewer complaints about Parklea than about other centres, in this context. We have no reason to believe that inmates are any more reluctant to contact us from Parklea than other centres. We note of course that many inmates fear reprisal action for contacting the Ombudsman and we take all steps possible to overcome such fears.

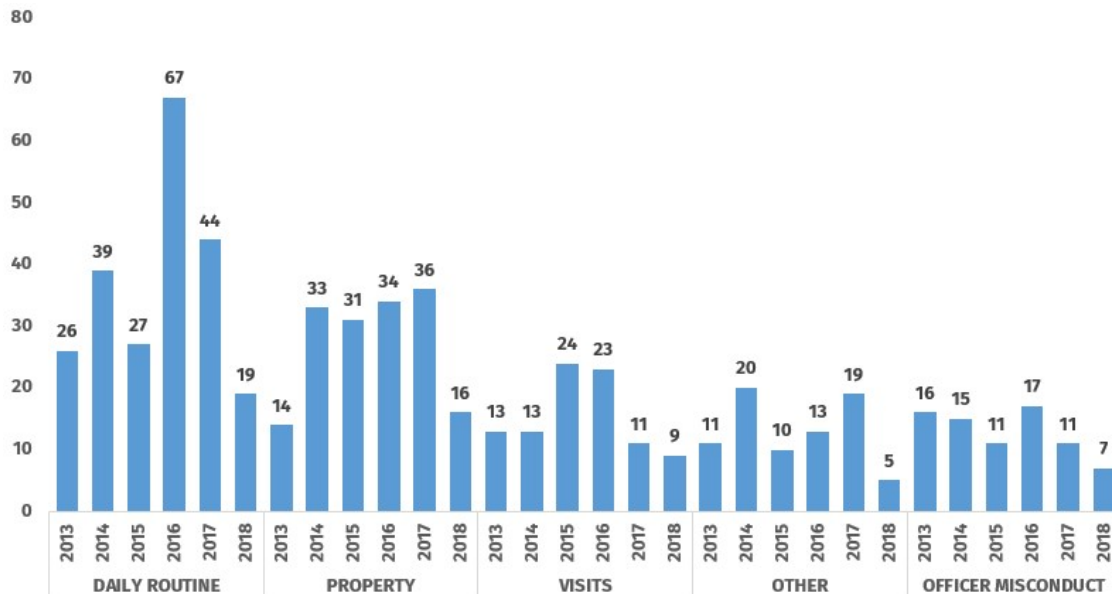
Maximum and minimum security	Formal	Informal	Total	Operational capacity	No. of contacts as % of Op. Cap.
Cessnock Correctional Centre ****	34	176	210	829	25.33
Goulburn Correctional Centre	16	132	148	516	28.68
Metropolitan Special Programs Centre	29	277	306	1100	27.81
Parklea Correctional Centre	43	191	234	1008	23.21
South Coast Correctional Centre	27	154	181	546	33.15
Wellington Correctional Centre	20	181	201	694	28.96

The most common issues raised about Parklea Correctional Centre for the period 1 July 2013 until 30 June 2018 are set out by quarter for each year. The Committee will note there is little variation in these issues across the years.

Most common issues raised in complaints (formal contacts) 1 July 2013 – 30 June 2018



Most common issues raised in inquiries (informal contacts) 1 July 2013 – 30 June 2018



Property complaints most often arise when property does not follow an inmate who is transferred between correctional centres. While these complaints are high across all centres, they are not necessarily significant in light of the volume of prison escorts that occur each day, including the need for inmates to move through particularly busy ‘hub’ centres around the state. When an issue was identified with property management within Parklea CC (as opposed to transport losses) GEO took steps to introduce a property manager role.

Daily routine complaints cover a range of issues. As the committee will appreciate the limitations on independent decision making for those in custody is often reflected in contact with our office. The issues, however, can include access to telephones, lack of basic amenities, lockdowns, hygiene, lack of activities and placement within in the centre. When the number of inmates being accommodated at Parklea CC spiked, resulting in an increase in double-up and the use of 3-out cells this resulted in an increased number of contacts. When that occurred, we visited the centre, spoke to staff and inmates and viewed the affected cells. We were then in a position to respond to the inmate contacts and to notify CSNSW of our concerns about the ongoing crowding at the centre.

Visits complaints may be from either inmates or their visitors and include: booking of visits, staff behaviour at visits, restrictions on visits and visit bans.

Officer misconduct also comprises sub-categories such as unfair treatment, threats and harassment, failure to comply with procedures, obstruct contact with Ombudsman and assault.

Records/administration is self-evident and includes matters such as inmate cash accounts, responses to internal complaint processes, and inaccurate records.

Other – while we have identified fairly detailed issues to capture the contacts we receive and properly report on them, there are always matters that don't fit into one of these areas. We encourage staff to use the other category only when absolutely necessary.

## **2. Are there any issues that stand out for you from a systemic point of view?**

As noted above when an issue was identified with the management of inmate property at the centre steps were taken by management to address the issue with the appointment of a property manager.

Among the issues raised regularly with us that are categorised as “Daily Routine” is a complaint that inmates at Parklea CC who must attend court in the Sydney city/metro area are woken at 4.30am and taken to reception, where they are collected by Corrective Services NSW Court Escort Unit and moved ‘in transit’ to the Metropolitan Remand and Reception Centre (MRRC) before being moved to their respective courts by court escort vans. The reverse occurs at the end of the day and these inmates may not be returned to their cells at Parklea until 8.30pm. This means inmates who are facing court are likely to be both tired and hungry throughout the period of their court appearance, and also experiencing impacts on the timing of routine prescribed medication. This is an issue that could only be addressed by a change to the escort services provided by CSNSW and involve large scale changes to the escort routine across the system.

From a complaint handling perspective, we have usually found the general managers and other senior staff who have worked at the centre during the period of the GEO contract to be responsive to our inquiries or requests for information, and to be alert to issues that may give rise to complaint, and to work towards resolving problems identified in complaints.

