Office of
The Children's Commissioner
NORTHERN TERRITORY

OWN INITIATIVE INVESTIGATION REPORT SERVICES PROVIDED BY THE DEPARTMENT OF CORRECTIONAL SERVICES AT THE DON DALE YOUTH DETENTION CENTRE

August 2015

Office of
The Children's Commissioner
NORTHERN TERRITORY

The Honourable John Elferink MLA
Minister for Children and Families
Parliament House
DARWIN NT 0801

Dear Minister

In accordance with section 43 (2) of the *Children's Commissioner Act* 2013, I provide you with my final own initiative investigation based on events that occurred at the Don Dale Youth Detention Centre in the Behaviour Management Unit between 4 and 21 August 2014.

Yours sincerely

Colleen Gwynne
Children's Commissioner
20 August 2015

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JURISDICTION

This investigation was conducted in accordance with Section 10(1)(a)(ii) of the *Children's Commissioner Act 2013* (the Act) which allows the Commissioner, on his own initiative, to investigate a matter which may form the grounds for a complaint.

The grounds for a complaint are defined under Section 21(1)(a)&(b) of the Act which states that the Children's Commissioner can investigate complaints relating to services provided or that might reasonably be expected to be provided, for vulnerable children[1].

The services investigated must be provided by either 'a public authority', or another person, or body acting for or under an arrangement with a public authority that has taken or is taking action in relation to the child as a vulnerable child.

FORMALITIES

There are a number of relevant legislative regimes that apply to the young persons referred to in this report. For the sake of convenience, and despite the terminology differing in each piece of legislation, including 'youth'[2], 'child'[3], 'vulnerable child'[4] and 'youth detainee'[5] or ' youth prisoner'[6], this report will use the phrase *young person*.

BACKGROUND TO INVESTIGATION

The decision to conduct this self-initiated investigation was made by the former Children's Commissioner, Dr Howard Bath, and was based on events that occurred at the Don Dale Youth Detention Centre ('Don Dale') in the Behaviour Management Unit ('BMU') between 4 and 21 August 2014.

On 12 August 2014, concerns were raised by a professional stakeholder on behalf of five young persons who were in detention. The complaint related to the alleged indefinite nature of the confinement in the BMU, and the unhygienic living conditions of the environment. It was the complainant's opinion that the conditions were 'inhumane' as young persons were being held in solitary confinement in cramped and darkened cells, for up to 23 hours a day. There were also concerns about the long term impact this could have on the five young persons' psychological and physical wellbeing.

[1] Defintion of vulnerable child: s 7 *Children's Commissioner Act 2013*
[2] Section 6, *Youth Justice Act* as currently in force
[3] Section 13, *Care and Protection of Children Act*
[4] Ibid – n 1 above
[5] Section 4, *Correctional Services Act 2014*
[6] Ibid, read with ss 5 and 6

The complainant's concerns were initially raised with the Commissioner of the Northern Territory Department of Correctional Services ('Correctional Services') and a written response was provided on 14 August 2014. Correctional Services' response did nothing to reassure the complainant of the young persons' wellbeing.

On 20 August 2014, the complainant lodged a complaint with this office, and provided a copy of the Commissioner's letter of response.

On 22 August 2014, two days after becoming aware of the concerns, Dr Bath was contacted by Correctional Services, who informed him that there had been a critical incident within the BMU and that a number of young persons had armed themselves with weapons and had tried to escape. He was further advised that the young persons had caused significant damage to detention centre property and that the only way to return any form of order was to use CS gas[7], and the prison security dog from the Darwin Correctional Centre.

On 22 August 2014, Dr Bath attended Don Dale to assess the welfare of the young persons, and also to inspect the conditions and damage allegedly caused to the BMU. During this visit he confirmed that there had been six young persons confined to the BMU, prior to and during the incident of 21 August 2014.

These events were widely reported in local, national and international news broadcasting services. Some of the comments made by the Commissioner of Correctional Services appeared in the media as follows:

- *That the use of tear gas was the safest option for staff and detainees because the boys had refused instructions to put down their weapons and lie on the floor;*
- *The youths threatened staff with weapons fashioned out of smashed dinner plates, light fittings and windows;*
- *We're really not able to hold these young fellows who are quite violent;*
- *At least one detainee had armed himself with a fire extinguisher;*
- *They were interested in smashing the facility and unfortunately other detainees were starting to get involved, belting doors, banging doors;*
- *When these things happen the most appropriate action is to use a small bit of chemical;*
- *It was the first time in his seven years in the Territory that tear gas was used to quell detainees at the centre; and*
- *The young persons were given directions to lay down the weapons and lay on the floor. They refused. In fact they had barricaded one of the two exits which made it hard for us to get into the facility'.*

[7] Orthochlorobenzalmalononitrile, commonly known as CS gas. See NTCS Directive 2.2.2 – Use of Chemical Agents, issued 9 December 2008.

On 25 August 2014, the decision was made to conduct this investigation into the incident. It was also decided that the allegations relating to the extended period of confinement of the young persons (4 to 21 August 2014) held in the BMU, should be investigated, as it appeared to be related to the incident on 21 August 2014.

PROCESS OF INVESTIGATION

This investigation involved:

- Inspection of the BMU at Don Dale;
- Inspection of the Holtze Youth Detention Centre;
- Review of paper files kept by Correctional Services;
- Review of the Integrated Offender Management System (IOMS) records (a computer program designed to store records);
- Review of email correspondence between Correctional Services staff;
- Review of closed circuit television ('CCTV') and portable ('Handicam') camera footage obtained from Correctional Services;
- Interviews conducted with the young persons allegedly involved;
- Interviews conducted with current and former Correctional Services and Department of Health (DoH) staff;
- Review of all legislation, policies, procedures, and guidelines in force at the time of the incident;[8] and
- Draft Investigation Report provided to NTDCS for response.

The investigation focused on seven issues of concern:

1. The decisions and actions taken by Correctional Services staff at Don Dale in relation to the young persons confined within the BMU on 21 August 2014;

2. The period of time the young persons were confined within the BMU and the purpose of this confinement;

3. The ability young persons in Don Dale had to make a complaint to the Children's Commissioner;

[8] This includes the legislation previously referred to above, as well as Northern Territory Correctional Services ('NTCS') Directives on Intensive Management Plans, Use of Chemical Agents, the Youth Detention and Remand Centres Procedures and Instructions manual, and individual management regimes.

4. The access the young persons had to external service providers when confined within the BMU;

5. The procedures in place to ensure the adequacy of the emotional and psychological welfare of young persons in the BMU;

6. The access (by telephone and in person) young persons contained within the BMU had to family members; and

7. The supervision and monitoring provided to the young persons while they were contained within the BMU.

INVESTIGATION ISSUES

Issue 1: The decisions made and actions taken by Correctional Service staff at Don Dale in relation to young persons confined within the BMU on 21 August 2014

Description of the BMU

Don Dale has five cells designated as part of the BMU. These five cells adjoin a room which is referred to by the Youth Justice Officers (YJOs) as an 'exercise yard'. There is an open shower at one end of this yard (refer to Diagram 1).

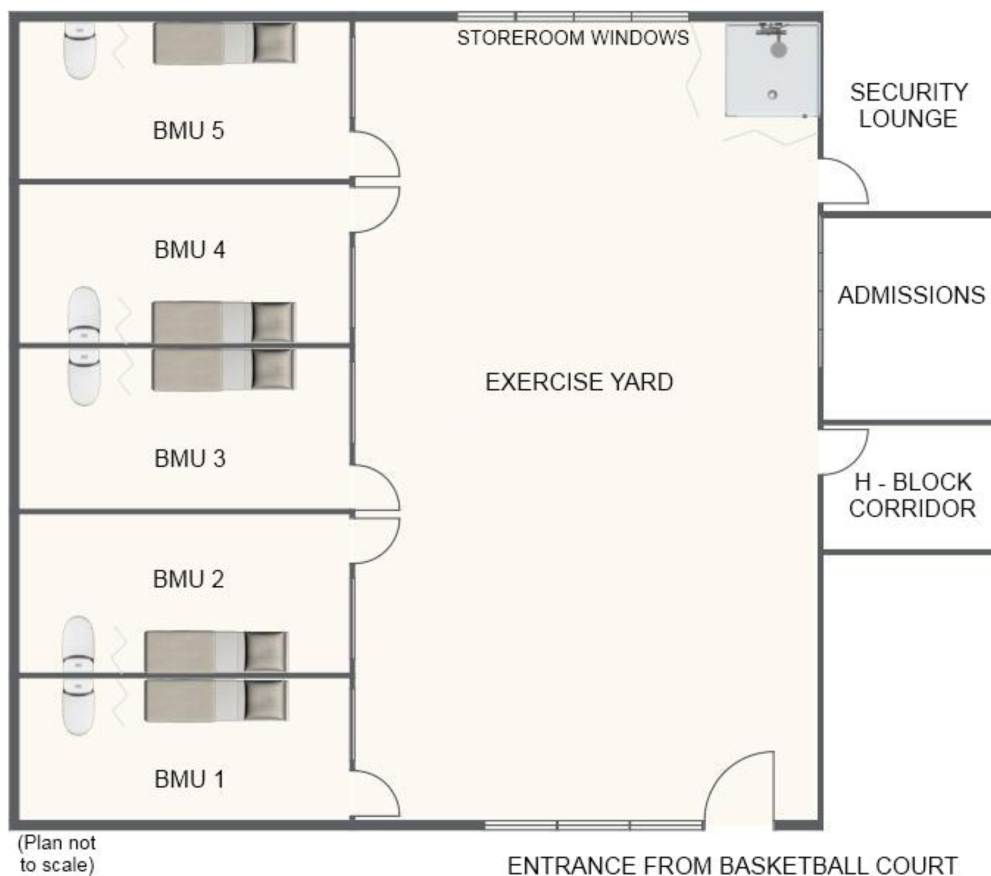

Diagram 1: Floor plan of BMU

Each cell contains a concrete platform which is used for sleeping, a toilet, a fluorescent light fixture, and an intercom. Three of the internal walls are made of cement-rendered concrete. The front of each cell consists of metal bars covered with a metal mesh screen. Some cells also have a perspex screen. The door to each cell is made from bars and screen mesh and includes a hatch which can be opened from the outside. Each door is fitted with a handle and a lock on the outside which must be engaged with a key to lock the door. There is no handle on the inside of the door (that is, inside the cell). The door is not locked if it is only pulled closed, but it cannot be opened from inside the cell, as there is no handle.

The cells do not have any air-conditioning, or fans. There are no facilities for the young persons to access drinking water, nor are there any facilities for hand washing after using the toilet, or before eating meals. There are no windows which allow direct natural light, or ventilation.

Photograph 1: BMU cell 5, taken from CCTV footage

The BMU is housed in an area separate from the mainstream part of Don Dale. At one end of the exercise yard there is a bank of glass panels set high in the wall which overlooks an outdoor basketball court area. These glass panels are the only source of natural light for the BMU area. There is a solid door which exits onto the basketball court.

At the opposite end of the exercise yard there is a bank of glass panels that overlook an enclosed storage area. No natural light is available through these glass panels. There is a shower partially enclosed by a three-quarter height wall in the corner, and a water tap. The shower is not private, as persons in some of the cells can see directly into the shower (particularly, cells 5, 4 and 3).

On the wall opposite to the cells, there are four windows side-by-side, that overlook the 'admissions' area. These windows are blocked from inside the admissions area office by a metal compactus. Beside the windows there is a solid door which enters into a security lounge. The security lounge was not in use because it does not comply with fire regulations. On the other side of the windows there is a door which leads into a corridor that opens into the H block dining room. The door has two triangle-shaped panels of glass at eye level height. There is a door separating the H Block dining room and the corridor. A door to the admissions area also leads off this corridor.

