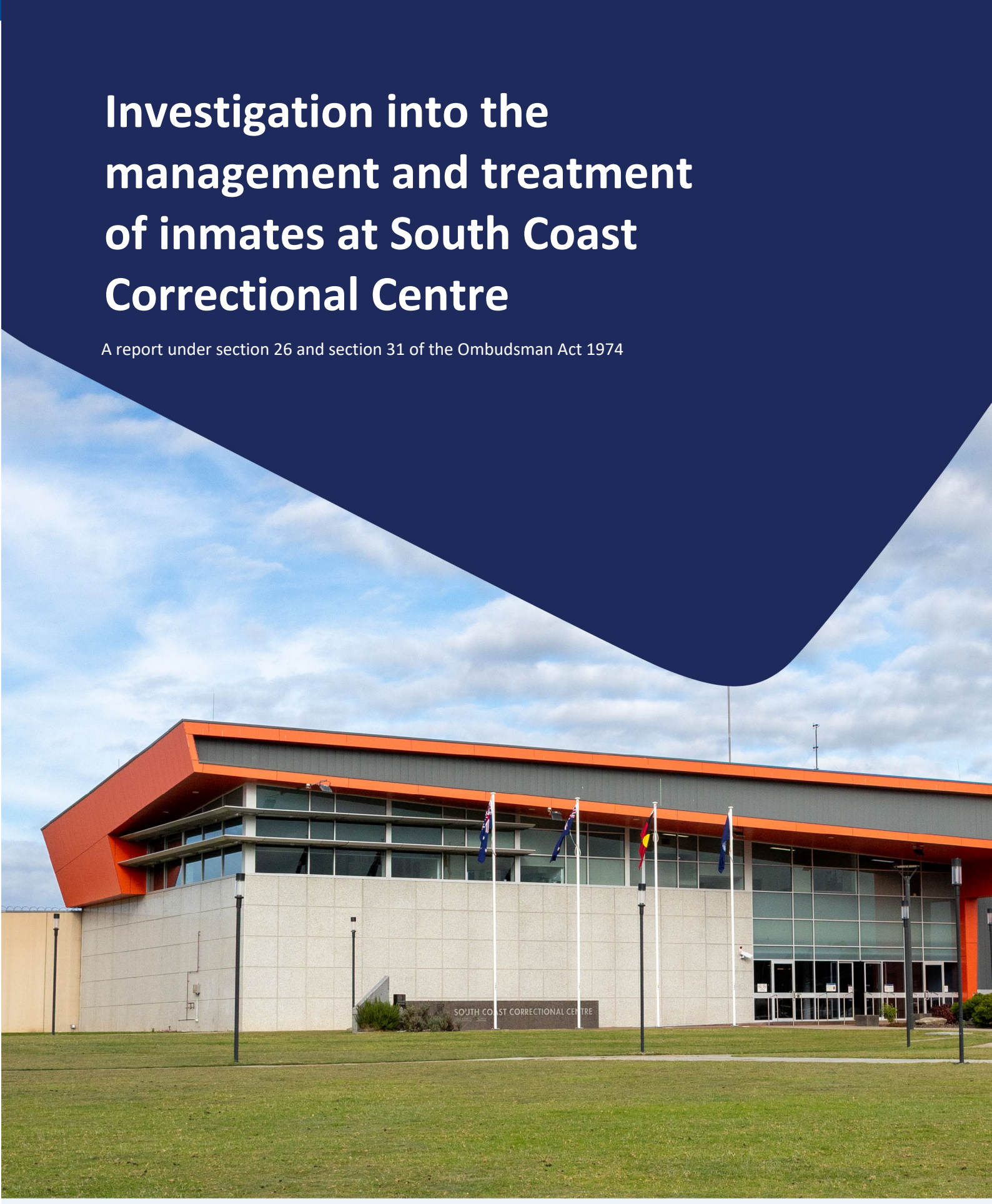
Investigation into the management and treatment of inmates at South Coast Correctional Centre

A report under section 26 and section 31 of the Ombudsman Act 1974



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The Hon. Ben Franklin, MLC
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The Hon. Greg Piper, MP
Speaker
Legislative Assembly
Parliament House
SYDNEY NSW 2000

Dear Mr President and Mr Speaker

Pursuant to section 31 of the *Ombudsman Act 1974*, I am providing you with a report titled *Investigation into the management and treatment of inmates at South Coast Correctional Centre.*

I draw your attention to section 31AA of the Act in relation to the tabling of this report and request that you make the report public forthwith.

Yours sincerely

Paul Miller
NSW Ombudsman

16 June 2026

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We acknowledge the traditional custodians of the land on which we work and pay our respects to all Elders past and present, and to the children of today who are the Elders of the future.

Artist Jasmine Sarin, a proud Kamilaroi and Jerrinja woman.

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1. Executive Summary

Complaints from inmates locked in cells for 24 hours a day

We started this investigation after receiving complaints in April 2025 from a number of inmates who were held in 'protective custody' at South Coast Correctional Centre (**South Coast CC**). Inmates in protective custody are kept separated from the mainstream population because of a threat to their safety, rather than as a punishment. They told us that they had been locked in their cells for 24 hours a day for periods ranging between 2 weeks and 3 months.

In response to our preliminary inquiries, Corrective Services NSW (**CSNSW**) confirmed that protective custody inmates who were held in 'overflow' accommodation at South Coast CC were locked in their cells, effectively 24 hours, 7 days a week. They also had no access to outdoor exercise. This situation persisted for at least a month and a half, and had likely begun in late December 2025.

Senior executives from CSNSW informed us that they had been unaware of the situation. Following our inquiries, steps were taken to improve the situation for affected inmates by facilitating at least some access to exercise in outdoor areas.

Our investigation found that protective custody inmates at other centres were also denied their daily entitlement to outdoor exercise in the period between January and April 2025. This included Parklea Correctional Centre[1] (**Parklea CC**), the Metropolitan Remand and Reception Centre (**MRRC**) and Shortland Correctional Centre (**Shortland CC**).

CSNSW did not keep proper (and in some cases any) records of inmates' time out of cells, or when and for how long they accessed a yard for exercise. Because of this, the full extent of the issue and the precise length of time the situation persisted could not be ascertained.

The entitlement to daily outdoor exercise

Prolonged confinement to a cell, without access to exercise, can lead to significant physical deterioration and psychological harm, and compound the challenges inmates face when reintegrating into society upon release.

The law requires that all inmates be offered access to daily exercise in the open air for a minimum of 2 hours.[2]

Inmates who are in protective custody because they may be at threat of violence, coercion or harassment from other inmates retain the same legal entitlements as inmates in the general population, including the entitlement to daily exercise in the open air.

How this situation came about

Our investigation found the following:

(a) Until 2024, correctional centres frequently relied on a mechanism known as 'section 78A orders' to keep certain vulnerable cohorts of inmates separate from the general prison population. This included inmates who were considered in need of protection. Inmates on s 78A orders were able to

[1] Parklea CC is a one of two privately managed correctional centres in NSW.

[2] Clause 53, CAS Regulation 2014 (the only exception is inmates being confined as a punishment, who are entitled to 1 hour).

associate with other similar inmates also on s 78A orders and were housed in units within a centre that gave them access to a yard.

(b) This process was distinct from placing an inmate in 'protective custody' under s 11 of the *Crimes Administration of Sentences 1999* (**CAS Act**). The CAS Act provides that protective custody inmates may be kept separate from every other inmate (referred to as 'protective non-association' or **PRNA**) or kept in a cohort with other similar inmates separate from the general population (referred to as 'protective limited association' or **PRLA**).

(c) In 2020, as a matter of policy, CSNSW decided to 'delete' PRLA forms of protective custody. This meant that any inmate held in protective custody was required, by policy, to be held on a PRNA direction, in isolation from all other inmates. Any PRLA inmates at the time were transitioned to other forms of placement.

(d) In July 2024, CSNSW received advice from the Crown Solicitor that s 78A of the CAS Act did not provide a separate head of power to separate inmates from the general prison population. It noted that, while there are general powers for the care, control and management of inmates that can provide for inmates to be separated from others in certain circumstances, those powers cannot be used for the purposes of protective custody. Instead, if inmates are required to be separated for reasons of protective custody, that separation is required to occur using the specific regime that has been enacted for that purpose – that is, the protective custody regime under s 11 of the CAS Act.

(e) Almost 6 months after receiving the Crown Solicitor's advice, in December 2024, CSNSW issued a memorandum directing all centres to cease using s 78A orders. Inmates who were on such orders at the time were to be transitioned to another placement or order. The policy governing the 'separation of inmates' was withdrawn and listed as 'under review'.

(f) It was clearly foreseeable that the cessation of s 78A orders would result in a significant increase in the number of inmates in protective custody – and that is what happened. Of the 176 inmates who were on s 78A orders in December 2024, 92 were placed in protective custody. Because of the 2020 policy change that had removed PRLA as an option for protective custody, all these inmates were placed on PRNA directions. This meant they moved from a situation where they were being held together as a cohort, to one where they were required to be fully isolated from every other inmate.

(g) In the 6 months between the Crown Solicitor's advice being received and the memorandum to cease s 78A orders being issued, it is not apparent that any action was taken to properly identify and manage the risks and foreseeable consequences that arose from that action.

(h) After the memorandum was issued, the sudden increase in PRNA inmates quickly exhausted the facilities that are available at centres for such inmates. These include dedicated units (usually called multi-purpose units (**MPUs**) with single-occupancy cells. Each cell in a MPU may have a small rear yard annexed, or there may be a larger single yard in that unit for inmates to access individually when scheduled.

(i) The 'overflow' of PRNA inmates were placed in other areas within centres, where providing access to yards (in isolation from all other inmates) was more challenging.

(j) At South Coast CC, overflow PRNA inmates were placed in F1-Pod. This is a reception area (with no dedicated yard/s attached) intended to house inmates only for a short period of time pending their transition to the general prison population. It appears this accommodation was chosen for the overflow PRNA inmates so as not to impact or inconvenience the state or daily routine of the mainstream population at the centre.

(k) Staffing shortages exacerbated the problems, particularly given that more PRNA inmates require increased staffing to facilitate and supervise time out of cells.

(l) The PRNA inmates at South Coast CC were effectively confined to their individual cells and denied access to exercise in the open air for a prolonged period of time. They were also restricted to non-contact visits with family or friends.

(m) This situation continued at South Coast CC because either the issues were not escalated from the centre, or they were escalated and no action was taken (accounts differ).

(n) Now, 18 months after the memorandum was issued to cease the use of s 78A orders, the relevant policy ('separation of inmates') remains 'under review'.

Ombudsman's findings and recommendations

Key findings

We have made the following key findings:

Findings:

1. Between January 2025 and 15 April 2025, PRNA inmates in South Coast CC F1-Pod were kept for prolonged periods of time in circumstances where they were deprived of any entitlement to daily open-air exercise, which was **unlawful** and **oppressive.**
2. In that same period, PRNA inmates in South Coast CC F1-Pod were not given access to contact visits, which was **unlawful** and **oppressive;** and the deprivation of this privilege was not recorded for each inmate, which was also **unlawful**.
3. The use of South Coast CC F1-Pod to house PRNA inmates was not properly authorised or recorded, which was **unlawful** and **otherwise wrong** as a breach of policy.
4. Between January 2025 and (at least) mid-April 2025, at various correctional centres including Shortland CC, MRRC and Parklea CC, certain PRNA inmates were kept in circumstances where they were deprived of their entitlement to 2 hours of daily exercise, which was **unlawful** and **oppressive**.
5. CSNSW failed to appropriately plan for and manage the decision in December 2024 to cease the use of 'section 78A orders' following the CSO advice of July 2024, including considering the need to reintroduce PRLA directions before doing so. This failure was **unreasonable** and **wrong**.

Key recommendations

We made 13 recommendations to CSNSW, including that it**:**

- conduct regular reviews of PRNA inmates' placement
- re-instate the PRLA placement option to allow cohorts of protective custody inmates to associate with one another where appropriate
- review and update the Protective Custody policy (COPP 3.2) to reflect legislation, and improve record keeping and review processes for protective custody inmates
- require correctional centres to notify the relevant Assistant Commissioner if any inmate is not able to access the required 2 hours of daily exercise for 3 continuous days or more

- review the decision made by South Coast CC to restrict protective custody inmates to non-contact visits
- conduct training for all senior staff in record keeping
- obtain advice about the lawfulness of Special Management Area Placements[3] (**SMAP**).

Other issues

Our investigation has raised a number of related issues, including:

Compliance with the Ombudsman Act

Public authorities are legally required to co-operate with the Ombudsman and must, at the time specified, produce any information, documents or other things required by the Ombudsman.[4]

In this case, despite requiring the production of information and documents on 8 May 2025 with an original due date of 6 June 2025, we only started to receive information from CSNSW in late August, with a final tranche on 10 November 2025.

