

**REPORT ON PROCEEDINGS BEFORE**

**PORTFOLIO COMMITTEE NO. 4 – LEGAL AFFAIRS**

**CORRECTIONS PORTFOLIO**

**BUDGET ESTIMATES 2018-2019**

**CORRECTED**

**At Macquarie Room, Parliament House, Sydney, on Wednesday 31 October 2018**

**The Committee met at 11:15 am**

**PRESENT**

The Hon. Robert Borsak (Chair)

The Hon. David Clarke

The Hon. Catherine Cusack

The Hon. Trevor Khan

The Hon. Shaoquett Moselmane

Mr David Shoebridge (Deputy Chair)

The Hon. Lynda Voltz

**The CHAIR:** Welcome to the supplementary hearing for the Corrections portfolio for the inquiry into budget estimates 2018-19. Before we commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay my respects to elders past and present of the Eora nation and extend that respect to other Aboriginal people present. Today the Committee will examine the proposed expenditure for the portfolio of Corrections and I welcome Mr Cappie-Wood, Ms Hawyes, Ms Rafter and Mr Severin to this hearing.

Before we commence, I make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. In accordance with the broadcasting guidelines, while members of the media may film or record 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 will not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that witnesses could answer only if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they may take questions on notice and in this particular circumstance provide answers by 19 November. Any messages from advisers or members of staff seated in the public gallery should be delivered through the Committee secretariat. I remind witnesses that they are free to pass notes and refer directly to the advisers seated at the table behind them. Transcripts of the hearing will be available on the website tomorrow.

To aid the audibility of this hearing, I remind both Committee members and witnesses to speak into the microphones. Several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. Finally, I ask everyone to turn their mobile phones to silent for the duration of the hearing. I remind Mr Cappie-Wood and Ms Hawyes from the Department of Justice, Mr Severin from Corrective Services NSW and Ms Rafter, Inspector of Custodial Services, that they do not need to be sworn as they have been sworn at an earlier budget estimates hearing.

**PETER SEVERIN**, Commissioner, Corrective Services NSW, on former oath

**MELANIE HAWYES**, Executive Director, Juvenile Justice, on former affirmation

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

**FIONA RAFTER**, Inspector of Custodial Services, on former affirmation

**The CHAIR:** I declare the proposed expenditure for the portfolio of Corrections open for examination. I understand, Ms Rafter, that you have requested to make an opening statement. This is not a usual practice for budget estimates. However, in the circumstances the Committee will allow it.

**Mr DAVID SHOEBRIDGE:** To that extent, I formally move that we allow an opening statement.

**The CHAIR:** We have already done that.

**The Hon. LYNDA VOLTZ:** We have resolved it.

**The CHAIR:** We did it when you went upstairs.

**The Hon. TREVOR KHAN:** In fact, I think you moved it.

**The CHAIR:** You moved it.

**Mr DAVID SHOEBRIDGE:** I thought we were going to move it here.

**The CHAIR:** No, you moved it. It is already done. Ms Rafter, please proceed.

**Ms RAFTER:** Thank you, Mr Chair. Thank you for the opportunity to appear before you today. I would like, firstly, to acknowledge the Gadigal people of the Eora nation. Prior to addressing issues in relation to my draft report on the use of forced separation, segregation and confinement of detainees in the New South Wales juvenile justice system, I would like to provide some background about my role and function, as well as the recent activities of my office. The Inspector of Custodial Services is an independent statutory office created in October 2013 pursuant to the Inspector of Custodial Services Act 2012 and reports to Parliament. The position of inspector is appointed by the Governor. It is independent of Corrective Services NSW and Juvenile Justice NSW and reports directly to Parliament.

Section 17 of the Act provides that the joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission has responsibility to monitor and review the performance of the inspector and their functions. The independence of the inspector is reinforced by section 19 of the Act, which makes it an offence to obstruct or hinder the inspector in the exercise of the functions under the Act. The activities of the inspector relate to the inspection of custodial facilities and services as required by the Act. The purpose of the inspector is to provide independent scrutiny of the conditions, treatment and outcomes for adults and young people in custody and to promote excellence in staff professional practice. The principal function of the inspector is to inspect each custodial centre at least once every five years and inspect each juvenile justice centre at least once every three years and report to Parliament on each such inspection.

There are currently 40 correctional centres, six residential facilities, 12 24-hour court cells and six juvenile justice centres that require inspection. The office of the inspector also has jurisdiction for 64 court cell locations, a fleet of 113 escort vehicles and a detaining transport fleet of 25 vehicles. This represents a substantial body of work. The first inspector, Dr John Paget, was appointed on 1 October 2013 and worked as the inspector until October 2015. Since my appointment by the Governor in March 2016 and commencement in the role in April 2016, my office has continued the schedule of inspections started by Dr Paget. At the time I was appointed there were seven juvenile justice centres, two of which had been inspected; one of the juvenile justice centres that had already been inspected by Dr Paget was subsequently closed.

I have had to undertake significant recruitment to try to meet the obligations placed on the office of the inspector under the Act. The permanent staffing of the office of the inspector is small. Since my appointment, staff have grown from four to 12, in addition to myself. Expert consultants have been engaged for the purposes of assisting with the conduct of inspections to enhance the capacity of the office to examine specialised operational areas. In addition to inspections, I conduct liaison visits to centres to inform inspection work, monitor the implementation of recommendations, provide the opportunity for information sharing and meet with official visitors. These liaison visits are an essential part of building strong, effective, productive relationships with key stakeholders.

To respond to legislative obligations using the resources available to the office of the inspector, a model of inspection has been developed which allows multiple centres to be included in a single, theme-based inspection. The office of the inspector consults with relevant agencies and stakeholders when determining inspection themes and centres to be examined so that priorities, risks and issues can be identified and canvassed. Over the 2017-18 financial year the office of the inspector has been undertaking the following seven thematic inspections: management of radicalised inmates in New South Wales correctional centres; 24-hour court cells in New South Wales; use of forced separation, segregation and confinement of detainees in New South Wales juvenile justice centres; women on remand; minimum security; provision of health services; and programs, employment and education in adult corrections New South Wales.

The Committee is currently concerned with the draft report about one of these seven themes. This inspection examined how use of force against detainees in juvenile justice centres in New South Wales is managed. When I commenced, five juvenile justice centres were required to be inspected by October 2016. Terms of reference to assess use of force were issued in June 2016 and consultation with relevant stakeholders commenced. The first inspection was due to commence for the first centre on Tuesday 26 July 2016—coincidentally, the day before *Four Corners* aired its report on Don Dale Youth Detention Centre in the Northern Territory.

In October 2016 the Minister for Corrections asked that I consider an expansion of the terms of reference for our existing inspection to include an examination of the use of separation, segregation and confinement in juvenile justice centres. I agreed, and issued the expanded terms of reference in November 2016. The expanded terms of reference incorporated consideration of the Chisholm Behaviour Program, which was utilised at two juvenile justice centres. The Chisholm Behaviour Program ceased in May 2016. During the inspection of the juvenile justice centres a range of material was reviewed, including legislation, policy documents, training materials, academic literature and reports by government bodies and non-government stakeholders.

All six juvenile justice centres across New South Wales were inspected—namely, Acmena, Cobham, Frank Baxter, Orana, Riverina and Reiby juvenile justice centres. Each inspection can take up to three days. Wide consultation with internal and external stakeholders occurred as part of this inspection, including centre staff, nurses, psychologists, school principals, official visitors and young people. Although the facilities had already been inspected, it became apparent that due to the nature of the information obtained in the expanded terms of reference further centre visits were required in connection with the inspection. Some centres were visited on multiple occasions.

Consequently, to ensure the expanded terms of reference were appropriately addressed I have conducted more than is required during the period under the Act. I have taken a hands-on role in relation to these inspections, attending the majority of inspections together with my team. This has been a significant undertaking for the small team at the office of the inspector. We have had significant stakeholder interest and cooperation with our inspection by internal and external stakeholder groups who provide us with essential information, often on a confidential base. The inspection process requires a team of up to four officers and up to three days for each centre. This does not include travel time to regional parts of New South Wales.

Data is then requested from juvenile justice centres. It takes time for those centres to gather data and for my office to analyse and consider it. The gathering of information for each inspection is a significant logistical undertaking. Once the office of the inspector has gathered our initial information and data, the information is analysed and reports drafted. Once reports start to be prepared, serious and extensive consultation obligations are triggered for me under the Act. Section 14 (2) of the Act states that I must not make a report to Parliament that sets out an opinion that is either expressly or impliedly critical of a public service agency other than one critical of Corrective Services or Juvenile Justice or any individual person unless I have afforded them the opportunity to make either oral or written submissions.