The exercise yard has two ceiling fans and no air-conditioning.

Photograph 2: BMU exercise yard, taken from CCTV footage

Photograph 3: BMU exercise yard, taken from CCTV footage showing natural light entering through glass panels.

Rationale and authority for young persons placed in the BMU

Six young persons were being held in the BMU between 4 and 21 August 2014, for periods of between 6 to 17 days, depending on the individual. Five of these young persons had been involved in an escape from the medium security section of Don Dale on 2 August 2014. They were all placed in the BMU after they were returned to detention.

Correctional Services staff say they were concerned that these young persons would attempt a further escape and the only secure area was the BMU, until a more suitable alternative was identified.

Young person 'C' – BMU cell 1

'C' was not involved in the escape. He was initially placed in the BMU on 15 August 2014 on a 24-hour security placement, as a result of threatening behaviour towards a YJO, as well as an allegation that he spat on the Acting General Manager (A/GM) of Don Dale. This action was ostensibly taken by Correctional Services in accordance with provisions contained in the *Youth Justice Act* which authorises isolation in certain circumstances:

Section 153 (5) of the *Youth Justice Act* states:

> If the superintendent is of the opinion that a detainee should be isolated from other detainees:
>
> (a) to protect the safety of another person; or
>
> (b) for the good order or security of the detention centre,
>
> the superintendent may isolate the detainee for a period not exceeding 24 hours or, with the approval of the Commissioner, not exceeding 72 hours.

A review of Correctional Services' records show that within the first five hours of 'C' being placed in the BMU, the Commissioner of Correctional Services authorised a 72-hour placement.

'C' was not released after the 72-hour placement and, instead, a 'management regime' was put in place. However, this did not occur until approximately two days after the authorised period of isolation had expired.

This is a breach of the *Youth Justice Act* which clearly states the placement must not exceed 72 hours.

Young person 'D' and young person 'F' – BMU cell 2

Both 'D' and 'F' were involved in the escape. 'F' was placed in the BMU on 4 August 2014 and 'D' on 6 August 2014.

Young person 'E' – BMU cell 3

'E' was involved in the escape and placed in the BMU on 6 August 2014.

Young person 'B' and young person 'A' – BMU cell 4

'B' and 'C' were involved in the escape and placed in the BMU on 4 August 2014.

Note: BMU cell 5 was not occupied at the time of the events of 21 August 2014.

The General Manager (GM) and Assistant General Manager (A/GM) said that the young persons involved in the escape were being housed in the BMU as part of a 'management regime', and not pursuant to s 153 of the *Youth Justice Act*.

The use of 'management regimes' is prescribed by 'NTCS Directive 2.4.5 – Intensive Management Plans'[9]. The following clauses are relevant:

Clause 1.1:

> A prisoner who continually poses a threat to other prisoners, staff or the security of the prison and requires a greater degree of supervision and management than general prisoners will be subject to an Intensive Management Plan.

Clause 5.1:

> '……. for management purposes, where a prisoner through his/her attitude, conduct and behaviour continually jeopardises the good order and security of a prison, threatens the health and safety of staff, other prisoners or themselves may have the following regimes applied'.

And clause 5.1 (a) of the Directive authorises that a detainee may be:

> '…… housed in an area of the institution that enables management away from other prisoners to ensure his/her safety, staff and other prisoners health and safety'.

The Directive contains no clauses authorising young persons to be isolated in a cell. It is clear that a young person must not be isolated in a cell except under s 153 (5) of the *Youth Justice Act*.

Intensive management plans

The definition of an Intensive Management Plan (IMP) can be found within Commissioner's Directive 2.4.5.

Clause 3.0 states:

> An 'intensive management plan' means an individually developed regime that enables the good order and security of the prisoner, prison and staff is maintained.

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[9] This Directive is dated 31 August 2011. The Directive is not specific to Don Dale, and applies to the adult prison as well.

Clause 5.2 of the Directive states:

> Prior to any of the above regimes being enforced, the OIC of the accommodation areas where the prisoner is intended to be housed for management purposes will compile an Intensive Management Plan for the prisoner. (Emphasis added)

IMPs were developed for each of the young persons housed in the BMU, however this Office was told by Correctional Services staff that this did not occur until 13 or 14 August 2014. These IMPs were not available to view in either hard-copy of electronic form, as the Professional Standards Unit (PSU) advised this Office that they had been typed over as part of an update on 21 August 2014. The A/GM stated that his practice was to destroy expired IMPs in order to prevent confusion, and this occurred in this instance. Thus, there is no idependent evidence of any IMPs prior to 21 August 2014.

The case notes obtained from the case workers' files of the six young persons confirm that they had requested information about their BMU placement, and that the young persons' caseworkers were also attempting to obtain information on their behalf from the A/GM.

Clause 5.4 of the Directive states:

> The Intensive Management Plan must be clearly defined and identify and record the risk behaviours that need to be addressed and the reasons for management under the alternative regime.

Each of the six IMPs compiled on 21 August 2014 was essentially identical to the others, and were compiled by the A/GM without any input from case workers or other relevant stakeholders.

There were no provisions within the IMPs to address individual behavioural standards or behavioural triggers, and no mention of the young persons' individual medical requirements, despite two of them having specific medical needs.

Day of the incident – 21 August 2014

The young persons' IMPs were due for review on this day, and YJO staff stated at interview that the young persons' behaviour in the BMU had been good. They had an expectation that the review would take this into account and be reflected within their new management regimes, or IMPs. However, the review was delayed by the A/GM.

YJOs on the day shift told investigators that the young persons were eager to see their new IMPs and appeared to be frustrated by the delay.

At about 5.00 p.m young persons ‘C’ (in cell 1), ‘D’ and ‘F’ (in cell 2) covered the CCTV cameras in their cells with wet toilet paper. The young persons were advised by YJO staff that they would not be provided with drinking water until they removed the paper from the cameras. The young persons complied with this instruction and removed the paper, however immediately after they were provided with the water they again covered their cameras.

YJO staff stated at interview that when they entered the BMU to retrieve the cutlery and plates from the evening meal, young person ‘C’ refused to hand over his plate and showed the YJO staff shattered pieces of the red plastic plate he had been given. YJO staff confirmed that they reported the matter to Shift Supervisor (SS) A.

Photograph 4: Plastic plate made into a make-shift weapon[10]

SS A stated that he did not know why young person ‘C’ had been given a plastic plate, as the young persons were supposed to be given paper plates for their meals. A makeshift knife fashioned from a piece of the broken plate was found in the BMU after the incident (see Photograph 4).

SS A confirmed at interview that he had told the young persons that they had received a further 24-hour placement due to their behaviour (adding to the period of between 6 to 17 days they had already been in segregation).

[10] Photo provided by Correctional Services

SS A further stated that he had not received approval to issue the young persons with a 24-hour placement, but that it was a method used by him to gain compliance from the young persons. He was not able to describe to investigators how the management or the young persons' circumstances would differ under an additional 24-hour placement.

The IOMS report completed by SS A states that he sought approval for the 24-hour placement from the A/GM.

The A/GM told investigators that he did not have the authority to authorise a 24-hour placement, and that he did not receive any application from SS A to approve a 24-hour placement. He said that he could see no point in a 24-hour placement as it would have been identical to the regime they were currently on. The GM confirmed this and advised investigators he would not have approved a placement in these circumstances.

At 7.45 p.m. YJO D was requested by SS A to enter the BMU to check the young persons, and he observed that young persons 'D' and 'F' had made a hole in the mesh of their cell door (cell 2).

YJO D told investigators that young person 'E' was in a heightened state of agitation. 'E' claimed that the SS A had told them they were being locked away for a 72-hour placement. YJO D stated in interview that SS A confirmed he had said this because he thought it may stop the young persons 'carrying on'.

SS A has denied informing the young persons they had been given a 72-hour placement but confirmed at interview that he did inform them they were receiving an additional 24-hour placement.

SS A contacted both the A/GM and the GM and advised them that the young persons in the BMU were becoming disruptive and 'increasingly aggressive and violent towards officers.' The A/GM arrived at Don Dale at approximately 8.00 pm.

YJO B told investigators:

> 'The kids kept asking if they could get out and management never had any answers for them and the detainees went off and I don't blame them, I would have too. It wouldn't have happened if they didn't keep them in there for so long. It is horrible, it stinks, they do the spring cleaning every Saturday but when you've got so many kids in there and they are all going to the toilet and they were sharing cells, it is not nice living arrangements or accommodation, I am surprised it didn't happen sooner.'

YJO A informed investigators the incident occurred as a result of a build-up of being kept in the BMU for so long, and boredom. Young person 'E' later told him he was angry because the shift supervisor had told him he was getting locked in for another 72 hours.

Events prior to the use of CS gas

The A/GM arrived at Don Dale with two YJO staff.

One of the YJO staff informed investigators that it was 'pandemonium' when he arrived, and that to him, it appeared that none of the YJO staff knew what they were supposed to be doing, including SS A.

The A/GM took operational command on arrival and although the GM arrived a short time later, the A/GM remained in this role for the duration of the incident.

The following matters have been confirmed[11], including:

- Only one young person ('E') had escaped his cell;
- 'E' had broken the light fitting in the roof of his cell and used it to make a hole in the mesh of his cell door. This allowed him to reach through the hole and between the bars to open the serving hatch. He was then able to reach the cell door handle from the outside;
- The door to BMU cell 3 was left unlocked, presumably by YJO staff, which enabled 'E' to leave the cell;
- Both cameras in the exercise yard had been partially obscured with wet toilet paper by 'E'. As the cameras had been only partially obscured, the footage showed almost the entire incident;
- 'E' opened all the hatches in the cell doors, allowing items to be passed in and out. He then proceeded to use the light fitting from his cell to smash glass panels in the locked door leading to H Block. He smashed the glass panels along the basketball court wall, as well as the glass panels leading to the store room. He broke off the handle to the basketball court door;
- 'E' also broke the windows to the admissions area and gained entry to the office where he removed a portable communications radio and fire extinguisher;
- The BMU cell 1 CCTV camera was not completely obscured during the incident and footage showed young person 'C' –
  - had his serving hatch open and was able to receive items from 'E', and he threw debris from his cell;
  - being handed a portable radio from 'E';
  - using the portable radio;
  - attempting to break his light fitting with a knotted sheet;

[11] It is acknowledged that Correctional Services staff present at the time of the incident may not have been aware of all of these details during the course of the evening of 21 August 2014, as the information was acquired in the course of many interviews and the review of footage obtained in this investigation.

  - throwing the weapon out of his cell minutes prior to the CS gas being deployed. This weapon was fashioned out of part of the broken red dinner plate (refer Photograph 4);
- BMU cell 2 CCTV camera was completely obscured with wet toilet paper, however the exercise yard CCTV footage shows young persons 'D' and 'F' passing debris from their cell to 'E'; and
- BMU cell 4 CCTV footage shows young persons 'A' and 'B' having no participation in the incident; indeed, they were playing cards together.

The incident was recorded by Don Dale staff on a portable Handicam. The young persons can clearly be heard yelling from the BMU asking for the A/GM.

The A/GM informed investigators that he felt that his presence appeared to agitate 'E' so he made the decision to keep out of sight of the young persons.

Attempts were made by YJO staff to negotiate with 'E' from the door leading to H Block.

A review of the attempts to negotiate with the young persons by the YJOs revealed them to be of little value in terms of de-escalating 'E's' anger. 'E' is heard on the Handicam to have the following conversation with a YJO:

'E' : 'I've been in the back cells for how long bruz'

YJO : 'Have you had time out or not?'

'E' : 'Yeah but I've been fucken stuck in there for how long?

Yet despite the young person's questions, the YJO staff continued to focus the negotiation on removing a shard of glass as opposed to engaging with him about his concerns.