Of particular concern, in August we were told by CSNSW that the production of any information would still be weeks away because CSNSW needed to brief and obtain its Minister's agreement to the production of information to us. We have noted to CSNSW that:

- The public authority named in a notice to produce from the Ombudsman has the legal duty to comply with its requirements. Failure to comply within the specified time frame is unlawful.
- A public authority is not required to obtain Ministerial 'approval' when complying with a notice.
- There is no basis on which a Minister could decide that a public authority should not comply with such a requirement, as to do so would constitute an unlawful Ministerial direction.

Additional finding:

6. CSNSW has engaged in **unlawful** and **wrong** conduct by failing to comply with the requirements of the *Ombudsman Act 1974* by not responding to notices to produce issued by the Ombudsman under section 18 of that Act by their due date.

Referral of suspected serious maladministration from the Inspector of Custodial Services

During 2025, the then Inspector of Custodial Services was undertaking a broad systemic review of segregation (and confinement and separation) in NSW correctional facilities.

In March 2026, the Inspector tabled her report of that review. The report includes observations about a number of matters that may constitute serious maladministration. This includes observations made during the Inspector's visit to MRRC in May 2025 that PRNA inmates were being denied their entitlement to 2 hours of daily outdoor exercise.

To facilitate the more efficient and effective exercise by the Ombudsman of our functions, including, if necessary, through a formal maladministration investigation, we have recommended that the Inspector

[3] A Special Management Area is a specific area that has been designated within a correctional centre for housing inmates who would be vulnerable or at risk from other inmates in the normal discipline area of the correctional centre. As inmates are placed there for protection there is a question about whether this is lawful, given the Crown Solicitor's advice. See section 6.2 below.

[4] The only exception to this is Cabinet-in-confidence information – there is no other basis on which production may be withheld by a public authority from the Ombudsman.

put in place processes for the early reporting of suspected instances of serious maladministration[5] to the Ombudsman (noting that the Inspector is authorised but not required by the legislation to do so).

The prohibition of certain forms of solitary confinement

Subject to certain exceptions, 'solitary confinement' is prohibited in NSW correctional centres by the *CAS Regulation 2014* (**CAS Regulation**). Our investigation raised a broader question of whether, and in what circumstances, the holding of an inmate in protective custody under a PRNA direction may constitute 'solitary confinement'.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the **Nelson Mandela Rules**) define solitary confinement simply as "the confinement of prisoners for 22 hours or more a day without meaningful human contact".[6] Unlike the Nelson Mandela Rules, the CAS Regulation does not prescribe the extent of 'solitude' and the duration of confinement required to amount to solitary confinement.

Applying the international standard, it seems that PRNA inmates would, on most days, meet the threshold of being held in conditions of solitary confinement. However, due to a lack of clarity about the application and scope of the prohibition on solitary confinement under the CAS Regulation, we have drawn no conclusions as to whether (or in what circumstances) the situation of protective custody inmates may constitute solitary confinement contrary to that prohibition.

The delay in implementing OPCAT

The Optional Protocol to the Convention Against Torture or Other Cruel or Degrading Treatment or Punishment (**OPCAT**) was required to have been implemented across Australia by no later than January 2023. That has not occurred in NSW, apparently due to an unresolved dispute with the Commonwealth Government in regard to funding.

The implementation of OPCAT may not have prevented the circumstances identified in this report taking place. However, it may have resulted in those circumstances being addressed much sooner.

In our view, the circumstances uncovered by this investigation underline the need for and value of an OPCAT oversight mechanism for places of detention in NSW.

We have therefore included in this report a recommendation that the NSW Government act to implement OPCAT, including by nominating a National Preventative Mechanism (**NPM**) for places or detention in NSW, introducing legislation to empower it to undertake pro-active monitoring, visits and related functions, and providing appropriate resourcing.

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[5] 'Serious maladministration' is defined in the *Public Interest Disclosures Act 2022* as: conduct, other than conduct of a trivial nature, of an agency or a public official relating to a matter of administration that is unlawful, or unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives.

[6] The Nelson Mandela Rules do not prohibit all solitary confinement outright, but they do prohibit indefinite and prolonged solitary confinement: Rule 43. They also impose certain procedural limitations - for example, 'Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority.': Rule 45. The Nelson Mandela Rules are not legally binding in NSW but are internationally recognised as setting minimum standards for prison administration.

2. Our investigation

2.1 The complaints

Between 25 March 2025 and 15 April 2025, we received separate complaints from 4 inmates being held in protective custody (on PRNA directions[7]) at South Coast CC.

Each told us that they were being held in a single-occupancy cell in the F1-Pod area. They were isolated from the general inmate population, and unable to associate with any other inmates, including any other inmates in F1-Pod. They also said that, since being housed in the F1-Pod area, they had not received any time out of cell, except to attend legal or medical appointments, or court appearances. Each said they had been told by staff that they were not being allowed out of their cell because they were in protective custody.

The inmates reported having been locked in their cell for periods that ranged from 2 weeks to 3 months.

2.2 Our preliminary inquiries

We made preliminary inquiries on 31 March 2025, and South Coast CC responded on the same day telling us that there were 18 inmates in F1-Pod, 9 of whom were on PRNA directions. The response also stated that those 9 inmates were unable to access yards for the purposes of exercise, or other time out of cells, due to a need to keep them completely isolated from other inmates.

We made further inquiries and on 9 April 2025 and received the following response:

> F1-Pod was designed and built as a normal discipline accommodation unit that is designated to house fresh custody remand inmates. The facilities are not designed, nor equipped as a protection or multi-purpose unit, which has resulted with inmates housed in that area to be locked-in-cell 24hrs a day.
>
> This routine has only been in place since the Deputy Commissioner of Custodial Corrections revoked the ability to use s78A of the Crimes (Administration of Sentences) Act. …[I]nmates on 78A were in fact able to get hours-out-of-cells, as 78A inmates were able to be grouped into cohorts, risk assessments completed and inmate application forms signed agreeing to be housed and exercised with others. This is not able to be done for PRNA inmates given there is not ability to mix PRNA inmates.
>
> for the month of March 2025 inmates housed in F1-Pod were locked-in-cell for 31 days of the month.[8]

2.3 Escalation to CSNSW executive, and action taken in response

The next day we raised our concerns with the Commissioner's Office at CSNSW.

On 14 April 2025, Ombudsman staff met with the then, Deputy Commissioner, Security and Custody. She told us that neither she nor the Assistant Commissioner for the region, had been aware of the situation at South Coast CC until our inquiries.

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[7] The precise meaning of 'PRNA' is not consistent – COPP 3.1 defines it as meaning 'protective non association area' while other CSNSW documents refer to the term as meaning 'protection restricted non association'. The Inspector of Custodial Services in a recent report refers to it simply as meaning the form of 'protective custody with nil associations'.

[8] Email from South Coast CC responding to our preliminary inquiries dated 9 April 2025.

The Deputy Commissioner told us that a recent change, effected by Memorandum 2024/52[9] which she had issued, meant that inmates were no longer able to be separated under s 78A orders. She noted that this change appeared to have led to an increase in PRNA directions being issued across all correctional centres. She told us that a project management team was reviewing this issue.

On 17 April 2025, the Deputy Commissioner advised us that:

- there had been an increase in PRNA inmates across CSNSW since her Memorandum (2024/52) had been issued
- a desktop review by the Security and Custody Project Management office showed that data/records relating to PRNA inmates was limited
- she had requested that work occur at the centres most affected by the changes[10] to consider which inmates might be suitable to be placed in a SMAP, and new local management plans
- in relation to South Coast CC, a review of housing had occurred and some PRNA inmates had been transferred to another centre or had their directions revoked
- around 10 PRNA inmates remained at South Coast CC, who were able to be housed appropriately. No PRNA inmates remained housed in F1-Pod.

On 15 April 2025 and 16 April 2025, following our inquiries with CSNSW, most inmates in F1-Pod were offered or given some time out of cell with yard access to exercise.

Between 17 and 22 April 2025, all PRNA inmates then remaining in F1-Pod were transferred to other correctional centres or other parts of South Coast CC.

2.4 Our investigation

On 22 April 2025, we commenced a formal investigation under the *Ombudsman Act 1974* (**Ombudsman Act**). The investigation, focused particularly on the situation at F1-Pod at South Coast CC, concerned:

> *The management and treatment, between 19 December 2024 and 18 April 2025 of individuals held in segregated custody and/or in protective custody and/or otherwise separated from other inmates (with reference to sections 10, 11 and 78A of the Crimes (Administration of Sentences) Act 1999) (**CAS Act**), and related conduct.*

On 8 May 2025, we issued a Notice to Produce under s 18 of the Ombudsman Act requiring CSNSW to produce certain information and documents. CSNSW did not produce the documents and information until 18 August 2025 and the response was incomplete. On 3 October 2025, we required CSNSW to produce the documents that had not yet been provided to us. On 7 and 28 November 2025, we received further documents and information. (In relation to CSNSW's compliance with the requirements of s 18 of the Ombudsman Act, see **section 6.5** below.)

2.5 Submissions

CSNSW and the Governor of South Coast CC were given the opportunity to make submissions in relation to the report on 30 April 2026. On 2 June 2026, CSNSW responded, incorporating submissions from the Governor. Those submissions were taken into account in finalising this report and are referred to in this report where relevant. Of note, the submissions include advice that:

[9] Deputy Commissioner's Memorandum, Security and Custody: no 2024/52 'Changes to separation of inmates for safety or protection'.

[10] MRRC, Mid North Coast CC, Lithgow CC, South Coast CC and Shortland CC.

- In response to our provisional recommendation that CSNSW re-introduce the Protection Limited Association (PRLA) placement option, CSNSW will amend the Custodial Operations Policy and Procedure (COPP 3.2 Protective Custody) that prohibits limited association[11] and will concurrently conduct a comprehensive review of that COPP.
- On 26 March 2026, a Review of Inmate Classification was announced that will support a 'coordinated and system-wide approach to placement, inmate cohorts, threat assessment and risk management.' This follows a review of PRNA placements, starting in September 2025, to try and reduce the size of this cohort by identifying alternative, suitable management and placement options, supported by strengthened governance and operational practices.'

The former Deputy Commissioner, Security and Custody was given the opportunity to make submissions in relation to this report but did not do so.

The former Inspector of Custodial Services and acting Inspector of Custodial Services were also given an opportunity to comment on the matters discussed in **section 7.2** of this report. Comments were received from them on 4 May and 9 June 2026 respectively. Those comments were also carefully considered in finalising this report.

2.6 Consultation with the Minister

Before finalising a report under s 26 of the Ombudsman Act, in accordance with s 25 (2), the Ombudsman must inform the responsible Minister they intend to make a final report concerning the investigation. On 10 June 2026, a copy of the draft report was provided to the Minister for Corrections, the Hon Anoulack Chanthivong. On 12 June 2025, Minister Chanthivong consulted with the Ombudsman. In that consultation, Minister Chanthivong clarified that his office did not have any role in delaying the provision of information to this office by CSNSW.[12]

In accordance with s 26 (3) of the Act, a copy of this final report is provided to:

- The responsible Minister
- The Commissioner for Corrective Services NSW

A copy is also being provided to the Acting and former Inspector of Custodial Services.

[11] This proposed re-introduction of PRLA had not occurred as at 12 June 2026.

[12] See section 6.5 below.

3. What happened

3.1 Inmates in F1-Pod were locked in their cells for 24 hours a day, without access to exercise

Inmates held in South Coast CC F1-Pod were confined alone in their cells without access to a yard or other outdoor exercise area.

They were kept in their cells for 24 hours a day, except as necessary to access or attend health and legal appointments, court appearances via audio-visual link (AVL), and 'box' visits (see **section 6.1 below**). Records indicate that inmates were seen daily in their cells by Justice Health and F1-Pod staff and had some access (in their cells) to services and programs staff, education staff, and other support staff.

This situation occurred for at least the entire month of March 2025 (31 days)[13] and into the middle of April 2025 (a further 14 days). It stopped only after we became aware of the situation and intervened. During this period, 33 inmates were impacted. Due to limited records provided to us it is unclear precisely how many days they were held under these conditions.

However, it is highly probable that the situation began before this time, including in January and February 2025, when there was a sudden increase in the number of PRNA inmates at South Coast CC, and F1-Pod began to be used as an 'overflow' area for these inmates.

F1-Pod is a designated reception area where, upon arrival to South Coast CC, inmates are temporarily housed pending a decision on their cell placement. Beds available in the reception area are considered 'Temporarily Assignable beds'[14] and are generally not counted in the operational state of the centre.[15]

F1-Pod is not designed to house PRNA inmates. Instead, G-Pod is the designated multi-purpose unit (**MPU**) at South Coast CC that ordinarily houses inmates on segregated and/or protective custody directions. G-Pod has 28 beds, 8 of which are designated for PRNA inmates. The cells in G-Pod are specifically designed for inmates that require isolation from other inmates. This includes each cell having a small rear yard that can be accessed to facilitate exercise time in an isolated manner. The cells in F1-Pod do not have rear yards attached to the cells. Rather, in ordinary circumstances when F1-Pod is used to temporarily house reception inmates, exercise is provided to those inmates in a communal setting, generally accessible to all F1-Pod inmates in the area at the same time.