## **3. What if any complaints have you received in respect of the two rapid build prisons?**

Attached is a copy of the section of the Ombudsman's annual report covering our work in custodial services, which was tabled on 22 October 2018. The Committee will note that we provided some comments and observations on the rapid build prisons, including details of complaints received, and observations from our visits to both centres. We visited each centre during construction and again once they had received inmates.

We also noted from the transcript of the Commissioner of CSNSW's appearance at the committee's hearing there was substantial discussion around the extent and use of electronic surveillance in the management of inmates at the rapid build prisons, as well as the access by inmates to a structured day. It is important to note that the ‘dormitory’ style prisons must not only rely on electronic surveillance and monitoring to ensure safety of staff and inmates in those centres. More than ever the presence of officers and

the role of dynamic security will be important in ensuring that intelligence is gathered, the mood of a centre is assessed and any potential security issues noted.

Similarly, the need to continue to carefully assess the appropriateness of individual inmates and staff to be located at such centres will remain of vital importance in the safe and efficient running of the centres. We believe it is not appropriate to make 'desk top' assessments for the classification to these types of centres, and that doing so does not comply with the concept that was identified by CSNSW for allocating inmates to these centres.

Finally, we are alert to the importance of ensuring that going forward the government or CSNSW do not make policy or legislative decisions that erode inmate access to the necessary components of a structured day – primarily work and education/programs. Extended access to phones and outside areas for inmates will also continue to play an important part in ensuring there is stability in these centres.

**4. Have you any plans to put in place a proactive model of monitoring the two rapid build prisons, including via outreach to inmates there?**

As noted above, we have regular contact by phone from inmates at both Hunter Correctional Centre and Macquarie Correctional Centre. We have visited each centre since they commenced operations, and intend to continue to make regular, routine visits to the centre. We also assess the need to visit any centre on a non-routine basis if complaint data/trends indicate a specific need. Given the current uniqueness of these centres we anticipate visiting each centre at least twice a year.

**5. Have you any comments to make in respect of benchmarking of NSW prisons?**

Once again we refer the Committee to the attached excerpt from our Annual Report which also discusses our experience about benchmarking from a complaint perspective. We note the impact the process of benchmarking has had on each centre as it has moved through the process and the patience that has been demonstrated by inmates and staff while this has occurred, particularly where that process has resulted in a higher number of lock ins.

Benchmarking of prisons is not unique to NSW and it is important that policy makers here closely review the impacts attributed to post-benchmarking operations in other, similar, jurisdictions such as Her Majesty's Prison Service, particularly where inmate numbers also escalated rapidly over a relatively short period.

## Custodial Services

Adults and young people in custody, as well as people who are supervised in the community, can call us to discuss issues of concern or make complaints. Our custodial services unit provides a frontline phone service – they identify matters that can be quickly resolved and those that might need formal investigation. We also give callers advice about how complaints can be raised internally, or which other agency might be better able to help them with their problem. The information we get from individuals also points us to systemic issues that might need attention.

Although the number of adults in custody rose to 13,500 by the end of June 2018, the number of children and young people in custody generally remained around 280 – occasionally rising over 300. The number of contacts made to us relating to all custodial services increased by 2.5%.

We have a program of visits to correctional and juvenile justice centres to talk with inmates, detainees and staff. This year we visited 30 correctional centres, and each of the six juvenile justice centres twice. Our visits help us resolve complaints and also learn more about how different centres operate and their physical layout. This assists us in better understanding issues when people call us.

## Complaint trends and issues

This year we received 135 contacts more than the previous year, continuing an upward trend. In juvenile justice, the number of formal complaints rose slightly.

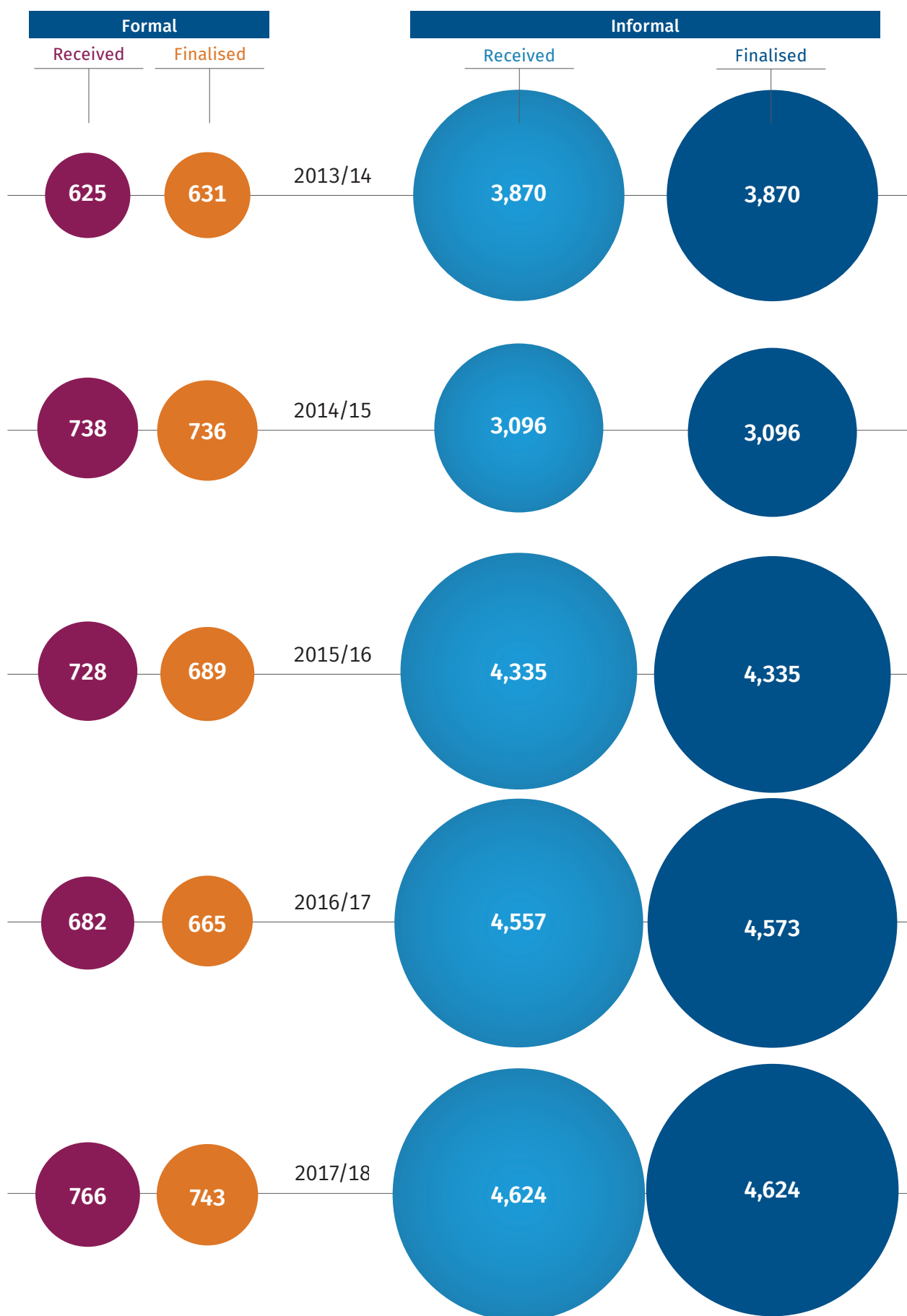
Contacts about the Justice Health & Forensic Health Network (Justice Health) rose from 643 to 876 this year, with most being received in the first half of the year. The number of contacts about Justice Health accepted as formal complaints started to decrease from January 2018 when the Justice Health Patient Health Inquiry Line went live. This line enables inmates to make enquiries about waiting lists and other issues relating to their access to health care. In most cases – if a complaint is about health-related issues – we are able to refer callers to the enquiry line or to the HCCC.