A decision was made shortly after this to seek the assistance of prison officers (POs).

Three POs attended, and were subsequently equipped with riot shields, gas masks, helmets, arm pads, knee/shin pads, expandable batons and CS gas . Two of the POs were trained as members of the Immediate Action Team (IAT) and were therefore appropriately trained to conduct emergency cell extractions and to use CS gas. The third PO had no experience with IAT training and response procedures, however he had received training in the use of CS gas. The A/GM was previously the Commander of the IAT.

'E' deployed the fire extinguisher in the direction of the POs, who were clearing broken glass away from the corridor floor in preparation for entry.

‘E’ then attempted to climb through the broken storeroom window. He was ‘poked’ back into the BMU by a YJO who was in the storeroom, using an object that resembled a broom handle.

Handicam footage recorded the following conversation between YJO staff in the store room:

> ‘No, let the fucker come through because when he comes through he will be off balance, I’ll pulverize, I’ll pulverize the little fucker. Oh shit, we’re recording hey’ (laughs)

Injury to staff member

Shortly after, ‘E’ threw a length of aluminium through the storeroom window (where he’d previously broken the glass panels) which was above his line of sight. It struck a YJO on the inside of his right arm, causing it to bleed.

Handicam footage captures the following conversation between the YJO staff:

> ‘…Who the fuck did that?
>
> ‘E’, he threw this fucken steel thing out and fucken got me on the arm. He tried to climb through the window and I poked him back through’.
>
> Go, go grab the fucken gas and fucken gas them through fucken, get (the A/GM) to gas them through here’.
>
> We’ve got to wait for approval first....
>
> …It will make my job easier, if you show Ken he’ll just go yep approval bang, go, fucken get him out’.

The YJO told investigators that the injury was minor and that he had *not* shown it to the Commissioner. He stated that once the incident was over he went to the Royal Darwin Hospital for treatment. This was on instruction of the GM. He made a report to Police but did not pursue any charges against ‘E’.

The use of CS gas

Correctional Services has confirmed that the use of CS gas was not initially the preferred method in which to resolve the situation. The original plan was for the dog-handler and dog to enter the BMU via the basketball court door. However, when the dog-handler tried to enter the area he found he could not. The A/GM said that his original understanding was that the door had been barricaded by the young persons and as such they were unable to enter the area via that door. It was later established that the door handle had being broken off by ‘E’.

The dog-handler said that he was not comfortable with the situation, as he had no knowledge as to how many of the young persons were out of their cells and he was not aware of the full extent of the situation.

The plan was that the dog would be used to force 'E' back to where the POs were located, and they would restrain him. When this action failed, a decision was made to deploy CS gas into the BMU as a way of resolving the situation.

The A/GM stated that permission was sought from the Commissioner to deploy the CS gas into the BMU. The A/GM further said that there was a feeling that all options had been exhausted and that CS gas was the preferred method. PO A told investigators that the prison officers did not attempt to negotiate with 'E', as it was understood that the YJO staff had already attempted this.

The A/GM told investigators that there was no indication that 'E's' behaviour was de-escalating, and he believed that 'E' was 'out of control'. As such, it was felt that there was no other option but to extricate him from the BMU. Handicam footage shows otherwise: 'E' wanted to speak with YJO A. The following dialogue was recorded on the Handicam.

'E' : 'Tell (YJO A) I want to talk to him.'

YJO : 'Nah, you've had your chance (undecipherable)'

YJO : 'He wants to speak to (YJO A).

YJO : 'Hey fellas, they're going to be gassing them pretty shortly.'

YJO : 'He won't come out, he wants to talk to you (YJO A).'

YJO : 'He wants to talk to you.' (laughing)

YJO A : 'Are you kidding.'

YJO : 'He said he wanted to talk to you but I said you had your chance, so.'

YJO : 'Yeah, don't talk to him, he's finished now.'

YJO staff told investigators they did not recall 'E' asking to talk to (YJO A). However, just prior to the deployment of the CS gas 'E' jumped up onto the window and told YJO D that he wanted to come out.

YJO D told 'E' that he couldn't come out through the window and that he would have to go out through the door. 'E' told him they had a dog at the door. It appeared that 'E' was scared and wanted to come out.

YJO D agreed at interview that this was probably the case, however admitted he did not think to tell anyone that 'E' wanted to come out because he was unsure of what was going on.

YJO A told investigators he thinks the reason 'E' wanted to speak to him was because he was scared of the dog. He also did not think it was his place to be informing senior management how to go about doing their job. He said that his role involves doing what he is told and not to question management. YJO A further stated that he did not think that talking to 'E' was an option as by this time the POs had arrived and were taking charge of the situation.

The A/GM informed investigators that it was difficult to communicate with YJO staff that were in the storeroom. The A/GM said that 'it was too noisy, too loud and too much happening" and that he was thinking on his feet trying to resolve the situation.

The A/GM advised at interview that he recommended the use of tear gas to extricate 'E' because he was aware 'E' was armed and he was concerned that if they didn't gain control of the situation someone would get seriously injured. He was aware that a staff member had already received an injury.

He further advised that had he been aware that 'E' was trying to give up, then he would never have subjected the young persons to the CS gas.

The GM stated that he had not reviewed the Handicam footage and that he was also unaware that 'E' had spoken to YJO D about coming out. He further conceded that YJO D had not been trained in critical incidents, however he thought that he would have had the 'common sense' to inform the A/GM.

'E' told investigators that he wanted to speak to YJO A, so he could give up. He also said that he could hear the dog barking and was scared.

Handicam footage and audio captured the POs preparing to enter the BMU, as well as what appears to be a concern expressed by the dog-handler regarding the non-participating young persons.

The dog handler can be heard to ask:

> 'You going to gas the lot of them?'

The Commissioner is then heard to say to someone:

> '…Mate, I don't mind how much chemical you use, we gotta get him out ………..'
> (Last part of sentence undecipherable.)

PO D told investigators that they gained entry to the corridor and read out the required proclamation[12] before the deployment of CS gas. The proclamation was administered by a PO who had a mask on, therefore muffling his voice.

PO C deployed two initial bursts of CS gas through the broken glass panel in the corridor door which he believed did not appear to take much effect because 'E' hit the door with the fire extinguisher. He then deployed two longer bursts, which resulted in 'E' complying with directions to lie on the floor.

CCTV footage in BMU cell 4 shows 'A' and 'B' running to the back of their cell and hiding behind a mattress and sheet. 'A' later informed his case worker that "he thought they were going to die" and that he and 'B' "said their good-byes".

CCTV footage in BMU cell 1 shows 'C' covering his face with his shirt and running to the back of his cell and spitting, and possibly vomiting into the toilet.

'E' told investigators that he wanted to lie on the floor sooner but because of all of the broken glass he had to get the mattress out of BMU cell 5 first.

Two POs handcuffed 'E' behind his back and pulled him to his feet. One of the POs is seen to push 'E's' head down as he was escorted out of the building via the H block dining room and onto the basketball court.

The POs immediately returned to the BMU and attempted to open BMU cell 2 to extricate 'D' and 'E', however they were having difficulty opening the cell door. YJO staff and the A/GM entered the BMU to assist. CCTV shows the YJO staff did not have gas masks and were subsequently affected by the CS gas.

YJO B told investigators the POs didn't have the keys and he could hear the young persons choking and that is why he went into the BMU to help. YJO B was significantly affected by the gas and was not able to return to the BMU.

YJO A told investigators that the POs had the keys but didn't know which ones to use and this was delaying the process of removing the young persons from their cells. YJO A stated that the CS gas made his eyes water and his mouth and throat burn. He said it felt like his throat was going to close, and he tried to hold his breath whilst assisting the POs.

With the assistance of YJO staff the POs handcuffed and extricated 'D' and 'F'. The POs then extricated 'A' and 'B' but did not handcuff them until they were on the basketball court.

[12] NTCS Directive 2.2.2 – Use of Chemical Agents issued 9 December 2008. Clause 5.13 Proclamations

‘C’ was the last to be extricated after he was directed to lie on the floor of his cell; he was handcuffed behind his back and escorted out to the basketball court with his head pushed down.

It is difficult to establish the exact amount of time the young persons were exposed to the CS gas because the CCTV footage does not have time and/or date information. The IOMS reports submitted by the POs show that the CS gas was deployed at 9.13 p.m.

The extrication process was captured on the Handicam and CCTV footage, so it is possible to determine that the young persons were exposed to CS gas for the following approximate periods of time:

‘E’	-	3 minutes
‘D’ ‘F’	-	5 minutes
‘A’ ‘B’	-	6 minutes
‘C’	-	8 minutes

Handicam footage captured on the basketball court shows the young persons coughing and spitting on the ground. They were kept on the basketball court until arrangements were made to transfer them to the main (adult) prison. Audio captured on the Handicam records ‘E’ saying to YJO staff; ‘you didn’t even lock the doors’, as well as ‘A’ and ‘B’ protesting to the staff that they had not been involved in the incident.

All POs interviewed were of the opinion that the use of CS gas was justified because a YJO had been injured, and the deployment of the fire extinguisher by ‘E’ had compromised the ability for the young persons to breathe in the BMU. They all believed that the use of CS gas was the safest option for the young persons and staff, primarily because it prevented the need for a physical confrontation.

The A/GM stated to investigators that the *Youth Justice Act* is to be interpreted as follows:

> ‘… it prevents the use of certain types of use of force, including medications, poisons and shaking, but the restrictions do not apply in emergency situations’

The A/GM was of the opinion that regardless of whether his interpretation of the legislation was right or wrong, the fact that no young persons were hurt should be the issue.

The GM advised investigators that he did not believe the use of CS gas was prohibited by the *Youth Justice Act.*

Actions subsequent to incident

The incident concluded with the young persons being escorted from the BMU and out onto the basketball court, where there were sprayed with water in an effort to decontaminate them.

The GM sought approval from the on-call Magistrate to transfer the young persons from the BMU in Don Dale to the adult prison.

The Magistrate gave verbal approval to temporarily transfer the young persons across to the adult correctional facility, pursuant to the emergency provisions contained in the *Youth Justice Act.* At 11.58 pm on 21 August 2014, the Magistrate e-mailed the GM written confirmation of the verbal approval she had provided earlier. The approval allowed for Correctional Services to transfer five (emphasis added) young persons to the adult prison. The authorising Magistrate stated:

> ' …..I have checked the Act. I presume your application is under Section 154. I have put a copy at the end of the email. I confirm my earlier advice of approval to transfer the five detainees. Please send me their full names so I can put the order in writing in the morning. In the meantime you can sign any order for the prison as per the Act…'

The Magistrate's e-mail specifies the number of young persons she had authorised be transferred to the adult prison, however six (emphasis added) young persons were transferred across. 'E' was one the transferees, despite him being only 14 years of age. This was in breach of the *Youth Justice Act*,[13] which requires the

[13] As at 21 August 2014, s 154 of the *Youth Justice Act* stated, inter alia:

154 Temporary removal of detainee to prison

(1) If the superintendent of a detention centre is of the opinion that:

(a) an emergency situation exists; and

(b) a detainee should be temporarily transferred to a prison to protect the safety of another person,

the superintendent may apply by telephone to a magistrate for approval to transfer the detainee.

(2) Subsection (1) applies only in relation to a detainee who is 15 years of age or older.

transferees to be 15 years or older. All other parts of the provision were complied with by Correctional Services.

On 22 August 2014, Correctional Services became aware that 'E' was being held unlawfully in the Darwin Correctional Centre (DCC).

At 9:53 am that morning, Correctional Services Executive Director (ED A) sent the following e-mail to senior management:

> 'It has come to our attention that young person 'E' is being held unlawfully at DCC as he is under the age of 15. (Magistrate A) has been advised and she stressed she was unaware of this last night when we sought her approval to place them at DCC. This is no doubt an oversight. (The GM and the A/GM) are organising his transfer back to DD where he will be held in a single cell under strict supervision and then transferred to CBU at the earliest possible time.'