As noted above, South Coast CC did not keep consistent records of time out of cells for inmates in F1-Pod, and so it has not been possible to determine precisely which inmates were affected, when and for how long.[16] As noted above, 1 of the affected inmates told us (in April) that they had been in F1-Pod without access to daily exercise for 3 months.

[13] When we made inquiries with the Governor of South Coast CC on 7 April 2025, he confirmed that inmates within F1-Pod had not received any access to the yard for exercise during the entire month of March 2025.

[14] A short stay bed that an offender can be placed into because of a breach in security, behavioural issue or for medical or other short-term treatment.

[15] COPP 5.1 (Accommodation records).

[16] See section 6.3 below in relation to our concerns about record keeping and reporting.

3.2 Similar issues were occurring at other centres at the same time

During our investigation into what was happening at South Coast CC, we discovered that large increases in the number of PRNA inmates were also impacting cell placement and time out of cells at other centres.

This was generally because, like South Coast CC, centres have limited areas designated for PRNA inmates. These designated areas were quickly exhausted by the rise in number of PRNA inmates in January 2025, with the result that some PRNA inmates were placed in 'overflow' areas that were not designed or appropriate for PRNA inmates. F1-Pod at South Coast CC was an example of this.

CSNSW advised us that other centres affected in similar ways were Clarence CC, Mid North Coast CC, MRRC, Parklea CC and Shortland CC.

We asked CSNSW for details (including relevant records) showing whether and how those centres facilitated time out of cells for these 'overflow' PRNA inmates in the period from 19 December 2024 to 18 April 2025.

Information from CSNSW about access to outdoor exercise by 'overflow' PRNA inmates in the period from 19 December 2024 and 18 April 2025

- Clarence CC

  CSNSW told us that exercise time for PRNA inmates was facilitated by having units cleared and only a (single) PRNA inmate out in the yard or unit common area. It said that this access was then rotated through the day to allow all PRNA inmates time out of cell.

  However, we were only provided with records that showed access to exercise for 1 inmate, who was not a PRNA inmate but was being held on a segregated custody direction.

  CSNSW provided no records showing access to exercise for any PRNA inmates, so we cannot verify how often (if at all) PRNA inmates were in fact able to access the yard and for how long.

- Mid North Coast CC

  CSNSW told us that PRNA inmates were given time out of cell by utilising common areas while all normal discipline inmates were secured.

  Again, however, we were not provided with any records showing access to exercise for any PRNA inmates, so again we cannot verify how often (if at all) PRNA inmates were able to access the yard and for how long.

- Parklea CC

  CSNSW told us that 'overflow' PRNA inmates at Parklea were given out-of-cell hours by using common areas or the yard.

  We were provided with case notes for 4 PRNA inmates. Of those:

  (a) The case notes did not record access to any exercise for 2 of the inmates.

  (b) The case notes for 1 inmate show that he was provided with an hour out of cell on 3 March 2025, pending his placement in an area of Parklea that was designated to house PRNA inmates.

  (c) The case notes for another inmate showed he was provided an hour of exercise on one day – 30 March 2025. On 1 April 2025 he was transferred to the area of Parklea (3A) that was designated to house PRNA inmates and he had access to a yard.

- MRRC

  CSNSW told us that 'overflow' PRNA inmates at MRRC were provided with yard time every 3 days.

  Based on the records provided in relation the MRRC, it appears that PRNA inmates in 'overflow areas' generally received only 30 minutes out of cell, once every 2 to 6 days.

  CSNSW noted that MRRC had a particularly high volume of PRNA inmates and was also experiencing significant staff shortages.

- Shortland CC

  CSNSW told us that inmates being held in J and H block were given no access to exercise.

  However, CSNSW provided no records regarding how many PRNA inmates were housed in H and J block during the relevant time. CSNSW also advised us that no records were kept of time out of cell at Shortland.

  Records from the Offender Information Management Systems (OIMS) show that of 6 inmates transferred from 's 78 orders' to PRNA directions in January 2025 at Shortland, 3 inmates were then held in H block - one for 9 days, one for 1 month, and one for 2 months. Given CSNSW's advice that no exercise at all was available to inmates in H block, this means that at least 2 PRNA inmates at Shortland had no time out of cell for exercise at all for a month or more.

Poor record-keeping (and/or CSNSW's failure to provide us with all relevant records – see **section 6.5** below) means that we cannot verify the extent to which (if at all) PRNA inmates at Clarence CC and Mid North Coast CC received their daily entitlement to exercise.

The records provided in relation to Parklea CC, while also inadequate and incomplete, indicate that overflow PRNA inmates were not receiving their daily entitlement to exercise.

The records provided in relation to the MRRC also show that overflow PRNA inmates were not receiving anything close to their daily entitlement to exercise.

The Inspector of Custodial Services' report '*Review of segregation and other measures which confine and separate prisoners',*[17] notes that at the time of her visit to the MRRC on 1 May 2025, there were 24 inmates in segregation and 139 in protective custody. The MPUs that are designed to provide housing for such inmates (Darcy 3 and 4) can only accommodate 31 inmates. The Inspector noted that she too had been informed by staff at the MRRC that inmates held outside of Darcy 3 and 4 were only receiving time out of cell for 30 minutes every third day, and that this was the only time available to them to shower or make phone calls, as well as to exercise.

CSNSW has advised us that inmates at Shortland CC in H and J block were given no access to exercise for the period from 19 December 2024 to 18 April 2025. As we have not been provided with any records, we have not been able to verify how many inmates were impacted, for how long in each case, or for how long the situation continued. Based upon the advice received from CSNSW, however, the situation at Shortland is at least as concerning as that at South Coast CC.

[17] Available at: https://inspectorcustodial.nsw.gov.au/reports-and-publications/inspection-reports/adult-reports/review-of-segregation--separation-and-protective-custody.html.

4. How did this situation happen?

The proximate cause of the situation that arose at South Coast CC and the similar circumstances happening at other centres in early 2025 was the sudden increase in the number of PRNA inmates that occurred from January 2025. These increases quickly exceeded the capacity of those centres to house PRNA inmates in facilities designated for them.

This increase in PRNA inmates occurred after Memorandum (2024/52) was issued by CSNSW to all centres in December 2024, instructing that any inmate previously held on a 'section 78A order' was to be transitioned to a PRNA direction or another relevant arrangement (see **section 4.4** below).

In this section we explain these processes in more detail, as well as outlining other factors that contributed to the circumstances described in **section 3.**

4.1 Legislation and policy context

To understand how the situation described in this report came about, it is necessary to provide some context about the legislation, as well as the policies and practices, that govern the circumstances in which inmates may be separated from other inmates. This is set out in detail in the **Appendix A** to this report.

A summary of the relevant provisions of the *Crimes Administration of Sentences Act 1999* (**CAS Act**) are as follows:

Power	**Purpose**	**Effect**	**Statutory limitations/safeguards**
Segregated Custody (s 10 CAS Act)	Securing the personal safety of any person [other than the inmate to be segregated], or the security, or good order and discipline within, a correctional centre	Inmate to be detained either: (a) in isolation from all other inmates, or (b) in association only with such other inmates as the Commissioner (or governor) may determine	- no reduction in diet - no deprivation of rights or privileges (other than as 'necessarily incidental' to being held in segregated/protective custody) - mandatory review after 14 days by Commissioner, then ongoing reviews every 3 months - right to apply for review by SORC after 14 days - daily health checks
Protective Custody (s 11 CAS Act)	Securing the personal safety of the inmate, or on the request of the inmate		
Punitive Confinement (s 53/56 CAS Act)	Punishment - penalty for the commission of a correctional centre offence	Confinement to a cell (with or without deprivation of withdrawable privileges)	Conviction and penalty subject to a right of review by the Commissioner Retention of entitlement to daily exercise in the open air (reduced from 2 hours to 1 hour) Limited to 7 days maximum

General care, control and management (ss 232/233 CAS Act, together with cl 33-35 CAS Regulation)	Separation of different classes and classifications of inmates Separation on other grounds, including: - gender - infectious status	Separated from other inmates not of the same class, classification, gender etc	

4.2 The use of 'section 78A' orders

Prior to December 2024 and for many years, CSNSW relied on s 78A of the CAS Act as a further and discrete head of power to separate some groups of inmates from the general inmate population of a centre.

Section 78A orders were imposed to separate inmates for a range of reasons including:

(a) significant media attention

(b) for the inmate's protection from threats to safety in the centre, whether actual or perceived, either by the inmate or staff – although the policy states that this should only be 'pending reclassification or relocation' this was not always the case

(c) a risk of self-harm

(d) for medical observation

(e) pending reclassification, for example following an offence in custody

(f) aggression towards or abuse of staff

(g) following an incident on a Special Management Area Placement (**SMAP**) requiring further separation between inmates who are already separated from the main group.

CSNSW frequently relied on s 78A to 'separate' inmates for the purposes of their safety and protection from other inmates, as an alternative to placing them in protective custody.

4.3 The July 2024 legal advice

In July 2024, the Crown Solicitor provided a written opinion to CSNSW to the effect that this approach was not correct.[18] The Crown Solicitor's opinion makes two key points:

(1) Section 78A does not confer a power to separate inmates

Section 78A does not confer any power to separate inmates but instead operates to clarify that the exercise of general powers under the CAS Act (including ss 232 and 233) may result in the separation of inmates, as long as the separation is for the 'care, control or management' of the separate inmate or inmates.

[18] Crown Solicitors Advice dated 19 July 2024, "Operation and Effect of Section 78A of the Crimes (Administration of Sentences) Act 1999".

(2) The general powers of care, control and management under the CAS Act cannot be used to separate inmates for the purposes of segregated or protective custody, or punishment

While the general powers under the CAS Act may be used to separate inmates (for example, in the circumstances identified in clauses 33-35 of the CAS Regulation), they cannot be used for punitive purposes, or for the purposes identified in section 10 (segregated custody) and section 11 (protective custody) of the CAS Act.

It is not necessary for the purposes of this investigation to set out in detail the reasons for the above conclusions. However, it is important to highlight one of the central principles underpinning the second point: where an Act confers a *specific* power to be used for a particular purpose or in particular circumstances – together with procedures, limitations or safeguards around the exercise of that power – an administrator cannot rely on some general power in the Act for that same particular purpose or in those same particular circumstances. Otherwise, the administrator would, in effect, be circumventing those procedures, limitations or safeguards.[19]

In this regard, the Crown Solicitor's advice states:

> My view, in this respect, involves the application of the *Anthony Hordern* principle of construction… Division 2 of Pt 2 [of the CAS Act, which deals with segregated and protective custody directions] is carefully calibrated in various respects to ensure that the power to make segregated or protective custody directions is used only to the extent that it achieves the purposes specified in the statute. Its procedural safeguards and review mechanisms reflect a legislative concern that ss 10 and 11 directions be subject to ongoing scrutiny for their consistency with those purposes. Its detail and specificity tend to suggest it was intended to operate [as] a "comprehensive and internally consistent code" on the subject matter of segregation for the purposes set out in ss 10(1) and 11(1).
>
> The effect of what I have said above is that, in my view, the general powers under the CAS Act cannot be used to make a separation order in the circumstances to which ss 10 and 11 apply…[20]

4.4 The December 2024 memorandum

Almost 6 months later, and presumably in response to the Crown Solicitor's advice, on 19 December 2024, the Deputy Commissioner issued Memorandum 2024/52 declaring that inmates were no longer to be separated under s 78A orders. It provided that inmates on such orders had to have their placements reviewed by 31 January 2025, and either be returned to the mainstream population or managed on an appropriate separation order (that is, protective custody, segregation, or SMAP).

Concurrently, COPP 3.1 (Separation of inmates) was withdrawn in its entirety (including from the CSNSW website and intranet), which now only states that 'This policy and procedures manual is currently under review'.[21]

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[19] To take an obvious example, a governor could not say that they are relying on their general power of care, control and management of an inmate to effect a punishment of confinement for more than 7 days, as that would be contrary to the limit on the governor's specific power to punitively confine an inmate for no more than 7 days.

[20] At [54]-[55].

[21] Available at: https://correctiveservices.dcj.nsw.gov.au/documents/copp/03-management-of-specific-inmates/03.01-separation-of-inmates.pdf.

4.5 The transitioning of inmates to protective custody

It was foreseeable that the decision to cease the use of s 78A orders would result in a significant increase in the number of PRNA inmates, given that s 78A orders were typically being used for inmates with safety or security concerns.

Data obtained from CSNSW shows that at the time of the Memorandum, across the adult corrections system, 176 inmates were on s 78A orders. Of those 176 inmates:

- 92 (52%) were then placed on protective custody directions (PRNA)
- 22 were placed on segregated custody directions
- 24 were placed onto SMAP
- 38 were not placed on any orders.

At South Coast CC there were 13 inmates on s 78A placement at the time: 7 were placed on a PRNA direction, 2 were placed on a segregation custody direction, 3 were not placed on any orders, and 1 was moved to SMAP. Out of the 7 placed on a PRNA direction, 3 inmates were placed and/or remained in F1-Pod.

The immediate effect for inmates of the transition from a s 78A order to a PRNA direction was that, while under the s 78A order they had generally been able to associate with other inmates (who were likewise on s 78A orders and subject to a risk assessment), the CSNSW policy on PRNA directions required that the inmate now be held in complete isolation and not associate with any other inmate.