Table 57 shows the primary issues complained about in the correctional system and Table 58 shows those for juvenile justice. There has not been a significant increase in any area of complaint compared to previous years. Although daily routine is the highest area of complaint for both adults (18%) and young people (27%), complaints about food are much higher from young people (almost 10%) than adults (1%).

**Table 55:** Formal and informal matters received by agency – five year comparison

	2013-14	2014-15	2015-16	2016-17	2017-18
<b>Formal</b>					
Correctional centres, CSNSW and GEO	483	572	571	552	608
Justice Health	88	112	117	82	101
Juvenile Justice	54	54	40	48	57
<b>Subtotal</b>	<b>625</b>	<b>738</b>	<b>728</b>	<b>682</b>	<b>766</b>
<b>Informal</b>					
Correctional centres, CSNSW and GEO	3,286	2,636	3,662	3,814	3,660
Justice Health	389	274	510	561	775
Juvenile Justice	195	186	163	198	189
<b>Subtotal</b>	<b>3,870</b>	<b>3,096</b>	<b>4,335</b>	<b>4,573</b>	<b>4,624</b>
<b>Total</b>	<b>4,495</b>	<b>3,834</b>	<b>5,063</b>	<b>5,255</b>	<b>5,390</b>

**Table 56:** Formal and informal complaints received and finalised – five year comparison



**Table 57:** What people complained about – correctional centres and Justice Health

Primary issue	Formal	Informal	Total	% of Total
Daily routine	116	805	921	17.90
Medical	94	762	856	16.64
Property	102	375	477	9.27
Officer misconduct	66	310	376	7.31
Visits	33	239	272	5.29
Other	21	238	259	5.03
Transfers	22	216	238	4.63
Classification	20	167	187	3.64
Records/administration	32	139	171	3.32
Unfair discipline	26	139	165	3.21
Segregation	26	120	146	2.84
Fail to ensure safety	16	120	136	2.64
Probation/parole	12	105	117	2.27
Case management	14	100	114	2.22
Buy ups	9	104	113	2.20
All other issues	100	496	596	11.59
<b>Total</b>	<b>709</b>	<b>4,435</b>	<b>5,144</b>	<b>100</b>

**Table 58:** What people complained about – Juvenile Justice

Primary issue	Formal	Informal	Total	% of Total
Daily routine	8	60	68	27.64
Officer misconduct	17	31	48	19.51
Food and diet	3	21	24	9.76
Other	2	13	15	6.10
Unfair discipline	5	8	13	5.28
Security	4	5	9	3.66
Classification	1	7	8	3.25
Property	4	4	8	3.25
Transfers	2	6	8	3.25
Fail to ensure safety	3	4	7	2.85
Records/administration	1	5	6	2.44
All other issues	7	25	32	13.01
<b>Total</b>	<b>57</b>	<b>189</b>	<b>246</b>	<b>100</b>

**Note:** Expanded tables of all issues are on our website.



**Table 59:** Current investigations at 30 June 2018 – correctional centres and Justice Health

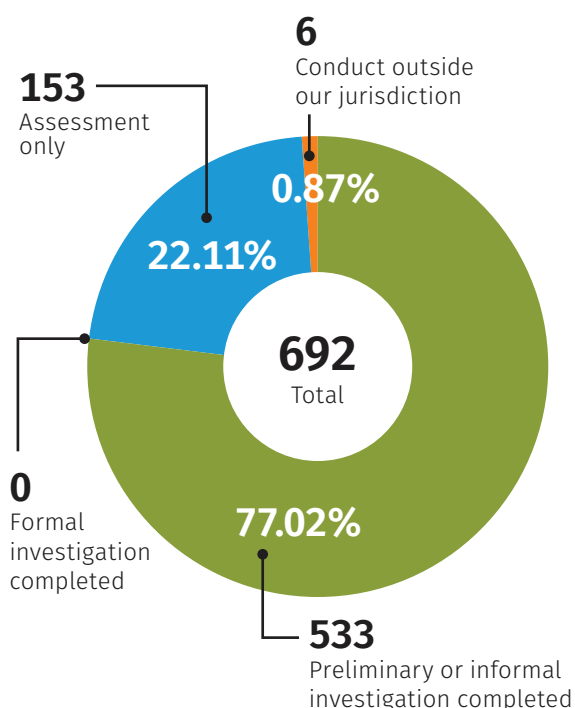
Current investigations	No.
Under preliminary or informal investigation	37
Under formal investigation	0
<b>Total</b>	<b>37</b>

Allegations of officer misconduct are also higher from young people (19.5%) than adults (7%). We do not believe there is a specific problem in juvenile justice – rather the contacts reflect different policies and procedures in the two systems, and a better understanding by adult inmates about why staff take certain action. Regardless, we make some form of inquiry into all allegations of officer misconduct by a detainee.