For this purpose, in late December 2017 I provided a copy of the draft report on a confidential basis to the Executive Director of Juvenile Justice. At the same time, 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. I have also consulted with other relevant agencies and individual persons to offer them the opportunity to make submissions. As a result of the confidential consultation process, I have considered a number of fulsome submissions received in respect of the consultation draft from relevant agencies and individuals.

As required by section 14 (2) of the Act, I took those submissions into account and investigated the issues raised in them prior to formalising my draft report. This is a lengthy and time-consuming process. By the time I appeared before you on 4 September, the consultation process was well progressed but not final, and I was close to preparing a final draft report. I am required by section 14 (1) of the Act to provide the Minister with a draft of

each report to be made by Parliament under the Act and give the Minister a reasonable opportunity to make submissions, either orally or in writing, in relation to that draft report. On 30 October 2018 I provided my draft report to the Minister as required under section 14 (1) of the Act. The previous courtesy copy of the report provided to the Minister did not constitute a formal provision for the draft report for the purposes of section 14 (1) of the Act. I am not bound to amend my draft report in light of any submissions I receive, including from the Minister. However, section 14 (3) of the Act requires that I must consider and identify any submission prior to finalising my report and providing it to the Presiding Officers.

During this consultation phase, I have also been responsible for the inspection of 22 adult custodial facilities, which occurred between February and October this year. I also undertook a number of liaison visits in that time. In total, 60 adult centres must be inspected every five years, 40 of which are correctional centres. Many of these centres have never been inspected before, so the process is new for them. In early June 2018 I tabled two reports, including the report titled "The management of radicalised inmates in NSW". This complex report took two years to complete. In preparing and finalising my draft report that the Committee is interested in, I not only have consultation obligations but also obligations to protect sensitive information. Under section 15 (1) of the Act I must not disclose information in a report to Parliament if there is an overriding public interest against disclosure of the information. Section 15 provides a range of information that must be protected under the Act, including information that would allow the identification of a person who is or was detained at a juvenile justice centre or correctional centre. It also includes information that could reveal the identity of custodial centre staff or prejudice any system for protecting their life, health or safety.

In preparing my final report, I must take great care so as not to inadvertently disclose this kind of sensitive information, which is contained throughout the draft report. There is a significant degree of scrutiny involved in checking to ensure that such information is not disclosed. Great care must be taken to ensure small and otherwise innocuous pieces of information are not released that, when put together by motivated individuals, could disclose a complete statement of information that would otherwise be protected under section 15 of the Act or other available mechanisms. If information were to be inadvertently or otherwise disclosed it would have a dampening effect on the willingness of internal and external stakeholders to provide critical information to the inspection process. Without the free flow of information to the office of the inspector, my role and function as the inspector—and of the office generally—would be hampered. This important process is not complete until such time as my final report is prepared for tabling before Parliament.

The Committee has called for the production of my draft report. I find myself in a difficult position in relation to the provision of the draft report. The Act expressly requires that I undertake specific functions, including the provision of reports to Parliament, the provision of a draft report to the Minister, consultation with interested agencies and individuals, and taking into account any relevant submission. The Act also requires that I not disclose certain sensitive information. Although I am here to assist the Committee, I must also comply with the obligations placed on me under the Act. I am in receipt of two advices from the Crown Solicitor's Office, dated 24 October 2018 and 29 October 2018 respectively—and to assist the Committee a copy of these advices has been provided to Ms Main, Committee Clerk. However, for the reasons identified in the advices, I find I am not in a position to produce my draft report. In particular, the advice of 24 October states requiring production of the draft report, which had been provided to the Minister, would involve a significant degree of inconsistency—if not interference—with the operation of the statutory scheme established by the Inspector of Custodial Services Act 2012, under which the inspector reports to each House.

Whilst I wish to assist the Committee in any way possible, I must draw the Committee's attention to the inconsistency or conflict that exists between my ability to perform my functions and obligations under the Act and the powers of the Committee and the important work it is undertaking. Therefore, based on the two advices from the Crown Solicitor's Office and my obligations under the Act, I cannot produce the draft report requested. However, I am happy to otherwise assist the Committee in any way that I can, and I am able. In closing, I should note that October 2018 marks five years since the establishment of the office of the inspector. In the first five years of this office we will meet our legislative mandate to inspect each custodial centre every five years and juvenile justice centre every three years in New South Wales. In the first five years, eight reports, including six thematic inspection reports and two public interest reports, have been tabled by the office relating to the inspection of 30 centres, resulting in 200 recommendations. A further five thematic inspections have commenced or are ongoing during this period.

Since my appointment in April 2016, my office has also undertaken approximately 95 liaison visits to centres and 50 centre inspections. This translates, on average, to approximately four liaison visits and two centre inspections each month. During this period we have tabled three significant reports in Parliament and will soon have tabled our fourth report. In the last 12 months alone, 98 per cent of our recommendations relating to adult

centres were accepted and 100 per cent of our recommendations in relation to juvenile justice centres were accepted. The office of the inspector continues to achieve significant results and has proven it can deliver against its legislative requirements. Thank you.

**The CHAIR:** Thank you, Ms Rafter. The Committee will now adjourn. I ask everyone to please clear the room while the Committee has a short deliberative meeting.

**(Short adjournment)**

**The CHAIR:** The Committee ordered the production of the draft report on Juvenile Justice prepared by Ms Fiona Rafter, Inspector of Custodial Services, from the Minister for Corrections, the Secretary of the Department of Justice and the Inspector of Custodial Services. The ordered document has not been provided by any party. In response to the non-production of documents, the Committee summonsed the inspector and the secretary to attend before the Committee today to give evidence as to and concerning the matters to be inquired into by the Committee and that such evidence include the answering of questions and the production of the draft report on Juvenile Justice prepared by the inspector. The secretary and inspector have not provided the ordered document and provided further advice from the Acting Crown Solicitor on this matter.

Notwithstanding the power of the Committee to order the production of the document, the Committee has resolved to delay taking immediate action to enforce provisions of the summons concerning the production of the draft report until further legal advice has been obtained. We note the correspondence from Mr Cappie-Wood and Ms Rafter and that public servants are bound to accept the advice of the Acting Crown Solicitor. The Committee will seek further legal advice on this matter, noting the inconsistencies between the various advices provided by the Crown Solicitor's and the Acting Crown Solicitor. The Committee has resolved not to conclude its inquiry into budget estimates at this stage and may consider recalling Ms Rafter and Mr Cappie-Wood to attend a further hearing. We will seek an extension of our reporting date until 28 February 2019.

**Mr DAVID SHOEBRIDGE:** Thank you all for attending today. Ms Rafter, you asserted in your opening statement that the draft of the report that was provided initially to the Minister's office was not pursuant to the statutory process under your Act. Is that right? Is that how I understand your opening statement?

**Ms RAFTER:** I will take that on notice.

**Mr DAVID SHOEBRIDGE:** Ms Rafter, you just gave the statement. Are you seriously taking on notice a question about the statement you just gave?

**Ms RAFTER:** I am going to take that on notice.

**Mr DAVID SHOEBRIDGE:** You said in your opening statement that the draft report that was provided to the Minister, which we discussed at the last budget estimates hearing, was not provided pursuant to section 14 of the Act. Do you remember saying that?

**Ms RAFTER:** It was not provided under section 14 (1) of the Act, that is correct.

**Mr DAVID SHOEBRIDGE:** I am in a difficulty because I have your letter that you sent to the Committee only this week where you say that on 30 October 2018 you finally provided it to the Minister under section 14. Is that right?

**Ms RAFTER:** That is correct.

**The Hon. LYNDA VOLTZ:** Are you saying that the copy that you provided to the Minister on 20 December 2017 was not provided under section 14 (1) of the Act?

**Ms RAFTER:** That is correct.

**The Hon. LYNDA VOLTZ:** We asked you in estimates last time when you sent the draft copy of the report to the Minister did you provide any correspondence and, if so, could you provide us with a copy?

**Ms RAFTER:** Yes.

**The Hon. LYNDA VOLTZ:** You took that question on notice. That is correct?

**Ms RAFTER:** I did.

**The Hon. LYNDA VOLTZ:** You came back and said, "A copy of the draft report was delivered to the Minister's office as a courtesy on 20 December 2017. There was no associated correspondence." Is that correct?

