

**Responses to questions taken on notice**  
**by Fiona Rafter, Inspector Custodial Services, before**  
**Legislative Council, Portfolio Committee No 4: Legal Affairs on**  
**31 October 2018 (Committee Hearing)**

**Question 1 (see page 8 of the Transcript of Committee Hearing):**

*"How did you make it clear to the Minister that this was not your fulfilment of section 14(1) of the Act? You provided him with a copy of a draft report; how did you make it clear to him that you were not fulfilling section 14(1) of the Act?"*

**Response:**

I refer to my opening statement of 31 October 2018 where I stated as follows: *"I provided to the Minister a copy as a courtesy so that he had visibility as to the status of the inspection – particularly in light of his request that I consider broadening the terms of reference."*

A member of the Inspector of Custodial Services (ICS) staff contacted the Minister's office and arranged to deliver a courtesy copy to the Minister's office on the same date the draft report was provided to the Executive Director of Juvenile Justice for feedback. I tasked a member of my staff personally with hand delivering the drafts to Juvenile Justice and the Minister's office. My staff confirmed delivery had occurred.

A submission under s 14 (1) of the *Inspector of Custodial Services Act 2012* (NSW) (ICS Act) was not requested from the Minister at that time.

A request to the Minister for a submission under s 14(1) occurs after procedural fairness has been provided to all agencies or persons who are potentially affected by adverse opinions which I may express. Section 14(2) requires that I not produce to Parliament a "report that sets out an opinion that is, either expressly or impliedly, critical of a Public Service agency (other than an opinion critical of Corrective Services or Juvenile Justice) or any person" unless I have given them the opportunity to make submissions. This is done by way of provision of the draft report, or an excerpt of the draft report, and a formal request for any submissions they might wish to make.

Although I am not required to do so under the Act, in relation to the draft report I wanted to ensure that Juvenile Justice had an opportunity to provide their feedback in respect of its contents.

The Minister was aware that a copy was provided to Juvenile Justice for feedback because, as outlined above, the Minister was provided with a copy as a courtesy at the same time.

I understand that the Minister is generally aware that feedback is sought from agencies and other persons before a copy of the report is formally provided to him for his consideration for the purpose of s 14(1). The basis of my understanding as to the Minister's awareness of this procedure is due to the wording of ss 14(1) and 14(2) of the ICS Act, and also because the Minister has received copies of draft reports from me in relation to other inspection matters.

A copy of the draft report was formally provided to the Minister for comment for the purposes of s 14(1), on 30 October 2018. The Minister has since responded to my

request for a submission in accordance with s 14(1) of the ICS Act, and I have requested a tabling date for the report.

**Question 2 (see page 18 of the Transcript of Committee Hearing):**

*“Not only as to a report you provide to the Government but also to satisfy ourselves as to your role as an independent inspector of those facilities. So in asking you whether your independent undertakings confirm that the data you have provided is the same or different, I do not think you can refer to a report; otherwise a “report” will systematically cover everything.”*

**Response:**

I refer to page 17 of the transcript of the Committee Hearing where I stated: *“I have powers under my legislation to request data and information from Juvenile Justice and I do that to obtain information in relation to these types of matters. That is what I have done on this occasion, requested data, which has informed my response.”*

Under section 7(a) of the ICS Act I am entitled to full access to the records of any custodial centre.

The ICS has access to the Juvenile Justice Client Information Management System (**CIMS**) on a 'read-only' basis, and is able to access and cross-check data recorded in CIMS in relation to individuals. The ICS can check individual records in CIMS regarding how long a young person may have been confined, and does this on occasion to verify information provided by a young person or staff member during inspection.

The ICS is unable to extract from CIMS large amounts of data about the rates and duration of confinements. The ICS requests Juvenile Justice to provide raw quantitative data about rates and length of confinement, and the ICS conducts its own quantitative analysis of this data.

As part of its investigation and reporting function, ICS independently verifies segregation and/or confinement records in relation to some, but not all, individual detainees. We conduct checks, based on information, and sampling of records in relation to a number of detainees. It is beyond the resources of the ICS to validate every instance of confinement and/or segregation and we rely on the data from Juvenile Justice to an extent to assist in this process.

Given the limited resources available to the ICS, the process of cross-checking and validating the data in the context of every instance of segregation and/or confinement would take a significant diversion of these resources and to verify the accuracy of the data provided by Juvenile Justice by searching each individual's confinement records in CIMS.

The ICS may check CIMS for records of segregation for individual young people who are on Detainee Risk Management Plan with segregation. The ICS does not receive an automatic notification when segregation exceeds 24 hours.

**Question 3 (see page 20 of the Transcript of Committee Hearing):**

*"I asked on notice, through the Minister, how many strip searches were conducted on juvenile prisoners in the last financial year. The answer I was given was that not all strip searches are required to be recorded. 'Were you aware of the fact that strip searches were not required to be recorded? Are you aware of any data in relation to strip searches of juvenile detainees?'"*

**Response:**

I am not aware that strip searches are not required to be recorded. The new 'Searching Young People Policy (October 2018)' and 'Searching Young People Procedure (October 2018)' replaced two policies 'Searching Detainees Procedures (2012)' and the 'Searching Detainees Procedure Resource Documents'. These policies of Juvenile Justice require strip searches to be recorded in the search register.

I have not requested data in relation to strip searches. I have requested data in relation to use of force to search a detainee in circumstances in which the detainee refuses to submit to being searched. The data indicates that it is rarely the case that use of force is used to conduct any kind of search.

**Question 4 (see page 21 of the Transcript of Committee Hearing):**

*"Have those recommendations been implemented?"*

**Response:**

Recommendation 10 of the 'Making Connections' Report provided – *"The Inspector recommends that JJNSW should not carry out strip searching on a routine basis and should replace this practice with a rigorous risk-based assessment process to target the trafficking of contraband"*.

The ICS requires six monthly reporting on implementation of recommendations from Juvenile Justice. The Inspector of Custodial Services reports in its 2018 Annual Report that the recommendation has been partially achieved. This report is based on the six monthly monitoring and reporting process.

Juvenile Justice has implemented policies to bring about the reduction of strip searching. Detainees at Juvenile Justice Centres are no longer routinely strip searched after any portion of leave, or after a visit with a family member or significant other.

However, routine strip searches still occur when a detainee is being admitted to a detention centre or returning to a detention centre following day leave or overnight leave.

This is in accordance with clause 11A(9) of the *Children (Detention Centres) Regulation 2015*.

*"A partially clothed search of a detainee must not be conducted as part of the general routine of a detention centre, except in the case of a detainee being admitted to a detention centre or returning to a detention centre following day leave or overnight leave."*

Dated 19 November 2018