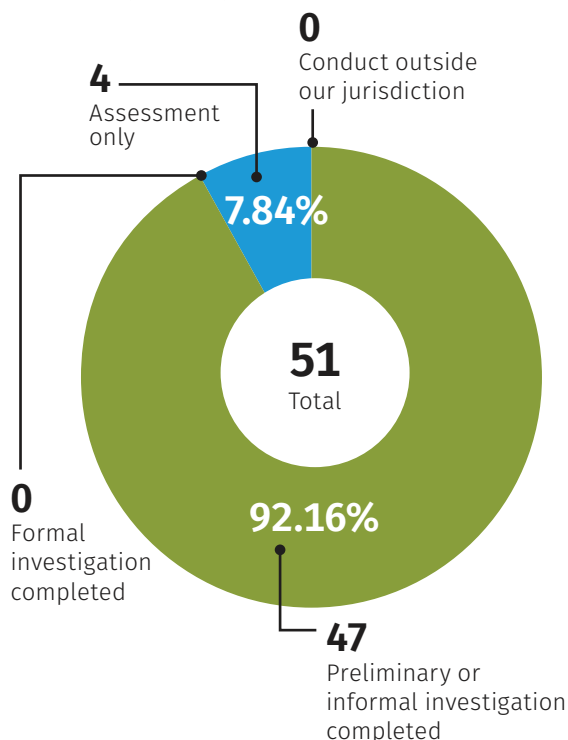
Over 5% of complaints from adults were about visits. This is similar to the previous year, and reflects the difficulties family and friends often face in attempting to book a visit at some centres – as well as the higher number of inmates whose classification requires additional approval for their visitors.

Complaints about unfair discipline are made at a similar rate by adults and by young people, at around 5% of all complaints in each system. Changes were made during the year to inmate discipline, which are discussed later, and we are monitoring the contacts in this area to see if there is any change as a result.

**Table 60:** Action taken on formal complaints finalised – correctional centres and Justice Health



**Table 61:** Action taken on formal complaints finalised - juvenile justice centres



**Table 62:** Current investigations at 30 June 2018 – juvenile justice centres

Current investigations	No.
Under preliminary or informal investigation	4
Under formal investigation	0
<b>Total</b>	<b>4</b>

## Adult correctional system

### Accommodating the increased population

To manage the increasing adult inmate population and improve standards at all centres, CSNSW has undertaken the Better Prisons Program. This includes infrastructure projects, Rapid Build Prisons (RBPs), benchmarking, market testing and a new education and training model.

There are now 40 correctional centres (CC), including two RBPs that were opened this year and expansion projects at several existing centres.

With a significant increase in the number of female inmates, changes have been made at a number of centres to accommodate women – plus specific expansion work is happening at locations such as Dillwynia CC and Emu Plains CC. This year women were also accommodated in a pod at the maximum

security centre at Cessnock, a juvenile centre was repurposed as a women's remand centre in the metropolitan area, and Berrima CC has changed once again from a male centre to one for females. Women are most likely to contact our office if they are placed at a centre where it is difficult for their family, especially their children, to visit them. Many also require access to the facilities offered in large hospitals and become concerned if moved to regional centres. Their physical location is often a greater concern to women in custody than men.

## Rapid Build Prisons

Two RBPs opened this year. These are the first centres in NSW to have 'dormitory' or 'open plan' style accommodation for inmates, including maximum security. The opening of Macquarie CC at Wellington in mid-December 2017 and Hunter CC at Cessnock at the end of January 2018 provided two different stories in terms of complaints.

When we were first invited to comment on the proposal for RBPs, we noted that the success of this new style of accommodation and program would rely on the careful selection of both inmates and staff. Inmates around the state were given promotional information about the centres and invited to express their interest. They were then to be interviewed so staff could carefully assess their suitability for the centre.

Preparation for the opening of Macquarie CC took place over many weeks. We received few complaints from inmates who moved there, with just a small number complaining about their treatment when they said they did not want to be transferred there – and these were resolved.

After the centre opened, we visited and spoke to inmates and most of their concerns were not related to Macquarie. Many told us they liked the centre – and the open accommodation was well compensated for with private bathroom facilities and a longer day to access phones and outside areas. They were also enthusiastic about the ability to earn some money at work and undertake programs to prepare for parole.

The opening of Hunter CC was done over a much shorter period – and we immediately received calls from inmates who had been transferred, but did not want to be there. Our inquiries revealed that many had simply been reviewed by 'head office' and a decision made to transfer them as they fitted the criteria on paper. This did not take account of their views or concerns about being accommodated in the open living arrangements, resulting in many calls and the segregation unit being filled with 'housing only' inmates who were not on segregation and just needed to be transferred out. We also visited Hunter CC soon after it became operational

and received several complaints from inmates who were trying to be moved elsewhere. The inmates at Hunter were dissatisfied with the routine – many did not like the long days and complained there was not enough work for everyone to fill those days.

In the first six months of 2018 we received 36 contacts from Macquarie CC, including 8 during our visit in March 2018. Over the same period, we received 129 contacts from Hunter CC, including 19 from our visit in April.

We also noted a number of contacts from Hunter CC alleging excessive force and intimidation by officers if they asked to be transferred. Some were told no requests for transfer would be considered until the inmate had spent some months at the centre. We made inquiries with the Commissioner about the transfers, as many of those who complained to us were from Junee CC – which holds a large number of similarly vulnerable inmates as special management placements. The decision to move more than 80 Junee and almost 100 inmates from the South Coast CC to Hunter CC seemingly gave rise to the complaints to us. Given the large infrastructure projects being undertaken by CSNSW it appears inmates were moved to Hunter CC to enable work to be done at other centres, not necessarily because they were best suited to the centre.

