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Investigation into the treatment of young people in the
Adelaide Youth Training Centre | November 2019



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Investigation under section 13(2) of the
Ombudsman Act 1972 concerning the
Department of Human Services.

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INTRODUCTION

In early 2017 I received two complaints concerning the treatment of residents of the Adelaide Youth Training Centre - Kurlana Tapa.

The complaints concern, generally, the use of regression, segregation, isolation and punishment in the Adelaide Youth Training Centre.

The first complaint was from Helping Young People Achieve (**HYP**A), on behalf of a young person who is Aboriginal.

The second complaint was from the Office of the Guardian for Children and Young People (**the OGCYP**), on behalf of a young person.

On 25 July 2016 a report on the ABC's Four Corners programme, 'Australia's Shame', aired disturbing footage of children and young people detained in the Don Dale Youth Detention Centre in the Northern Territory. That footage raised questions about several practices used in the Northern Territory's youth justice system.

The Four Corners report was the impetus for a Royal Commission and Board of Inquiry into the Northern Territory's child protection and youth detention systems (**the NT Commission**).

Given that I received two complaints raising similar allegations, and that the treatment of young people in youth detention was the subject of public debate following the commencement of the NT Commission, I determined to conduct an investigation into the treatment of young people in the Adelaide Youth Training Centre using my own initiative powers under section 13(2) of the *Ombudsman Act 1972*.

The investigation considered the periods of time the two young people were segregated and secured in isolation, whether they were provided with sufficient education and with reasonable opportunities for contact with their family, and whether the department kept sufficient records in relation to their treatment. The investigation also considered the use of mechanical restraints on the young people, and whether the Aboriginal young person was provided sufficient cultural recognition and support.

The investigation ultimately concluded that the treatment of the two young people detained in the Adelaide Youth Training Centre was unreasonable, wrong, oppressive, unjust and contrary to law.

The investigation noted that the Operational Orders in relation to segregation, isolation, restricted routines and the use of mechanical restraints had been improved since the commencement of the *Youth Justice Administration Act 2016* and since the periods of segregation of the young people I considered. However, in order to ensure that treatment such as that experienced by the two young people is no longer being inflicted on other young people at the Adelaide Youth Training Centre, I made recommendations aimed at ensuring that the department could satisfy itself of what occurs in the Adelaide Youth Training Centre and whether the treatment of the young people is in accordance with the legislative requirements, the Operational Orders and human rights standards.

A provisional report setting out my preliminary conclusions and provisional recommendations was provided to the Department of Human Services (which now administers the Adelaide Youth Training Centre), the two young people, HYP A and the OGCYP for their feedback and comments.

The department acknowledged that its record keeping was unsatisfactory and advised that the recent reframing of its Youth Justice Division has provided improved oversight and governance.

The department acknowledged that the ‘the restrictive routines of Ben and Ryan did not promote their wellbeing’¹ but sought ‘my consideration of the context within which the AYTC was operating at that time and the broader context of Youth Justice’s involvement with’ the two young people. It submitted that I ought to consider factors such as:

- that youth justice was undergoing significant change, including that the Youth Justice Administration Act came into effect on 1 December 2016
- the organisational status at the time
- infrastructure deficiencies
- the issues resulting from a dispute lodged by the Public Service Association on behalf of its members relating to general issues associated with staff safety in the AYTC
- staffing models
- the department’s responsibility under the *Work Health and Safety Act 2012*
- the number of high risk residents at the AYTC at the time, and
- the high risk status of the two young people.

Whilst I acknowledge these factors and the difficulties faced by youth justice, I remain of the view that, regardless of the context and circumstances at the time, the department must, at all times, ensure that the treatment of young people is in accordance with the legislative requirements, the Operational Orders and human rights standards.

My provisional report made twelve provisional recommendations. In its response, the department advised that it disagreed with one of my recommendations, fully accepted four of the recommendations, was currently implementing three of my recommendations and accepted ‘in principle’ four of my recommendations. The reasons given for accepting in principle only included the importance of ensuring the safety and security of the AYTC and work, health and safety obligations, as well as ‘industrial harmony’ and ‘resource availability’.

The OGYCP’s response to my provisional report included:

Your report details many matters that have arisen for me in my role of Training Centre Visitor. Our work in the Adelaide Youth Training Centre has also detected concerns in relation to record keeping practices, lack of consistency and transparency regarding segregation and isolation practices and the potential routine use of mechanical restraints in incident management. My team continues to monitor the cultural supports provided for young people and advocate for individualised plans and care responses for children and young people who have disabilities and have experienced trauma. I also have a particular interest in both the opportunity for, and interruption of, education for young people in custody.

As a result of the responses, I amended my provisional recommendations and added eight recommendations. I sought further responses from the department and the OGCYP to my revised recommendations.

The department and the OGCYP fully supported my proposed additional recommendations, and the department advised that it was committed to, where possible, immediately addressing any issues raised in my report that have not already been addressed.

Whilst I was extremely disheartened to read the records relating to the two young people, and the ways that I consider the youth justice system failed them, the department’s response to my recommendations gives me reason to be optimistic that the treatment of young people at AYTC will improve.

¹ Page 25 of the department’s response to my provisional report.

TERMINOLOGY

At the time of the complaints, the Adelaide Youth Training Centre was managed by the Department for Communities and Social Inclusion (**DCSI**). As a result of Machinery of Government changes that took effect on 17 May 2018, DCSI was replaced with the Department of Human Services (**DHS**). I have used the term **'the department'** to refer to the agency under both titles.

In response to my provisional report, the department advised that the term 'cell', which I have used in my report, is never used in the Adelaide Youth Training Centre. Rather, the term 'bedroom' is used. The rooms in the Frangipani Unit, which were viewed as a part of my investigation, displayed the same qualities that are associated with a prison cell, and are comparable to prison cells I have seen at adult prisons across South Australia. As such, I have deliberately used the term 'cell' (see paragraph 101).

I have used pseudonyms throughout this report. Other parties have been de-identified where appropriate.

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INVESTIGATION

My investigation involved:

- assessing the information provided by the young people
- meeting with Ryan
- speaking to Ben on the telephone
- speaking to advocates from HYP A
- speaking to advocates from the OGCYP
- seeking and assessing a response from the department
- seeking further information from the department
- considering:
 - the *Young Offenders Act 1993*
 - the *Youth Justice Administration Act 2016*
 - the *Youth Justice Administration Regulations 2016*
 - the Charter of Rights for Children and Young People Detained in Training Centres
 - Adelaide Youth Training Centre, Operational Order 69, 'Use of Segregation', Version 1, Working draft, 01/12/2016
 - Adelaide Youth Training Centre, Operational Order 68, 'Use of Isolation, Version 1, 01/12/2016
 - Adelaide Youth Training Centre, Security Order, 'Use of Mechanical Restraint', Version 2, 01/12/2016
 - international covenants which identify and protect the rights of juveniles in the justice system
- meeting with Mr Tony Harrison, department Chief Executive, and officers from the Youth Justice Department
- preparing a provisional report and considering responses made by the department, the OGCYP and HYP A
- revising my provisional recommendations in consultation with the OGCYP and the department
- preparing this final report.