The GM advised investigators that he was not aware that 'E' was only 14 years of age when he was transferred to the prison. He was also unable to provide an explanation as to why six young persons were transferred to the prison when the magistrate's e-mail clearly authorised the transfer of only five young persons. He conceded that it was an oversight by him.

A preliminary medical assessment conducted on the young persons following their transfer to the adult prison showed there to be no medical concerns or injuries resulting from the incident. All young persons were housed in B Block, which is the maximum security section of the adult prison.

Despite direct questioning of all staff present or involved in the incident, no explanation was provided to investigators why young persons 'A' and 'B' were transferred to the adult prison. Neither participated in the incident, or failed to comply with directions given by the YJO staff during the course of the incident, and this was known to staff throughout the incident.

The A/GM confirmed at interview that he was fully aware they didn't participate in the incident, were compliant throughout and appeared genuinely scared. Despite this, he did not consider it relevant to whether they should or should not be transferred to the adult prison.

The use of spit hoods

YJO A told investigators he accompanied the young persons to the prison and observed the POs place spit hoods on them when they arrived. He did not know why this occurred because 'C' is the only young person known to spit.

…

The YJO staff informed investigators that they told the POs that ‘A’ and ‘B’ had played no part in the incident. They disclosed that they were afraid of the way they were going to be treated in the adult prison. The YJO staff stated that they witnessed the young persons being treated roughly and they understood the concerns of ‘A’ and ‘B’.

The A/GM advised investigators that he was of the opinion that once young persons were handed over to the prison they were “no longer his responsibility”, pursuant to Section 154 of the *Juvenile Justice Act*.

He also said that he was not aware that spit hoods were used on the young persons on 21 August 2014, or on ‘E’ when he was returned to Don Dale on 22 August 2014. He confirmed that he did not authorise their use and he would only ever authorise the use of a spit hood if a young person was spitting. He was not aware of anyone spitting during the incident.

He further stated:

> ‘I don’t think there is an SOP[14] on spit hoods, I think there should be, they are not very commonly applied but absolutely there should be some operational procedure.’

CCTV footage shows ‘E’ was returned to Don Dale and placed in the ‘admissions’ cell. The footage clearly shows ‘E’ handcuffed behind his back with a hood still placed over his head.

All of the YJO staff interviewed advised that they have received no training in the appropriate use of a spit hood. They were unaware of any policy or procedures governing the use of a spit hood, and most believed the hoods were only used on young persons who continually and routinely spit on staff.

No YJO interviewed had witnessed ‘E’ spit on staff.

The use of handcuffs

Section 155 of the *Youth Justice Act* states:

> Restraint devices may be used to escort certain detainees. The Superintendent of a detention centre may approve handcuffs or a similar device to restrain normal movement to be used when escorting a detainee outside the detention centre.

YJO A told investigators that he received ‘E’ from prison staff handcuffed behind his back and wearing the spit hood and that he placed him in the van and transported him back to Don Dale before removing the handcuffs and hood.

He said that he did not why ‘E’ had a spit hood placed over his head, because ‘E’ is not known to spit on staff. YJO B further informed investigators that he did not

[14] SOP refers to a ‘standard operating procedure’.

consider removing the handcuffs and hood from ‘E’ prior to transferring him because he was not directed to by management. He was not aware of the policy regarding using handcuffs on young persons whilst in a vehicle.

It was clear during interviews that the GM and A/GM did not possess any current knowledge of the use of handcuffs or the policy regarding the use of handcuffs.

Section 9.2.11 of the Don Dale Instruction Manual[15] [16]states:

> ‘Handcuffs are to be removed as soon as a detainee is in a secure area of vehicle’.

Commissioner’s Directive 3.1.5[17] states:

> ‘The handcuffs will remain secured on the detainee during transit to ensure a safe and secure exit from the vehicle when arriving at the designated destination’.

Staff response to incident due to a lack of formal training in crisis management

All of the YJO staff interviewed were of the opinion that they had not received sufficient training to undertake their required daily duties. They stated that they received only minimal training (approximately 3 days) at the commencement of their employment, and that long term staff do not receive any refresher training except for first aid and fire training.

The A/GM told investigators that:

> ‘…a YJO receives three days training and there is no way in the world the training is adequate...’

The GM told investigators that:

> ‘…it is no secret there has been a paucity of training in Youth Justice...’

He then advised that a Certificate III in Youth Justice was to be introduced in February 2015.

The GM confirmed that he was not aware of the recommendation made by the Children’s Commissioner in 2012 to address training deficiencies and improve practices within juvenile detention.

SS A told investigators that management were talking about implementing a Certificate III in Youth Work “years ago”, but it was never implemented.

It appears that most YJOs have received Predict, Assess & Respond To Challenging/Aggressive Behaviour (PART) training which includes restraint

[15] As applicable on 21 August 2014
[16] This policy was changed on 28 April 2015 due to an escape by two young persons from the back of a Correctional Services vehicle.
[17] As applicable on 21 August 2014

techniques, the use of handcuffs and a brief overview regarding the restrictions on the use of force contained in the *Youth Justice Act*. YJO staff complete some on-the-job training in the form of 'shadow shifts' when they are first employed, but subsequently must rely on directions from senior YJOs or shift supervisors.

It has been identified that there is no formal training required (or provided) to progress from YJO to a senior YJO, or to progress from a senior YJO to a shift supervisor.

All YJO staff advised that they had received no training in critical incidents or methods to verbally de-escalate the type of incident that occurred on 21 August 2014. The staff did not feel equipped to safely resolve these types of incidents and were concerned they have not been provided with adequate personal protection equipment. As a result, they were required to resort to improvised protection such as mattresses, training pads and cobweb brooms.

After the young persons were transferred to the adult prison, a 'debrief' occurred which involved all YJO staff and the three POs present during the incident. The Commissioner spoke and thanked the staff for their actions and assured them that he would support them. There was no critical discussion regarding what worked well and what could have been done better. All YJO staff agreed this would have been beneficial with respect to future incidents.

The A/GM told investigators that the debrief was not intended to be a 'back patting exercise', as he believed the incident was not a good situation. He stated:

> 'we lost control of a high security area, used chemical agents, and staff were injured. Even though the injury was minor it could have been a lot worse.'

Information provided to executive management

At 11.54 p.m. on 21 August 2014, the GM sent an e-mail to the Commissioner and the Executive Director, which contained a timeline of the events that had occurred, stating in part:

> '1730 – All (emphasis added) detainees became disruptive and non-compliant blocking their cameras. 'C' broke his plate and was abusive and threatening to staff.
>
> 2025 – 'E' broke out of his cell, not clear how cell was compromised. He began smashing windows and passing glass and debris through the bars to other detainees to use as weapons. Code amber called, 'E' broke out of BMU into admissions receptions area. He was pursued by (SS A and YJO D) 'E' threw a piece of aluminium at (YJO D) striking and cutting his arm. It was unsafe for officers to engage 'E'. (emphasis added)

This factually incorrect information was later included in a 'flash brief' provided to the Minister.

Inaccurate information supplied to police

During the investigation, police stated that a report was made to them five hours after the incident containing the following information: 'five detainees had escaped their cells, caused significant damage and assaulted staff with shards of glass, bricks and steel poles.'

Review of the Northern Territory Youth Detention System Report, January 2015

The Department of Correctional Services commenced a review in November 2014, which was conducted by Mr Michael Vita. It extended to a review of Correctional Services existing operations and practices.

The review report was released publicly on 18 February 2015.

The Vita review reported, inter alia:

> '…there is evidence that poor management including poor supervision and poor record keeping has also contributed to the lead up and aftermath of some incidents, including a disturbance at Don Dale where intelligence had been received that it had been planned, however, this information did not get passed on to the appropriate staff.'[18]

> 'In instances where incidents were not managed well, either in their lead up or during the incident itself, material made available to the reviewer indicated some additional common patterns as contributing factors including:[19]

- poor supervision
- lack of experienced staff
- lack of training especially in crisis management and behaviour management
- poor communication and relay of intelligence information
- lack of appropriate direction and procedures
- sloppy security awareness – the lock on detainee R's door in the BMU on 21 August 2014 was not closed off. Ultimately leading to his escape from his room and escalating the disturbance itself
- immature responses by some staff to detainee behaviour
- lack of comprehensive structured day, which includes elements of work, programming, recreation, cleanliness, hygiene and schooling
- inadequate infrastructure and equipment.'

[18] Review of the Northern Territory Youth Detention System Report. January 2015. p.50.
[19] ibid. p.55.

The Vita Review identified

- The BMU at Don Dale was not designed to house young persons for extended periods
- The communication with the young persons was insufficient as they became agitated as they were unaware of the length of their detention in the BMU
- Staff not adequately trained to effectively manage critical incidents including negotiation training and risk assessments where young persons are displaying aggressive and threatening behaviours
- The failure to lock a cell door provided the opportunity for a young person to leave his cell and for the incident to escalate
- The lack of communication between personnel involved resulted in the incident Commander making decisions and taking action without being appraised of all of the facts
- The use of CS gas on juveniles held in detention under the provisions of the *Youth Justice Act* is violent and involves the dosing of a chemical substance, therefore it is not reasonably necessary as prescribed by s 153 (3) of the *Youth Justice Act*
- The investigation has determined that the force used was unnecessary and in contravention of s 153 (2) of the *Youth Justice Act.* After viewing all of the material provided, the then Children's Commissioner determined that the young persons suffered harm as a result of being exposed to CS gas and a mandatory report as prescribed by s 26 of the *Care and Protection of Children Act* was required
- The inaccurate internal reporting resulted in incorrect information being provided to other sources
- An underage young person was held without lawful authority at the prison from 9.38 p.m. on 21 August 2014 to approximately 9.55 a.m. on 22 August 2014
- Lawful authority was not provided by the Magistrate to transfer all six of the young persons to the prison on 21 August 2014
- Don Dale does not have policies or procedures in place relating to the justification and use of spit hoods

The Vita review identified a lack of appropriate training and development from the date of first employment. In particular, some staff did not know when to use force, how to use it and what equipment was available. Vita also stated that negotiation and mediation should be the ultimate aim of any confrontation, and ideally, the use of force should be the last option.

Issue 1: Findings

Prior to the incident escalating and 'E' exiting his cell, no attempts were made to de-escalate the situation, apart from threatening to impose further restrictions on the young persons who had already been subjected to prolonged periods of isolation in their cells.

The failure to lock the cell door ultimately provided the opportunity for a young person to exit his cell and access potential weapons with which to threaten staff and damage property.

The audio captured by the Handicam shows no meaningful attempt by staff to negotiate a peaceful resolution to the incident. None of the staff interviewed described any attempt to negotiate a peaceful resolution. No IOMS report submitted by staff describes any attempt to negotiate a peaceful resolution. The YJO staff were not trained in negotiation skills.

The apparent attempt by 'E' to surrender to YJO staff in the storeroom may have resulted in the incident being concluded peacefully without the need resort to the use of force, if staff were able to identify it as a negotiation opportunity. It was not recognised by staff as such, and it was refused. It was also not communicated to the A/GM as the YJOs were simply not equipped to deal with such matters in the circumstances as they occurred on the night.

The use of CS gas was prefaced with a proclamation given in circumstances that did not allow the young persons the opportunity to respond by way of compliance. There was a portable communications radio in the possession of at least one of the young persons, and this could have been utilised as a communication tool between Correctional Services staff and the young persons.

The issue of poor training and practice around crisis intervention was raised by Dr Bath in 2012. In April 2012, surveillance tapes depicting the inappropriate and unsafe use of restraint were shown to senior staff of the Department of Justice (which incorporated Correctional Services) ('DOJ') and undertakings were provided that such practices would cease. In December 2012, the Office of the Children's Commissioner sent DOJ formal recommendations regarding the review and suggested implementation of safe intervention techniques.