The Commissioner wrote in response to our inquiries that CSNSW does not require the agreement of inmates to transfer them between correctional centres, and that the inmates were assessed for suitability based on the centre criteria, inmate classification, behaviour and conduct. He further noted that as Macquarie CC is a new type of centre, staff interviewed suitable inmates in an attempt to source those who were willing to go there. This did not happen with a large number of inmates transferred to the same type of centre at Hunter CC. The decision to simply transfer inmates to the RBPs who did not want to be there also appeared to be out of step with the earlier discussions on the proposal.

Since that time, some inmates have adapted and others have been transferred elsewhere. However, we continue to receive more contacts from Hunter CC than from Macquarie CC.

## Benchmarking

CSNSW is in the process of reviewing every correctional centre and 'developing individual budgets within which performance targets must be met'. Information provided by CSNSW acknowledges the implementation of benchmarks may require centres to make improvements in operations. This is generally reflected in the staffing structure of the centre, and decisions about where those staff are deployed.

The process of benchmarking each centre takes time and the involvement of staff. We have noted that – as the process occurs in centres – there are often lock downs while meetings are held and people consulted. Naturally this then results in complaints being made to us. There are also some people in CSNSW who do not agree with benchmarking and the targets, and this has led to some significant industrial action over the past year. Once again, this has an impact on inmates who cannot be released from their cells and miss out on visits and other amenities.

On some of the larger complexes, the process has also had a wider impact over a period of time. While a centre is going through benchmarking, new staff cannot be appointed. This has often resulted in lock ins, which affect some inmates more than others. For example, the Additional Support Units at Long Bay – where inmates with intellectual disability are accommodated – had a large number of lock ins that we were told were the result of a lack of staff during the benchmarking process. Being locked in their cell for longer than their usual routine is especially distressing for many of these inmates and their families. We listened to each one who called us, talked with them about why this was happening, and made inquiries about individual cases that we believed needed some intervention.

### Old centres

While the prison expansion program is underway, there are still correctional centres operating in NSW that were built more than 150 years ago. This means that inmates are living, and staff are working, in facilities that are no longer fit for purpose.

When we visited the Metropolitan Special Programs Centre in August 2017 we received many complaints about the physical conditions of some of the wings. On inspection, we found some of the ceilings of some cells were covered in black mould, the paint was peeling, there was nothing but a grille on the window vent so the elements – hot and cold – and vermin are free to enter. We contacted the Commissioner immediately after the visit with our concerns, which he addressed.

The need for the continued use of Grafton CC, especially to house women, is also a concern. Although the June Baker facility for women at the centre is adequate, women who are not sentenced or who have other behaviour or security needs are held in the same area as men. We did not consider that this area was fit for this purpose. We discussed with the Inspector of Custodial Services, who had also visited the centre, the view that women should generally not be accommodated in this unit for longer than seven-days as the facilities are comparable to those in court cells where the seven day limit applies. The new complex under development in the Grafton area will address these problems, but its completion is still several years away.

### Supermax facilities

NSW requires any inmate who represents a special risk to national security to be classified as Category AA. All Category AA inmates, under current policy, must be held at the High Risk Management Correctional Centre (HRMCC) or ‘supermax’. There has been considerable growth in the past few years in the number of inmates who require ‘supermax’ style accommodation.

**Table 63:** Formal and informal complaints and centre operating capacity

Institution	Formal	Informal	Total	Operational capacity (OC) at 30 June 2018	Complaints as % of OC
Maximum security	160	1,037	1,197	3,265	36.66
Maximum, medium and minimum security	17	133	150	646	23.22
Maximum and minimum security	169	1,111	1,280	4,693	27.27
Medium security	9	86	95	522	18.20
Medium and minimum security	90	556	646	2,302	28.06
Minimum security	42	281	323	2,134	15.14
<b>Subtotal</b>	<b>487</b>	<b>3,204</b>	<b>3,691</b>	<b>13,562</b>	<b>27.22</b>
<b>Other</b>	222	1,231	1,453		
<b>Total</b>	<b>709</b>	<b>4,435</b>	<b>5,144</b>		

**Note:** expanded table is on our website.

The HRMCC was built for 75 inmates, but it is not possible to hold that many inmates when additional security measures and operational programs are in place – and to also maintain amenities. During 2017–18, there were around 50 inmates at the centre – with more than half being Category AA. The inability of the HRMCC to be the only location able to manage this population has been documented in our past annual reports and has been reflected by the high number of contacts from that centre over many years.

When we visited the centre in May 2018, three quarters of the inmates asked for an interview. Most of them spoke about not being able to regularly make calls to family and legal representatives, and the difficulties faced by families trying to make visit bookings because of the limited number of spots available each week. They also complained they cannot participate in programs or in education, with some of them not being able to do so within the usual time frame for parole preparation. This was also amplified in May 2018 in the Inspector of Custodial Services’s report on ‘The management of radicalised inmates in NSW’.

With the increasing focus on the accommodation and management of sentenced and alleged terrorists – and the need to counter violent extremism across the system – CSNSW is now engaged in providing additional infrastructure and other facilities for this group. This should help provide access to education, programs and preparation for parole for some inmates while maintaining the necessary security. We feel it will also reduce the number of contacts we receive from this group.

### **Segregation housing unit**

Not all of our work comes from complaints. In June 2018 the Sunday Telegraph ran an article, including photos, of a new Segregation Housing Unit (SHU) at Long Bay. The story made much of the possibility that the SHU would be used to accommodate terrorist inmates. Comparisons were made to the ill-fated Katingal, which was considered inhumane and closed many years ago. The article also claimed that the water misting system installed in the cells to dampen fires could also be used to subdue inmates. If an inmate needs to be subdued in their cell, this is usually done by a team of officers who use ‘chemical munitions’ under conditions controlled by policy. The notion that inmates could be subdued in their cell by a remote system dispensing any form of liquid or gas concerned us. Once inmates read the article they called us, describing the SHU as a torture chamber and threatening disobedience if they were transferred there.