STANDARD OF PROOF

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.² It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved

² This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

BACKGROUND

1. The Adelaide Youth Training Centre (**the AYTC**) is a detention facility for young people generally between 10 to 18 years. A court may sentence a young person to a period of detention, or remand them in custody, at the AYTC.
2. Youth Justice is a division of the department and has statutory responsibility for the supervision of young people subject to a range of criminal justice mandates. Youth Justice is responsible for the management and operation of the AYTC.
3. Ben and Ryan were both detained at the AYTC at the time of the complaints. As such, they were clients of the Youth Justice section of the department.
4. Ben was 17 years old at the time of the complaint, and turned 18 in late March 2017.
5. Ben's complaint, by letter dated 17 March 2017, includes:

...I would like to complain about my recent treatment while at the Adelaide Youth Training Centre (AYTC) and what I believe has been a breach of my rights. I contacted GCYP out of frustration in regard to a period of regression that I have currently been serving within the Frangipani Unit at AYTC and my concerns at the lack of access to 'reasonable' education I have been offered while on this period of regression...
6. Ryan was 17 years old at the time of the complaint, and turned 18 a short time thereafter. Ryan is of Aboriginal cultural background.
7. Ryan's complaint, by letter dated 9 February 2017, includes:

... I believe the regression was unfair because I was double-banked by two other young people. The centre expected that I would not retaliate but just take it. If you stand up for yourself you are punished.

During my regression I was not allowed out of my room very much. I felt like I was going crazy. You are meant to be let out for two x 30 minute periods morning and afternoon.

It was better than the regression I am currently on (for another incident). For this regression, I have been locked in my room for more than 22 hours per day since 17 January 2017. I have not had all the time out of my room that was promised. I have had nothing to look forward to and I am depressed. There is no current end date for my regression (when I will re-join a unit or education)...
8. Both Ben and Ryan submitted that they were isolated in their rooms for unreasonable periods of time, without being advised when their punishments would end, and that it caused them psychological harm.
9. As a result of their treatment at AYTC, both Ben and Ryan requested, and were granted, transfers to the adult prison system soon after they turned 18.
10. There are two units at the AYTC that are used for housing residents on regression – Saltbush and Frangipani.
11. On 23 March 2017 the Deputy Ombudsman and one of my Investigating Officers visited AYTC and met with Ryan and inspected the Frangipani Unit.
12. During my Officer's meeting with Ryan, Ryan expressed his concerns about Ben, advising my Officers that Ben had been in regression since 17 January 2017 and that he had heard that Ben is 'going crazy'.

13. By letter dated 27 March 2017, I wrote to the department's Chief Executive, Mr Tony Harrison (**the CE**), notifying him of the complaints and expressing my concerns as a matter of urgency about Ben's prolonged regression. I advised that I understood that Ben had been locked in his room for up to 22 hours per day, with limited access to exercise, stimulation and interactions with people his own age, since his involvement in an incident that occurred on 17 January 2017. I advised the CE that I was concerned about the impact of excessive physical and social isolation on Ben and requested his intervention given that I was of the view that the conditions were likely to cause Ben serious hardship. I asked the CE to advise me of any steps taken in relation to Ben by COB on 31 March 2017.
14. The CE sent a formal response by letter dated 30 March 2017:

Thank you for your correspondence dated 27 March 2017. Further to my discussion with [your Investigating Officer], I acknowledge that there will be on occasion, circumstances in which residents of the Adelaide Youth Training Centre (AYTC) are managed under restricted routines and that this aspect of custodial management warrants scrutiny to ensure young people's rights are maintained. The *Youth Justice Administration Act 2016* and associated Regulations came into effect on 1 December 2016. This legislation and subordinate procedures governs the management of residents of training centres.

I have considered the circumstances of the matter in relation to [Ben]. [Ben's] management has been complex and categorised by dynamic assessment to attempt to mitigate significant ongoing risks associated with serious threats to harm staff and residents and to cause affray. Dynamic assessment and review has occurred in relation to [Ben] throughout this period of custody, including by the AYTC At Risk and Intelligence Group and the Priority Resident Steering Group. A number of strategies have been put in place to help support [Ben] with incentives and privileges in line with the AYTC Behavioural Support Framework. [Ben] has been offered educational resources through the on-site Youth Education Centre, within the capabilities of his management plan, and has been engaging with a Youth Justice Psychologist and with Child and Adolescent Mental Health Services. The Department has ensured his ability to speak with family, support persons, Office of the Guardian, legal representation, and senior staff at the AYTC in line with his rights and to address any concerns.

On 23 March 2017, [Ben] appeared before the Training Centre Review Board for his review. He requested a determination that "a youth sentenced to detention be transferred to prison on or after his eighteenth birthday to complete the period of detention", which was granted pursuant to Section 39(6) of the *Young Offenders Act 1993*. Discussions are occurring with the Department for Correctional Services (DCS) to facilitate this transfer, expected sometime during the week commencing 3 April 2017. Information is being shared in relation to [Ben's] case management, in accordance with the shared Memorandum of Administrative Arrangement between our agencies.

I can also advise that [Ryan] has been transferred to DCS following his successful request to do so, in the Adelaide Youth Court on 28 March 2017.

15. I again wrote to the CE by letter dated 11 April 2017 to:
 - advise of my investigation
 - provide the specific allegations
 - request responses to the allegations, and
 - request further information.
16. I advised the CE that I had decided to conduct a preliminary investigation about the use of regression, punishment, isolation and separation in AYTC under section 18(1) of the Ombudsman Act. I further advised that I had been made aware of the following allegations:
 - residents of the AYTC have been on regression for unreasonable lengths of time
 - residents are unreasonably punished while on regression

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- residents are denied reasonable access to education when they are on regression
 - residents are confined to their cells for more than 22 hours a day
 - residents on regression have limited access to exercise, stimulation and interactions with people their own age
 - residents are not told how long they will be on regression
 - residents who are approaching, or are over, eighteen years of age may be subjected to more severe regression in an attempt to have them transferred to Yatala
 - residents on regression are unreasonably handcuffed when they leave their rooms. It is alleged that residents have, at times, remained handcuffed even when they are by themselves in the secure courtyard and when they are having visits
 - professional visits are often included in the two hours of time that residents are allowed out of their rooms each day
 - the treatment of residents on regression is punitive, not rehabilitative.
17. Further, I advised the CE that the following allegations were made specifically in relation to Ben:
- the OGCYP and 'psych services' were told that Ben was going to the gym daily but this was not true
 - at some point in his regression, Ben was given a radio to listen to, but he was only allowed to use it after 12pm
 - Ben was told that 'they were not considering taking him off regression'
 - Ben behaved well for three or four weeks but remained on regression
 - the long period of regression was damaging to Ben's wellbeing and his physical and mental health.
18. Further, I advised the CE that the following allegations were made specifically in relation to Ryan:
- Ryan was unfairly placed on regression following an incident, in which he alleges he was attacked by two other residents
 - staff failed to prevent the incident from occurring and failed to protect Ryan
 - Ryan received injuries during the incident, as a result of staff restraining him on the ground
 - Ryan was not provided with prompt medical attention following the incident
 - Ryan was not provided with the opportunity to make a complaint while he was on segregation
 - whilst on regression Ryan was not always let out of his room for the required amounts of time per day
 - Ryan was not advised of the end date of his segregation.
19. I requested that the response and information be provided to me by 19 May 2017.
20. On 3 May 2017, the department requested an extension to 9 June 2017 to respond to me.
21. On 25 May 2017, the department requested a further extension to 16 June 2017.
22. On 16 June 2017, I received a response from the CE and some additional information. My Office assessed the information but was not able to determine what periods of time Ben or Ryan spent in isolation in their rooms. Given this, my Office requested³ that further information be provided by 18 August 2017, including, amongst other information:

³ By email dated 7 August 2017.