It appears that the recommendations were not implemented at that time, nor in the subsequent 18 months.

Whilst it is acknowledged that any injury to staff is unacceptable, the injury occurred to the YJO due to a piece of aluminium being thrown through a broken window, set high in the wall. The injury was minor and did not require any immediate medical treatment. 'E' did not have line of sight to the YJO and recklessly threw the piece of aluminium. The YJO involved has not pursued any assault charges.

When it was found that entry (for the dog and its handler) could not be achieved through the basketball court door, it was incorrectly assumed that the door was barricaded. This assumption informed the subsequent decision-making process by Correctional Services staff.

The A/GM was not aware that the threat of the use of a dog had been sufficient to cause 'E' to attempt to surrender to staff in the store room area when he recommended the option of the use of gas to the Commissioner.

The use of gas was subsequently authorised by the Commissioner on the recommendation of the A/GM, based on the A/GM becoming aware of the injury to the YJO.

The A/GM was aware that the use of gas would mean that all the young persons locked in their cells would also be exposed. After the CS gas was sprayed, choking was heard by the A/GM and two YJOs. They entered the BMU without the necessary face masks to protect themselves from the effects of the gas, in order to extricate as quickly as possible the young persons who were still in their cells.

When the GM contacted the on-call magistrate, he sought approval to transfer the young persons to the adult prison. This was despite two of them having not participated in the incident, and one of them being only 14 years of age.

The on-call magistrate provided verbal authority to transfer five young persons to the adult prison, however, six young persons were transferred. The magistrate later provided written confirmation of the verbal authorisation to transfer five young persons to the adult prison.

On arrival at the adult prison, a number of the young persons had spit hoods placed over their heads. Only one of the young persons had a history of spitting on staff.

The next morning, 'E' had a spit hood again placed over his head when he was returned to Don Dale from the adult prison. No-one questioned the efficacy of this action.

The briefing made by the GM to senior management stated that all of the young persons in the BMU had blocked their cameras and that a YJO was injured after pursuing a detainee into the admissions office. This was inaccurate, and was provided to the Minister in a flash brief.

The public statement by the Commissioner that 'We're really not able to hold these young fellows who are quite violent' was an overstatement of the history of the young persons, as not all of the young persons at the time of entering detention had a history of violent offending. Further, not all of the young persons were violent on the evening of 21 August 2014.

The report to Police that five detainees had escaped their cells and assaulted staff with shards of glass, bricks and steel poles was also inaccurate and misleading.

Issue 2: The period of time young persons were confined within the BMU and the purpose of this procedure

YJO staff advised that the BMU cells were used for the short term separation of young persons who needed to be isolated from other detainees for their own safety or for the safety of others.

The A/GM informed investigators that essentially the BMU is a security unit that is used for confinement, housing and short-term placements. He stated that a 24-hour placement is very restrictive as there is limited time out of the cell for the young person. However, young persons can also be accommodated for a longer period of time within the BMU if they are placed on an IMP or management regime. He stated that the time out of the cell for a young person on an IMP depends on their behaviour, but should be at least an hour a day. This time out of the cell includes time to shower as there is not access to water or toiletries within the cells.

According to the GM the BMU is a secure cell used as a place for securing or accommodating young persons who are having behavioural issues, or security type issues. Both the GM and A/GM agreed it was not a proper environment for long term placements but in recent times it had become the only secure area due to the failing infrastructure of Don Dale.

The use of the BMU for security placements

The Daily Journal[20] show that young persons had been isolated in the BMU for a number of days on a 'placement'. SS A told investigators that it was common for young persons to remain in the BMU for periods exceeding 72 hours if their behaviour did not improve.[21]

YJO staff consistently stated in their interviews that they were unaware of the procedure for obtaining approval to isolate young persons in the BMU, and relied upon instruction from the shift supervisors.

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[20] The Daily Journal is an A3 sized book used to log incidents by shift supervisors in Don Dale. It is not specific to the BMU, and was kept in the main administration office at Don Dale.
[21] Contrary to s 153 (5) of the *Juvenile Justice Act.*

It became evident from these interviews with the shift supervisors that not all of them were aware of who could authorise this type of placement. One SS told investigators that the A/GM could approve a 24-hour placement, while the Minister needed to approve a 72-hour placement.

The GM correctly informed investigators that he has the delegation to approve 24-hour placements, and he does this on the recommendation of shift supervisors, noting that the A/GM does not have a delegated authority to authorise 24-hour placements. He further advised that if a 72-hour placement is necessary he is required to contact the Commissioner for approval. The GM said he usually did this by telephone or e-mail and confirmed that there was no formal procedure, he further stated that he was not required to provide evidence for the Commissioner to consider.

It is evident from talking with staff that, generally, young persons on a placement will remain confined in their cell for the entire 24-hour or 72-hour placement. They will be fed in their cell and would only be let out for a shower if their behaviour was satisfactory. Further, young persons on a 72-hour placement may be let out of their cell for a limited amount of time for recreation, depending on staff availability to supervise them, and their behaviour.

Many YJO staff stated that although the young persons should be provided with recreation time on 72-hour placements, this does not always happen.

When asked to describe the BMU at interview, one SS stated:

> 'dark, dingy, repressive very hot with no air-conditioning, in-humane as far as water goes, inappropriate for today's thinking and mindset'.

While a YJO said:

> 'the BMU stinks, it is revolting, I would not like to be in there for 72 hours'.

It also became evident from interviews with staff that 24-hour placements were considered by most to mean that the young persons remained on this placement for the entire 24-hour period, regardless of improved behaviour. The A/GM advised that he would allow a 24-hour placement to finish earlier if good behaviour was demonstrated, however he appeared to think this was more a good-will gesture as opposed to the expected process.

Part of the Correctional Services legislative and operating procedure framework includes a manual: 'Youth Detention and Remand Centres Procedures and Instructions.'[22] In particular, clause 10.3.4 states that a detainee is not to remain in a security placement once the poor behaviour has ceased:

[22] This manual refers to the *Youth Justice Act* as its legislative base.

Security isolation unit placements are regarded as an emergency response and should not continue beyond the period necessary to address the emergency.

Placement in the BMU on the 24-hour or 72-hour regime can only be legally used in such situations, and within the parameters of the legislation.

The use of the BMU for accommodation under a 'management regime'

Young persons are also housed in the BMU if they are placed on a 'management regime' as a result of their behaviour.

The use of management regimes is prescribed by Correctional Services Directive 2.4.5 – Intensive Management Plans (IMPs).[23]

The GM told investigators that there were a number of Directives that cover both the prison system and juvenile justice, and he was not aware of this specific Directive or the obligations contained within it.

The A/GM told investigators that he formulates the IMPs and provides them to the Shift Supervisors who then advise the YJO staff of their content. The A/GM stated that he did not seek input from case managers or other external stakeholders when he compiled the IMPs which were to be applied to the young persons held in the BMU. He also said that he was not aware of the conditions set out in Directive 2.4.5.

The A/GM confirmed that he does not keep a record of expired IMPs and that he will generally type over the previous version and destroy the hard copy original to prevent confusion.

As a result of this practice I was only able to obtain the IMP applied to the young persons held in the BMU dated 21 August, 2014.

As part of this report, I have provided an example of an IMP dated 21 August 2014, for each young persons involved in the incident. (Refer to Attachment A).

As the original IMPs were unable to be accessed, I could not confirm the date that they were implemented or the content. The AGM admitted it was possible that he had not compiled the required IMPs when he should have and said the reason being was that he had been 'extremely busy'.

The AGM confirmed that there had been occasions where a detainee had been held in the BMU without an IMP, but he did not consider this to be a breach of the Act. In

case notes made by the young persons' case worker (obtained from Correctional Services)[24] confirmed that the young persons had concerns about the non-implementation of their management regimes.

[23] The Directive is dated 31 August 2011, and is Attachment A to this report.

The classification of the BMU as regular accommodation

The GM told investigators that the young persons were housed in the BMU without any IMPs or management regimes in place until 13 August 2014. He believed the physical infrastructure of Don Dale was incapable of containing the young persons who had recently escaped, and he had no other option available to him to securely house the young persons.

The A/GM advised investigators that he was not aware of any authority to hold a young person in the BMU, apart from a placement in accordance with the *Youth Justice Act* or a management regime requiring an IMP.

The use of isolation in the BMU ostensibly because of failing infrastructure

In a letter to the Northern Australian Aboriginal Justice Assosiation (NAAJA) on 14 August 2014 the Correctional Services Commissioner stated:

> 'In order to ensure the safety of the other detainees, staff and the escapees themselves, it is important that the escapees are accommodated separately from the general youth detention population. The five escapees are currently being housed in the BMU. Although designed as a short term measure, the BMU is the only option available at Don Dale with sufficient standard security required to accommodate such high risk detainees. The timeframes for the occupation of the DCC site will not happen quickly enough to sufficiently mitigate the issues and risks posed by the escapees within the current failing infrastructure of DDYDC. The department is currently working on options to alternative secure accommodation to appropriately manage the escapees during the interim period.'

The GM advised investigators he had explored other options but that the BMU was the only available secure place. He said:

> 'They had escaped for one, infrastructure was not secure so we could not guarantee if we locked them in, basically it would have been either in rooms with other kids and scenarios of sharing between three and six in a room, either all together which was potentially undesirable in relation to, or with other persons through the centre. With all of them being an escape risk and mentioning escape at the front of their minds and they had acted in concert and confronted staff with weapons, you have to be crazy to put them back into general population.'

When the GM was asked if he had specific information that the young persons would escape again, he said:

> 'We know they had escaped, we also know that 'B' and 'D' had made reference to give us a go and we will try it again. Given 'D' when he says he is going to escape and he continues to make plans and tell us he has identified at least one credible escape route he makes no secret of the fact that it is his ambition. He has escaped

[24] The relevant case notes were dated 11 August 2014

> from Youth Detention, he has escaped from the Police and he has escaped from the court so it is certainly something to take seriously in relation to, and given doors had been kicked open and continue to be kicked open, so what happened was essentially proof of the pudding of what we had been working on for more than the last year in terms of saying that the infrastructure at Don Dale had reached its use by date in terms of containing the older cohort.'
>
> 'When you manage a Youth Detention Centre it is all about public safety, you have to weigh it all up.'

In order to keep a cell empty and available for use if required, two further young persons were housed in a single cell – therefore, four young persons were placed two to a cell, and two other cells held one young person each. This resulted in two young persons sleeping on a mattress on the floor in two of the cells. [25]

Despite the fact that four of the young persons were sharing cells, all of the young persons were segregated from the main population and confined to a cell with no running water, natural ventilation or natural light for at least 22 hours per day.

The United Nations General Assembly report on Torture and other cruel, inhuman or degrading treatment or punishment[26], in part states:

> 'For the purposes of this report, the Special Rapporteur defines solitary confinement as the physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day. Of particular concern to the Special Rapporteur is prolonged solitary confinement, which he defines as any period of solitary confinement in excess of 15 days. He is aware of the arbitrary nature of the effort to establish a moment in time which an already harmful regime becomes prolonged and therefore unacceptably painful. He concludes that 15 days is the limit between "solitary confinement" and "prolonged solitary confinement" because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible.[27]'
>
> 'In … 1990, the General Assembly adopted resolution 45/113, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. In paragraph 67 the Assembly asserted that "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including ... solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned"[28].'

In relation to physical conditions in solitary confinement the report stated:

> 'The presence of windows and light is also of critical importance to the adequate treatment of detainees in solitary confinement. Under rule 11 of the Standard Minimum Rules for the Treatment of Prisoners, there should be sufficient light to

[25] BMU cells 2 and 4.