We spoke with the team responsible for constructing the SHU and also inspected the unit at Long Bay. We were given assurances that the water misting system could not be used to dispense gas or chemical munitions.

During our inspection, we also noted the cells contained two cameras – with one placing the toilet and shower area of the cell under direct observation. We considered this inappropriate and unreasonable and a significant variation to the level of privacy inmates currently have.

We have written to the Commissioner asking him to remove the cameras by which staff can monitor (or record) inmates in the bathroom area of these cells. We also sought written assurance the water misting system cannot be used to dispense any gas or liquid to subdue inmates. At the time of writing we are awaiting his response.

## **Policy changes and complaints**

### **Inmate discipline**

The inmate discipline process causes a number of complaints to be made each year. In early 2018, CSNSW made changes to the policy and procedures around laying and adjudicating correctional charges. These are known as ‘internal charges’ and are not matters referred to the police. They include a range of offences such as not attending muster, damaging property, intimidating staff, fighting etc. Punishments include loss of amenities, confinement to cells, or payment of compensation. These offences form part of the inmate’s record – which is considered in such things as their placement, classification and parole.

We are often consulted by CSNSW before the adoption of a new policy or procedures, but that did not happen on this occasion. We consider the new policy and procedures provide some greater clarity around the inmate discipline process, but some significant changes have caused inmates to complain. These changes are:

- The officer hearing the matter under delegation makes the determination, instead of recommending an outcome to the Governor.
- Inmates do not have a right to appeal to the Governor against a determination against them, or the penalty imposed – as they did before.

A number of inmates have alleged this new process is unfair – as they have no right to challenge findings made against them or penalties imposed. They also contend this has led to them being inappropriately ‘targeted’ by less senior staff in this process. We have also spoken to some senior staff who note it is generally necessary in an operational sense for governors to delegate this function. However, they

feel that a governor's understanding of the centre and the inmates, and sense of proportionality, is now missing from the process. We have written to the Commissioner about these concerns.

### Separating inmates – a good outcome

Section 78A was inserted into the *Crimes (Administration of Sentences) Act 1999* (CAS Act) in June 2009 to enable the separation of inmates – as distinct from administrative segregation, confinement to cell or protection. Since that time, we have advocated for proper transparency and accountability around its use. Our experience from complaints and visits was that the provision was being used as another form of segregation, but one in which the inmate had no rights or protection.

In 2016–17 the Commissioner undertook to develop specific policy and procedures for the administration of s 78A. These were incorporated into the Custodial Operations Policy and Procedures in December 2017. We are now able to direct CSNSW staff to this document if there is any uncertainty about the management of individual inmates using this section, and we can also use the document to assess any complaints we receive.

### The use of force

It is sometimes necessary in a custodial environment for officers to use force on inmates for safety and security reasons, and to ensure compliance. There has been significant media reporting this year around force being used inappropriately, being reported incorrectly and being excessive to the situation.

In July 2012 we tabled a report on 'Managing use of force in prisons: the need for better policy and practice'. This report drew on two investigations about using force – one a systemic review and the other an investigation of an individual incident. The recommendations that were adopted by CSNSW have led to an increased understanding of the need for each use of force to be properly reviewed – for both good and bad practices to be identified and addressed.

We also made recommendations about the use of force training, particularly around prohibited holds and other practices being included in this training. At that time, CSNSW's view was that officers should not be trained in holds they cannot use with the focus being on what is allowed. It remains our view that officers need to understand what constitutes bad practice – not so these holds and practices are used, but so they can be avoided.

We also made specific recommendations about Immediate Action Teams (IAT) and their use of force in our unpublished report to CSNSW about an investigation of an individual use of force.

Although our investigations and reports are not recent, our conclusions and recommendations remain relevant today. The inquest into the death of an inmate during a use of force and an ICAC inquiry about alleged corrupt behaviour involving the use of force have again highlighted this as an issue. As well, there has been an increase in serious complaints alleging that IAT have used excessive force, or assaulted inmates under the guise of using force. We have and will continue to raise the use of force with CSNSW. We have provided our earlier reports to inform their current review of the use of force and associated matters, and will provide any further assistance as requested.

### Case study 33. Handcuffed to a pole

An inmate complained he had been handcuffed to a pole after some unrest in his pod. He said he felt he had been singled out and left on display in front of other inmates and staff, even though he had been complying with directions. Centre management told us he was cuffed to the pole while staff attended to another incident. We were also told the cuffing did not constitute a use of force as the inmate was complying with directions. It was confirmed the inmate was left cuffed to the pole for approximately an hour. We were still not satisfied after further inquiries that this action was permitted under regulation. We wrote to the Commissioner and suggested legal advice be sought. We were told the General Counsel's advice would be requested and we await further advice on this matter.

### Case study 34. Paying for the fire engine

An inmate was required to pay \$500 towards the call out fee for NSW Fire and Rescue after the alarm in his cell went off. He was found guilty of smoking in his cell, but there was no fire and no damage. The CAS Act allows compensation to be levied as a punishment for any loss of, or damage to, property and CSNSW interpreted this as including the call out fees for false alarms. We knew many inmates had been charged the maximum compensation of \$500 for similar incidents. We suggested CSNSW seek advice from the Crown Solicitor and – if they agreed with our view – to then compensate affected inmates. The Acting Commissioner advised us that they had decided not to consult the Crown Solicitor, but accepted our view and would refund any affected inmate.



### Case study 35. Constant moving stopped

A female inmate complained that – as a punishment – she was going to be moved cells every two days for three weeks. Cell moves are not an authorised punishment and are very disruptive to inmates, including the need to adjust to living with a new person each time. The woman said she had mental health and self-harm issues and moves affected her wellbeing. The manager of security told us the inmate was right – the functional manager had decided on this action to make the inmate feel uncomfortable, using it as a management tool. We considered this unreasonable and spoke with the Governor, who immediately had the practice stopped.