**Ms RAFTER:** That is correct.

**The Hon. LYNDA VOLTZ:** So you provided a draft report to the Minister. You provided no attached correspondence to that draft report. How was the Minister aware that you were not fulfilling the requirements under section 14 (1) of the Act?

**Ms RAFTER:** I just refer you back to my opening statement where I said that I provided the draft report at the time to the Executive Director of Juvenile Justice and then provided the courtesy copy to the Minister.

**The Hon. LYNDA VOLTZ:** Yes, but that is not my question. My question was you provided a copy of the draft report to the Minister's office. You are required under section 14 (1) of the Act to provide a copy to the Minister's office for him to provide feedback. You did that on 20 December 2017. You have provided no correspondence to indicate to him that that draft report is not being provided under section 14 (1) of the Act. How did you make it clear to the Minister that that draft report you provided to him was not fulfilling the requirements of section 14 (1) of the Act?

**Ms RAFTER:** When I seek a submission from the Minister under section 14 (1) of the Act, as I have done now, I make it clear that I have requested it subject to that provision.

**Mr DAVID SHOEBRIDGE:** How was the Minister to know that? When a draft report lobs on his desk there is a statutory process for feedback on it. You just lobbied a report on his desk without any associated correspondence. What was the Minister meant to take of that?

**Ms RAFTER:** The Minister's office was aware that I had provided it to the Executive Director of Juvenile Justice for agency feedback.

**Mr DAVID SHOEBRIDGE:** How? That was not mentioned in any covering letter. How was the Minister aware of that?

**The Hon. LYNDA VOLTZ:** 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?

**Ms RAFTER:** I would have contacted the Minister's office at the time to make sure that there was someone there to receive the courtesy copy. I can take that on notice about exactly how that happened.

**The Hon. LYNDA VOLTZ:** But you have the statutory requirement under section 14 (1) of the Act to provide a draft report.

**Ms RAFTER:** Yes.

**The Hon. LYNDA VOLTZ:** The Minister is required to respond to it. You provided him a copy of the draft report. There is no correspondence that says—

**The Hon. CATHERINE CUSACK:** Point of order: This question has been answered already. It was clearly answered. I believe this is bordering on bullying the witness. It has been asked many times and it has now been answered.

**Mr DAVID SHOEBRIDGE:** The Hon. Catherine Cusack knows that that is not a point of order. Members are allowed to press a question—

**The Hon. CATHERINE CUSACK:** It is tedious repetition of a question and it is being done in a way that is bullying and inappropriate.

**Mr DAVID SHOEBRIDGE:** I reject the assertion of bullying. This is a long way from tedious repetition. There is no point of order.

**The Hon. CATHERINE CUSACK:** It is bullying when she has already answered it.

**The Hon. LYNDA VOLTZ:** There was a requirement of section 14 (1) that you deliver it to the Minister?

**Ms RAFTER:** I refer the Committee back to the response I gave in the earlier Committee hearing and to my opening statement around this issue. If there is anything that is different from what has been previously requested I am happy to take it on notice.

**The Hon. LYNDA VOLTZ:** At the previous hearing you were not clear on whether you provided correspondence and you actually undertook to provide us with that correspondence.

**The Hon. CATHERINE CUSACK:** We are going around in circles.

**Ms RAFTER:** I believe I took the question on notice at the last Committee and then provided a response to the Committee.

**Mr DAVID SHOEBRIDGE:** For the sake of clarity, I have the transcript. You were asked:

**The ACTING CHAIR:** Ms Rafter, for what purpose did you send it to the Minister's office in December?

And your answer was:

**Ms RAFTER:** As a courtesy.

That was the answer you gave on record.

**Ms RAFTER:** I stand by that response.

**Mr DAVID SHOEBRIDGE:** Inspector, did you have any communication with the Minister's staff about the contents of the draft report?

**Ms RAFTER:** No, I did not.

**Mr DAVID SHOEBRIDGE:** How many recommendations were in the draft report?

**Ms RAFTER:** That is a matter which I do not wish to comment on because of my obligations under the Act. The report is now, as a draft, final but it is not yet finalised.

**Mr DAVID SHOEBRIDGE:** For the sake of clarity, do you purport to rely upon the advice of the Crown Solicitor to not answer the question that I am putting to you directly about the contents of the report?

**Ms RAFTER:** I am relying on the sections, on my statutory obligation.

**Mr DAVID SHOEBRIDGE:** Yes, you and Mr Cappie-Wood have each provided us with advice from the Acting Crown Solicitor. I am asking, for the sake of clarity, are you purporting to rely upon the content of that advice—

**Ms RAFTER:** That is subject to legal professional privilege.

**Mr DAVID SHOEBRIDGE:** Sorry, you are asserting legal professional privilege about the content of the draft report?

**Ms RAFTER:** No. I am trying my best to assist the Committee. I am relying on the provisions of my legislation, as I have referred to in my opening statement.

**Mr DAVID SHOEBRIDGE:** Ms Rafter, you know there is no legal professional privilege in advice that has been tendered to us. You have waived that legal professional privilege. You understand that?

**Ms RAFTER:** I do understand.

**Mr DAVID SHOEBRIDGE:** Are you purporting to rely upon legal professional privilege in relation to the advice you provided to us?

**Ms RAFTER:** I am relying upon the provisions of my legislation, as I referred to in my opening statement.

**Mr DAVID SHOEBRIDGE:** I am going to press the question: How many recommendations were there in the draft report that you provided to the Minister—not the one on 30 October but the one that you provided earlier?

**Ms RAFTER:** Because of my statutory obligations, I do not intend to answer that question.

**Mr DAVID SHOEBRIDGE:** Are you aware that in the time that this Parliament has been waiting for that report the Northern Territory has instituted a royal commission, held a royal commission, provided a report from the royal commission with 227 recommendations, had a government response to the royal commission and funded a \$226 million response to what is happening in their juvenile justice centres, whilst we are still waiting for your report? Can you explain how so much has been achieved in the Northern Territory and so little in New South Wales?

**Ms RAFTER:** In response to your question, I refer back to my opening statement. The report into Juvenile Justice that I have been completing is in no way linked to that royal commission, and the inspection of juvenile justice centres was in accordance with the provisions of my legislation. It is a matter which is being—the inspections are being conducted, along with all of the other activities of the office that I have outlined in the opening statement. It is quite different from a royal commission.

**The Hon. LYNDA VOLTZ:** You stated last time you were here that you had sent the report to the Executive Director of Juvenile Justice to provide feedback. Has it provided that feedback?

**Ms RAFTER:** Yes. I believe that I covered that. I think I responded to that at the last hearing.

**The Hon. LYNDA VOLTZ:** No, you said you had provided it. Has it provided the feedback?

**Ms RAFTER:** Yes.

**The Hon. LYNDA VOLTZ:** Was some of that feedback around potential recommendations?

**Ms RAFTER:** Yes. As I said in my opening statement, I have consulted with all impacted agencies and that is around recommendations.

**The Hon. LYNDA VOLTZ:** Were any of the recommendations modified as a response to that feedback?

**Ms RAFTER:** Again, I just rely on the provisions in my legislation in relation to my functions and the processes that I have to adhere to.

**Mr DAVID SHOEBRIDGE:** I take that as you objecting to answering the question. Is that right, Ms Rafter?

**Ms RAFTER:** I am just referring back to my opening statement where I addressed that issue.

**Mr DAVID SHOEBRIDGE:** Yes, but are you purporting to rely upon those statutory provisions to object to answering the question?

**Ms RAFTER:** To provide the detail of what is in a draft report, yes.

**The Hon. LYNDA VOLTZ:** Has the Minister's office provided any feedback around potential recommendations?

**Ms RAFTER:** No. The report has been provided to the Minister now, and this is now his opportunity to make a submission. And, as I have said in my opening statement and at the previous hearing, I am obliged to obtain a submission; I am not bound to accept it.

**Mr DAVID SHOEBRIDGE:** Is it purely a coincidence that you finally get the draft report to the Minister's office the day before this Committee has its further hearing? Are we to take that as pure coincidence or is there another explanation?

**Ms RAFTER:** When I appeared before the Committee last time on 4 September, I refer you back to what I said at that stage about I was working on finalising the report, and I have been working diligently on doing that ever since it was in a position to be sent to the Minister yesterday.

**Mr DAVID SHOEBRIDGE:** My question was quite clear: Is it pure coincidence or is there another explanation for the report being provided the day before this hearing?

**Ms RAFTER:** I have been anxiously trying to finish it as quickly as possible.

**The Hon. LYNDA VOLTZ:** Have you had any conversations with the Minister regarding the draft report that you previously delivered to him since the last hearing?