4.6 Limited facilities for PRNA inmates

The sudden increase in PRNA inmates across a number of centres as a result of the Deputy Commissioner's Memorandum 2024/52 quickly exhausted the available capacity of centres to house PRNA inmates in cells designated for that purpose.

As noted above, correctional centres typically include a unit or wing that contains a number of cells designated for holding inmates who are subject to segregated or protective custody called a multi-purpose unit (MPU). These typically include either a small rear yard attached to each cell, or a larger single yard for the unit/wing that relevant inmates can be scheduled to access individually.

In relation to South Coast CC, some PRNA inmates were placed or moved to F1-Pod as the centre reached capacity within the cells designated to house PRNA inmates in G-Pod.

4.7 The lack of alternative to 'non-association' for protective custody inmates

With the removal of s 78A orders as a placement option, governors in January 2025 had limited options under CSNSW policy when transitioning inmates to alternative arrangements.

Since 2020, CSNSW policy has permitted only one form of protective custody – PRNA – which requires complete non-association with any other inmate. That is the case even though the CAS Act itself clearly contemplates protective custody arrangements in which inmates may associate with other approved inmates.

Up until 2020, COPP 3.2 had also allowed for these two different types of protective custody placements:

(a) Protection Non Association Areas (**PRNA**) – areas where an inmate is detained in a single-occupancy cell and otherwise in isolation from all other inmates.

(b) Protection Limited Association Areas (**PRLA**)[22] – areas within a correctional centre used to accommodate cohorts of protective custody inmates who could associate with each other. For these areas, the protective custody direction provided for the inmate to be detained not in isolation but 'in association with only such other inmates as the Commissioner or governor determines'.[23]

On 30 October 2020, however, the then Assistant Commissioner, Custodial Corrections, issued a memorandum to all centres advising that COPP 3.2 (Protective Custody) had been reviewed and that PRLA had been 'deleted' as a placement option.[24] The memorandum directed Governors and Managers of Security to re-assess all PRLA inmates and transition them to a SMAP placement by 8 November 2020.

Given PRLAs had been discontinued 5 years earlier, in 2025 the option to transition inmates to the kind of protective custody placement that would have been most similar to a s 78A separation (that is, one that allows similar inmates to associate together) was no longer available.

4.8 The failure to escalate or respond to the impacts of the change

When we met with the Deputy Commissioner, Security and Custody on 14 April 2025 she advised us that she had no awareness of the issues at South Coast CC until we made our inquiries, and that the Assistant Commissioner for the region had been similarly unaware.

This was contradicted when we made inquiries with South Coast CC in April 2025, which advised that:

> Centre Management have escalated concerns from staff and inmates alike through the chain-of-command through to the Regional Directions [sic] and up to the Deputy Commissioner of Custodial Corrections.[25]

It is not necessary for the Ombudsman to form a view about these competing accounts, which mean that:

(a) issues were escalated by South Coast CC and no action was taken, or

(b) issues were not escalated.

Either is unacceptable.

4.9 Staffing shortages exacerbated the issues

When we made inquiries with the Deputy Commissioner, Security and Custody, she cited staffing shortages as causal factor across CSNSW affecting whether inmates had access to exercise. The rise in the number of inmates subject to PRNA directions exacerbated this issue. Inmates that are accommodated in MPUs still need extra staff to facilitate access to their yards. Inmates in accommodation like F1-Pod require even more staff to ensure that time out of cells can be facilitated.

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[22] The Dictionary in section 10 of COPP 3.2 retains 'PRNA' and PRLA' as defined acronyms, although they are not otherwise defined or used in the Policy.

[23] COPP 3.2 (Protective custody) version 1.1, page 17.

[24] Assistant Commissioner's Memorandum, Custodial Corrections no: 2020/25, 'Changes to COPP 3.2 Protective custody and associated policies' (30 October 2020).

[25] Response to preliminary inquiries from South Coast dated 7 April 2025.

During the period from January to April 2025, staffing shortages at South Coast CC led to multiple centre lockdowns, which also affected whether or not PRNA inmates (including those in F1-Pod and G-Pod) could exercise.

As noted above, inmates housed in G-Pod are housed in a MPU, where inmates' cells have individual exercise yards. However, they are also not able to exercise if the centre is locked down.

CSNSW records reflect that there were at least 23 days between 19 December 2024 and 18 April 2025 where lockdowns directly affected F1-Pod. In many cases F1-Pod was specifically affected.

Between March and 17 April 2025 there were 10 full day lock-ins affecting inmates in F1-Pod and one half day lock-in. For the same period there were 11 full day lock-ins affecting inmates in G-Pod and 2 half day lock-ins.

4.10 Delays in addressing issues in the transition from s 78A

The Deputy Commissioner's Memorandum 2024/52 was issued in December 2024, 6 months after the receipt of the CSO advice. It is not apparent that any action was taken in that 6 months to properly identify and manage the risks and foreseeable consequences that arose from that action.

It is now more than 18 months since the Memorandum was issued, and since the withdrawn COPP 3.1 'Separation of inmates' was withdrawn and 'under review'.

During the investigation CSNSW told us that it has now established a 'project' to ensure that inmates subject to segregated and protective custody directions are managed in accordance with legislation. We were provided with a project plan for the 'Housing and Association' brief dated 1 May 2025 and approved on 23 July 2025. CSNSW further advised that the project:

> will consider the underlying factors leading to inmates being subject to protective custody or segregated custody directions with the goal of maximising associations for all inmates within the statutory framework. The scoping work has included a root cause analysis to identify the drivers and causes underlying the need to separate inmates.
>
> This long term project will consider:
> - how inmates with risk factors and association concerns are managed across the system
> - the best way to facilitate maximum associations for as many inmates as possible
> - impact of "labelling" inmates – for example, labels may impact placement, access to programs, eligibility for parole, and
> - ensure that any solutions do not have unintended consequences and create more issues than they resolve

Considering the serious nature of the issues that have occurred in the transition from the use of s78A orders, the fact that the project brief was not even approved until July 2025 is concerning.

CSNSW has now advised us that this project has been superseded by another project, the Review of Inmate Classification announced in March 2026.

5. Key issues and findings

5.1 Treatment of inmates was oppressive

The Ombudsman Act provides at s 26(1)(b) that in an investigation the Ombudsman may make a finding that conduct is oppressive. In expressing an opinion that conduct was 'oppressive', that term's ordinary meaning is applied. A standard definition of 'oppressive' from the Oxford English Dictionary is:

> exercise of authority or power in a burdensome, harsh, or wrongful manner; unjust or cruel treatment of subjects, inferiors, etc; the imposition of unreasonable or unjust burdens

Exercise is universally recognised as a fundamental component of physical and mental health. Exercise plays a critical role in mental health, reducing symptoms of depression and anxiety, improving mood, and enhancing cognitive function. For inmates, access to exercise is particularly vital due to the inherently restrictive nature of their environment. Lack of physical activity can exacerbate the negative effects of confinement, including increased stress, feelings of isolation, and a heightened risk of mental health disorders. Prolonged deprivation of exercise can lead to significant physical deterioration and psychological harm and compound the challenges of reintegration into society upon release.

The denial of access to exercise for inmates over a prolonged period also raises serious concerns regarding compliance with human rights standards. International human rights instruments, including the Nelson Mandela Rules emphasise the importance of providing inmates with opportunities for physical exercise. Rule 23 of the Nelson Mandela Rules explicitly states that prisoners shall have at least 1 hour of suitable exercise in the open air daily, weather permitting. The Nelson Mandela Rules are not legally binding in NSW but are internationally recognised as setting minimum standards for prison administration.

In our view, the denial of access to exercise for inmates over a prolonged period constitutes oppressive treatment.

5.2 The prolonged lack of access to exercise was unlawful

Inmates have a right to 2 hours of daily exercise in the open air

Clause 53(1) of the CAS Regulation requires that all inmates (other than those currently confined to cell as a punishment) are to be allowed at least 2 hours each day for exercise in the open air.

Inmates confined to cell as a punishment are required to be allowed at least 1 hour of exercise in the open air (clause 53(2)). All other inmates – including those subject to a segregated or PRNA direction – have a legal entitlement to access 2 hours of daily exercise.

The 'practical limitations' exception to this right did not apply here

There is a qualification to the right in clause 53(3) of the CAS Regulation, which provides that:

> An inmate's entitlement to exercise under this clause is subject to the practical limitations that may from time to time arise in connection with the administration of the correctional centre concerned.

In reference to clause 53(3), COPP 6.11 (Daily exercise and time out of cell) notes that there may be times where it may not be possible for daily exercise to be facilitated, for example where a Variation to Operational Routine (**VOR**) has been approved. It notes that any exceptions to the required time out of

cells for inmates, such as a VOR, must be recorded on the Daily Security System 2 on the CSNSW intranet.

Clause 53(3) cannot plausibly be relied upon as a justifiable basis for the situation that occurred in F1-Pod in early 2025. We note that:

- There was no VOR recorded to provide for a change to the daily exercise routine for inmates in F1-Pod. CSNSW advised us that 'between 19 December 2024 and 18 April 2025, a variation to the routine for F1-Pod was implemented as an operational adjustment: however this was not recorded on the Variation of Routine documentation' and these changes were a 'standing operational change rather than a day-to-day variation, [and as such] it was not recorded in the VOR as a daily entry'. The reference in clause 53(3) to practical limitations that may 'from time to time' arise indicates that this exception to the right to daily exercise is intended to apply to short term and temporary circumstances (for example, inclement weather or a critical incident occurring on any given day) rather than the kind of prolonged and indefinite state of affairs that occurred here.
- Soon after our intervention, daily exercise was quickly able to be facilitated for inmates in F1-Pod. The records we obtained show inmates in F1-Pod were offered yard access from 15 and 16 April 2025, and in the days following they were re-located to placements that would allow for time out of cell to exercise. Analysis of the records provided by CSNSW shows that during March the number of PRNA inmates in F1-Pod was never greater than 11. On 15 April, the number of PRNA inmates in F1-Pod was 15.

  If there were practical limitations that could be resolved to allow access to the yard on 15 April (after our intervention), it hard to see how that could not have occurred on occasions prior to that date.
- The issues that gave rise to the placement of PRNA inmates in F1-Pod at South Coast CC also affected other centres, in some cases to a much greater degree (see **section 3.2 above**). In those cases, while inmates' statutory rights to daily exercise were also seriously infringed, most of those other centres facilitated some access to outdoor exercise. This included:
    - Allowing protective custody inmates access to the yard alone, and scheduling access throughout the day to allow all such inmates some access to the yard.[26]
    - Allowing protective custody inmates access to the yard at least once every 3 days.[27]
    - Giving protective custody inmates time out of cell hours by using common areas or yard (when not otherwise in use).[28]
- Most importantly, the underlying reason given for this situation arising was that inmates who were previously able to associate with (at least certain) other inmates when under s 78 orders had become unable to do so when subject to a PRNA direction, which instead required them to be completely and at all times isolated from any other inmates. However, as discussed at **section 5.4** below, this was not a practically necessary outcome, but instead was a situation entirely of CSNSW's own making. Furthermore, it was an outcome that could have easily been remedied by a change in policy**.**

[26] Clarence CC and Mid North Coast CC.

[27] MRRC.

[28] Parklea CC.

Based on the limited information provided to us by CSNSW, it appears that the situation at other centres, including Shortland CC and MRRC, was also unlawfully in breach of clause 53 of the CAS Regulation, for the same reasons.

5.3 CSNSW's response to the CSO advice resulted in perverse outcomes

In light of the CSO advice, it was appropriate and necessary for CSNSW to take action toward discontinuing s 78A orders so as to bring CSNSW's practices into alignment with the law.

It is ironic, however, that the way that CSNSW went about doing this has placed inmates in a much worse situation, and one which has involved CSNSW substituting unlawful conduct of a procedural nature (separating inmates using a flawed 'section 78A order' process) with other unlawful conduct that raises more substantively significant concerns (oppressive and unlawful treatment of inmates).

That this has occurred seems especially perverse when the reasons explained by the CSO as to why s 78A orders cannot be used, relates to the need to ensure that specific safeguards governing protective custody should not be circumvented. Those safeguards are intended for the benefit and protection of inmates. It seems a perverse outcome that a concern to ensure these procedural safeguards for inmates are observed has resulted instead in inmates' substantive entitlements being seriously violated in other ways.

5.4 The outcomes were foreseeable, and avoidable

CSNSW could and should have easily avoided these consequences, which were entirely foreseeable.

As noted above, the legislation itself – CAS Act s 12 – provides for protective custody arrangements under which an inmate is detained either:

(a) in isolation from all other inmates, or

(b) in association only with such other inmates as the Commissioner (or governor) may determine.

As noted in **section 4.7** above, in 2020 a policy decision was made to remove the placement option of PRLA. Contrary to what was provided for in section 12 of the CAS Act, the policy impermissibly narrowed the application of that section by limiting its operation to paragraph (a) and removing discretion to allow inmates subject to protective custody to associate with (some) other inmates.