- beginning and end dates for Ben and Ryan's periods of segregation
 - the times that Ben and Ryan were confined to their rooms per day during their periods of segregation
 - relevant Dynamic Risk Management Plans (**DRMP's**) for Ben and Ryan
 - details of any education provided to Ben and Ryan during their periods of segregation
 - evidence that cultural support was provided for Ryan, and
 - relevant case notes for Ben and Ryan during any periods of isolation and/or segregation.
23. On 18 August 2017, my Investigating Officer was advised on the telephone by an officer of the department that it was difficult for the department to provide my investigation with the requested information because:
- some of the requested information pre-dates the legislative changes that came into effect in December 2016, and
 - the amount of information would be significant and it would take considerable time and resources to compile.

My Officer explained that, whilst my Office had been provided with information from the department that was useful in terms of understanding the background and of providing a broad overview, I had not received any information about anything affecting Ben and Ryan's rights. It was explained that my investigation was not able to determine, from the information provided, things such as:

- how much time per day Ben and Ryan spent in their rooms
 - how much access Ben and Ryan had to education
 - whether Ben and Ryan were permitted contact with their families and other young people
 - whether Ben and Ryan were unreasonably restrained, and
 - whether Ben and Ryan were given sufficient stimulation.
24. The CE wrote to me, by letter dated 6 September 2017, and advised that the 'periods of segregation involving [Ben] and [Ryan] occurred in the four months immediately following the 1 December 2016 implementation' of the Youth Justice Administration Act, subordinate regulations and associated procedures. The CE's letter included the following enclosures:
- summaries of Ben and Ryan's periods of segregation
 - incident reports, reviews and client statements
 - example DRMPs
 - examples of cultural and educational support
 - meeting minute excerpts
 - CCTV footage.
25. On 19 December 2017, my Office contacted the department and requested the C3MS⁴ records for Ben and Ryan during their periods of segregation. My Officer was advised that the relevant officer was away on leave.
26. On 10 January 2018, I wrote to the CE and advised that, whilst the department staff had been cooperative, my investigation was still not able to determine from the information provided, *inter alia*, for example:
- how long Ben and Ryan spent in isolation each day
 - when and for how long Ben and Ryan were able to exercise
 - when/if Ben and Ryan had personal visits
 - when/if Ben and Ryan had phone contacts

⁴ C3MS is an electronic case management system.

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- when/if Ben and Ryan attended school
 - if the requirements of the legislation, regulations and Operational Orders were complied with in relation to Ben and Ryan's periods of segregation and isolation
 - if any other behaviour management methods or strategies were implemented for Ben and Ryan.
27. On 15 January 2018, the CE phoned my Investigating Officer to discuss my 10 January 2018 letter. The CE advised that he wished to arrange a meeting between my Officers, himself and Officers from the department in order to establish what further information was required and to avoid further delays.
28. On 24 January 2018 two of my Officers met with the CE and three Officers from Youth Justice. My Officers explained that, whilst my investigation had been provided with DRMP's for Ben and Ryan's periods of segregation, my investigation was not able to establish whether the DRMP's, policies, procedures and legislation were complied with. My Officers explained that my investigation needed records that showed how long Ben and Ryan spent confined to their rooms each day.
29. The department advised my Officers that it would take one staff member at least four weeks to compile the requested information as it would have to be collated from a variety of sources, including Telephone Logs, Visitor Logs and Unit Logs, as there was no single record that recorded the requested information. My Officers suggested that the department's record keeping may be of concern, given that it is crucial that the department is able to easily determine and monitor how long a young person spends in their cell each day.
30. The department also advised my Officers that anything in the documents that referred to other residents would have to be redacted before the information was provided to my Office. My Officers advised that it was the usual practice of my Office to receive documents that contain sensitive information and the department would be consulted before any information was publicly released and, as such, redaction was not necessary. The department maintained that it needed to redact the information before providing it to my investigation.
31. On 15 March 2018, the department provided my investigation with additional information, including:
- copies of hand written Unit Observation Logs (**Unit Log**)
 - C3MS records
 - telephone records for Ben and Ryan
 - visitor records for Ben and Ryan
 - Case Note Assessments, and
 - Structured and Restricted Routine Activity Logs (**SRRA Log**).
32. The Unit Log records the movements of all of the residents in a Unit. The department redacted all of the information in the Unit Logs relating to residents other than Ben and Ryan.
33. From the above information I was able to identify issues to consider in relation to the treatment of Ben and Ryan, as being:
- whether Ben and Ryan were unreasonably segregated and/or isolated
 - whether Ryan was provided with cultural supports
 - whether Ben and Ryan were provided with access to education
 - whether Ben and Ryan were provided with access to exercise and other stimulation
 - whether Ben and Ryan were provided access to family
 - whether use of mechanical restraints was unreasonable

- whether the use of isolation and/or segregation was punitive
 - whether Ben and Ryan's periods of isolation/segregation were properly recorded
 - whether the use of isolation and/or segregation was lawful
 - whether proper processes and procedures were followed
 - whether the segregation and isolation of Ben and Ryan was always necessary.
34. By considering the above issues, I have considered whether the department acted in accordance with:
- the Youth Justice Administration Act and Regulations
 - the Charter of Rights for Children and Young People Detained in Training Centres
 - the Aboriginal and Torres Strait Islander Youth Justice Principle
 - relevant policies/procedures
 - international law.
35. I have considered whether the department complied with the above to determine whether the department's treatment of Ben and Ryan was unreasonable, wrong, oppressive, unjust and contrary to law in accordance with section 25 of the Ombudsman Act.

RELEVANT LAW

36. The Youth Justice Administration Act and associated regulations, which govern the management of residents of youth training centres, commenced on 1 December 2016.
37. The Youth Justice Administration Act amended the following:
- *Children's Protection Act 1993*
 - *Criminal Law Consolidation Act 1935*
 - *Criminal Law (Sentencing Act) 1988*
 - *Family and Community Services Act 1972*
 - *Young Offenders Act 1993*
 - *Youth Court Act 1993.*
38. Section 5 of the Youth Justice Administration Act provides that the Youth Justice Administration Act and the Young Offenders Act are to be read together and construed as if the two Acts constitute a single Act.
39. Section 3 of the Youth Justice Administration Act provides the objects and guiding principles of the Act, including:
- (1) The objects of this Act are—
 - (a) to provide mechanisms for the establishment and proper administration of training centre, community based supervision services and other facilities and services relating to youths who offend against the criminal law; and
 - (b) to provide for the safe, humane and secure management of youths held in training centres in the State; and
 - (c) to provide for appropriate programs for youths who are in detention or under supervision in the community; and
 - (d) to follow, to the extent practicable, international and national requirements or guidelines relating to the detention of youths; and
 - (e) to promote the rehabilitation of youths by providing them with the care, correction and guidance necessary for their development into responsible members of the community and the proper realisation of their potential; and
 - (f) ...
 - (g) ...
 - (h) to have regard to the particular needs and circumstances relevant to a youth's cultural identity and linguistic background; and
 - (i) to promote, and endeavour to ensure compliance with, the Charter of Rights for Youths Detained in Training Centres; and
 - (j) to recognise the importance of family and community involvement and participation in administering youth justice; and
 - (k) to support the reintegration of youths with the community as part of their rehabilitation; and
 - (l) to promote community safety.
 - (2) The Minister, the Chief Executive, the Department and other persons and bodies involved in the administration of this Act are to be guided by the following principles in the exercise of their functions:

- (a) in exercising powers under this Act, consideration should at all times be given to promoting the wellbeing and best interests of youths;
 - (b) ...
 - (c) the management of residents of training centres, and youths who are subject to supervision in the community, should be designed to achieve their rehabilitation and development into responsible members of the community and the proper realisation of their potential;
 - (d) the community, and individual members of it, must be adequately protected against violent or wrongful acts;
 - (e) facilities and programs developed for the care, rehabilitation, detention, training, therapeutic treatment or other treatment of youths should—
 - (i) be evidence based; and
 - (ii) be individually designed as much as reasonably practicable—
 - (A) to take account of the youth’s age, gender, gender identity, sexuality or sexual identity, cultural identity, developmental and cognitive capacity, ability or disability, and any special needs; and
 - (B) to promote the health of the youth; and
 - (C) to promote the educational and vocational training needs of the youth; and
 - (D) to address offending behaviours; and
 - (iii) be governed by a comprehensive assessment and case plan developed in a multi-disciplinary framework; and
 - (iv) support a focus on connecting and reintegrating with family and community; and
 - (vi) emphasise individual responsibilities.
- (3) In addition to the principles set out in subsection (2), a person or body exercising a function or power under this Act in relation to an Aboriginal or Torres Strait Islander youth must—
- (a) observe the Aboriginal and Torres Strait Islander Youth Justice Principle; and
 - (b) have regard to the particular needs and circumstances of Aboriginal or Torres Strait Islander youths who are residents of training centres or are under supervision in the community; and
 - (c) recognise the diversity of cultures within Aboriginal and Torres Strait Islander communities.

40. Section 25 of the Youth Justice Administration Act provides:

Subject to this Act, the Chief Executive has an absolute discretion—

- (a) to place any particular youth or youth of a particular class in such part of a training centre as the Chief Executive thinks fit; and

- (b) to establish in respect of a particular youth, or youth of a particular class, or in respect of youths placed in any particular part of a training centre, such a regime for education, training, work, recreation, contact with other youths or any other aspect of the day-to-day life of youths in detention; and
- (c) to vary any such regime,

as from time to time seems expedient to the Chief Executive.

41. Section 27 of the Youth Justice Administration Act provides:

- (1) The Chief Executive must arrange for such courses of instruction or training as the Chief Executive thinks fit to be made available to residents of training centres.
- (2) In particular, the Chief Executive must, as much as reasonably practicable, encourage a resident of a training centre who is a child of compulsory school age or a child of compulsory education age to continue or otherwise further his or her school education or vocational or other training (as the case requires).

42. Section 29 of the Youth Justice Administration Act provides:

29—Prohibited treatment of residents

Subject to this Act, a resident of a training centre must not be subjected to any of the following kinds of treatment:

- (a) corporal punishment of any form (that is, any action that inflicts or is intended to inflict physical pain or discomfort);
- (b) isolation or segregation (other than in a safe room or in prescribed circumstances) from other residents;
- (c) psychological pressure or emotional abuse of any form intended to intimidate or humiliate;
- (d) deprivation of medical attention, basic food or drink, clothing or any other essential item;
- (e) deprivation of sleep;
- (f) restriction of free movement by means of mechanical restraints (other than in prescribed circumstances);
- (g) unjustified deprivation of contact with persons outside the centre;
- (h) any other treatment that is cruel, inhuman or degrading.

43. Part 3 of the Youth Justice Administration Regulations sets out the circumstances in which otherwise prohibited actions are allowed.

44. Regulation 6 provides the circumstances in which isolation of residents of training centres is allowed, as follows:

- (1) For the purposes of section 29(b) of the Act, this regulation prescribes the circumstances in which a resident of a training centre may be isolated from the other residents of the centre by being placed in a locked room (which may be the resident's bedroom) and kept apart from the normal routine of the centre.
- (2) Subject to this regulation, a resident of a training centre may be isolated from the other residents of the centre if an employee of the centre believes on reasonable grounds that—

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- (a) the resident's personal safety is in need of protection from other residents; or
 - (b) the resident's behaviour presents a threat to the safety of others and all reasonable de-escalation actions have failed; or
 - (c) it is otherwise necessary to isolate the resident from other residents—
 - (i) to maintain order in the centre; or
 - (ii) to preserve the security of the centre; or
 - (iii) to protect the health of other persons.
- (3) A resident of a training centre may be isolated from the other residents of the centre by being placed in the resident's bedroom—
- (a) on the request of the resident; or
 - (b) if the resident is ill.
- (4) A resident of a training centre isolated from other residents of the centre at the request of the resident under subregulation (3) must be released from isolation at the resident's request.
- (5) If a resident of a training centre is isolated from other residents of the centre under subregulation (3)(b), the employee of the centre responsible for isolating the resident must consider whether an assessment of the resident's health should be made by a medical practitioner.
- (6) Isolating a resident of a training centre must not—
- (a) be used to punish the resident; or
 - (b) contravene the resident's rights under the *Charter of Rights for Youths Detained in Training Centres*; or
 - (c) limit the ability of the resident to communicate with employees of the centre at any time.
- (7) The following provisions apply in relation to a resident of a training centre who is being isolated from the other residents of the centre:
- (a) if the resident is isolated from the other residents of the centre for longer than 30 minutes, the manager of the centre must be informed of the isolation, and the reasons for the isolation, as soon as reasonably practicable;
 - (b) isolation of the resident must not continue—
 - (i) for longer than is reasonably necessary in the circumstances; or
 - (ii) for longer than 3 hours unless the manager of the centre approves a longer period;
 - (c) if the resident is isolated from other residents of the centre for longer than 3 hours in accordance with the approval of the manager of the centre under paragraph (b), the isolation must not continue for longer than 24 hours unless—
 - (i) the manager of the centre considers that the circumstances are exceptional; and

-
- (ii) isolation of the resident for that longer period has been approved by the Chief Executive.
 - (d) the resident must, if possible, be provided with mental or physical stimulation that does not constitute a risk to the resident's safety;
 - (e) the residents must be closely supervised;
 - (f) the residents must be observed at intervals of not longer than 15 minutes;
 - (g) the observations must be recorded.
- (8) The Chief Executive must establish procedures to be followed relating to the isolation of residents of training centre from other residents.
- (9) If a resident of a training centre is isolated from the other residents of the centre, the manager of the centre must ensure that a record is made containing the following details:
- (a) the name and age of the resident;
 - (b) the date and time the period of isolation began;
 - (c) the date and time the period of isolation ended;
 - (d) the reason for the isolation;
 - (e) the name of the employee of the centre who ordered the isolation;
 - (f) action taken (if any) in respect of the resident before the resident was so isolated.
45. Regulation 7 of the Youth Justice Administration Regulations provides the circumstances in which segregation of residents of training centres is allowed, as follows:
- (1) For the purposes of section 29(b) of the Act, this regulation sets out the circumstances in which a resident of a training centre may be segregated from the other residents of the centre by being placed on an individualised regime separate from the normal routine of the centre that allows the resident only restricted contact with the other residents.
 - (2) Subject to this regulation, a resident of a training centre may only be segregated from other residents of the centre if an employee of the centre believes on reasonable grounds that—
 - (a) the resident's personal safety is in need of protection from other residents; or
 - (b) the resident's behaviour presents a threat to the resident's safety or the safety of others and all reasonable de-escalation actions have failed; or
 - (c) it is otherwise necessary to segregate the resident from other residents—
 - (i) to maintain order in the centre; or
 - (ii) to preserve the security of the centre.
 - (3) Segregating a resident of a training centre must not—
 - (a) be used to punish the resident; or