**Ms RAFTER:** No, I have not.

**The Hon. LYNDA VOLTZ:** Have you had any conversations with him since you provided the draft report to him?

**Ms RAFTER:** The draft report yesterday?

**The Hon. LYNDA VOLTZ:** Yes.

**Ms RAFTER:** No. I will be waiting for his submission.

**Mr DAVID SHOEBRIDGE:** Ms Hawyes, between the provision of the courtesy copy of the report by the inspector and before yesterday, have you had any communication with the Minister's office about the contents of the draft report?

**Ms HAWYES:** Obviously I meet with the Minister regularly and we talk about the progress of the review. It is a comprehensive and significant piece of work that has been underway for a long time now, and naturally I update him on my perception as to how it is progressing and inspections, and operational matters naturally as a matter of course. I have not spoken with him about the draft report that was tabled last night, and I have not yet received a copy myself.<sup>1</sup>

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<sup>1</sup> In [correspondence](#) to the committee received on 21 November 2018, the Hon David Elliot MP provided a correction to the evidence of Ms Hawyes.

**Mr DAVID SHOEBRIDGE:** But you would have spoken to the Minister, I assume, about the—I am not quite sure how we describe it—courtesy report.

**Ms HAWYES:** From my point of view, the report I received in late December was a working draft demonstrating analysis and some observations that had been, I guess, put together as a result of inspections and having a look at documents that had been provided to date. We were asked to review it from the point of view of: Does this reflect, in terms of the activity, the operational reforms that you are progressing and the activity that you would consider to be needing to be reflected in a report of that nature? And from my point of view there were some significant omissions. It might assist the Committee if I talk through the change program that Juvenile Justice has been undertaking since 2016. That will explain to the Committee why there is a need to regularly update the inspector's office as to major reform activity that is going on in our organisation.

**Mr DAVID SHOEBRIDGE:** I am perfectly happy for you to do that, once we finish this line of questioning—and I do note the detailed response you have given to questions on notice about what has been implemented.

**Ms HAWYES:** Substantial.

**Mr DAVID SHOEBRIDGE:** And I do not think anyone is critiquing you for responding to the draft report. I think we would all commend you for doing that work. Did you speak to the Minister about the draft report and the contents of the draft report prior to the previous budget estimates hearing?

**Ms HAWYES:** At the time of receiving the report I spoke with the Minister's office. I recall the conversation where I spoke with the Minister's office to advise them that in my view there were substantial inaccuracies in terms of the review had not kept pace with the reform that had been undertaken in Juvenile Justice and that I would have been endeavouring to provide the inspector with up-to-date information on fundamental aspects of practice that we are changing, such as recruitment, training, the introduction of caseworkers and our approach to detainee risk management planning. They are absolutely relevant to the findings and, from my point of view, I have a responsibility to ensure that the inspector is entirely up to date with what is occurring in Juvenile Justice, and that is what I then did.

**Mr DAVID SHOEBRIDGE:** You see, you had that conversation with the Minister's office. You have also indicated, and quite appropriately, that you regularly meet with the Minister. Did you discuss any of that or the contents of the draft report with the Minister prior to the previous budget estimates hearing?

**Ms HAWYES:** I do not recall specifics. I do recall updating him that my intent and actions were to update the inspector as to current activity, particularly, as I say, some of the major reforms that are directly relevant to the review and its findings.

**Mr DAVID SHOEBRIDGE:** So you would have spoken to the Minister about the December report and said, "This is what we are doing. This is what we are clarifying."?

**Ms HAWYES:** That is right. I would have said, "Yes, this report has come in to me. It is inadequate, in my view, in terms of it is missing some key information, and I am embarking on ensuring that the inspector is apprised of relevant information."

**Mr DAVID SHOEBRIDGE:** As best as you can recall sitting there now, those conversations would have started soon after the receipt of the report and have been a continuing feature? Is that how I am to understand it?

**Ms HAWYES:** It is a continuing feature, that I update on progress. More recently, that has not necessarily been the case because we have been waiting for a formal report to come through, with recommendations that we can provide commentary on. That is a routine part of a review like this: You receive a report, you review its recommendations and you provide a response.

**Mr DAVID SHOEBRIDGE:** To be utterly clear, those conversations included the period prior to the previous budget estimates hearing?

**Ms HAWYES:** As I said, I meet with the Minister every week. I am not so good that I can recall the exact detail of every conversation, but the review comes up. Late last year I definitely gave opinion to the Minister's office that, in my view, we needed to update the inspector's team, and from there on the conversations have been about progress and the likely timing of the draft.

**Mr DAVID SHOEBRIDGE:** Progress on dealing with the draft recommendations in the report and clarifying inaccuracies of the report—those two aspects were discussed with the Minister?

**Ms HAWYES:** My feedback to the inspector has taken various forms of feedback from discussions and liaison through to providing large amounts of information and documents, including things like copies of our new training packages and programs so that the team is entirely up to date with activity that we are undertaking in the portfolio.

**Mr DAVID SHOEBRIDGE:** Ms Hawyes, it is a very simple question: It is about your communications with the Minister directly. Those communications about the draft report, raising the draft report and issues in relation to the draft report—those conversations happened prior to, not exclusively but at least in part prior to, the previous budget estimates hearing?

**Ms HAWYES:** I have kept the Minister apprised of the progress of the review from my perspective as the executive director with responsibility for ensuring that we cooperate fully.

**Mr DAVID SHOEBRIDGE:** And that is on and from December of last year?

**Ms HAWYES:** Every week we speak.

**Mr CAPPIE-WOOD:** Can I assist in clarification on that matter?

**Mr DAVID SHOEBRIDGE:** If you can.

**Mr CAPPIE-WOOD:** I have been present during the conversations with the Minister on a weekly basis. There has been no discussion with the Minister in the updates that Ms Hawyes has given that relate to specific recommendations. They relate to ensuring that the inspector is apprised of changes and reforms in Juvenile Justice and, therefore, the communication to the inspector of those changes. From our perspective—and I am just trying to get an understanding because obviously something we would anticipate is what would be the likely timing—it is outside our control. But we want to make sure that every update, every change, is available to the inspector. I just needed to clarify that there is no discussion with the Minister about specific recommendations.

**Mr DAVID SHOEBRIDGE:** You are not trying to disagree with Ms Hawyes' evidence are you, or qualify it?

**Ms HAWYES:** No.

**Mr CAPPIE-WOOD:** No, you asked about the recommendations and I am saying to you there was no direct conversation with the Minister about specific recommendations in the updates we gave him.

**Mr DAVID SHOEBRIDGE:** But the fact of the report, issues in the report, the content of the report—at least in a general way—was discussed with the Minister? You are not cavilling with Ms Hawyes'—

**Mr CAPPIE-WOOD:** In generic terms it was discussed.

**Ms HAWYES:** We have not discussed in detail any specifics, given my advice to the Minister that the report needed to be informed substantially by contemporary information about what we have been doing in the portfolio. That was the nature of our conversation and, of course, the Minister's response to me was that is the progress of the review.

**The Hon. LYNDA VOLTZ:** Mr Cappie-Wood, you have provided in your advice to the Committee, in regard to legal advice, advice from the Solicitor-General. Will you provide the Committee with a copy of that advice?

**Mr CAPPIE-WOOD:** I have provided advice to the Committee of the Acting Solicitor-General in letters of 24 October and 29 October. Is that what you are referring to?

**The Hon. LYNDA VOLTZ:** No, that was the Acting Crown Solicitor. You referred to advice from the Solicitor-General. Will you provide that advice to the Committee?

**Mr DAVID SHOEBRIDGE:** So there is no ambiguity about the request, it is paragraph 4.4 of the advice, where you say, "However, the Solicitor-General has recently indicated that in his view it is"—and then you quote from that earlier advice—"more likely than not that 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 has the power to call for a witness to attend and give evidence, including by the production of a document." That is the advice.

**Mr CAPPIE-WOOD:** You are asking do I waive my legal privileges in this matter?

**The Hon. LYNDA VOLTZ:** No, I am not asking you whether you waive your legal privilege. I am asking to provide the Committee with a copy of the Solicitor-General's advice.