Even prior to current events, however, the Inspector of Custodial Services recommended that CSNSW consider reinstating PRLA placements.[29] The Inspector has re-iterated this recommendation in her March 2026 report, 'Review of segregation and other measures which confine and separate prisoners.'

Had the PRLA placement option been in place, the transition away from s 78A orders could have been effected without the consequences we have seen in this investigation.

Given that it took 6 months between the CSO advice and the decision to cease the s 78A placements, it is unreasonable that CSNSW did not take the opportunity to properly plan for the change, including by reintroducing a PRLA form of protective custody that could have, in substance, replicated the practical aspects of the existing s 78A placements. Doing so would have required no change to legislation, or even regulation, but only a change to the Commissioner's policy.

[29] Inspection of Shortland CC and Cessnock CC Report, available at: https://inspectorcustodial.nsw.gov.au/reports-and-publications/inspection-reports/adult-reports/shortland-and-cessnock-correctional-centres.html.

Instead CSNSW told us that the following steps were taken:

- following receipt of the legal advice, a working group was established to identify the reasons for the increase of s 78A orders and develop strategies to reduce them. It is unclear what risks were identified or taken into consideration by the project team.
- a meeting was held on 19 December 2024 between the Deputy Commissioner, Security and Custody and the Governors and Managers of Security of all NSW correctional centres. The meeting was to provide information outlined in the memorandum and to offer the opportunity for questions about implementing the changes. No written minutes or other record of the meeting was apparently made.[30]
- apart from withdrawing COPP 3.1 for 'review', no other policies were changed or developed to account for the removal of s 78A orders.

[30] MRRC was the only centre to seek advice following the meeting, and asked questions about which orders would stand under various circumstances. CSNSW advised that they provided verbal strategies to MRRC but did not inform us of the details of the advice provided.

6. Other issues and findings arising during the investigation

6.1 Other unlawful conduct in respect of South Coast CC protective custody inmates

This investigation arose initially from complaints emanating from South Coast CC, and our primary focus has been on the circumstances at that centre. As noted above, however, it is apparent that the issues identified have wider implications across multiple centres.

In the course of our examination of South Coast CC, however, we identified a number of related issues, which we now outline below. In order to facilitate a timely completion of this investigation and reporting of its serious findings, we have not sought to expand the investigation to consider whether similar or other issues also arose in respect of other centres.

The direction to use F1-Pod to house protective custody inmates was not recorded as required by law

Section 233A of the CAS Act provides that the governor of a correctional centre may issue directions concerning the administration of the centre, provided such directions do not conflict with any Commissioner's instructions. It also requires the governor to ensure a record is kept of the direction. Clause 315 of the CAS Regulation also requires the governor of a correctional centre to maintain records, including, 'any directions issued by the Governor concerning the administration of the centre.'[31]

The governor of South Coast CC confirmed that a new routine was implemented in F1-Pod following the Deputy Commissioner's Memorandum 2024/52 ceasing the use of s 78A orders. CSNSW confirmed that this constituted an 'operational change'[32] (to permit the use of F1-Pod as an overflow area for protective custody inmates due to insufficient housing in G-Pod). It appears the decision to effect this change was made by the governor. However, CSNSW has confirmed that it was not documented in writing and was only ever verbally communicated to custodial managers at South Coast CC. CSNSW could provide no written record of the decision or direction to effect this change.

The failure to make and keep such a record was contrary to the requirements of the CAS Regulation and therefore contrary to law.

The direction to use F1-Pod for housing PRNA inmates was not made in accordance with the policy

The decision to use F1-Pod for housing PRNA inmates was, in any event, not one that the governor alone should have made under CSNSW policy.

COPP 21.13 (Correctional Centre Variations) provides that, for 'operational changes' at a correctional centre, a Correctional Centre Variation Package (**CCVP**) must be prepared, endorsed by the relevant Director, and approved by the relevant Assistant Commissioner (acting as delegate for the Commissioner).

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[31] Section 315(2) *CAS Regulation 2014*.

[32] An operational change is any change that impacts the current operation and/or routine of the centre. General changes in operation are split into minor and major changes. As noted above, the Governor stated that this change was not treated as a VOR because it was considered an operational change.

To comply with the COPP, a CCVP package should have been completed and approved by the relevant Assistant Commissioner. When we made inquiries with CSNSW we were advised that both the Deputy Commissioner and the Assistant Commissioner were not made aware of the change.[33]

PRNA inmates at South Coast CC have also been unlawfully deprived of contact visits

As well as the complaints we received in late March and early April 2025 about inmates being locked in their cells without access to exercise, we received 3 complaints in January 2025 concerning new procedures implemented in late December 2024 at South Coast CC that limited PRNA inmates to 'box visits' or video visits.[34] Box visits are non-contact visits where the inmate and their family or other visitor can only meet in a room with a glass partition between them.

On 9 April 2025, the Governor of South Coast CC confirmed by email, in response to our inquiries, that PRNA inmates at South Coast CC had been limited to box or video visits. He told us this was to ensure that the inmates did not come in contact with any other inmates in the area of the centre where contact visits took place.

During the investigation we asked CSNSW to confirm whether PRNA inmates at South Coast CC were given access to contact visits. CSNSW responded that:

> All inmates managed under a PRNA (Placement of Restricted Non-Association) order at South Coast CC Correctional Centre (SCCC) were provided with the opportunity to book an in-person personal visit between 19 December 2024 and 18 April 2025.[35]

This response does not answer the question asked. We asked about 'contact' visits and the response affirms that 'in-person personal' visits were offered but these may include box visits, a form of non-contact visit. The advice that we received from the Governor of South Coast CC, and records provided to us by CSNSW, make clear that there were, in fact, no contact visits. Our review of the files provided for the PRNA inmates housed in F1-Pod in the period between 19 December 2024 and 18 April 2025, also showed that no personal contact visits occurred while the inmates were subject to a PRNA direction.

We conclude that, consistent with the complaints we received and the Governor's advice, PRNA inmates in F1-Pod at South Coast CC were prevented from accessing any personal contact visits between January and mid-April 2025.

[33] Meeting with Deputy Commissioner on 14 April 2025.

[34] Video visits are visits using a tablet.

[35] CSNSW response to s18 notice, page 9.

Clause 100 of the CAS Regulation relevantly provides that:

> (1) Visits to inmates may be either contact visits, in which the inmate and the visitor are permitted physical contact with each other, or non-contact visits, in which the visit takes place in an environment in which physical contact is prevented.
>
> (2) The governor of a correctional centre may direct that a visit is to be, or is to continue as, a non-contact visit if of the opinion that the visitor is likely—
>
> (a) to introduce into the centre prohibited goods or any other property that an inmate is not authorised by this Regulation to possess, or
>
> (b) to act in a threatening, offensive, indecent, obscene, abusive or improper way.
>
> (3) A direction under this clause has effect for the period specified by the direction or, if a period is not specified, from the time it is given until it is revoked by a further direction.

Contact visits are also prescribed by the CAS Regulation as a 'withdrawable privilege' for the purposes of the inmate discipline regime.[36] This means that they can be withdrawn for up to 56 days as a penalty for a correctional centre offence.[37]

However, section 12 of the CAS Act provides that an inmate in protective custody:

> 'is not to be deprived of any rights or privileges other than those determined by the Commissioner (or the Governor in the exercise of the Commissioner's functions under section 10 or 11), either generally or in a particular case, and other than those the deprivation of which is necessarily incidental to the holding of the inmate in segregated or protective custody.'[38]

Restricting protective custody inmates to box and video visits constitutes the deprivation of a privilege. We do not accept the view that such a deprivation, particularly when applied as it has been at South Coast CC on an ongoing basis can be 'necessarily incidental to the holding of the inmate in segregated or protective custody'.

We also note that contact visits, while no doubt important to any inmate, will likely be particularly important for PRNA inmates.

In addition, cl 315(1)(e) of the CAS Regulation provides that, for any PRNA inmate, where there is deprivation of any rights and privileges, a record is to be made. That did not happen here for any of the inmates affected.

Lack of proper threat assessment and reviews of protective custody directions

In order for a protective custody direction to be made the Commissioner must be of the opinion that the association of the inmate with other inmates constitutes or is likely to constitute a threat.[39] COPP 3.2 (Protective Custody) provides that 'protective custody should only be considered for inmates that have a localised, evidenced and recent threat to their personal safety.'[40] Further, 'protective custody should only be considered a short term option while other suitable housing options are considered.'[41]

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[36] Clause 163(k) *CAS Regulation 2014.*

[37] Section 53 *CAS Act 1999.*

[38] Section 12 *CAS Act 1999.*

[39] Section 11(1) *CAS Act 1999.*

[40] COPP 3.2 (Protective custody), page 5.

[41] Ibid.

COPP 3.2 (Protective Custody) provides that if an inmate has requested protective custody then:

- they must complete a request in writing to the Commissioner (or their delegate)
- the inmate should be interviewed
- an assessment of the threat of harm to the inmate should be conducted by filling out an 'Assessment tool – inmate under threat'
- if satisfied that the threat of harm to the inmate cannot be managed otherwise, a protective custody direction must be completed which is attached to a report that clearly outlines details of the threat, supporting information and the inmates request for protection including their reasons.

The procedures for issuing a protective custody direction at the direction of the governor are similar, however the inmate must be advised of their right to have the direction reviewed by the Serious Offenders Review Council (**SORC**)

We analysed the assessments of the threat of harm for the 32 PRNA inmates that were placed in F1-Pod between March and April 2025. We note that a very high proportion (22 out of 32) of the PRNA directions were issued following a request from the inmate.

In 8 cases, PRNA directions were imposed without completed threat assessment tools or inmate application forms, resulting in unclear or poorly substantiated risk evaluations.

Threat assessments were variable in quality, with risk levels, sources, and nature of threats often inconsistently evaluated and documented. This undermines the reliability and consistency of the risk assessment and evaluation process. For example:

- Some risk assessments are noted as very high despite little detail being provided.
- One threat assessment references intelligence about criminal group affiliations with 'very high' risk but also states no specific threats exist, creating inconsistency between the risk categorisation and descriptive assessment.
- Risk levels and nature of threats vary widely between similar cases, with what appear to be equivalent scenarios receiving different risk ratings (e.g., threats or non-associations with other inmates assessed as very high, high, low and very low).
- Some assessments reference manipulative behaviour by the inmate or unsubstantiated claims and assign a low or very low risk level but still proceed to determine that a PRNA direction is required.

The initial PRNA direction is made for 14 days. If the direction is to be extended beyond 14 days, it must be reviewed and confirmed/approved by the Commissioner of Corrective Services or their delegate (s 16 CAS Act).

The review process for a PRNA direction set out in COPP 3.2 (Protective Custody) requires the governor of a correctional centre to complete a 'Review of Protective custody direction' form and then make a recommendation regarding whether the direction should be continued. The decision about whether the direction should be confirmed or revoked is to be made by the Director, Custodial Operations or the General Manager, State Wide Operations, as the Commissioner's delegate, within 7 days. If the inmate has requested the protective custody direction, then a new inmate application form and threat assessment tool should be attached to the review. If the direction was initiated by the governor, then a fresh threat assessment tool should be provided.

Our analysis of the files provided by CSNSW relating to the 31 inmates subject to PRNA directions in F1-Pod during April and March, shows that:

- 9 files were missing a 'Review of protective custody direction', suggesting that no review of the direction took place as required by s 16 of the CAS Act.
- One file had a review dated 13 January 2025; however, the initial protective custody direction had expired on 30 October 2024.
- 4 inmate files had a 'Review of protective custody direction' form on them, but the form was not reviewed and signed by the Director, Custodial Operations or the General Manager State Wide Operations, as required by s16(2) of the CAS Act, meaning that the extension of the direction was not actually approved.
- None of the inmate files that had the 'Review of protective custody direction' form signed by the General Manager State Wide Operations were signed within the mandated 7 days. The average timeframe taken for the form to be signed was 12 days.
- 7 inmate files were missing a fresh threat assessment or inmate application form to justify the extension of the PRNA direction.

Where a review of a PRNA direction has not been conducted, is not conducted before the expiry of the initial direction or is not authorised appropriately, it is unlawful to continue to hold the inmate in protective custody.

6.2 Doubt regarding the legality of some SMAPs

While the Deputy Commissioner's Memorandum 2024/52 issued in December 2024 discontinued the use of section 78A orders, it did not affect the continued use of SMAPs in NSW. The policy, COPP 3.3 (Special management area placement) states that:

> 'Clause 33 (3b) [sic.] of the Crimes (Administration of Sentences) Regulation 2014 authorises the Commissioner to direct these inmates be housed separately as they would be at risk if not separated from other inmates.'

However, having regard to the Crown Solicitor's July 2024 legal advice, there must be doubt as to whether the above statement is correct. That advice makes clear that the CAS Act requires that any separation that is specifically for the purpose of securing the personal safety of an inmate can only be done pursuant to the specific power of issuing a protective custody direction under section 11. The regulation cannot authorise something that is inconsistent with the Act.[42]

We do not suggest that clause 33(3)(b) of the CAS Regulation is of no effect, or that SMAPs cannot be used at all.