-
- (b) contravene the resident's rights under the *Charter of Rights for Youths Detained in Training Centres*; or
 - (c) limit the ability of the resident to communicate with employees of the centre at any time; or
 - (d) limit the resident's access to regular exercise periods or other stimulation; or
 - (e) restrict the resident's access to contact with visitors (whether in person or by telephone) beyond what is normally allowed for the resident.
- (4) If a resident of a training centre is segregated from the other residents of the centre—
- (a) the segregation must not continue for longer than is reasonably necessary in the circumstances; and
 - (b) the resident must not be prevented from having contact with other residents of the centre for more than 22 hours in any 24 hour period unless such contact would be detrimental to the wellbeing of the resident or other residents; and
 - (c) the manager of the centre must be informed of the segregation, and the reasons for the segregation, as soon as reasonably practicable; and
 - (d) the manager of the centre must ensure that—
 - (i) a parent, guardian or carer of the resident is informed of the segregation as soon as reasonably practicable; and
 - (ii) if the resident is an Aboriginal or Torres Strait Islander youth—an Aboriginal or Torres Strait Islander person who can provide the resident with cultural support is informed of the segregation as soon as reasonably practicable; and
 - (iii) if the resident is under 12 years of age—the Training Centre Visitor is informed of the segregation; and
 - (iv) an individualised action plan is prepared to support the resident's return to the normal routine of the centre, including interaction with other residents; and
 - (v) a record is made containing the following details:
 - (A) the name and age of the resident;
 - (B) the date and time the period of segregation began;
 - (C) the date and time the period of segregation ended;
 - (D) the reason for the segregation;
 - (E) the frequency and outcome of any risk assessments conducted in relation to the segregation;
 - (F) the name of the employee of the centre who ordered the segregation;
 - (G) action taken (if any) in respect of the resident before the resident was segregated;
 - (H) the resident's contact (if any) during the period of segregation with other residents of the centre; and

- (vi) as far as reasonably practicable, the resident maintains access to education, health and rehabilitative services in accordance with the case plan prepared for the resident.

46. Regulation 8 of the Youth Justice Administration Regulations provides the circumstances in which the use of mechanical restraints on residents of training centres is allowed, as follows:

- (1) For the purposes of section 29(f) of the Act, this regulation sets out the circumstances in which the free movement of a resident of a training centre may be restricted by the use of a device, instrument or physical object (that is, by means of a *mechanical restraint*).
- (2) Subject to this regulation, the free movement of a resident of a training centre may only be restricted by means of a mechanical restraint if—
 - (a) the mechanical restraint is of a kind approved by the Chief Executive for the purpose; and
 - (b) an employee of the centre believes on reasonable grounds that—
 - (i) the resident is about to harm himself or herself or another person; or
 - (ii) it is necessary to restrain the resident—
 - (A) to preserve the security of the centre; or
 - (B) to prevent the resident from escaping from custody; or
 - (C) to preserve community safety.
- (3) Restricting the free movement of a resident of a training centre by the use of a mechanical restraint—
 - (a) may only be used as a last resort following an assessment of the risks associated with using, or not using, a mechanical restraint to restrain the resident's free movement; and
 - (b) must not—
 - (i) be used to punish the resident; or
 - (ii) contravene the resident's rights under the *Charter of Rights for Youths Detained in Training Centres*.
- (4) The Chief Executive must establish procedures to be followed relating to the use of mechanical restraints on residents of training centres.
- (5) The following provisions apply to the use of mechanical restraint on a resident of a training centre:
 - (a) the use must be reasonable, justified and proportionate in the circumstances;
 - (b) the mechanical restraint may only be used by an employee of the centre who has been trained in the use of such restraints;
 - (c) the manager of the centre must be notified of the use of the restraint as soon as reasonably practicable;
 - (d) the restraint may only be used for as long as necessary in the circumstances;

- (e) the resident must not be left unsupervised and the resident and restraint are to be checked at regular intervals of not more than 15 minutes;

...

47. Section 22 of the Youth Justice Administration Act provides that there will be a Charter of Rights for Children and Young People Detained in Training Centres (**the Charter of Rights**). The Charter of Rights is as follows:

This Charter of Rights for Children and Young People Detained in Training Centres (YJAA 2016 sec 22) tells you what you can expect during your time in the Centre. The rights apply to everyone and you have to respect other people's rights.

You have the right to:

- be treated equally, and not treated unfairly because of your sex, sexuality, race, religion, disability or other status
- be treated with respect and dignity by staff and to be kept safe while you are in the youth justice centre
- be given a copy of the rules of the centre and information about your rights and responsibilities in a language that you can understand
- see a doctor or nurse whenever you need to and receive proper healthcare
- receive help for your mental health if you need it and be transferred to a mental health facility for treatment if required
- get help if you have problems with drugs or alcohol
- have special care and protection if you are vulnerable or have special needs
- have regular contact with your family and friends through visits and phone calls
- get help to see a lawyer and talk to them privately
- have an interpreter for formal meetings or medical examinations if you are not fluent in English
- get information and news about what is happening in the world
- have a say in decisions about your rehabilitation and other issues that affect you
- participate in activities and programs that help your rehabilitation, continue your education, or do training to learn useful skills for work
- get exercise every day, and to go outside every day except in bad weather
- have enough good food (including food that is suitable for your culture or religion, or dietary requirements), and have drinking water available whenever you need it
- have clean clothes, and to wear your own clothes if you go out of the centre
- not to be punished unfairly, and only in accordance with the rules of the centre or the law
- not have force used against you or restraints used on you unless absolutely necessary, and never as a punishment
- not be isolated from other young people unless necessary to keep you or others safe, and never as a punishment
- practice your religion or express your culture and whenever possible be able to see religious or spiritual advisors
- if you are Aboriginal or Torres Strait Islander, participate whenever possible in cultural activities and celebrations with other Aboriginal or Torres Strait Islander people
- make a complaint about your treatment to an independent person (like an official visitor) and to be told what happens with your complaint
- before you leave the centre, get help with somewhere safe to live and ongoing support.