**Mr DAVID SHOEBRIDGE:** Given you have already disclosed part of it.

**Mr CAPPIE-WOOD:** Thank you. Can I take that on notice and provide an answer to you expeditiously?

**The Hon. LYNDA VOLTZ:** If you like.

**The Hon. CATHERINE CUSACK:** Good answer.

**Mr DAVID SHOEBRIDGE:** You can provide an answer or you can provide the report, but expeditious is nice.

**The Hon. LYNDA VOLTZ:** I want to turn to some other matters, Mr Severin. Last time we were before the Committee, I asked you questions in regard to sexual or inappropriate relationships between prison officers and inmates. You recall that at the time you indicated there had been four reports, or the Minister indicated there had been four reports to him. Have you received any more recent reports of a prison officer having an inappropriate sexual relationship with an inmate?

**Mr SEVERIN:** I think we need to take that back to the origin of the establishment of Task Force Themis. I think the Minister's reference to four cases related directly to cases that were currently being looked at by Task Force Themis. Task Force Themis obviously also looks at the occasion of any kind of complaint being made in this regard or any kind of allegation being made in this regard going back 10 years. We have had a number of people coming forward identifying that there have been other occasions in various locations. These are all subject to investigation. I am not sure of the entire number of those. It is not an insurmountably big number, but through Task Force Themis and the very active pursuit of people coming forward to bring inappropriate behaviour to the attention of authorities, it has had some responses. I need to take on notice the exact number—if that is your question—of complaints that have been made since the last estimates hearing.

**The Hon. LYNDA VOLTZ:** Let me ask the question another way. Have you received any complaints in the last week?

**Mr SEVERIN:** I was not on duty last week. I need to refer that back to the acting commissioner at the time.

**Mr DAVID SHOEBRIDGE:** Has each of those instances of sexual relations between a prison officer and a prisoner compromised the security or the good order of those correctional facilities, and do you have evidence to that effect?

**Mr SEVERIN:** Fundamentally, any kind of inappropriate relationship where it is not disclosed has the potential to compromise the good order of the operation of a prison facility. The clear focus is on staff crossing the line and, therefore, jeopardising the safety and security of the ordered operation of a prison, or any kind of operation really across our area of responsibility. Fundamentally, my belief is that inappropriate relationships where they are occurring in the execution of somebody's duty when they are not disclosed—for example, we could have situations where a father has their child in custody for a period of time, or vice versa, and that is declared. I would not categorise those types of occurrences in the same way. However, the starting point for me is to say that inappropriate relationships have every potential to compromise safety or security.

**The Hon. LYNDA VOLTZ:** Mr Severin, you were on duty this morning. Were there any more recent reports sitting on your desk today?

**Mr SEVERIN:** No, nothing this morning.

**The Hon. LYNDA VOLTZ:** No reports?

**Mr SEVERIN:** I returned to duty this morning, had a briefing and then I came straight to this Committee.

**The Hon. LYNDA VOLTZ:** And there were no new cases raised in the briefing?

**Mr SEVERIN:** I have not been made aware of any cases. However, I was away since 13 October. So, quite clearly, I am not across every investigation that may have started or commenced between 13 October and me returning to duty on 31 October.

**The Hon. LYNDA VOLTZ:** How many under Task Force Themis are historical and how many are more recent?

**Mr SEVERIN:** I need to take that on notice. I have just been handed a note from the then acting commissioner to say that there has been a complaint received from an inmate yesterday. I am not aware of the

detail of that complaint at this point in time. Obviously any complaint is subject to a proper investigation. If they are criminal matters that relate to the complaint, the Corrective Services investigation unit is investigating. They are always investigated by the Corrective Services investigations branch.

**The Hon. LYNDA VOLTZ:** So you did have one complaint this week?

**Mr SEVERIN:** I personally did not receive a complaint but the then Acting Commissioner for Corrective Services just handed me a note indicating that there was a complaint received yesterday from an inmate.

**The Hon. LYNDA VOLTZ:** Was it a male or a female inmate?

**Mr SEVERIN:** I am not across that detail. I will need to take that on notice.

**The Hon. LYNDA VOLTZ:** There is no detail?

**Mr SEVERIN:** No detail. I was literally just handed a handwritten note this very second.

**Mr DAVID SHOEBRIDGE:** We all saw. It was bright yellow.

**The Hon. LYNDA VOLTZ:** Mr Severin, as you have taken that on notice, can you also ascertain if that complaint contained any complaints about the provision of contraband and also take on notice if there were any complaints about the provision of contraband, whether that contraband constituted drugs of any nature?

**Mr SEVERIN:** Absolutely, but I also would encourage you quite actively, Ms Voltz, that if you have information that is relevant for the investigation of a complaint to make that available to us.

**The Hon. LYNDA VOLTZ:** Well, I am just asking the questions.

**The Hon. TREVOR KHAN:** Yes, help, Lynda, help.

**The Hon. LYNDA VOLTZ:** I am happy to do that. Let us go to another issue. Mr Severin, in regards to Corrective Services officers, particularly ones who may be covered by whistleblower status, what provisions do you have in force to protect people who may be at risk from those other people they work with?

**Mr SEVERIN:** It is a very difficult area and we clearly have had occasion, most recently in the public inquiry by the Independent Commission Against Corruption [ICAC], identifying that there have certainly been occasions where staff who have come forward and provided evidence have indicated that they have had to endure some retribution. As a result of that and also as a result of the anticipated report that will be handed down by the Commissioner of the ICAC in the near future, we have commissioned a steering committee. Amongst other things, the terms of reference of the steering committee, which looks at use of force and other things, looks at a very clear analyses of what else we can do to better protect witnesses, not witness protection but support witnesses, support staff who come forward. We are also learning from the NSW Police Force and it is clearly a concern that anybody who comes forward to provide evidence that indicates inappropriate behaviour by others should be subject to any retribution. They should actually be the heroes in this process rather than the victims.

**The Hon. LYNDA VOLTZ:** Mr Severin, I would like to hand you some documents for you to have a look at. Firstly, I just ask if you have seen these documents before?

**Mr SEVERIN:** These are officers' reports from—

**The Hon. LYNDA VOLTZ:** I am just asking if you have seen them before?

**Mr SEVERIN:** I cannot recall that I have seen those before, no.

**The Hon. LYNDA VOLTZ:** In regards to these statements from this officer, there were some quite serious assaults, the firebombing of their vehicle, blood thrown over their vehicle. Do you know if there have been any investigations into this behaviour?

**Mr SEVERIN:** I understand, and I need to qualify that this comes from the GEO Group. The GEO Group is the private operator of Parklea and Junee correctional centres at this point in time. I am aware of one particular situation where there were allegations made by a former officer in relation to inappropriate behaviour that he or she was subject to by fellow officers. I am also aware that that officer themselves had engaged in some behaviour that compromised the safety and security of the centre. I am happy to take on notice the consequences that that had. I know it has been investigated. I know there were consequences but I have not got that detail in front of me.

**The Hon. LYNDA VOLTZ:** Mr Severin, if you had a Corrective Services officer who had had their car firebombed, who had been assaulted in the street, had damage to their house and property and had on numerous

occasions damage to their vehicle and had made numerous reports, would that be a common occurrence in Corrective Services?

**Mr SEVERIN:** It is most certainly not and it is very concerning if that behaviour is related to the employment of that person and not to factors relating to their private lives. And yes, I am across occurrences where that was alleged, not just related to the GEO Group. In the context of Corrective Services NSW, any time an employee comes forward and makes allegations of this nature, we take that extremely seriously because it could be—

**The Hon. LYNDA VOLTZ:** This is just one person that all these incidents have happened to who has made numerous reports. Are you aware of any investigation or anything that has happened from Corrective Services in regards to protecting that officer?

**Mr SEVERIN:** Can I just qualify again that this officer is an employee of the GEO Group. He is not an employee of Corrective Services NSW, so the GEO Group, as their employer, is responsible for the employment-related issues of this officer. Where we would get involved very clearly is with any allegations of criminal behaviour, which clearly this is the case and, as I said, I take on notice the action that was taken by the NSW Police Force as a result of being initiated by us.

**Mr DAVID SHOEBRIDGE:** But, Commissioner, surely you have an arrangement, a very clear arrangement in place with anyone operating a private prison in New South Wales where if any of their employees are under duress or potential threats to their property or person as a result of their duties there is an obligation to report that to you?

**Mr SEVERIN:** Absolutely.

**Mr DAVID SHOEBRIDGE:** Has it been reported?

**Mr SEVERIN:** We certainly are aware of incidents. As I said, I just have not got the details in front of me. I am very happy to provide those details.

**The Hon. LYNDA VOLTZ:** But you are saying incidents. I am talking about one person—

**Mr SEVERIN:** Yes.

**The Hon. LYNDA VOLTZ:** —who has had a pattern of quite violent and very serious damage and assaults happening to them and you are not aware of that. Have there been more serious incidents than this?