### Case study 36. Shoes, glasses and a shower

An inmate who called us said his orthotic shoes – required for use with his prosthetic leg – and the prescription glasses that he needs to wear at all times had been confiscated when he was moved to segregation. He also did not have a chair to use for showering, making one legged showers difficult. It took a week of inquiries before we were told he would need to see a doctor to sign off on his orthotic shoes (thankfully an appointment had been arranged), his glasses had been located in the unit he was moved from and given to him, and he had a chair so he could shower properly.

### Case study 37. Out for a day

Day leave is recognised as an important part of an eligible inmate's preparation to return to the community. One man called us because he had been waiting three months for a reply to his day leave application. He had used internal complaint processes to follow up his application, but there was still no decision – and he only had a short time left until his release. We contacted the centre on several occasions and eventually were told that the inmate's application had been approved and he would have his first day leave the following weekend.

## The juvenile system

This year there were about 280 children and young people in custody at any given time, accommodated in six juvenile justice centres across the state. Although we refer to detainees as 'young people', they are mostly aged under 18 and so technically still children. More than 50% of them identify as Aboriginal or Torres Strait Islander and many are from families with siblings, parents or other relatives also in custody.

There are challenges in managing young people in custody – but it needs to happen without compromising security, the rights and needs of the young people, or staff safety. People working in this area must be mindful of the current environment, which has been informed by not only the Royal Commission, but by significant reviews, debate and media around various juvenile justice systems in NSW and in other states. It is essential that those who work in the juvenile justice system understand the impact of trauma on young people in custody and be willing to apply child safe policy and practices.

In undertaking our role, we also need to be mindful of the changing environment and the work being done to improve practices. With this in mind, we met with a consultant doing a review on behalf of Juvenile Justice, providing general observations and insights from our work in this area.

The issues that young people raise with us are varied, but most relate to them feeling that something is unfair or they are required to do something they do not like. At one centre, we received a few complaints from boys who claimed they were only allowed to prepare vegan food as the cooking teacher was vegan. It is important for young people to feel they have a choice in the few things available for them to choose, and that they are listened to and treated fairly – especially compared to other detainees.

### Assessing notifications of segregation and separation

Juvenile Justice must notify the Ombudsman each time a young person is segregated for more than 24 hours. Under agreement, we are also notified when a young person in custody is separated for more than 24 hours. These notifications come to us directly from the Juvenile Justice database, he client information management system (CIMS). Each notification is assessed and any apparent anomalies or queries are followed up with relevant centre staff. For several years we were also receiving many erroneous notifications, usually due to staff not properly completing the records in CIMS. After we worked with Juvenile Justice on this issue, it appears to have been rectified.

This year we received 353 valid notifications from juvenile justice centres, compared to 307 the previous year.

The number of over 24-hour segregations notified dropped significantly from 151 to 116 this year. In particular, we noted the incidents of over 24-hour segregations had decreased at both of the centres managing higher classification detainees – Cobham was down from 71 to 48, while Frank Baxter dropped from 41 to 32.

The use of separation for a period of 24 hours has increased in the past year from 156 to 237, with increases most noticeable in regional centres. We are aware young people with a higher classification may be at these centres for family visits or court, or be a female at these all male centres. It is also sometimes necessary to separate young people for medical reasons to contain communicable diseases, such as chickenpox.

### Reviewing detainee risk management plans

Another area where we have regular contact with the juvenile system is when a young person is placed on a Detainee Risk Management Plan (DRMP). These are put in place when a detainee behaves in a way that needs specific strategies to minimise or remove the risk to them, other detainees and staff. A DRMP often includes intermittent or ongoing segregation – and if this extends over 24 hours it is one of the areas of focus for our review of the notification.

Sometimes young people will contact us because they feel they are being managed under a DRMP as a form of punishment. As DRMPs often follow a security incident, it is not surprising young people feel this way. We have a significant amount of contact with centre staff about the DRMPs that come to our attention. If a young person contacts us, we will make inquiries to be sure it is in place to manage risk and not to punish bad behaviour.

Of the DRMPs we have reviewed this year, we have noticed that most are of good quality and clearly demonstrate that the provisions in place are for managing the behaviour of the young person.

### Countering violent extremism

Juvenile Justice has started a program aimed at countering violent extremism (CVE) among young people in custody. There are several young people in this category who are either sentenced or awaiting trial, and the CVE team is designing programs to equip staff with appropriate skills to manage them. They are also coordinating the approach to identifying young people at risk of radicalisation and managing those who are already in custody. We have engaged with Juvenile Justice about their CVE activities to avert areas of unnecessary complaint, and – based on our experience in the adult system – have identified some potential pressure points.

Over the past year, we have received complaints from young people around issues of their religious conversion, staff attitudes to their offences (including those unconvicted), and issues with the provision of Ramadan meals. As well as increasing the capability of staff to recognise CVE behaviours, we anticipate the team’s work should also help to minimise such complaints from young people by removing apprehension and uncertainty – and increasing the knowledge and experience of staff who work with them.

### Monitoring the use of force

We received several complaints this year from young people about force being used on them. Inevitably, situations may arise when force is needed – usually to stop a young person hurting themselves or others. When a young person complains to us about a use of force being excessive or they claim to have been assaulted, we will always take some form of action. In such cases, we often work alongside our ERCPD, which is responsible for the oversight of any allegations of reportable conduct that may arise from the same incident.

**Table 64:** Formal and informal matters received by juvenile justice centre

Institution	Formal	Informal	Total
Acmena Juvenile Justice Centre	4	22	26
Cobham Juvenile Justice Centre	10	45	55
Frank Baxter Juvenile Justice Centre	23	60	83
Juvenile Justice NSW	2	8	10
Orana Juvenile Justice Centre	4	12	16
Reiby Juvenile Justice Centre	14	30	44
Riverina Juvenile Justice Centre	0	12	12
<b>Total</b>	<b>57</b>	<b>189</b>	<b>246</b>

Our focus in these matters is to work with Juvenile Justice to achieve a custodial environment where de-escalation is the first resort and force is the last. We are always conscious of the large number of young people in custody who have a history of trauma, and will ask Juvenile Justice to review policies or practices that possibly contribute to further traumatising.