48. Regulation 5 of the Youth Justice Administration Regulations provides Aboriginal and Torres Strait Islander Youth Justice Principle as follows:

- (a) that, in acknowledging the diversity of Aboriginal and Torres Strait Islander communities, the individual cultural identity of Aboriginal and Torres Strait Islander

youths be recognised and their beliefs and practices be supported, respected and valued;

- (b) that Aboriginal and Torres Strait Islander youths will be supported to uphold their cultural responsibilities and have access to, and participation in, cultural ceremonies, funerals and cultural practices, relevant to their individual cultural identity;
- (c) that assessment, case planning and decision-making in respect of an Aboriginal or Torres Strait Islander youth includes consultation with relevant Aboriginal and Torres Strait Islander people or organisations to assist the youth;
- (d) that, where it is appropriate to do so, the identified family, significant person and community of an Aboriginal or Torres Strait Islander youth are participants in assessment, case planning and decision-making for the youth;
- (e) that Aboriginal and Torres Strait Islander youths are provided with programs, services and supports that have regard to their age, maturity and individual cultural identity;
- (f) that the assessment of appropriate accommodation in a training centre will consider the individual cultural identity of Aboriginal and Torres Strait Islander youths;
- (g) that, where necessary, Aboriginal and Torres Strait Islander youths will be provided with interpreters and, where possible, translated documents;
- (h) that the particular health, education and wellbeing needs of Aboriginal and Torres Strait Islander youths are considered and, where practicable, met;
- (i) that officers of the Department actively participate in cultural training and demonstrate culturally respectful engagements;
- (j) that the Department actively recruits and supports the retention of Aboriginal and Torres Strait Islander staff.

49. Part 5 of the Youth Justice Administration Regulations relates to visitors and communication.

50. Regulation 12 provides the circumstances in which residents of training centres are permitted visitors other than official or professional visitors, as follows:

- (1) A resident of a training centre is entitled to at least 2 visits each week.
- (2) The manager of a training centre must encourage and facilitate visits to the residents of the centre by relatives, friends and other significant persons, including by directing the type of visit depending on the needs of the particular resident.

Example—

The manager of a training centre may direct that a visit by a particular person to a particular resident of the centre is to be a contact or non-contact visit in a separate or private, or in a public, meeting room.

...

51. The management of youths who turn 18 years of age whilst in the AYTC is prescribed by sections 39 and 63 of the Young Offenders Act. Section 39 of the Act provides:

- (1) The Training Centre Review Board has the following functions in respect of a youth who has been sentenced to detention in a training centre:

- (a) to conduct a review of the progress and circumstances of the youth while in the training centre—
 - (i) at intervals of not more than 6 months; and
 - (ii) at any other time on the request of the Chief Executive;
- (b) to hear and determine any other matter relating to the youth assigned to the Board under this Act.

...

- (6) If a period of detention to which a youth has been sentenced will extend past the youth's 18th birthday, the Training Centre Review Board must, at the last periodical review before that birthday, and at each periodical review thereafter, consider whether the youth should be transferred to complete the period of detention in a prison (and, if the Board does so determine, the youth will be transferred to prison in accordance with the Board's determination).

52. Section 63 of the Young Offenders Act provides:

- (1) ...
- (2) If a person who is above the age of 18 years is detained in, or remanded to, a training centre or another place pursuant to an order of a court, the person or the Chief Executive may apply to the Youth Court for an order that the person be transferred to a prison for the remainder of the period of detention or remand.
- (3) the Youth Court may not make an order under subsection (2) unless satisfied that, in the circumstances, a prison would be an appropriate place for the person to be held for the remainder of the period of detention or remand.
- (4) If a person who is above the age of 17 years has been remanded to, or is being detained in, a training centre or another place pursuant to an order of a court, the Chief Executive may apply to the Youth Court for an order that the person be transferred to a prison for the remainder of the period of remand or detention.
- (5) The Youth Court may not make an order under subsection (4) unless satisfied that—
 - (a) the person—
 - (i) cannot be properly controlled in that training centre or other place; or
 - (ii) has, within the period of 14 days preceding the date of the application, been found guilty of assaulting a person employed, or detained, in that training centre or other place; or
 - (iii) has persistently incited others in the training centre or other place to cause a disturbance; or
 - (iv) has escaped or attempted to escape from the training centre; or
 - (b) the person's needs for rehabilitation, care, correction and guidance cannot be met in that training centre or other place and it is in the best interests of the person for him or her to be transferred to a prison.

...

RELEVANT POLICIES / PROCEDURES

Operational Order 68 - Isolation

53. Regulation 6(8) of the Youth Justice Administration Regulations provides that the CE must establish procedures to be followed when residents are isolated from other residents.
54. At the relevant times, Operational Order 68, 'Use of Isolation', version 1,⁵ (**the Isolation Operational Order**) was in place at the AYTC to define the circumstances in which a resident could be isolated from other residents, and to outline the procedures to be followed and the associated reporting and recording requirements to ensure compliance with the legislation.
55. A review of the Isolation Operational Order has since been undertaken and version two of the Isolation Operational Order⁶ was implemented in late March 2018 following staff training.
56. I have set out the relevant provisions of the Isolation Operational Order in the body of my report.
57. I note that version 2 of the Isolation Operational Order includes considerably more detail than version 1.

Operational Order 69 - Segregation

58. Regulation 7(5) of the Youth Justice Administration Regulations provides that the CE must establish procedures to be followed when residents are segregated from other residents.
59. At the relevant times, Operational Order 69, 'Use of Segregation', (**the Segregation Operational Order**) was in place at the⁷ AYTC to define the circumstances in which a resident could be segregated, and to outline the procedures to be followed and the associated reporting and recording requirements to ensure compliance with the legislation.
60. A review of the Segregation Operational Order has since been undertaken and version two of the Segregation Operational Order was renamed 'Operational Order 69, Use of Restricted Routine'⁸ (**the Use of Restricted Routine Operational Order**). The CE advised my investigation that staff were trained prior to the full implementation of the Use of Restricted Routine Operational Order in late March 2018.
61. I have set out the relevant provisions of the Segregation Operational Order in the body of my report.
62. I note that version 2 of the Segregation Operational Order, being the Restricted Routine Operational Order, includes more detail than version 1.

⁵ Adelaide Youth Training Centre, Operational Order 68, 'Use of Isolation, Version 1, 01/12/2016.

⁶ Adelaide Youth Training Centre, Operational Order 68, 'Use of Isolation, Version 2, 12/02/2018.

⁷ Adelaide Youth Training Centre, Operational Order 69, 'Use of Segregation', Version 1, Working draft, 01/12/2016.

⁸ Adelaide Youth Training Centre, Operational Order 69, renamed as 'Use of Restricted Routine, Version 2, 12/02/.

Security Order 26 - Use of Mechanical Restraint

63. At the relevant times, Security Order 26, 'Use of Mechanical Restraint, (**the Mechanical Restraint Security Order**) was in place at the⁹ AYTC to define the circumstances in which a resident could be segregated, and to authorise the use of mechanical restraints on residents of the AYTC and to provide the conditions of their use. I understand that this version of Security Order 26 is still in place.
64. I have set out the relevant provisions of the Mechanical Restraint Security Order in the body of my report.

⁹ Adelaide Youth Training Centre, Security Order, 'Use of Mechanical Restraint, Version 2, 01/12/2016.