**Mr SEVERIN:** If I could just clarify. I clearly said I am aware of an occurrence at the Parklea Correctional Centre where a GEO officer literally was subject to very, very inappropriate behaviour. The matter was investigated. The matter was appropriately referred and the matter was appropriately reported back to us. So it is not that this is something that went under the radar. The matter was even reported in the media at the time, if I recall correctly. So, very clearly, if we have an officer in our employment, that is Corrective Services NSW, who comes forward and makes any kind of report indicating that they are subject to this type of behaviour, we immediately undertake a very comprehensive risk assessment. We are looking at the threats that the officer is subject to, we are looking at the link between the employment of the staff member and these types of threats and behaviours and we certainly involve on every occasion the NSW Police Force. This is done by our Security Operations Group, who are the technical experts in this area and we, under no circumstances, condone this behaviour—not take it seriously, not investigate it, not follow up on it—and we make sure the welfare of the officer is looked after.

**The Hon. LYNDA VOLTZ:** Let us go through that systematically. We are not talking about inappropriate behaviour here, are we?

**Mr SEVERIN:** No. This is clearly not inappropriate behaviour between an inmate and an officer.

**The Hon. LYNDA VOLTZ:** But that is the term you used. That is why I am wondering why you used it.

**Mr DAVID SHOEBRIDGE:** It would be better to classify it as violent and criminal.

**Mr SEVERIN:** Because something can be inappropriate; it does not need to be sexual. For me, this is a very—

**The Hon. LYNDA VOLTZ:** No, I am not saying it is sexual. I am saying it is criminal behaviour.

**Mr SEVERIN:** If I could just—

**Mr DAVID SHOEBRIDGE:** It is violent, criminal behaviour.

**The Hon. CATHERINE CUSACK:** I think he is explaining the process rather than the incident.

**Mr SEVERIN:** It is very clear. I used one term and I think I have used it quite accurately. To just recap again, if we have been made aware by an officer or by anybody—it could be a third party—that there are any issues relating to the employment resulting in threats or action being taken against an employee of Corrective Services NSW, we undertake a comprehensive risk assessment. We do that in situ. If it happened at their home, we do it there. We involve the NSW Police Force. We investigate matters and we do everything possible to ensure that the safety and welfare of staff are protected.

**Mr DAVID SHOEBRIDGE:** But, Commissioner, this is about a private prison. If I understand your answers earlier, when it is a private prison it is not your business; it is done by the private operator in a manner that you cannot clearly articulate to us?

**Mr SEVERIN:** But I can. I mean, the process is very clear that we are not the employer of the staff of the GEO Group, so we are not marching in there and undertaking investigations. That is the obligation in the first instance of the private operator and the employer of that employee.

**Mr DAVID SHOEBRIDGE:** Do they have the equivalent of your Special Operations Group that will be able to undertake it?

**Mr SEVERIN:** If they request that we undertake any kind of assessment, of course we make our resources available, as is appropriate.

**Mr DAVID SHOEBRIDGE:** Did they in this case? I have looked at the material. It is some of the most appalling threats against somebody. Have they requested it on this occasion?

**Mr SEVERIN:** I have to take on notice if they requested us or if they used other means to undertake the risk assessment.

**Mr DAVID SHOEBRIDGE:** What other means?

**Mr SEVERIN:** They could have engaged their own experts from elsewhere. I do not want to speculate. What I am saying is these are serious allegations. My understanding is they were investigated, they were followed through and they were brought to the notice of authorities and reported on in the media at the time, or later on. My understanding is there were actions taken as a result.

**The Hon. LYNDIA VOLTZ:** What were those actions?

**Mr SEVERIN:** I need to take that on notice, as I mentioned before.

**The Hon. LYNDIA VOLTZ:** Is the person still employed in Corrective Services?

**Mr SEVERIN:** They are not employed by Corrective Services NSW. If they are employed by the GEO Group, I have to take it on notice.

**Mr DAVID SHOEBRIDGE:** Are there specific arrangements in place with current private prison operators and those who are about to have the operation of further private prisons in New South Wales? Are there specific arrangements in place that says your Special Operations Group needs to be involved and undertake investigations when these kinds of threats and criminal behaviour are happening to prison officers in private employ?

**Mr SEVERIN:** They would not be as specific as that. Again, we are not telling an operator how to deal with their employees in the first instance. However, if there are any matters related to the employment of the person and the conduct of corrective services in New South Wales by the private sector, we make sure that matters are appropriately dealt with, that matters do not affect the safety and security of corrections in this State. What we are not doing is we are not becoming a surrogate employer for a private sector operator's employees.

**Mr DAVID SHOEBRIDGE:** Does GEO have the expertise that you have in the Special Operations Group? Is it a requirement of the tender? Absent the expertise, how can you ensure the integrity of private prisons?

**Mr SEVERIN:** I can ensure the integrity of private prisons because, first of all, we have very clear specifications as to how these prisons need to operate. Secondly, we have monitors on site that identify that the prisons are operating appropriately and we have a catalogue of interventions. And a question was asked in a different place in relation to those contractual arrangements being available and they are online. I refer again, all the documents are there that outline all the obligations on both sides. We, of course, have very clearly also the

ability to provide support through the Special Operations Group if the operator feels that they do not have that expertise within their own organisation or they cannot source that expertise elsewhere if it is indeed needed. My example referred to Corrective Services NSW employees. It did not refer to a mandatory requirement to use us every time there is a concern in relation to alleged inappropriate or criminal behaviour against an employee.

**The Hon. LYNDA VOLTZ:** Mr Severin, you say there has not been a more serious example before you of someone being intimidated and harassed than being firebombed, assaulted on the street and having their house and vehicles damaged, yet you cannot tell us whether that person is still employed. You cannot tell us what protections were put in place. You cannot tell us whether you undertook the investigations. How many types of these allegations come before your office?

**Mr SEVERIN:** If I can correct you, I did not say that I have not seen any more serious incident. That is not to say in any way that this is not serious. I did indicate very clearly that the matter was investigated, that action was taken, that consequences ensued from that action and I need to take on notice to provide you with the detail of what actually happened. The matter, to the best of my knowledge, was duly investigated, followed through and action was taken.

**The Hon. LYNDA VOLTZ:** Action was taken. Were there charges laid?

**Mr SEVERIN:** As I said and I reiterate again, or repeat again, I will take that on notice.

**The Hon. LYNDA VOLTZ:** At one stage in your earlier responses you made a statement that there were complaints from a person who was then later complained about by officers. Is that not a common response when someone is a whistleblower, that they then become the target of complaints?

**Mr SEVERIN:** Again, I do not want to speculate on this. As I said before, the details of what happened at the time we take on notice.

**The Hon. LYNDA VOLTZ:** I was just surprised.

**Mr DAVID SHOEBRIDGE:** Inspector, you took on notice the question as to whether or not the prohibition on confinement for 24 hours in juvenile detentions had been breached in circumstances where a child had been locked in the cells at night and had then been confined during the day. That the period was continuous and whether or not that breached the 24-hour prohibition—do you remember taking that on notice?

**Ms RAFTER:** I do.

**Mr DAVID SHOEBRIDGE:** In your answers on notice you reference page 19, but I think it is accurately a reference to the question asked at page 25. You say:

Juvenile Justice has advised that it has not breached the maximum 24-hour confinement period in the last financial year. The terms of reference for the Juvenile Justice inspection include how the use of separation, segregation and confinement of detainees in Juvenile Justice centres in New South Wales is managed.

Do you remember giving that answer?

**Ms RAFTER:** Yes, I do.

**Mr DAVID SHOEBRIDGE:** Inspector, you are an independent statutory officer?

**Ms RAFTER:** Yes.

**Mr DAVID SHOEBRIDGE:** Do you understand I was asking you about what you knew, not what Juvenile Justice said to you? Do you understand the question was to you in your role as a statutory officer?

**Ms RAFTER:** Yes, I do.

**Mr DAVID SHOEBRIDGE:** I ask that again. I am not asking you to recite to me the opinion of Juvenile Justice. I am asking you whether you in your role as an independent statutory officer do you have any evidence or have ever seen a circumstance where the 24-hour confinement prohibition was breached in the circumstances outlined?

**Ms RAFTER:** To address that, I maintain the response that I provided to the Committee. 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. I referred to the report that I am currently drafting and again I refer back to my opening statement that under the provisions of the Act I will discuss these sorts of matters in the report, in the final report when it is tabled.