However, the SMAP policy expressly provides for placement in circumstances 'when staff become aware of a threat to the inmate'. In such circumstances, there may be a question as to whether, given section 11 of the CAS Act provides a specific power for protective custody, that section is the relevant head of power that must be relied on for such separation, rather than relying on a regulation made under the general care, control and management provisions of the Act.

[42] This point is implicit in the CSO Advice, which characterises clauses 33-35 of the CAS Regulation as providing for 'circumstances in which the more general powers [e.g. under ss 232 and 232] may (or should) be exercised' and not as an additional or standalone authority.

It may be relevant in this regard to note that, when the decision was made to 'delete' PRLA as a placement option, the Assistant Commissioner's memorandum[43] expressly stated the rationale for the changes as:

> 'As SMAP placements only need to be reviewed every twelve months by the Functional Manager, the deletion of PRLA placements [which under the CAS Act require review within 14 days of being issued and then every 3 months] will mean a significant reduction in the work load of senior officers across the state, with no impact on the safe and secure management of correctional centres.'

This seems to suggest that SMAPs are, at least in some instances, being used for the very purpose that the CSO advised that the general powers of the CAS Act cannot be used – that is, to avoid procedures and safeguards that apply in relation to a relevant specific power.

We have therefore recommended that the SMAP policy be reviewed following the obtaining of further legal advice from the Crown Solicitor.

6.3 Inadequate record keeping and reporting concerning inmates' time out of cells

As noted above at **sections 3.1** and **3.2**, CSNSW was not able to provide us with access to records showing whether PRNA inmates were provided with access to exercise, and if they were, the duration of the exercise. This was not only the case at South Coast CC but also at Clarence CC, Mid North Coast CC, Parklea CC and Shortland CC.

COPP 3.2 (Protective custody) does not currently require daily case notes to be recorded for PRNA inmates covering access to exercise. Given that access to exercise for 2 hours is a mandated statutory right, and the very significant impacts of depriving inmates of exercise, our view is that correctional centres should be required to record daily case notes for all PRNA inmates noting whether access to exercise was facilitated and the duration of the exercise.

We also consider that correctional centres should be required to notify the relevant Assistant Commissioner if any inmate (i.e. segregated custody, protective custody or SMAP) has not received their required entitlement to exercise for 3 continuous days, and the reasons for this.

As noted above, at **section 6.1**, record keeping at South Coast CC was seriously deficient in other respects. The direction to use F1-Pod to house PRNA inmates was not recorded although this is required by law. The decision to deprive PRNA inmates of access to personal contact visits was not recorded in relation to each inmate, as required by the law. Further, records that are required by the law and policy to be made and retained regarding the issuing and review of PRNA directions and reviews, were not.

Substandard record keeping across CSNSW is an issue that we have highlighted in many other investigations.[44]

In submissions, CSNSW acknowledged that improvements to record keeping are required. It told us that, on 26 March 2026, in a broadcast to CSNSW staff, the Commissioner reinforced the importance of maintaining accurate and comprehensive case notes.

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[43] Assistant Commissioner's memorandum, Custodial corrections no: 2020/25, 'Changes to COPP 3.2 Protective custody and associated policies' (30 October 2020).

[44] Including our investigation into inmate discipline in correctional centres.

6.4 Policy and standards relating to inmates' entitlement to daily exercise not aligned to the regulations

COPP 6.11 (Daily exercise and time out of cell) provides that (consistent with the CAS Regulation) the entitlement to 2 hours daily exercise applies to all inmates not confined to cells. It expressly notes that this includes those subject to a segregated custody direction but does not specify that this applies to PRNA inmates. For consistency, we recommend that the COPP be revised to expressly refer to the entitlement of PRNA inmates to the standard 2 hours of daily exercise.

While the NSW Inspector of Custodial Services' inspection standards emphasise that the right to exercise 'is applicable to all inmates including those under protective or segregated custody',[45] they state that inmates are entitled to a minimum of 1 hour of daily exercise, rather than 2 hours as provided for by the CAS Regulations.[46] We recommend that the standards be revised to align with the regulations.

6.5 CSNSW's compliance with the Ombudsman Act during this investigation

In an Ombudsman investigation, the Ombudsman has powers like a Royal Commission and can legally require public authorities to produce information, documents or things by a specified time.[47] The only basis upon which a public authority may object to the production of information is that it is Cabinet-in-confidence information.[48] There is no other basis on which production can be withheld.

On 8 May 2025, we served a s 18 notice on CSNSW, requiring that it provide us with information and documents by 6 June 2025. On 6 June and 3 July 2025, CSNSW requested and was granted extensions of time to comply with the notice. The second extension required compliance by 31 July 2025. We received no response by that date.

In August 2025, staff at CSNSW advised us that the response to the notice was still several weeks away, due to a 'need' to brief and obtain the Minister's 'approval' to provide us that information. We noted that CSNSW was now in breach of the law, that an agency is not required to obtain Ministerial approval to provide information required to be produced in an Ombudsman investigation, and that in any case there is no basis on which a Minister could decide that an agency should not comply with such a requirement as to do so would constitute an unlawful Ministerial direction.[49]

On 18 August 2025 we received a response from CSNSW.

After reviewing the response provided by CSNSW, it was apparent that many documents that fell within the scope of the s 18 notice had not been produced.

We sent a further request requiring that those documents be produced by 17 October 2025. On 15 October 2025, CSNSW contacted us in relation to the request. They said that due to 'an error' the unit at

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[45] Standard 100.1; also Standard 42.3 ('Segregated and protective custody inmates should have equitable access to the range of activities, education, employment, incentive schemes, and visiting entitlements that are available to other inmates. Segregated and protective custody inmates must have daily access to the open air and be able to exercise.') available at: https://inspectorcustodial.nsw.gov.au/documents/standards/inspection-standards-for-adult-custodial-services-in-new-south-wales.pdf,

[46] Standard 100.1 ('Inmates should be able to exercise in the open air for at least one hour every day, weather permitting') available at: https://inspectorcustodial.nsw.gov.au/documents/standards/inspection-standards-for-adult-custodial-services-in-new-south-wales.pdf,

[47] Section 18 *Ombudsman Act 1974.*

[48] Sections 21 and 22 *Ombudsman Act 1974.*

[49] During our consultation with the Minister on 12 June 2026, the Minister informed us that neither he nor his office required CSNSW to seek approval before complying with a requirement of the Ombudsman. The Minister further informed us that, in case there had been any confusion about this by CSNSW, he has reiterated that CSNSW should and must comply, and within the stated timeframes, to all such requirements and that CSNSW does not need and should not be seeking Ministerial 'approval' to do so.

CSNSW responsible for coordinating the response to our notice (Oversight Review) had not received the request until that day. They requested a further 6 weeks, up until 26 November 2025, to respond to the notice.

On 20 October 2025, we responded and required CSNSW to provide the remaining documents in 2 tranches. The first tranche was to be submitted by 3 November 2025, and the second tranche was to be provided by 13 November 2025.

We received no documents by 3 November 2025, and so on 5 November 2025 we followed up with CSNSW again.

On 10 November 2025 we received a first tranche of documents. On 24 November 2025 we received a second tranche of documents.

It is a statutory duty of all public authorities to cooperate with the Ombudsman in the exercise of Ombudsman functions, and to use their best endeavours to assist the Ombudsman in exercising those function.[50] A wilful failure to comply with requirements (including to produce documents or information required by a s 18 notice) or otherwise hindering the Ombudsman in the performance of his functions without lawful excuse constitutes a criminal offence.[51]

CNSW failed to provide the documents that we required within the designated timeframe on numerous occasions. When information was provided it was inadequate and incomplete. Ultimately it took almost 8 months for CSNSW to respond to our notice.

In submissions to this investigation, CSNSW acknowledged that it did not meet the required timeframes when responding to our notice, and that the response that was received was incomplete. We were advised that CSNSW has now initiated a change of practice to ensure that any correspondence from the Ombudsman is escalated to senior officers reporting to the Deputy Commissioner, Security, Custody and Community, with a view to providing more timely responses to our notices.

[50] Section 36A *Ombudsman Act 1974.*

[51] Section 37 *Ombudsman Act 1974.*

7. Related observations

7.1 Delays in complaints being made by inmates

The 4 complaints that we received from inmates from F1-Pod at South Coast CC were made to us in late March and early April 2025. By this time the situation of inmates being locked in cell without exercise had been ongoing for at least a month and probably longer.

It is concerning that inmates at South Coast CC waited so long to bring these issues to our attention, and that so few affected inmates have complained to our office. Had we not received any complaints, it is not clear how long the situation at South Coast CC and the other centres would have persisted.

Factors that may have affected when and whether inmates escalated their concerns to our office include:

(a) A lack of understanding of their rights, including their entitlement to 2 hours of daily exercise, including when in segregated or protective custody. (That said, in our experience, inmates generally have a good understanding that this entitlement exists, at least in theory.)

(b) When inmates are placed on segregation, policy expressly requires that they are to be verbally informed of their right to contact the Ombudsman, ICAC, and/or Legal Aid. However, there is no corresponding requirement under the protective custody policy.

(c) Many inmates are placed in protective custody at their own request, because of fears for their personal safety from other inmates. They may be reticent to complain about the conditions under which they are being held in protective custody for fear of reprisal, including fear that the centre may respond by removing their protective custody status and placing them among the general population of inmates.

(d) Inmates may have been attempting to resolve concerns locally, or by calling the Corrective Services Support Line (CSSL), which is the usual process for inmates to raise concerns at least initially, or through other avenues (such as the Prisoner Legal Services).

7.2 Referral of suspected maladministration from the Inspector of Custodial Services

As noted above, in March 2026 the (now former) Inspector of Custodial Services tabled her report on the review of the use of segregation and other measures which confine and separate prisoners.[52] My office received a copy of that report at the same time.

The Inspector's report raised concerns of direct relevance to this investigation, including the matters observed by the Inspector during her visit to MRRC on 1 May 2025, described in **section 3.2** above. The report also noted issues across CSNSW with regard to reviews of PRNA directions not being conducted within the statutory review period.

The Inspector's report raises other issues that may constitute serious maladministration, including:

(a) the administration of segregated custody directions (under section 10 of the CAS Act), including a widely perceived view by CSNSW staff that segregation is a form of punishment.

(b) prolonged segregation without proper review within the statutory timeframe.

[52] Available at: https://inspectorcustodial.nsw.gov.au/reports-and-publications/inspection-reports/adult-reports/review-of-segregation--separation-and-protective-custody.html

(c) segregation and confinement of:

a. Aboriginal inmates without proper consideration of the risks and alternatives, and

b. inmates with intellectual disability without considering the impact of their disability on behaviour.

Other than receiving the Inspector's tabled report, these matters were not reported or referred to the Ombudsman.

Under the *Inspector of Custodial Services Act 2012*, the Inspector is authorised,[53] but is not required,[54] to report to the Ombudsman matters of maladministration that are observed or suspected in advance of the finalisation of a report to Parliament. Early reporting of suspected instances of serious maladministration[55] to the Ombudsman would facilitate the more efficient and effective exercise by the Ombudsman of functions, including, if necessary, through a formal maladministration investigation. We have recommended that the Inspector put in place processes for the prompt referral to the Ombudsman of any observed or suspected instances of serious maladministration.

7.3 The prohibition on certain forms of solitary confinement

Subject to certain exceptions, 'solitary confinement' is prohibited in NSW correctional centres by cl 164(1) of the CAS Regulation. The Regulation carves out certain forms of isolation from this prohibition on 'solitary confinement', meaning that segregated custody under s 10 of the CAS Act, and confinement as a punishment in accordance with s 53 of the CAS Act are not prohibited. However, it does not expressly carve out protective custody under s 11 of the CAS Act.

Whether, and in what circumstances, the holding of an inmate in protective custody under a PRNA direction may constitute 'solitary confinement' raises issues that are broader than the scope of the current investigation.

CSNSW's position is that the protective custody of an inmate will not constitute solitary confinement, even in circumstances where PRNA inmates are held in single cells (with or without a yard) and in complete isolation from all other inmates. There appear to be two bases for this position:

(a) **The argument that solitary confinement connotes punishment**

First, there may be a view that solitary confinement, although not defined by the CAS Act or CAS Regulation, inherently refers only to such confinement when imposed as a punishment. As such, being held in isolation for other reasons (such as protective custody), even if the conditions otherwise have the features of solitary confinement, are not what is meant by 'solitary confinement' which is banned by the CAS Regulation.

There may be some support for this view in the fact that the CAS Act itself uses the term 'confinement' only to refer to the penalty of confinement.[56]

[53] Section 26 *Inspector of Custodial Services Act 2012.*

[54] The Inspector and the Ombudsman both have a duty to report suspected corrupt conduct to the ICAC.

[55] 'Serious maladministration' is defined in the *Public Interest Disclosures Act 2022* as: conduct, other than conduct of a trivial nature, of an agency or a public official relating to a matter of administration that is unlawful, or unreasonable, unjust, oppressive or improperly discriminatory, or based wholly or partly on improper motives.

[56] It uses other terms elsewhere, such as 'segregation' (s 10) or 'isolation' (s 15).