[26] Dated 5 August 2011, and which applies in principle to Don Dale

[27] UN Report p.9.

[28] UN Report p.9

> enable the detainee to work or read, and windows so constructed as to allow airflow whether or not artificial ventilation is provided.[29]'

In relation to juveniles the report found:

> 'United Nations treaty bodies consistently recommend that juvenile offenders, children or minors should not be subjected to solitary confinement …. Juveniles are often held in solitary confinement either as a disciplinary measure, or to separate them from the adult inmate population, as international human rights law prohibits the intermingling of juvenile and adult populations ... In regard to disciplinary measures, a report has indicated that solitary confinement does not reduce violence among juvenile offenders detained in the youth prison.'

Period of time confined in a cell

It is difficult to determine the total amount of time the young persons were permitted to be out of his cell each day because there were no records kept for the entire time the young persons were held in the BMU cells.

Inspection of the observations sheets[30] showed that they were incomplete, with no observations recorded for the period of 0700 – 1500 on Sunday 9 August, 2014 and no observations sheets completed at all after 1500 on 13 August, 2014.

The observation sheets show that the time out of the cells for 'recreation time' (which included showers and telephone calls) varied from 30 minutes to one hour per day. On days when visits occurred, an additional hour out of the cell was permitted.

The visitor records and telephone records, combined with the available observation sheets show that the young persons were confined to their cells, on average, for no less than 22 hours per day.

In a letter to NAAJA on 14 August 2014, The Correctional Services Commissioner stated:

> 'The detainees are considered to be high risk of both escape and compromising the safety of themselves, other detainees and staff. Three additional staff have been rostered on to manage the detainees. The detainees must be kept apart from the general population and carefully supervised to mitigate risk of escape and further incidents. The detainees are removed from the BMU in pairs for a period of one hour a day for exercise such as playing basketball or similar. Dependant on their behaviour the detainees may be permitted up to an additional hour of recreation time.'

[29] UN Report p.14

[30] Observation sheets are written notes on individual young persons, maintained by Don Dale. The sheets are mandatory for young persons on a placement, but none existed for the specific period that the six young persons were in the BMU, as Correctional Services deemed them to be on IMPs (thus avoiding all of the attendant legislative restrictions). Thus, there were sporadic notations on some observation sheets pertaining to some of the young persons in the BMU.

The A/GM and GM both told investigators that the BMU was not a suitable place to house young persons for the long term, however, in the interests of 'protecting the public' they had no other option but to keep them in the BMU cells until another suitable secure location was approved.

A YJO at interview described the BMU as a 'shithole' and said he hated working in there because the young persons confined were; 'young lads with bad hygiene' *and it* 'stunk'.

In a letter to NAAJA on 14 August, 2014, the Commissioner stated:

> 'The young persons will remain in the BMU until such time as alternative appropriate accommodation is identified. As noted above we are working to find alternative solutions that will meet these accommodation needs as soon as possible.'

The A/GM told investigators he was extremely unhappy about keeping the young persons in the BMU because:

> '…it is horrible and not a good environment for kids because of a lack of sunlight, lack of exercise and lack of engagement.'

He said that just prior to the incident occurring on 21 August 2014, he was at the point of telling management that:

> 'the lack of suitable infrastructure was not a good enough reason for isolation in the BMU.'

The GM advised investigators that prior to the incident he felt that he was at the point of having to take the risk and place the young persons back into H Block. He said he didn't feel it was right to keep the young persons in the BMU any longer.

Alternatives that had been considered

The GM stated that consideration had been given to transferring the young persons to Aranda House in Alice Springs, however, difficulties with the logistics of the transfer did not make it possible.

Consideration was also given to re-classifying a section of the adult prison as a Youth Detention Centre, however Correctional Services received legal advice that the re-classification could not occur because it was not possible to ensure physical separation between young persons and adult prisoners.

E-mails provided by Correctional Services show that, prior to the incident, steps were underway to classify a part of the new DCC Prison at Holtze as a Youth Detention Centre.

Issue 2: Findings

The housing of the young persons in the BMU did not comply with the requirements of Section 153(5) of the *Youth Justice Act*.

The classification of the use of a BMU cell for a prolonged period as a bedroom placement and as part of a management regime did not comply with clauses 10.2 and 10.3 of the 'Youth Detention and Remand Centres Procedures and Instructions manual.

There was a failure to maintain either electronic or hard copies of expired IMPs, due to the A/GM's stated practise of over-writing the old plan with the new one. No independent record is therefore available. The ramifications of such a practise include no idependent evidence to show whether there has been compliance with legislative and policy regimes, unless the Daily Journal contains such information.

In April 2014, as a result of a previous unrelated investigation, Dr Bath made the following recommendations:

1. Correctional Services make it a requirement to record within Behaviour Management Plans (IMPs) any information that relates to a known mental illness or medically diagnosed behavioural condition and any known triggers or warning signs that could be beneficial in assisting a YJO to strategically manage a detainees' behaviour in a proactive manner; and

2. That where possible, the Behaviour Management Plan has the input of any mental health or therapeutic professional involved.

In accordance with Section 10 of the *Children's Commissioner Act* this Office sought information from Correctional Services so that it could monitor the outcome of these two recommendations.

Correctional Services sent a response by e-mail, stating in part:

> 'As advised, in previous correspondence to your office, Youth Justice is unable to provide information or respond to recommendations that are relevant to services provided by other departments. This matter is relevant to the services provided within the Don Dale Youth Detention Centre by the Department of Health to …'

This response is incorrect, as the content of Behaviour Management Plans (IMPs) are developed and implemented by Youth Justice staff.

Despite further attempts to be provided with information pursuant to Section 10 of the *Children's Commissioner Act* no further information was forthcoming.

It is evident from reviewing current IMPs that the previous recommendations made by this Office have not been implemented.

A further document obtained during the investigation appears to apply to Don Dale. In 2009 the Australasian Juvenile Justice Administrators published a document entitled 'Juvenile Justice Standards 2009'. The standards specificially refer to the *Youth Justice Act 2006 (NT).* Clause 9 discusses 'security', in terms of:

> detaining children in a safe and secure environment that is developmentally appropriate and provides community safety. …

9.5 Separation or isolation of a child or young person is used only in response to an unacceptable risk of immediate harm, escape and or in accordance with legislation and is used for the minimum amount of time.

Clause 9.5 clearly states that legislative requirements are to be given primacy, and time is to be kept to a minimum. This did not occur in relation to these young persons.

The young persons were housed in the BMU under strict management conditions, including long periods of isolation locked in their cells, from the time of their return to custody until 13 or 14 August 2014 without an approved IMP or management regime.

The management regimes implemented for all six of the young persons housed in the BMU were essentially identical to each other, including the same spelling and grammatical errors. It is clear that one template was used for each young person, without any individualisation for their particular circumstances.

They were compiled by the A/GM without input from the young persons' case workers or other relevant stakeholders. There were no parts of the IMPs addressing the individual behaviour triggers for each individual young persons.

The Vita report made the following findings, with which this Office concurs:

> Behaviour Management Plans should be individualised and contain clear reasoning for their implementation and conditions. The plans should be signed off by all stakeholders as, *'[t]his will provide transparency in the process and get away from a single "sign off" by the custodial person alone. This will also prove a consultative* approach to external agencies who may question the plans origins and/or expertise.[31]'

The Vita review further reported:

> 'The physical infrastructure in the Don Dale Behaviour Management Unit was poor and not conducive to being able to separate and manage detainees on plans satisfactorily. This no doubt contributed to many incidents in that location, however

[31] Vita report p.41.

> infrastructure on some occasions was accompanied by poor management and oversight, especially after hours, when supervision at a middle management level was lacking.[32]'

In relation to the template IMPs of the young persons held in the BMU, the Vita report found:

> '… that facility was antiquated and not conducive to contemporary detainee management. The templates may have been well-intentioned but were very basic in their configuration and contents. They lacked being descriptive or prescriptive in their nature. They appeared to be purely custodial based and signed off with no apparent input from other relevant stakeholders.[33]'

This Office has identified issues surrounding incomplete records elsewhere in this report.[34]

Finally, there appears to be an overlap between a placement for security reasons, and one for disciplinary reasons in relation to the young persons being detained in the BMU in August 2014. The GM appears to be expressing the view that the behaviour of the young person needs to improve, rather than assessing the risk in an objective manner in accordance with the legislation. Discipline is to be maintained at the *detention centre* and the restrictive provisions within the *Youth Justice Act* are to be used in an *emergency situation*. The focus is on the good governance of the centre, not the individual behaviour of the young person/s.

Issue 3: The access young persons have had in regard to making a complaint to the Children's Commissioner

This investigation stablished that there is no formal process in place to inform the young persons of their right to contact and make a complaint to Children's Commissioner. There are differing opinions on whether this Office's telephone number is on the young persons' authorised list of contacts or whether they can phone directly. Phone numbers on the young person's phone list may be monitored by staff, whereas any contact to this Office should be anonymous, if that is the wish of the complainant.

The IMP provided to this office dated 21 August 2014, provides the following information:

> 'Detainee is provided access to the detainee telephone system when required for calls to the Children's Commissioner or legal representative.

[32] ibid. p 42.

[33] ibid. p 41.

[34] See heading *The supervision and monitoring provided to the young persons whilst they were accommodated within the BMU – p 46.*

> In the event that detainee is being non-compliant or displaying signs of aggression he is to forgo access to DTS'.

Issue 3: Findings

The young persons were provided with telephone access to the Children's Commissioner.

Young persons are required to use their telephone access code, therefore calls to my office may not be anonymous.

Information provided by Correctional Service staff, confirms that young persons are able to contact this Office via telephone. However, this access may be restricted if the detainee is non-compliant or shows signs of aggression. The inherent difficulties faced by a young person wanting to make a complaint or contact with this office, but being forbidden to do so, is borne out in the case of young person 'C' referred to previously. If staff are not minded to assist, for whatever reason, a complaint for sound reasons may never be brought to this Office's attention.

Issue 4: The access young persons had to external service providers when confined within the BMU

A review of notes recorded by case workers established that attempts had been made to arrange cultural and art-based therapy visits for the young persons during their time in BMU. Investigators were informed by the A/GM that he believed that they could do a lot more to provide therapeutic service programs. He said he was horrified at the conditions at Don Dale when he first started working there.

He acknowledged that there were very few services able to assist the young persons and considered this to be an issue. Shift supervisors supported this view and said that very rarely are organisations booked in to see the young persons and that management within Youth Justice are reactive to problems, and not proactive.

This Office is pleased that Correctional Services is in the process of employing a permanent fulltime psychologist in 2015 to provide services to both Don Dale and the Alice Springs Youth Detention Centre (ASYDC).

A SS at interview stated:

> '…when you don't have enough staff to mentor detainees all you are doing is breeding prisoners and that is where we are headed.'

The majority of YJO staff interviewed were of the opinion that there is no rehabilitation for young persons and that they rarely see counsellors or therapists at the Centre. They believed the young persons just come in and do their time.

In relation to the young persons in the BMU during the period of this investigation the records show that they received the following visits from external professional visitors:

Visitors Records

Young person 'E'

Three visits - 11 August, 2014, 14 August 2014 & 15 August, 2014.

Young person 'C'

One visit – Video Conference visit 18 August, 2014

Young person 'F'

Five visits - 13 August 2014, 14 August, 2014, 15 August, 2014, 18 August, 2014 and 19 August 2014.

Young person 'D'

One visit – 18 August, 2014.

An official visitor attended Don Dale on 7 August 2014. The visit is recorded for a period of two and a half hours. The GM advised investigators that he accompanied the official visitor to the BMU on this day and that the visit was conducted whilst the young persons remaining in their cells.