**Mr DAVID SHOEBRIDGE:** Inspector, I do not care if this is raised in the report. I do not want you to reference the report. I want you to give me the information that you have as a statutory officer. Has the prohibition on confinement been breached in the circumstances I outlined in the question: yes or no?

**Ms RAFTER:** The answer that I provided to you is, my response today is consistent with that answer.

**Mr DAVID SHOEBRIDGE:** Your answer was that Juvenile Justice says "no". I am asking you as a statutory officer?

**Ms RAFTER:** On the data, I accept that based on the data.

**Mr DAVID SHOEBRIDGE:** You have been looking at segregation—

**The Hon. TREVOR KHAN:** You wanted a yes or no, she has given you a yes or no.

**Mr DAVID SHOEBRIDGE:** You have been looking at segregation independently of Juvenile Justice in your statutory role. I am not simply asking about the data that has been provided by Juvenile Justice. I am asking from your analysis of that data your understanding of the statutory regime and whether or not the prohibition has been breached? If I wanted Juvenile Justice's opinion I would ask them.

**Ms RAFTER:** I refer you back to my opening statement around my obligations under section 15.

**Mr DAVID SHOEBRIDGE:** I am not asking you about your report. I do not care if it is referenced in your report. I want an answer to my question.

**Ms RAFTER:** It is relevant to the report.

**The Hon. LYNDA VOLTZ:** To be fair, as the Inspector, the Committee has a right to ask questions regarding your responsibility.

**Ms RAFTER:** Absolutely.

**The Hon. LYNDA VOLTZ:** 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 systemically cover everything.

**Ms RAFTER:** I am trying to assist the Committee in the answer I have provided. I can take it on notice if you are asking me a different question to that you asked previously.

**The Hon. TREVOR KHAN:** Why do you not ask Ms Hawyes? I think she knows. In fact, I think she has been busting to tell us.

**Ms HAWYES:** I think it might help the Committee if—

**Mr DAVID SHOEBRIDGE:** We will get to Ms Hawyes in a bit. Ms Rafter, you understand the reason we are asking you is because you are meant to be statutorily independent of Ms Hawyes?

**Ms RAFTER:** Yes.

**Mr DAVID SHOEBRIDGE:** And you have your own independent view. Yet the only answer you have given is on the data provided by Ms Hawyes: no. Can you not understand how an inspector's job is to do more than simply regurgitate the response from the organisation you are meant to be an independent inspector of?

**The Hon. CATHERINE CUSACK:** Can I just clarify? Is the question: Do you not understand?

**Mr DAVID SHOEBRIDGE:** Ms Rafter, do you understand the question?

**Ms RAFTER:** Can you—

**The Hon. CATHERINE CUSACK:** Are you asking her does she not understand the question?

**The CHAIR:** Order!

**The Hon. CATHERINE CUSACK:** I am not convinced it is a real question.

**The Hon. TREVOR KHAN:** We are not getting anywhere.

**The CHAIR:** If the Hon. Catherine Cusack wishes to speak then she should seek the call.

**The Hon. CATHERINE CUSACK:** Thank you.

**The CHAIR:** I note that the Inspector responded to a number of questions by referring to the secrecy provisions in the Act. It is our view that these statutory secrecy provisions do not apply, except by express enactment. I would suggest that the Inspector seek her own legal advice on this matter.

**The Hon. CATHERINE CUSACK:** "Do you not understand?" is not a valid question. It is battering and confusing rather than asking a genuine question of the witness. The member should be directed to ask a genuine question, not to have a debate under the guise of asking "Do you not understand?"

**The Hon. TREVOR KHAN:** Why do we not let Ms Hawyes tell us something?

**The Hon. LYNDA VOLTZ:** Because our question is not to Ms Hawyes, it is to the Inspector.

**The CHAIR:** The question relates to the Inspector's role.

**The Hon. CATHERINE CUSACK:** They are not questions. They are a whole lot of assertions with ironical statements and questions like "Do you not understand?"

**Mr DAVID SHOEBRIDGE:** The Government can continue to run defence through the Hon. Catherine Cusack.

**The Hon. TREVOR KHAN:** That is not what is going on.

**The CHAIR:** Order!

**The Hon. CATHERINE CUSACK:** It is just torturous; it is not progress.

**Mr DAVID SHOEBRIDGE:** Ms Rafter, you are an independent statutory officer. You understand that, correct?

**Ms RAFTER:** Yes, I do.

**Mr DAVID SHOEBRIDGE:** That means your job is not simply to regurgitate the advice given by the agency you are meant to be an independent inspector of? Do you understand that?

**Ms RAFTER:** Yes.

**Mr DAVID SHOEBRIDGE:** Therefore, do you understand the frustration when I ask you a question about something as important as potential unlawful confinement of children and your answer simply refers to the advice you got from the agency you are inspecting without your own independent analysis of it? Do you understand the frustration?

**The Hon. CATHERINE CUSACK:** "Do you understand the frustration?" That is not a question.

**The CHAIR:** Order!

**Mr DAVID SHOEBRIDGE:** Do you understand why that is an inadequate answer from an independent inspector?

**Ms RAFTER:** I do not believe it is because I have powers to request information from Juvenile Justice that is not necessarily available. I do so and then I formulate my response.

**Mr DAVID SHOEBRIDGE:** Ms Rafter, my final question in this fairly barren landscape is: Are you required to give the Minister a reasonable opportunity to respond to the draft report that you provided to him yesterday?

**Ms RAFTER:** Yes, I am.

**Mr DAVID SHOEBRIDGE:** Did you set a time frame or do you have a time frame for a reasonable opportunity, given that we are now two years and four months into this process?

**Ms RAFTER:** The usual time frame that I provide is four weeks to respond, but I have asked the Minister to respond to me as soon as possible.

**The Hon. LYNDA VOLTZ:** Mr Severin, in an earlier budget estimates hearing this year I asked you how many Corrective Services staff were disciplined for misconduct in 2017-18. Your answer to that question taken on notice was 118. Do you think that is a high figure?

**The Hon. CATHERINE CUSACK:** This constant series of questions: "Do you think?"—

**The CHAIR:** What is your point of order?

**The Hon. CATHERINE CUSACK:** This is a budget estimates hearing. The purpose of this hearing is to obtain information about portfolios. It is one question after another such as "Do you think" or "Do you agree" or "Would you not be frustrated?" They are not fact-finding questions relating to portfolios.

**The CHAIR:** I will allow the question and we will see whether it is a factual question seeking factual information.

**The Hon. LYNDA VOLTZ:** Do you think 118 Corrective Services staff being disciplined for misconduct in 2017-18 is a high number?

**Mr SEVERIN:** I think we need to qualify that and differentiate in the context of how we view those numbers. On 30 June this year we had 8,640 employees, so in that context it would be a very low number. However, disciplinary action can be the result of a number of things. Obviously somebody has done the wrong thing and it has been brought to the attention of his or her superior officers, been duly investigated and subsequently disciplinary action is taken. It is a process that occurs in every law enforcement agency and other agencies as well. It could be the result of very vigilant and very clearly focused reporting on matters that are relevant in the context of appropriate professional behaviour. If it is that, then for me it is clearly not a high number because I want any kind of misconduct to be brought to attention, duly investigated and then obviously dealt with, if necessary, under the provisions of the Government Sector Employment Act.

It is certainly not indicative of an organisation that has a crisis in relation to its staff constantly breaching the rules. It is not indicative of an organisation where the staff are not on a daily basis doing an absolutely outstanding job, 24 hours a day, seven days a week, and, at times, under very trying and testing circumstances. I cannot really answer a question in the context of yes or no, is it high or is it low. If it is the result of diligent work done by staff who are responsible in bringing matters to the attention of the authorities or if it is identified through other means, then it is a very appropriate number. Would I like to think that we could eliminate that? Yes, absolutely I would like to. But 8,640 employees in that context I have to say, spread over more than 100 areas of operation in this State, is not a number that raises any significant concerns with me.

**The Hon. LYNDA VOLTZ:** So if you say that number is the result of staff being diligent and bringing matters to the attention of the service, how many of those reports are as a result of staff members bringing those matters forward?

**Mr SEVERIN:** I would have to take that on notice.

**The Hon. LYNDA VOLTZ:** Would that not be one of the key criteria you set as to whether or not those 118 were the result of the behaviour of staff? How do you assess that?