The heading to cl 164 itself is 'Prohibited *punishments.*' This may be seen as supporting this view. On the other hand, it may carry little weight[57] given that some of the prohibitions in the clause clearly extend beyond punishments. For example, the clause also deals with being 'subjected to any other punishment *or treatment* that may reasonably be expected to adversely affect the inmate's physical or mental health.'[58]

The Oxford English Dictionary also defines 'solitary confinement' to mean: 'Isolation of a prisoner in a separate cell as a punishment'.[59] Again, this may suggest that, at least according to its ordinary meaning, isolation for any reason other than punishment will not be solitary confinement. That said, it is common to see the term being used more generally, and in the literal sense of simply any 'confinement' that is 'solitary'.[60] A recent NSW Court of Criminal Appeal decision, for example, referred without qualification or comment to an expert's description of the COVID isolation of an inmate as 'solitary confinement'.[61]

Further, if solitary confinement in cl 164(1) were limited in meaning to only confinements as a punishment, some of the carve-outs in cl 164(2) (such as 'keeping an inmate alone in a cell, if a nursing officer considers that it is desirable in the interest of the inmate's health to do so.') would not be necessary.[62]

(b) **The argument that PRNA inmates are not held in 'solitary' conditions**

The second basis for the contention that PRNA directions do not involve solitary confinement is that, even if inmates are being held in isolation from all other inmates, they are not completely solitary. They are, for example seen daily by health and other staff, and can have personal visits.[63]

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the **Nelson Mandela Rules**) define solitary confinement simply as "the confinement of prisoners for 22 hours or more a day without meaningful human contact".[64] Unlike the Nelson Mandela Rules,

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[57] Further, the clause is in a Division headed 'Punishments' and a Part headed 'Correctional centre discipline'. As to the regard which may be had to these headings in aiding interpretation of the clause, see ss 34 and 35 *Interpretation Act 1987.*

[58] Cf *Garland No. 1* [2004] QSC 450, at [87]. That case concerned an inmate who had so far spent more than 7 years in continuous segregation. In that case White J considered the meaning of 'solitary confinement' in the context of Rule 5.33 of the then current version of the *Australian Guiding Principles for Corrections in Australia:*
"Prolonged solitary confinement, corporal punishment, punishment by placement in a dark cell, reduction of diet, sensory deprivation and all cruel, inhumane or degrading punishments must not be used".
Rule 5.33 is reflected in rule 53.3 of the current NSW Inspection Standards for adult custodial services in NSW, available at https://inspectorcustodial.nsw.gov.au/documents/standards/inspection-standards-for-adult-custodial-services-in-new-south-wales.pdf. Unlike clause 164(1) of the *CAS Regulation 2014*, Rule 5.33 of the then Guiding Principles and rule 53.3 of the NSW Inspection Standards refer only to cruel, inhumane or degrading punishment, and not to 'punishment *or treatment'*.
Her Honour stated that "That rule [in the Guiding Principles] is made in the context of discipline and punishment. The applicant's accommodation in the maximum security unit is not for punishment but for the maintenance of security in the prison environment", and so the rule had no application.

[59] Australian Oxford Dictionary (2nd Edition) Oxford University Press 2004.

[60] See eg T Walsh et al, *Legal perspectives on solitary confinement in Queensland*, The University of Queensland, 2020, available at https://www.austlii.edu.au/au/journals/UQLRS/2020/8.pdf , which states, for example:

'Prisoners may be placed in solitary confinement for administrative or punitive reasons. Administrative reasons include situations where the prisoner is 'at risk' of harming either themselves or others, or of disturbing the 'security' or 'good order' of the prison… Some prisoners are held in solitary confinement by virtue of their classification status. For example in Queensland, all maximum security prisoners are held in what is effectively solitary confinement.'

[61] *Birkic v R* [2026] NSWCCA 53.

[62] That said, clause 164(2) sets out these exceptions by stating that '[for] the purposes of' clause 164(1), these 'are not solitary confinement'.

[63] Although see section 5.5 in relation to the cessation of contact visits for PRNA inmates at South Coast CC.

[64] The Nelson Mandela Rules do not prohibit all solitary confinement outright, but they do prohibit indefinite and prolonged solitary confinement: Rule 43. They also impose certain procedural limitations (for example, 'Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent. authority.': Rule 45. The Nelson Mandela Rules are not legally binding in NSW, but are internationally recognised as setting minimum standards for prison administration.

the CAS Regulation does not prescribe the extent of 'solitude' and the duration of confinement required to amount to solitary confinement. Applying the international standard, it would seem that PRNA inmates would, on most days, meet the threshold of being held in conditions of solitary confinement.

Given the lack of clarity about the application and scope of the prohibition on solitary confinement under the CAS Regulation, we draw no conclusions as to whether (or in what circumstances) the situation of protective custody inmates may constitute solitary confinement contrary to that prohibition.

However, whether or not protective custody is technically 'solitary confinement', as a practical matter it is apparent that the conditions under which PRNA inmates are being held raise all the same issues as prolonged solitary confinement, including in terms of its harmful psychological impacts.

That these conditions could have been avoided, at least for some inmates, by the re-introduction of PRLA directions underlines our findings regarding the unreasonableness of CSNSW's conduct in failing to take that action.

7.4 Implications arising from the delay in implementing OPCAT

Australia is a signatory to the Optional Protocol to the Convention Against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**).[65]

OPCAT recognises that risks of ill treatment can be greatest in place of detention. As a result, OPCAT establishes a system of regular visits by independent bodies to places of detention, to improve treatment and conditions and support the prevention of torture and other ill treatment before it occurs.

A central requirement of OPCAT is that National Preventive Mechanisms (NPMs) be established to pro-actively monitor and inspect places of detention. The Commonwealth Ombudsman has been established as an NPM for Commonwealth places of detention; it also co-ordinates the work of other NPMs across Australia.

OPCAT was required to be implemented in NSW by no later than January 2023. This has not occurred. According to the NSW Government, this is because of an unresolved dispute with the Commonwealth Government with regard to funding.

The implementation of OPCAT may not have prevented the circumstances identified in this report taking place. However, it may have resulted in those circumstances being addressed much sooner. An appropriate body with a dedicated OPCAT mandate and appropriate resourcing to pro-actively monitor and conduct regular visits of the adult correctional system would probably have identified the circumstances that arose in correctional centres across NSW the first half of 2025, with the likelihood of escalating them much sooner than has actually occurred.

Importantly, an NPM would have considered not only whether conduct occurred that is unlawful or otherwise involves maladministration (as we have in this report). It would also, and primarily, have

[65] Ratified by Australia on 17 December 2017.

considered the circumstances through the lens of the state's obligation to prevent 'cruel, inhuman or degrading treatment'. Although not defined by international conventions, such treatment is commonly distinguished from 'torture'.[66] According to an academic source:

> Cruel and inhuman treatment or punishment, …can be defined as the infliction of severe pain or suffering, whether physical or mental, by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. Such conduct can be both intentional or negligent, with or without a particular purpose.[67]

Given our current mandate does not include NPM functions, we do not express any opinion as to whether the treatment of inmates in this case amounts to a breach of the convention or, more generally, at what point in time prolonged solitary confinement would do so.

In our view, however, the circumstances uncovered by this investigation underline the need and value of an OPCAT oversight mechanism for places of detention in NSW to prevent such treatment. OPCAT is not just relevant to those regions of the world where state-sanctioned torture is prevalent, but wherever ill-treatment may arise behind closed doors in places of detention.

We again[68] recommend that the NSW Government act to implement OPCAT, including by nominating an NPM (or NPMs) for places of detention in NSW, introducing necessary legislation to empower it to undertake pro-active monitoring, visits and related functions, and providing appropriate resourcing for the performance of those functions.

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[66] Torture is defined as 'any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.': Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment | OHCHR.

[67] *The United Nations Convention Against Torture and its Optional Protocol: A Commentary (2nd Edition),* Oxford University Press, 2019, Chapter 18.

[68] We have previously made this recommendation in the context of NSW Parliamentary Committee inquiries.

8. Findings

I find the following conduct of CSNSW was wrong within the meaning of s 26 (1) (b) and s 26 (1)(g) of the Ombudsman Act:

1. Between January 2025 and 15 April 2025, certain inmates in South Coast CC F1-Pod were kept for prolonged periods of time in circumstances where they were deprived of any entitlement to daily open air exercise, which was **unlawful** and **oppressive.**
2. In that same period, inmates in South Coast CC F1-Pod were not given access to contact visits, which was **unlawful** and **oppressive;** and the deprivation of this privilege was not recorded for each inmate, which was also **unlawful**.
3. The use of South Coast CC F1-Pod to house inmates subject to PRNA directions was not properly authorised or recorded, which was **unlawful** and **otherwise wrong** as a breach of policy.
4. Between January 2025 and (at least) mid-April 2025, at various correctional centres including Shortland CC and MRCC, certain protective custody inmates have also been kept in circumstances where they were deprived of their entitlement to 2 hours of daily exercise, which was **unlawful** and **oppressive**.
5. CSNSW failed to appropriately plan for and manage the decision in December 2024 to cease the use of 'section 78A orders' following the CSO advice of July 2024, including to consider the need to reintroduce PRLA directions before doing so. This failure was **unreasonable** and **wrong**.
6. CSNSW has engaged in **unlawful** and **wrong** conduct by failing to comply with the requirements of the *Ombudsman Act 1974* by not responding to Notices to Produce issued by the Ombudsman under section 18 of that Act by their due date.

9. Recommendations

I make the following recommendations:

Corrective Services NSW should:

1. Review the circumstances of all PRNA inmates to assess whether they are receiving their entitlement to 2 hours of daily exercise, and report to our office on the outcome of that review in respect of each inmate.
2. Immediately revisit the decision to remove the Limited Association (PRLA) placement option for protective custody inmates and advise this office of the outcome of the review.
3. Update this office on the progress made on the Inmate Classification and Review project every quarter.
4. Amend COPP 3.2 (Protective Custody) to:
   a) reflect the CAS Act provisions that inmates who are subject to protective custody directions can associate with other such inmates that the Commissioner (or governor) may determine.
   b) provide guidance about the level of risk required to justify subjecting an inmate to a protective custody direction.
   c) require that daily case notes be kept for all PRNA inmates, recording whether access to exercise was granted and the duration of the exercise.
   d) provide guidance about the factors that need to be considered when deciding whether it is 'necessarily incidental' that a privilege be withdrawn from an inmate subject to a protective custody direction.
   a) provide that inmates placed on protective custody directions are to be verbally informed of their right to contact the Ombudsman, ICAC, and/or Legal Aid.
5. Amend COPP 6.1 (Daily exercise and time out of cell) to specifically provide that (consistent with the CAS Regulation) the entitlement to 2 hours daily exercise applies to inmates subject to a protective custody direction.
6. Require correctional centres to notify the relevant Assistant Commissioner if an inmate is deprived of access to their entitlement to 2 hours of outdoor exercise for 3 continuous days or more.
7. Conduct regular reviews or audits of the files of all inmates subject to protective custody directions to ensure that they have all relevant documents on them, including:
   - a completed threat assessment tool and inmate application form
   - review or revocation of the protective custody direction, where appropriate
   - fresh threat assessment tool or inmate application form if the direction is extended being 14 days.
8. Ensure that all reviews of protective custody directions are viewed and approved by the General Manager Statewide Operations within 7 days.
9. Ensure that any operational changes to correctional centre routine are recorded in line with clause 315 (2) of the CAS Regulation and COPP 21.13.
10. Ensure that any future decisions to limit inmates subject to protective custody directions to non-contact visits are recorded in line with clause 315(1)(e) of the CAS Regulation.

11. Review the decision made by South Coast CC to restrict any inmate subject to protective custody directions to non-contact visits, to ascertain whether this is reasonably necessary to ensure the safety of the inmate.
12. Conduct training for Executive staff and Governors of all correctional centres in record keeping.
13. Obtain advice from the Crown Solicitor regarding the lawfulness of SMAP placements.

The **Inspector of Custodial Services** should:

14. Amend the inspection standards for adult correctional facilities to reflect the standard legal entitlement to 2 hours of daily outdoor exercise, other than for those being confined as a punishment (who are entitled to 1 hour).
15. Put in place process to facilitate the prompt reporting to the NSW Ombudsman of any observed or suspected instance of serious maladministration by CSNSW or other public authority.

The **NSW Government** should:

16. Act to implement OPCAT, including by nominating an NPM (or NPMs) for places of detention in NSW, introducing necessary legislation to empower it to undertake pro-active monitoring, visits and related functions, and providing appropriate resourcing for the performance of those functions.

Appendix A: Legislative and policy context

To understand how the situation described in this report came about, it is necessary to provide some context about the legislation, as well as the policies and practices, that govern the circumstances in which inmates may be separated from other inmates.

Legislation regarding the separation of inmates

A number of provisions of the *Crimes Administration of Sentences Act 1999* (**CAS Act**) provide for inmates to be separated from the general prison population, with the effect of them being either separated individually or grouped separately together as a cohort.