DOMESTIC AND INTERNATIONAL HUMAN RIGHTS STANDARDS

65. Australia has signed and ratified a number of international covenants which identify and protect the rights of juveniles in the justice system. These include:
- the Convention on the Rights of the Child (**the CRC**)¹⁰
 - the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**the CAT**)¹¹
 - the International Covenant on Economic, Social and Cultural Rights (**the ICESCR**)¹²
 - the International Covenant on Civil and Political Rights (**the ICCPR**).¹³
66. The obligations set out in the above international covenants are elaborated on by the following United Nations rules and guidelines, which provide member states with comprehensive guidelines on how to uphold the human rights of juveniles in the justice system:
- the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (**the Beijing Rules**)
 - the United Nations Guidelines for the Prevention of Juvenile Delinquency (**the Riyadh Guidelines**); and
 - the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (**the Havana Rules**).
67. These instruments form part of Australia's obligations under the CRC, as they have been adopted by the Committee on the Rights of the Child as filling out the content of the CRC itself.
68. A fundamental feature of these instruments is the recognition that juvenile offenders are different to adult offenders and so should be managed in a way which takes into account their inexperience, immaturity and increased capacity for rehabilitation. In particular, it is emphasised that the juvenile justice system should consider the best interests of the child at all times and to this end, detention should always be a last resort.
69. The torture and ill-treatment of children is absolutely prohibited and states must ensure that children deprived of their liberty are treated with humanity and respect for their inherent dignity.¹⁴
70. Together, these treaties create the framework within which Australia must work to maintain its status as a responsible member of the international community, and ensure that children within its jurisdiction enjoy their basic human rights.
71. However, an international instrument to which Australia is a party does not form a part of Australian law unless the relevant provisions have been given legislative effect.¹⁵
72. The South Australia *Administrative Decisions (Effect of International Instruments) Act 1995* establishes that an international instrument that does not have the force of domestic law cannot give rise to a legitimate expectation that an administrative decision in South Australia will conform to that instrument. Section 3(3) of this Act does, however, permit a decision-maker to have regard to such an international instrument 'if the instrument is relevant to the decision.'

¹⁰ The CRC was adopted in 1989 and ratified by Australia in 1990.

¹¹ Ratified by the Australian Government in 1989.

¹² Ratified by the Australian Government in 1975.

¹³ Signed for Australia on 18 December 1972. Ratified by Australia 13 August 1980 (note - with various reservations and declarations).

¹⁴ Article 37 of the CRC; Article 7 and Article 10 of the ICCPR, and Article 2 of the CAT.

¹⁵ *Minister of State for Immigration & Ethnic Affairs v Ah Hin Teoh* (1995) 183 CLR 273 at [22] per Mason CJ and Deane J.

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73. Section 3 of the Youth Justice Administration Act provides that an object of the Act is 'to follow, to the extent practicable, international and national requirements or guidelines relating to the detention of youths.'
74. Given the above, the international instruments referred to in this report have not been wholly incorporated into domestic law in the manner required by section 3 of the Administrative Decisions (Effect of International Instruments) Act. Rather, they apply only 'to the extent practicable'. In any event, I am of the view that in a community such as South Australia, we should be aiming to exceed these international minimum standards to ensure the humane treatment of young people in detention.

The UN Convention on the Rights of the Child - the CRC

75. The CRC sets out the fundamental binding principles to be reflected in the treatment of juvenile offenders. Under international law, all rights that apply to adults apply equally to children, but additional juvenile justice protections exist under the international human rights framework in recognition that children differ from adults in their physical and psychological development. The CRC is the primary source of these rights.
76. Article 1 of the CRC defines a child to be 'every human being below the age of eighteen years, unless, under the law applicable to the child, majority is attained earlier'.
77. The CRC provides that the best interests of the child is to be a fundamental principle to be observed, including in the context of criminal justice.¹⁶
78. Article 37 of the CRC includes:
- States Parties shall ensure that:
- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
 - (b) ...
 - (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
 - (d) ...
79. Article 40.1 of the CRC states:

States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

¹⁶ See Article 3.1 and Article 19.

80. The particular needs of Indigenous children are recognised in Article 30 of the CRC, which states:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - the CAT

81. Under the CAT, the Australian Government is responsible for ensuring 'effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction,' and to prevent 'acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture'.¹⁷

82. **Article 1 of the CAT provides:**

1. For the purposes of this Convention, the term "torture" means 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.

83. The excessive use of solitary confinement against children is a form of treatment that could constitute cruel, inhuman or degrading treatment or punishment. Where these forms of treatment are inflicted deliberately by, or on behalf of, a public official, in an effort to punish, intimidate or coerce, they may also amount to torture under the CAT.
84. On 15 December 2017 Australia ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**).¹⁸ The Australian Government has three years to implement OPCAT. OPCAT assists Australia in meeting its existing international human rights obligations. Under OPCAT an independent National Preventative Mechanism will be established to conduct inspections of all places of detention, including youth justice detention centres.

The Rules and Guidelines

85. The obligations set out in CRC are elaborated on by the Beijing Rules, the Riyadh Guidelines, and the Havana Rules, which provide member states with comprehensive guidelines on how to uphold the human rights of juveniles in the justice system. These instruments form part of Australia's obligations under the CRC as they have been adopted by the Committee on the Rights of the Child as filling out the content of the CRC itself.

¹⁷ See Article 1 and Article 16.

¹⁸ Media release, 'Improving oversight and conditions in detention'. 9 February 2017, available at <<https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/FirstQuarter/Improving-oversight-and-conditions-in-detention.aspx>> last accessed 10 August 2017.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice - the Beijing Rules

86. Rule 5 of the Beijing Rules states:

5. Aims of juvenile justice

5.1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

87. Rule 26 of the Beijing Rules states:

26. Objectives of institutional treatment

26.1 The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.

26.2 Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality and in the interest of their wholesome development.

...

26.5 In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.

...

The United Nations Guidelines for the Prevention of Juvenile Delinquency - the Riyadh Guidelines

88. Fundamental Principle 5 of the Riyadh Guidelines states:

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

89. Section 54 of the Riyadh Guidelines states:

54. No child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty - the Havana Rules

90. The Havana Rules include:

...

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities

should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

...

47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skill development...

...

60. Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

...

64. Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances, the director should at once consult medical and other relevant personnel and report to the higher administrative authority.

...

66. Any disciplinary measures and procedures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person.

67. All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned...

...

The United Nations Standard Minimum Rules for the Treatment of Prisoners - the Mandela Rules

91. Whilst the Mandela Rules are not specific to juveniles, they are nonetheless relevant.

92. The Mandela Rules relevantly provide:

Rule 43

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement

...

Rule 44

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

DYNAMIC RISK MANAGEMENT PLANS (DRMP'S)

93. If a resident is segregated, regulation 7(4)(d)(V) of the Youth Justice Administration Regulations provides that the manager of the centre must ensure that a record is made which records the following details:

- (a) the name and age of the resident
- (b) the date and time the period of segregation began
- (c) the date and time the period of segregation ended
- (d) the reason for the segregation
- (e) the frequency and outcome of any risk assessments conducted in relation to the segregation
- (f) the name of the employee of the centre who ordered the segregation
- (g) action taken (if any) in respect of the resident before the resident was so segregated
- (h) the resident's contact (if any) during the period of segregation with other residents of the centre

94. The AYTC records the above information on a document titled a Dynamic Risk Management Plan (**DRMP**).

95. The CE submitted, in a letter dated 13 June 2017:

... To support the appropriate and limited use of segregation, it is required that a Dynamic Risk Management Plan (DRMP) be in place. The DRMP contains a requirement for regular reviews, consideration of continued access to education, exercise, use of restraint, and the provision of a range of supportive mechanisms. It is recognised that the individual needs and circumstances of each resident be considered to ensure a tailored approach. As a result, the plans are designed to be highly specific, and dynamically reviewed, with the expectation that greater levels of restrictions will only be used for the shortest time possible in limited circumstances. On occasion, in consideration of individual circumstances, professional visits may occur as part of the time out of bedrooms for residents on restricted routines. However, separate exercise periods are the preferred method, and practice improvement is being progressed in this area. Now implemented, the DRMP and segregation and isolation procedures are currently undergoing thorough review to enable further enhancements....