**Mr SEVERIN:** Any time there is an allegation of an officer or any staff member engaging in behaviour that is not consistent with the provisions of the law or provisions of procedures, and the matter is brought to the attention of the authorities, it is expected that that is followed through, that it is duly investigated and then action is taken as a result of that, as deemed appropriate. Whenever an allegation is made it goes to the Professional Standards Branch within Corrective Services NSW and it is considered by a committee, which includes the strategic HR group, operations and the investigations branch. If the matter is serious, it is referred to investigations, and if it is a matter that relates more to the performance of a staff member, it is referred to strategic HR for follow-up.

**The Hon. LYNDA VOLTZ:** Is that true across the board? You said earlier organisations like the GEO Group do not necessarily rely on your organisation to do that?

**Mr SEVERIN:** Of course, the professional standards unit does not concern itself with complaints in relation to misconduct by employees who have a different employer—

**The Hon. CATHERINE CUSACK:** Point of order—

**The Hon. LYNDA VOLTZ:** So the 118 does not include privately run prisons?

**Mr SEVERIN:** That is correct.

**The Hon. CATHERINE CUSACK:** Our time has expired for the hearing.

**The CHAIR:** It has not expired because we took a 10-minute adjournment. I will see how we go.

**The Hon. LYNDA VOLTZ:** The 118 were Corrective Services run prisons. How many are in privately run prisons?

**Mr SEVERIN:** I would have to take that on notice.

**The Hon. LYNDA VOLTZ:** Do you know if it is higher than the 118?

**Mr SEVERIN:** It most certainly will not be higher but I do not want to speculate.

**Mr DAVID SHOEBRIDGE:** Ms Rafter, I asked on notice, through the Minister, how many strip searches were conducted on juvenile prisoners in the last financial year. The answer that 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?

**Ms RAFTER:** I will have to take that question on notice.

**Mr DAVID SHOEBRIDGE:** Has the conduct of strip searches come up at any point in your inspection of juvenile detention facilities?

**Ms RAFTER:** Yes, it has. And it has in the previous inspector's report as well; there were recommendations in relation to strip searching.

**Mr DAVID SHOEBRIDGE:** Have those recommendations been implemented?

**Ms RAFTER:** I believe they have been partially implemented in response to the previous inspector's report but I will take it on notice to give you a fulsome answer.

**Mr DAVID SHOEBRIDGE:** Now is your opportunity, if you want, to put something on record about that question of 24-hour confinement and the cumulative sleep/following confinement, whether that was breached.

**Ms HAWYES:** Before I do that I might just clarify the point about strip searching.

**Mr DAVID SHOEBRIDGE:** I was going to ask that next but you speak to it first if you like, or whatever order you like.

**Ms HAWYES:** Searching is clearly a necessary part of the business in response to mitigating the risk of contraband. Items that are secreted upon a person such as a lighter can cause significant risk. As a result, we are authorised to conduct searches of detainees. They are partially clothed. There are two officers present at all times. A detainee has the right to request the sex of the officers. The way that the search is conducted is to do it in a way that maintains the dignity of the young person. One officer is giving directions about the search—top then bottom, partially clothed, never all clothes off at the same time—and the other officer observes the officer conducting the search. That explains to the Committee the way we conduct searches. In response to the recent royal commission into child sexual assault we have brought in new practice, our new policy, around searches because it clearly is such a difficult part of our practice, and we are keen to ensure that it is done with all due respect and dignity for the detainees. I hope that clarifies the practice of strip searching in our organisation.

**Mr DAVID SHOEBRIDGE:** If you can, on notice, will you table that current policy and provide any data that you have?

**Ms HAWYES:** Yes, definitely.

**Mr DAVID SHOEBRIDGE:** And then on the 24-hour detention.

**Ms HAWYES:** The response to the question was clearly we collect data. The independent inspector has access to our database, as does the Ombudsman at all times. It is a live database. Officers are required to report daily management of detainees but particularly the application of a practice such as confinement. Confinement is a lawful part of the restrictive practices we are authorised to utilise. We operate under a spectrum of restrictive practice for safety, for the safe and secure operation of the centres and for the safety of detainees who are, at times, exposed to risk as a result of the behaviour of other detainees.

We operate under a lawful spectrum of practice, which includes segregation and confinement. They are not the same thing. Confinement is a very specific provision which relates to the use of time in room as punishment for misbehaviour. We have lawful limits on the use of confinement and they are 12 hours for a detainee up to 16 years, and 24 for a detainee who is between 16 and 21. In 2017 the average time a detainee spent in confinement was five hours and 20 minutes, and there were no exceedances of the legislative limits.

**Mr DAVID SHOEBRIDGE:** On your understanding of the combined time when a juvenile was locked in a cell at night and then had a consecutive period of confinement, do you say that cumulative period never exceeded 24 hours or are you saying that cumulative period, even if it does exceed 24-hours, is not a breach?

**Ms HAWYES:** I am not saying either. From a practical point of view, if a confinement is applied at midday we do not wake up the young person at midnight to say, "Your confinement is over. It is time to get up." We have legislative limits on the application of confinement. Given the time of day, that can occur on a 24-hour cycle. If there is ever any concern that a young person feels that they had a reason to complain there are multiple mechanisms to complain. There is no practice of back-to-back confinement. Confinement is applied when there is a misbehaviour.

**Mr DAVID SHOEBRIDGE:** To illustrate the issue I will give an example. A young person was locked in their cell at 8 o'clock at night and is due to be unlocked at 8 o'clock in the morning. At 7 o'clock in the morning they behave in a very bad way in the cell, such that a decision is made to put a further confinement period of 20 hours—and it is a 16-year-old. That is then exercised immediately. The period that young person would have been in confinement would be 27 hours.

**Ms HAWYES:** Yes, I understand.

**Mr DAVID SHOEBRIDGE:** Has that cumulative period ever exceeded 24-hours?

**Ms HAWYES:** I would have to take that on notice to get specifics. It can occur but, as I say, it is down to the behaviour we are trying to manage. If a young person is assaultive then there is clearly high risk in bringing them out of their room. It is case by case and individualised and it is very much responding to the behaviour that we see. Our default is to have detainees out and engaged in a purposeful day with school, work, offence-based interventions, recreation as well as relaxation time as for any teenager. That is our default. We apply segregation and confinement where there is a risk or there has been a misbehaviour.

**Mr DAVID SHOEBRIDGE:** My question is whether that is a breach. We can discuss that after your answers to questions on notice.

**The Hon. LYNDA VOLTZ:** Mr Severin, in regard to investigations in privately run prisons, you stated at the last hearing that occurrences of inappropriate sexual relationships were undertaken by the Professional Standards Unit, Investigations Branch of Corrective Services. Is that the case for any allegation before the legislation within a privately run prison?

**Mr SEVERIN:** Yes.

**The Hon. LYNDA VOLTZ:** All complaints would have come to you for all allegations?

**Mr SEVERIN:** In relation to inappropriate relationship between prisoners and staff, those would be investigated through our investigations branch—and indeed the police, if that is necessary.

**The CHAIR:** I want to put on the record the Committee's thanks for the way it has been treated—

**Mr DAVID SHOEBRIDGE:** Accommodated, perhaps.

**The CHAIR:** Accommodated is probably a better word when visiting some of your jails. Would you please pass on our thanks to your staff who participated in the various facilities?

**Mr SEVERIN:** I will do that and I appreciate that the Committee took so much time to acquaint itself with the operations.

**The Hon. TREVOR KHAN:** Extraordinarily informative.

**Mr DAVID SHOEBRIDGE:** A good summary would be professional and helpful.

**Mr SEVERIN:** Thank you. I will pass that on.

**The CHAIR:** The Committee has resolved that answers to questions taken on notice be returned by Monday 19 November 2018. The secretariat will contact you in relation to the questions you have taken on notice. Ms Rafter, you have taken on notice a number of questions today. You have until 19 November to provide written answers to those questions. You also declined to answer a number of questions, apparently on the grounds of statutory secrecy provisions in the Inspector of Custodial Services Act. I would respectfully suggest that you might wish to carefully reconsider your approach in that regard.

I would urge you to consider the advice of the Solicitor-General, to which reference was made by the Crown Solicitor in paragraphs 3.9 to 3.11 of her advice to the Auditor-General, dated 10 August 2018, and included as an appendices to the Auditor-General's report on State Finances, tabled on 19 October 2018. You might also like to consider pages 7 and 8 of the advice of the Solicitor-General, dated 9 April 2014, tabled in the Legislative Council on 6 May 2014. We look forward to your further advice in relation to these matters in the

context of your answers to questions on notice. As indicated earlier, the Committee will be seeking an extension of its reporting date and may be recalling you and others at some future time. Thank you for coming.

**(The witnesses withdrew)**

**The Committee adjourned at 12.55 p.m.**