The following outline is drawn primarily from the CAS Act, CAS Regulation and advice of the Crown Solicitor obtained by CSNSW on 9 July 2024.[69]

Segregated and protective custody

Segregated custody directions (section 10)

Section 10 of the CAS Act provides for segregated custody directions to be issued by the Commissioner providing for an inmate to be held in segregated custody. A direction may also be issued by the governor of a correctional centre, but if that occurs the governor must notify the Commissioner on each occasion they do so.[70]

The grounds on which a segregated custody direction may be issued are that the Commissioner (or governor) is of the opinion that such segregation is necessary to secure –

(a) the personal safety of any other person [i.e. other than the inmate to be segregated],

(b) the security of a correctional centre, or

(c) good order and discipline within a correctional centre.[71]

Protective custody directions (section 11)

Section 11 of the CAS Act provides for protective custody directions to be issued by the Commissioner providing for an inmate to be held in protective custody. Again, such a direction may be issued by the governor with notice to the Commissioner.[72]

A protective custody direction may be issued if the Commissioner (or governor) is of the opinion that 'the association of the inmate with other inmates constitutes or is likely to constitute a threat to the personal safety of the inmate'.[73] They can also do so if the inmate makes a request in writing for them to do so.[74]

The essential difference between sections 10 and 11 is that segregated custody is directed to protecting the safety of any other person, or the security or good order and discipline of a centre, while protective custody is directed to protecting the personal safety of the separated inmate.

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69 Crown Solicitor's legal advice on the operation and effect of section 78A of the *CAS Act 1999* dated 9 July 2024.

70 Section 10(2).

71 Section 10(1).

72 Section 11(3).

73 Section 11(1).

74 Section 11(2).

Effect of segregated or protective custody directions, and protections for inmates

The statutory effect of a segregated or protective custody direction is that the inmate is detained either:

a) in isolation from all other inmates or

b) in association only with such other inmates as the Commissioner (or governor) may determine.[75]

Directions remain in force until revoked, which can be done at any time.[76]

The CAS Act includes the following safeguards for inmates on segregated or protective custody directions – the inmate:

a) is not to suffer any reduction of diet, and

b) is not to be deprived of any rights or privileges other than those determined by the Commissioner (or governor), either generally or in a particular case, and other than those the deprivation of which is 'necessarily incidental to the holding of the inmate in segregated or protective custody'.[77]

Segregated and protective custody directions are also subject to both automatic and on-application review.

First, the governor of the relevant centre must report to the Commissioner within 14 days of the direction being given (whether by the Commissioner or the governor) with a recommendation as to whether the direction should be confirmed or revoked, and the Commissioner must then review the direction within 7 days and either revoke, confirm or vary it.[78] If the direction continues, reporting and review obligations continue every 3 months.[79]

Second, an inmate who has been held continuously on a segregated or protective custody direction for more than 14 days may apply to the Serious Offenders Review Council (**SORC**) for a review of the direction.[80] SORC may hold a hearing, at which the inmate may be legally represented and evidence taken under oath.[81] SORC may revoke, confirm or amend the direction.[82]

Confinement as a penalty

Confinement of an inmate to a cell (and therefore isolated from other inmates) is a penalty that may be imposed if an inmate is found guilty of a correctional centre offence.[83]

This power is not relevant to the current investigation and so it is not necessary to outline in detail the circumstances in which confinement may be imposed. However, in considering the conduct currently under investigation, it is worth noting that, even where an inmate has been confined as a punishment:

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75 Section 12(1).

76 Section 17(1).

77 Section 12(2).

78 Section 16.

79 The Commissioner must also notify the Minister where an inmate's total continuous period of segregated or protective custody exceeds 6 months: section 18(1).

80 Section 19.

81 Section 21.

82 Section 21(6), applying Division 2 of Part 9.

83 Section 53(1), 56(1) *CAS Act 1999.*

(a) they remain entitled to daily exercise in the open air (albeit with that entitlement reduced from 2 hours to 1 hour),[84] and

(b) confinement is limited to no more than 7 days.[85]

Separation that occurs under the general powers conferred by the CAS Act

There are a range of general provisions under the CAS Act, including in particular sections 232 and 233, that confer functions on the Commissioner, governor or their delegates, including for:

(a) the care, direction, control and management of centres and facilities, and

(b) the care, control and management of inmates.

Actions taken under these general provisions may include actions that are designed to, or will result in, inmates being separated in particular circumstances. This could include, for example, the classification of inmates into particular classes (such as convicted and remand inmates) and the separation of inmates in one class from the other, the separation of male and female inmates, or the separation of infectious inmates.

Regulations may be made to provide for, and govern the circumstances of, such separation under these general functions,[86] including regulations for '(c) the classification of inmates into different categories and the separation of inmates by reference to the categories into which they have been classified, including by authorising the Commissioner to classify and separate inmates.'[87]

That separation may occur for the purpose of exercising these general powers of care, control and management (and not only for the specific purposes provided for in relation to segregated or protective custody directions, or confinement as a penalty) has, since 2009, been made clear by section 78A of the CAS Act.[88]

Clauses 33, 34 and 35 of the CAS Regulation

The CAS Act includes a power to make regulations that are 'not inconsistent with the Act' for or with respect to any matter that the Act requires or permits to be prescribed, or which are necessary or convenient for the carrying out or giving effect to the Act. Section 79 expressly provides that regulations may make provision with respect to:

[84] Clause 53(2) CAS Regulation 2014.

[85] Section 53(1). The CAS Act provides for a visiting magistrate to impose a penalty of confinement of up to 28 days: s 56(1)(c). However, a mechanism for visiting magistrates to hear and determine correctional centre offences has not been in place for many years: see our inmate discipline report.

[86] See above discussion of clauses 33 to 35 of the CAS Regulation.

[87] Section 79 of the CAS Act.

[88] Section 78A is discussed above.

'(a) the management, control, administration, supervision and inspection of correctional centres and correctional complexes, including in relation to the good order, security and discipline of a correctional centre,

…

(c) the classification of inmates into different categories and the separation of inmates by reference to the categories into which they have been classified, including by authorising the Commissioner to classify and separate inmates,

(c1) the designation of inmates for the purposes of or in connection with the management of security and other risks, including by authorising the Commissioner—

(i) to designate inmates, and

(ii) to make requirements about the management of inmates of a particular designation…'

Regulations for the classification and designation of inmates have been made, including in particular the following.

Clause 33(1) provides that each inmate is to be included in one of 5 classes, which are to be kept separate from each other 'as far as practicable'. These are:

- convicted inmates
- unconvicted inmates
- civil inmates
- Commonwealth post sentence terrorism inmates
- NSW post sentence inmates.

Clause 33(3) provides that, within each of those classes, there is to be further separation of:

- inmates who have not previously been imprisoned
- inmates who would be at risk if not separate from other inmates[89]
- inmates who are forensic patients within the meaning of the *Mental Health Act 2007*
- inmates who are detained under a preventive detention order within the meaning of the *Terrorism (Police Powers) Act 2002*
- inmates who are imprisoned as fine defaulters under the laws or the Commonwealth or the ACT.

Clause 34 provides that female inmates must generally be kept separate from male inmates, and clause 35 provides for inmates found or suspected to be in an infectious or verminous condition may be kept separate from other inmates.

[89] As noted above, separation for the purposes of securing the personal safety of the inmate is specifically provided for under section 11 of the CAS Act and accordingly must be done under that power and not under the general powers of the Act. This means that, although clause 33(3) purports to provide a separate head of authority for separation on this ground, that is likely not the case given that this would be inconsistent with the Act. See the discussion at section 4.3.

CSNSW's policies and practices for dealing with inmates facing threats to their personal safety

This section outlines mechanisms that CSNSW had, up to December 2024, put in place for separating inmates who may face threats to their person safety. The following is drawn primarily from a recent report of the Inspector of Custodial Services,[90] and relevant COPPs (current and repealed).

Protective custody directions

Under COPP 3.2 (Protective custody) '[p]rotection should only be used if there is no other option to appropriately manage the inmate' and 'should only be considered a short term option while other suitable housing options are considered'. If, when an inmate is received into a centre, an opinion is formed that placement in normal discipline constitutes or is likely to constitute a threat to the personal safety of the inmate, the policy requires that consideration first be given to transferring the inmate to another centre or taking one of the following steps to manage the risk:

- placing an association alert on OIMS
- Special Management Area Placement (SMAP)
- separation under 78A

COPP 3.2 sets out CSNSW policy for the making of protective custody directions. It generally outlines the requirements of section 11 and 12 of the CAS Act and associated procedural steps.

It also imposes some additional limitations on the making of a direction, as a matter of policy. For example, the policy provides that, if an inmate requests protective custody, this can only happen if the governor forms the opinion that the association of the inmate with other inmates constitutes, or is likely to constitute, a threat to the personal safety of the inmate.[91] A requirement to form that opinion is not a requirement of the Act if the inmate has made a request.

Of most importance to this current investigation, the policy provides that:

> 'An inmate who is subject to a protective custody direction must be detained in isolation from other inmates.'[92]

This imposes a significant limitation that is not required by the Act. The Act instead provides that inmates in protective custody can be detained *either* in isolation from other inmates *or* in association with only such other inmates as the Commissioner or governor determines.[93]

Association alert on OIMs

An offender association alert (non-association) is used to identify and restrict contact between certain inmates due to identified risks such as prior conflicts, intimidation, co-offending histories or safety issues. A request for an offender association alert may be submitted in writing by an inmate; they must identify the specific inmates they do not want to associate with, and the risk posed to their safety if they were able to associate.

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[90] Inspector of Custodial Services, *Review of segregation and other measures which confine and separate prisoners,* March 2026, available at: https://inspectorcustodial.nsw.gov.au/reports-and-publications/inspection-reports/adult-reports/review-of-segregation--separation-and-protective-custody.html.

[91] COPP 3.2 at [1.3].

[92] COPP 3.2 at [1.4].

[93] Section 12(1).

Staff may also identify offender association issues without the inmate requesting the alert. This usually occurs through inmate assaults or conflicts between Outlaw Motorcycle Gangs (OMCG'S) or Organised Criminal Networks (OCN). A thorough risk assessment must be conducted before the alert is generated for the inmate in OIMS. In the event of serious concerns for safety, staff must also consider whether the current placement is suitable. Offender alerts on OIMS must be reviewed prior to transferring an inmate to another correctional centre to ensure their safety.

Special Management Area placement (SMAP)

A Special Management Area is a specific area that has been designated within a correctional centre for housing inmates who would be vulnerable or at risk from other inmates in the normal discipline area of the correctional centre. SMAPs have been established across centres to manage inmates 'where the nature of their offence or previous employment status may put them at risk within the mainstream prison population.'[94] Inmates held in this area associate freely with each other and have access to programs and services.

The typical example of a SMAP area is a unit within a centre that is dedicated to housing inmates charged or convicted of certain sex offences.

Section 78A separation

Until it was removed in early 2025, COPP 3.1 (Separation of inmates) set out the circumstances under which 'inmates may be separated from each other under s 78A of the [CAS Act] and clauses 33, 34 and 35 of the [CAS Regulations].'

It provided for separation of inmates on 5 grounds:

- Gender (where, in special circumstances, an inmate is being held in a centre which does not ordinarily house inmates of that gender)
- Health (where there is a risk to the general population from infectious or contagious disease)
- Risk (from others pending re-classification or relocation)
- Affiliation with an outlaw motorcycle gang or organised crime network, or
- Any other reason with the approval of the Assistant Commissioner, Custodial Corrections.

The policy provided that an inmate may be separated by the governor under s 78A for up to 14 days, with an extension of up to 28 days permitted with the approval of the General Manager, State-Wide Operations. Further approval was required for each subsequent 28-day period of separation.

In practice, so-called s 78A orders were imposed to separate inmates for a range of reasons including:

(h) significant media attention

(i) for the inmate's protection from threats to safety in the centre, whether actual or perceived, either by the inmate or staff – although the policy states that this should only be 'pending reclassification or relocation' this was not always the case

(j) a risk of self-harm

(k) for medical observation

(l) pending reclassification, for example following an offence in custody

(m) aggression towards or abuse of staff

[94] COPP 3.3 at [1.1].

(n) following an incident on a SMAP requiring further separation between inmates who are already separated from the main group.

The Inspector of Custodial Services has noted that separation by way of s 78A orders 'did not provide robust procedures to ensure adequate oversight or safeguards'.[95] For example:

- While the policy required governors to obtain the approval of the General Manager, State Wide Operations if a s 78A order was extended beyond 14 days, there was nothing to stop a governor revoking a direction on its 14th day and issuing a new one.
- With the approval of the General Manager, separation directions could be extended indefinitely with no requirement to notify the Commissioner at any point.
- There was no right of an inmate to appeal a separation direction.
- Unlike segregation or protective custody, or punitive confinement, there was no requirement for daily checks by a member of the health service.[96]

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[95] Inspector of Custodial Services, *Review of segregation and other measures which confine and separate prisoners*, March 2026, available at: https://inspectorcustodial.nsw.gov.au/reports-and-publications/inspection-reports/adult-reports/review-of-segregation--separation-and-protective-custody.html .

[96] Clause 289 *CAS Regulation 2014.*

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