### Case study 38. Confusion, not a complaint

A 16-year-old who was in custody for the first time called us because he was confused about his situation. He had no previous contact with the community service or criminal justice systems. He also could not go back home because of his offence, and he said he had not had any legal advice. Although he was calm when he started the conversation, he became quite down and it was clear he was upset. We spoke with the client services manager at his centre who said he had seen a psychologist that day – but it was quite possible he may have become overwhelmed again by his circumstances. She arranged for a juvenile justice officer to sit down with him and run through everything he needed to know. In this case it was not that the centre had done anything wrong, but often we can help callers make the right connection to get their needs met. The manager called us a few days later to say the boy had accessed the services he needed and would hopefully be released on bail that day.

### Case study 39. Giving consistent advice

No one enjoys being isolated from people they feel most comfortable with, particularly young people. Being in custody can intensify this aloneness. One detainee told us he was in a unit where there were no other Aboriginal detainees. He said he was feeling alone and separated from the others. He had been asking for a few months to transfer to another unit, but said he was getting inconsistent

messages from staff. Some told him he needed to demonstrate good behaviour for a longer period, and others said there were already too many Aboriginal detainees in the other units. We spoke with centre management about the reasons why the young person needed to be in his current unit, and found that it was largely a result of his previous behaviour in other units. However, his behaviour had improved in the current unit and it was not intentional that he was the only Aboriginal detainee there. Centre management had identified another Aboriginal detainee who was due to move units, and he would join the young man that week. Importantly, the manager said she and other staff would continue to give him consistent advice and explanations in the future, aiming to be open and honest with him.

### Case study 40. Making progress with an issue

We encourage young people in custody to use the internal complaint system at their centre. Sometimes we then have to ensure that system operates properly. A detainee told us he was having issues with a particular worker, who had expressed a view that the detainee should not be in his unit. The unit is one where young people earn their place by ongoing good behaviour. He felt he was being treated unfairly and had made a complaint, but nothing had happened. The centre manager told us the complaint had been lodged but no action taken yet. However they would look at the issues he had raised. We were told a few days later the worker had swapped units while the matter was ongoing, and an assistant manager was meeting with him and the detainee to facilitate a resolution.

### Case study 41. Bringing a family together

Some detainees have parents and other family members in adult custody, and their ongoing contact is often considered important. One young

**Table 65:** Segregation and separation notifications

Centre	Segregation	Separation	Total
Acmena	10	70	80
Cobham	48	47	95
Frank Baxter	32	24	56
Orana	15	42	57
Reiby	9	16	25
Riverina	2	38	40
<b>Total</b>	<b>116</b>	<b>237</b>	<b>353</b>



woman had been trying to speak with her father who was in a correctional centre. Her centre had approved the call but been unable to get a response from her father's centre. We contacted his centre and were informed he had been moved to another one. We then facilitated the application process, starting again at his next centre. After a month of making inquiries, we were told the call had taken place. We also reviewed any opportunities for improving the system for future calls that have been approved.

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## Justice Health

Most inmates and all young people in custody receive medical care and treatment from the Justice Health and Forensic Mental Health Network, which is still referred to as Justice Health by their patients. Junee CC is privately managed and provide their own health care for inmates. As well as custodial patients, Justice Health are involved in community based care in a range of criminal justice settings.

Many people in custody have poor health. In 2015, Justice Health conducted patient health surveys and reported the results this year. These results demonstrate the significant number of people in both the adult and juvenile systems who experience poor health at higher rates than the rest of the community, particularly in the area of mental health. This provides significant challenges for Justice Health in meeting their needs during the periods they are in custody. The large number of people currently in custody also means there are even more needs to be met.

For many years, we have followed up on some complaints where it seemed an inmate patient was unable to express the urgency of their situation, or may have fallen through a crack in the appointment system. While we can and still do this, the introduction in January 2018 of the Justice Health Patient Inquiry Line as a free call on the inmate phone system has already reduced the number of contacts we need to make with Justice Health's client liaison. In most cases, we can now refer the inmate to the line to follow up their own issue. We acknowledge this initiative of Justice Health to take ownership of issues about their service provision.

Case studies 42 and 43 are examples of the type of matters we have followed up with Justice Health over the year.

### Case study 42. Waiting for results

An inmate at a high security centre told us he had been waiting three months for the result of a scan on his head. He had asked about it, but not received any further information. This was before the enquiry line came into operation, so we made inquiries. Justice Health checked the health system and identified that results from the scan – which were done at a major hospital – had not been loaded into the system. The hospital then sent them the results, showing there was no problem, and arranged for the images to be loaded into the system. The inmate patient was booked as a priority at the next GP clinic to be held at his centre and the local nursing unit manager spoke to him about the results to alleviate his concern.

### Case study 43. Concerns about strip searches

One patient at the Forensic Hospital, which is run by Justice Health, complained to us that they were strip searched too often. Although the hospital is not a correctional centre, it is a secure facility and maintains a very high level of security. We asked Justice Health for their searching procedures and policy, and about the training provided to staff who do the searches. After we assessed the information, we spoke again to the patient and told him we believed the searches were properly authorised and had adequate accountability. Although he remained unhappy that searches could be done, he did agree that those searches were being done in accordance with the protocols that had been sent to us. We encouraged him to speak with the staff at the hospital if he had any remaining concerns about the searches.

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## Working with the Inspector of Custodial Services

We collaborate regularly with the Inspector of Custodial Services – including providing insights from our complaint database and visits to centres – to help inform their preparation for inspections. We meet bi-monthly and discuss general issues affecting both the adult and juvenile systems, as well as specific areas of complaint or review. We have a memorandum of understanding so we can share information and provide comprehensive oversight of custodial services in the state. This year we have continued to provide information to assist the Inspector's broader review work.