Issue 4: Findings

Although the young persons did not receive any unreasonable restrictions to available external service providers it is evident that they are are not receiving adequate external services to meet their needs.

It is acknowledged that there is a serious shortage of specialist service options available to young persons in the NT youth justice system. This includes access to specialist therapeutic services to address issues relating to mental health, suicide awareness programs, sexual offending treatment, sexual health and substance abuse reduction, anger management. This is of concern given that many of the young persons in the youth justice system come from backgrounds of neglect, abuse, neglect, drug and alcohol abuse, and exposure to traumatic events. To assist them in addressing these complexities it is essential to have access to culturally appropriate evidence based programs. Unfortunately, for a number of reasons it is difficult to recruit and retain suitably skilled and qualified persons to deliver such services.

Correctional Service staff are concerned that there are insufficient external service providers visiting the young persons and, in general, young persons do not receive suitable therapy or counselling.

The Vita review found:

> '*There are no examples of programs currently provided at either NT YDC's that would, in the eyes of the reviewer, be considered to be of sufficient intensity to bring about change in the highest group of offenders, The recent recruitment of a clinical psychologist position will hopefully be a catalyst for this to change.*[35]'

This move by Correctional Services is welcomed, as are the efforts towards addressing the need for specialist services in the youth detention centres. It is also noted that Correctional Services are committed to introduce at least two evidence-based offence focused programs.

Issue 5: The provisions in place to ensure the emotional and psychological welfare of young persons in the BMU

The length of time the six young persons were forced to spend in the BMU is very concerning. It is not acceptable to place young persons in a confined area for days at a time, only allowing them out for one hour per day.

The environment in which they were housed was clearly not appropriate, with Don Dale staff decrying the conditions as 'unhygienic' and 'inhumane'. The fact that the young persons were unable to have continuous access to water for drinking and washing is unacceptable.

The cells were not air-conditioned, did not have fans or natural light, all of which is unacceptable. Available observation records and CCTV footage show that the young persons spent the majority of their time lying on the platform (bed) when confined to their cell.

Case workers interviewed informed investigators that they visited the young persons on most days, however they were restricted to talking to them through the bars of the cells.

It is acknowledged that the young persons were provided with reading material and playing cards to keep them occupied, and that music was piped into the cells via the intercom system. The investigators were told that it was not until towards the end of the period in isolation in the BMU that they were provided with educational material.

YJO staff advised investigators that the young persons were provided with stress balls. They also advised that the young persons were regularly requesting Panadol for headaches, which they were concerned may have been due to dehydration.

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[35] Vita report p.38.

The United Nations General Assembly report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[36] in relation to the latent effects of solitary confinement states:

> 'There is a lack of research into the latent effects of solitary confinement. While the acute effects of solitary confinement generally recede after the period of solitary confinement ends, some of the negative health effects are long term. The minimal stimulation experienced during solitary confinement can lead to a decline in brain activity in individuals after seven days. One study found that "up to seven days, the [brain activity] decline is reversible, but if deprived over a long period this may not be the case".
>
> Studies have found continued sleep disturbances, depression, anxiety, phobias, emotional dependence, confusion, impaired memory and concentration long after the release from isolation. Additionally, lasting personality changes often leave individuals formerly held in solitary confinement socially impoverished and withdrawn, subtly angry and fearful when forced into social interaction. Intolerance of social interaction after a period of solitary confinement is a handicap that often prevents individuals from successfully readjusting to life within the broader prison population and severely impairs their capacity to reintegrate into society when released from imprisonment.'[37]

Issue 5: Findings

The conditions in the BMU in August 2014 were well below acceptable standards. There was no access to natural light, drinking water, or programs to address rehabilitation or perceived behavioural issues. Rehabilitation is a key factor in the *Youth Justice Act*[38], and a denial of any program due to behavioural issues is nothing short of counter-productive.

The *Youth Justice Act* places a positive obligation upon the Superintendent of Don Dale to:

> …promote programs to assist and organise activities of detainees to enhance their wellbing… and… must encourage the social development and improvement of the welfare of detainees.[39]

Issue 6: The contact young persons housed within the BMU have had with family members

YJO staff told investigators that the young persons were permitted telephone calls and family visits, however not all of them had family visits. If the behaviour or demeanour of the young persons made it unsafe to allow them out of their cell, then visits or telephone calls were delayed or cancelled.

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[36] Dated 5 August 2011
[37] Ibid. p18.
[38] Section 3 (e), s 4 (n), s 81 (4), and more particulary s 151 (2) & (3) (a)
[39] Ibid, s 151 (3) (a) & (b)

Issue 6: Findings

A review of the relevant telephone and visitor records identified no unreasonable restrictions.

Issue 7: The supervision and monitoring provided to the young persons whilst they were accommodated within the BMU

As stated previously, the young persons were not permitted out of their cells for 23 hours of each day. They were monitored via the CCTV cameras and by staff who were also managing the general population at Don Dale. The young persons' one hour of 'recreational time' was rostered to take place on the morning shift.

Staff advised investigators that certain YJO staff were selected by management to work the morning shift to assist with each of the young persons' recreational time. The selection process was thought by most YJO staff to be about who had the physical size and ability to restrain the young persons if the occasion arose, as opposed to who had the most experience working within DDYDC.

One of the YJO staff, who was relatively new to the centre and who was routinely selected to work within the BMU, stated at interview that he had complained to management about always having to work within the BMU and how this process was limiting his ability to develop and learn about other areas of Don Dale.

YJO staff advised investigators that they were required to check on young persons who were on a placement every 15 or 30 minutes and for this to be recorded on an observation sheet. However this was not always done, especially at night because the young persons were usually sleeping and they did not feel this was necessary.

The majority of the YJO staff interviewed stated that there were often times on the afternoon and night shift, in which there was not physically enough time (or staff) to attend to the young persons in the BMU. The most common example provided was being able to provide drinking water. This is consistent with the concerns previously discussed regarding the young persons getting headaches, believed to be from dehydration.

Inspection of the BMU observation records confirms that they were not completed in accordance with Regulation 72 of the *Youth Justice Regulations.*

Youth Detention and Remand Centres Procedures and Instructions

The requirements set out in the Youth Detention and Remand Centre Procedures and Instructions manual regarding security unit placements, were not followed.

10.3 Security Unit Placement states:

(3) Whenever a detainee is placed in a security isolation unit, regardless of the duration of the placement, the Security isolation unit Journal must be completed. The Journal also acts as a log recording all observations and activities throughout the security isolation placement.

(15) Detainees on security isolation unit placement must be monitored constantly via closed circuit television surveillance or contacted face to face at 30 minute intervals.

Young person 'A'

An observation sheet was commenced for young person 'A' at 1.45 am on 5 August 2014.

An observation sheet was commenced for the remainder of the young persons on 6 August 2014. The page numbers on the copies of the observation sheets provided in the course of the investigation were out of numerical sequence and it was difficult to determine if they are correct.

There is no day shift observation sheet for 9 August 2014. There is no entry on two observation sheets between 5.15 to 7.00 am on 12 August 2014. The last entry was recorded at 3.15 pm on 13 August 2014.

Young person 'C'

An observation sheet was completed for young person 'C' from 16 August 2014 until 2.30 pm on 19 August 2014. The GM told investigators that 'C' was on a cumulative 96-hour placement from 15 August 2014.

Inspection of the Daily Journal showed no recorded observations.

Issue 7 Findings

In relation to young persons placed in isolation, Regulation 72 of the Youth Justice Regulations require 15 minutes checks be conducted and a record made of the check.[40] There is no evidence of this occurring.

Clauses 10.3 (3) and 10. 3 (15) of the Youth Detention and Remand Centres Procedures and Instructions manual require detainees on security isolation unit placements to be monitored constantly via CCTV surveillance or contacted face-to-face at 30 minute intervals with observations recorded in the Daily Journal. The surveillance was not conducted in accordance with the above clauses, and the Daily Journal was not completed.

[40] Pursuant to s 153 (5) of the *Youth Justice Act.*

‘C’ was isolated in the BMU cells on 15 August 2014 pursuant to Section 153 (5) of the *Youth Justice Act*, therefore the failure to commence an observation sheet until 16 August 2014 was a breach of Regulation 72.

It appears that the staff rostered for the morning shift on 21 August 2104 were chosen for their physical capability rather than their experience and skill as YJOs. This resulted in a relatively inexperienced group of YJOs managing and supervising the young persons in the BMU.

Resources to adequately monitor and supervise the young persons in the BMU during the afternoon and night time shifts were compromised. The staff were responsible for supervising the general population of Don Dale as well as those in the BMU.

Record keeping in relation to the BMU is an identified area of concern. This Office concurs with the Vita report, which said:

> ‘Recordkeeping which has posed a problem at Don Dale YDC should be monitored, particularly any behaviour management plans that are formulated and any significant periods of segregation or confinement.[41]’
>
> ‘Although there is no doubt that detainees required to be managed in the BMU because of their risk taking behaviours, the Review found they should have had more time out of rooms on an individual basis. Anecdotal evidence by staff is that they recall that they did have visitors and more exercise periods; however inspection of Unit logs and records do not support or reflect this. Unfortunately, if it is not in the record then it cannot be considered or proved as having occurred.[42]’

In particular, IMPs are not monitored or checked and this Office concurs with the Vita report, which said this about Behaviour Management Plans:

> ‘A single log should be maintained which accurately records each day’s progress and relevant times, in and out of rooms and if relevant, why this was not able to be enforced as required by the plan.[43]’

Additional matter identified in the course of the investigation

‘C’ advised investigators of an incident which involved inappropriate and threatening behaviour by YJOs towards him. It was alleged to have occurred on 16 August 2014, while he was in the BMU.

The incident was not brought to the attention of Correctional Services until ‘C’ formalised a complaint regarding the matter during the Vita Review. The matter was

[41] ibid. p.47.
[42] ibid. p.52.
[43] ibid. p 41.

then given to the Professional Standards Unit (PSU) to investigate. Relevant CCTV footage supported 'C's complaint and internal action was taken.

This Office was not notified of the complaint in accordance with requirements set out in the Youth Justice Regulations.

Regulation 66 (5A) of the *Youth Justice Regulations* states:

That if, in the opinion of the Superintendent, the complaint is about a matter that could be the subject of a complaint under the *Children's Commissioner Act*, the Superintendent:

(a) may refer the complaint to the Children's Commissioner; or

(b) if the complaint is to be dealt with under these Regulations – must, as soon as practicable, give written notice about the complaint to the Children's Commissioner.

The Vita report recorded:

> 'There have been isolated and individual circumstances, as is the case in most institutional jurisdictions, where individual staff have taken it upon themselves to "cover up" their involvement in an incident by not reporting it up the 'chain of command', these attempts eventually fail. An example of this was an incident on 16 August 2014 where staff acted inappropriately in threatening a detainee at the Don Dale YDC and attempted to cover up the CCTV surveillance to hide this.[44]'

The conduct of the YJO staff did not amount to a criminal offence and a report was not made to Police, however the Correctional Services determined that the conduct did amount to a breach of discipline and took internal disciplinary action.

RECOMMENDATIONS

1. Correctional Services develop and deliver a suitable training package to ensure that all staff have an adequate skill-set to work within the current youth justice environment. Records of the completion of such training should be recorded for each staff member and attached to their personnel file. Mandatory regular refresher training should be undertaken at industry-accepted periods[45]. The training should include:

    - Crisis de-escalation / negotiation / mediation training specific to young persons in medium to high risk environments;

[44] ibid. p.50.

[45] For example, police officers in the Northern Territory have to do one day of training each year to maintain their firearms qualification; same as their defensive tactics training and First Aid certificates need to be 're-freshed' every three years.

- The proper use of PART (including competence certification if appropriate), with regular re-fresher courses for staff;

- and the regular review of all restraint / use of force reports;

- Critical incident management to ensure compliance with the *Youth Justice Act*;

- The proper use of all personal protection equipment available for use by staff;

- Knowledge and competence to safely manage the young persons in their care, to assess and respond to depression and other emotional stresses in order to effectively assess the potential of self-harm, and to positively engage with the detainees; and

- Consideration of a memorandum of understanding between NT Police and Correctional Services in relation to the training of staff in use of force tactics, negotiation and mediation, etc.

- Any other training recommendations contained in the Vita report.

2. In relation to its employment process, Correctional Services should consider psychometric testing in order to provide an objective measurement of job applicants' skills, knowledge, abilities, attitudes, personality traits and education against the core requirements of the roles.

3. Correctional Services urgently conduct a job evaluation of all positions associated within the Youth Detention Centres so that they accurately reflect the responsibilities and requirements of the roles.

4. Correctional Services conduct a review of operational practices, and where necessary it should implement changes to policies and procedures to ensure compliance with the requirements of the *Youth Justice Act* and Regulations. To ensure the rights of the young person under the UN Convention of the Rights of the Child, the review should include consideration of:

   - The preparation, content and implementation of individual management plans under a management regime to ensure a consistent and structured multi-disciplinary methodology is applied;

   - The operational practices surrounding the use of isolation and containment;

- The implementation of a policy that includes the completion of full and accurate observation sheets every 15 minutes for any young person confined to their cell for any reason;

- The relevant recommendations contained in the Vita report.

5. Correctional Services develop and implement policies and procedures that comply with the requirements of the *Youth Justice Act* and Regulations. The policies should ensure the rights of the young person as specified under the UN Convention of the Rights of the Child. In particular, the policies should address:

    - Critical incident management, including negotiation strategies, cordon and containment, appropriate use of force, structured roles and responsibilities of staff, debriefing and reporting;

    - The use of chemical agents/dogs to gain compliance or to resolve potentially serious violent incidents in a Youth Detention Centre context;

    - Maintaining accountable electronic and hardcopy records of all management regime documents developed and implemented for all young people;

    - The rights and obligations of young persons upon admission to a Youth Detention Centre, including specific information about their right to access the Office of the Children's Commissioner and the method of making contact or/a complaint;

    - Any obligations on Correctional Services staff to make a complaint on behalf of a young person who wants to make contact or lodge a complaint with the Children's Commissioner (but due to the behaviour of the young person they are precluded from direct telephone access for safety and security reasons); and

    - Ensuring that the Children's Commissioner telephone number is listed in such a way that the young persons' complaints or discussions with this Office are confidential. It is suggested that such calls should be categorised as 'legal-in-confidence' and therefore the attendant protocols for legal calls should be applied.

6. The use of a spit hood/mask is a particular concern which has the potential to be inhumane and cause harm to young persons. While the hood was placed on the young persons by staff from the adult prison, it is recommended that Correctional Services develop a policy that includes:

    - The appropriate use of the spit hood and any authorisations required;

- The length of time a spit hood may be used;
- Any alternatives to the use of spit hoods;
- The requirement for accurate recording of the justification for the use of the spit hood and the time it was applied to the young person; and
- Adherence to applicable legislation and conventions.

7. The information collated in this investigation highlighted a lack of suitable programs being delivered to young persons to address their physical and mental well-being whilst in the care of Correctional Services. It is understood that a psychologist has been recently employed by Correctional Services and this should go some way to address this issue. Further, a policy on the use of an appropriate assessment tool such as the Youth Level Service of Inventory (YLSI) would assist to drive the case management process and form the beginning of the goals necessary for the young person to work on as part of his/her reintegration back into the community.

DEPARTMENT RESPONSE

On 27 May 2015 the Department of Correctional Services provided a response[46] to the my Draft Investigation Report. The response in part states:

> *'…The Northern Territory Department of Correctional Services Accepts the recommendations made in your draft report. As you are aware, the department is working towards meeting the sixteen recommendations of the Vita report which broadly align with your recommendations 1,4,5,6 and 7.*
>
> *I do not however support the comments made on page 29, (7th paragraph) as pertinent to this report. This issue has been the subject of a number of court proceedings in which it was determined that the claims of 'inapproriate and unsafe use of restraint' were not supported. I also note in your report a significant number of comments in relation to the BMU. As you are aware, the BMU was a unit in the former Don Dale Youth Detention Centre. The department is currently establishing a high security unit (HSU) and would be more than happy to send you copies of the HSU specific procedures once they are finalised…'*

Ms Colleen Gwynne
Children's Commissioner
20 August 2015

[46] NTDCS response dated 27 May 2015 to the Draft Investigation Report is Attachment B to this report.

ATTACHMENT A

NORTHEN TERRITORY
CORRECTIONAL SERVICES

MANAGEMENT REGIME

DETAINEE NAME: [redacted]

IJIS NUMBER: 377876

Legal Status: REMANDED

COMMENCEMENT DATE: 21st AUGUST 2014

REVIEW DATE: 28TH AUGUST 2014

PART 1. OVERVIEW

Detainee [redacted]. will be subject to a Management Regime (MR) due to ongoing non-compliance and behaviour that threatens the safety, good order and security of Don Dale Youth Detention Centre.

- This MR has been designed to safely manage and maintain custody detainee [redacted] and ensure the safety of staff and other detainees.

Detainee [redacted] requires a management regime that will ensure his conduct will be managed appropriately with detainee and staff safety a paramount consideration.

Detainee [redacted] will remain a High security rating in conjunction with this MR until otherwise advised.

To prevent breaches of security detainee [redacted] at all times is to be managed with close supervision.

Detainee [redacted] will not be allowed into the main recreation area of H Block outside of regular dayshift hours.

PART 2. PROCEDURE

ACCOMMODATION

- Detainee [redacted] is to be accommodated in single room accommodation with ablution services within the unit.

- Under no circumstances is detainee [redacted] to be accommodated in any other accommodation area.

- Detainee [redacted] is permitted to have reading material in his accommodation unit.

- Detainee [redacted] is permitted to have personal correspondence in his accommodation unit.

MEALS

- All meals will be with the exception of lunch will be consumed in his allocated accommodation unit.

- All rubbish, food that has not been consumed and used eating utensils will be returned through the judas hatch.

UNLOCK

- Unlock will be conducted by day shift Youth Justice Officers.

- Youth Justice Officers are required to enter the cell and greet the detainee.

- In the event that detainee [redacted] is displaying signs of aggression or non-compliance he is not to be released from his accommodation unit.

LOCKDOWN

- Detainee [redacted] is to be secure by day shift staff at the completion of their shift.

- Only in exceptional circumstances will detainee [redacted] be allowed out of his accommodation unit outside of day shift hours.

CLEANLINESS

- Detainee [redacted] is required to conduct cleanliness and sanitation in his accommodation unit on a daily basis.

HYGIENE

- Youth Justice Officers will supervise detainee [redacted] having a shower and allow him appropriate time to undertake personal hygiene prior to being secured at the completion of the shift.

EDUCATION AND READING

- Detainee [redacted] is authorized to have reading and education material in his accommodation area.
- Staff will issue his education material at the commencement of the shift.
- At any time detainee [redacted] is to depart the accommodation area, he is to hand all eduation material through the judas hatch prior to the accommodation door being usecured.
- All education material must be handed in prior to staff departing for the day.
- Educaiton material will be stored in a container in the security lounge.
- Education staff will have acess to the education material as required.
- ***The only writing implement to be issues for the purpose of education is one (1) pencil.***

RECREATION

Detainee [redacted] will:

- Be authorized to mix freely with one (2) other detainee whilst out of his accommodation unit.
- Youth Justice Officers are encouraged to actively engage and interact with detainee [redacted] during his recreational period.
- Under no circumstances be autherised to attend M Block.

(NOTE; DUE TO DETAINEE [redacted] ESCAPE CUSTODY; CLOSE SUPERVISION IS REQUIRED AT ALL TIMES DURING RECREATIONAL PERIODS).

DETAINEE TELEPHONE SYSTEM (DTS)

- Detainee [redacted] can access to the Detainee Telephone System (DTS) to contact family and support networks once per day.
- Detainee [redacted] recreation times to include enough time for access to the DTS.
- Detainee [redacted] is provided access to the DTS when required for calls to the Children's Commissioner or legal representative.
- In the event that detainee [redacted] is being non-compliant or displaying signs of aggression he is to forgo access to the DTS.

VISITS

- Detainee [redacted] will have access to personal and professional visits.

MEDICATION

- Should it be required Detainee [redacted] will be issued with medication under the direction of the primary health care provider.

AT RISK

- If an 'At Risk' situation should occur, an 'At Risk' (Red) file is to be initiated and relevant procedures followed.

COMPLIANCE WITH INSTRUCTIONS AND RULES OF THE CENTRE

- Detainee [redacted] is expected to continue to follow the rules of the centre and comply with all reasonable instructions issued by Youth Justice Officers (YJO).

- YJO's are to assess if Detainee [redacted] requires additional time to comply with directions.

In the event that detainee [redacted] displays any of the following actions or behaviors as listed below, YJO's are to return him to his accommodation area.

- Threating behavior
- Intimidation of staff or detainees
- Non compliance
- Openly threatening non compliance
- Assaulting staff
- Destruction of pAustralty

USE OF FORCE

At all time's staff are to use force where absolutely necessary and minimum force proportionate to the situation is to be applied.

In the event that there is an escalation in aggressive behavior or an assault on staff Youth Justice Officers are to;

- **Raise the alarm and call for assistance**
- ***Exhaust all avenues of verbal persuasion***
- **Restrain detainee using appropriate restraint techniques**
- **Apply authorized restraint devise**

- **Return detainee to his allocated accommodation unit.**
- **Complete incident reports and relevant journals**

REPORT AND JOURNALS

- YJO's are to complete all incident reports, relevant journals and case notes within the appropriate required time frames.
-

PART 4. CASE MANAGEMENT

- Detainee [redacted] case management worker will have contact with detainee on a regular basis.
- Detainee [redacted] will undertake a case management / classification review as per any standardised classification schedule.
- Detainee [redacted] will have an opportunity to have input into his case plan.

PART 3. REVIEW OF REGIME

- ~~This MR will be on going until further discussions take place in relation to~~ appropriate accommodation options and/or classification decisions.
- This MR supersedes any other management or case plans in effect for detainee [redacted]

[redacted]
AGM
Date 21st August 2014

ATTACHMENT B

Northern Territory Government

DEPARTMENT OF
CORRECTIONAL SERVICES

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Our Ref: DCSDOC15/1687

Ms Colleen Gwynne
Children's Commissioner
Office of the Children's Commissioner
PO Box 40598
Casuarina NT 0811

Dear Ms Gwynne

RE: DRAFT INVESTIGATION REPORT

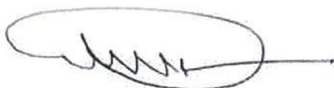
Thank you for your letter dated 27 May 2015 seeking my response to your draft report for your consideration.

The Northern Territory Department of Correctional Services accepts the recommendations made in your draft report. As you are aware, the department is working towards meeting the sixteen recommendations of the Vita report which broadly align with your recommendations 1, 4, 5, 6 and 7.

I do not however support the comments made on page 29, (7th paragraph) as pertinent to this report. This issue has been the subject of a number of court proceedings in which it was determined that the claims of '*inappropriate and unsafe use of restraint*' were not supported. I also note in your report a significant number of comments in relation to the BMU. As you are aware, the BMU was a unit in the former Don Dale Youth Detention Centre. The department is currently establishing a high security unit (HSU) and would be more than happy to send you copies of the HSU specific procedures once they are finalised.

I look forward to continue to work with your office to achieve improvements in detention centre program and service delivery.

Yours sincerely



KEN MIDDLEBROOK
COMMISSIONER

19 June 2015