96. The Segregation Operational Order states that when a resident is subject to segregation:

A Dynamic Risk Management Plan must be prepared to respond to the needs of the resident and support the resident's return to the normal structured day of the AYTC, including attendance at school, programs or group activities and planned interaction with other residents, in accordance with section 3.2 *Dynamic Risk Management Plans* of this Operational Order.

97. The Segregation Operational Order includes:

3.2 Dynamic Risk Management Plans

A Dynamic Risk Management Plan is required for any resident who is subject to segregation. The Dynamic Risk Management Plan must consider the resident's needs,

safety and the safety of others and include risk mitigation strategies to be applied by staff when interacting with the resident.

3.2.1 Review Periods

A Dynamic Risk Management Plan is subject to ongoing assessment of the resident's circumstances and responses to interventions. Dynamic Risk Management Plans for residents subject to segregation must be reviewed at the end of each shift.

3.2.2 Approvals

Only a Duty/On-call Manager (or higher classification) can approve for a resident to be subject to segregation. If the resident's Dynamic Risk Management Plan includes no school, or only individual programs and activities in section 7 AND association restrictions or no association in section 8 it must be approved by a Duty/On-call Manager.

DEFINING ISOLATION, SEGREGATION AND SEPARATION

98. Multiple terms are used throughout Australia to describe what essentially amounts to solitary confinement, including: isolation; regression; segregation; behaviour management, and high security.
99. Segregation at the AYTC is not called 'solitary confinement' but the effect may be that the young person is kept away from other young people in a cell on their own.
100. In the AYTC, Frangipani is a separate unit fitted with security features, that is used to accommodate residents who are segregated, or on restricted or structured routines. There is a small fenced courtyard in the unit for exercise periods.
101. The room my Officers visited in Frangipani Unit had minimal amenities, being: a toilet; a basin; a bed; a mattress; and a caged small television mounted high on the wall near the ceiling. In other words, it was similar to a prison cell.
102. The CE advised my investigation that the introduction of the Youth Justice Administration Act, and subordinate procedures, on 1 December 2016 'brought into effect a range of changes in terminology and practice', stating that 'in particular, the term 'on regression' is no longer used within the AYTC' and 'the terms 'segregation' and 'isolation' are now contained in the legislation, with provisions prescribed which direct their use'.¹⁹
103. The legislation does not define 'isolation'. However, Regulation 6 of the Youth Justice Administration Regulations prescribes 'the circumstances in which a resident of a training centre may be isolated from other residents of the centre by being placed in a locked room (which may be the resident's bedroom) and kept apart from the normal routine of the centre'.
104. The legislation also does not define 'segregation'. However, Regulation 7 of the Youth Justice Administration Regulations sets out 'the circumstances in which a resident of a training centre may be segregated from other residents of the centre by being placed on an individualised regime separate from the normal routine of the centre that allows the resident only restricted contact with other residents.'
105. The Isolation Operational Order defines isolation as follows:

Isolation refers to when a resident of the AYTC is placed in a locked room (which may be the resident's bedroom) and kept apart from the normal routine of the centre. This definition does not apply to the use of a safe room.
106. The Segregation Operational Order defines segregation as follows:

Segregation refers to when a resident is placed on an individualised regime, separate from the normal routine of the ATYC, and has restricted contact with other residents. This occurs primarily when a resident is assessed as unable to attend school, programs or group activities and is subject to association restrictions as defined in Section 7 and 8 of a Dynamic Risk Management Plan.
107. These definitions are confusing because, in accordance with the definitions, a young person may be on segregation but also be subject to isolation.
108. Whilst there is no universal definition for solitary confinement, the United Nations Special Rapporteur on Torture has defined it as the 'physical and social isolation of individuals who are confined in their cells for 22 to 24 hours a day.'

¹⁹ Letter from CE to Ombudsman, 13 June 2017.

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109. The Mandela Rules define 'solitary confinement' as the confinement of prisoners for 22 hours or more a day without meaningful human contact.
110. The Youth Justice Administration Act, Regulations and operational procedures do not refer to 'solitary confinement'. However, the effect of both segregation and isolation are that the young person is kept away from other young people in an isolation unit on their own and may be subject to isolating conditions that could be classified as solitary confinement.
111. My investigation identified a lack of clarity regarding the definitions of 'segregation' and 'isolation' and a level of confusion in AYTC staff. This is evident in the Unit Logs, which often refer to 'isolation' rather than 'segregation'. For example Ben's Case Note on 7 March 2017 states 'when [Ben] came out of isolation...'.²⁰
112. This confusion is significant because, depending on whether a young person is subject to 'segregation' or 'isolation', they will be subject to different reporting and review requirements and, as such, to different procedural protections.
113. For example, if a resident is 'isolated' from other residents of the centre for longer than 30 minutes, the manager must be informed of the isolation, and the reasons for the isolation, as soon as reasonably practicable.²¹ The isolation must not continue for longer than is 'reasonably necessary', or for longer than three hours, unless the manager of the centre has approved a longer period. If the manager has approved a longer period, the isolation must not continue for longer than 24 hours, unless the manager considers that the circumstances are exceptional, or the longer period of isolation has been approved by the CE.
114. Alternatively, if the resident is 'segregated' from other residents of the centre, the segregation must not continue for longer than is reasonably necessary in the circumstances, and the resident must not be prevented from having contact with other residents of the centre for more than 22 hours in any 24 hour period (unless such contact would be detrimental to the wellbeing of the resident or other residents).²² In addition, the manager must be informed as soon as reasonably practicable, and then the manager must take a number of steps, including ensuring that:
- a parent, guardian or carer of the resident is informed of the segregation as soon as reasonably practicable
 - if the young person is Aboriginal or Torres Strait Islander and Aboriginal or Torres Strait Islander, a person who can provide the resident with cultural support is informed as soon as reasonably practicable
 - an individualised action plan is prepared 'to support the resident's return to the normal routine of the center, including interaction with other residents'
 - a record is made of details relating to the segregation.
115. The Youth Justice Administration Regulations provide that the CE must establish procedures to be followed when residents are isolated and when segregated from other residents. These are the Use of Isolation and the Use of Segregation Orders.
116. By letter from the CE dated 7 March 2018, the CE advised that there were no breaches of the Use of Isolation or Use of Segregation Orders in relation to Ben and Ryan, as follows:

²⁰ Other examples include Ben's Unit Logs for 16, 18, 19 and 20 March 2017, and Ryan's Unit Log and SRRA Log on 16 March 2017.

²¹ In accordance with regulation 6 of the Youth Justice Administration Regulations.

²² In accordance with regulation 7 of the Youth Justice Administration Regulations.

As provided in my response to your letter of 30 May 2017 (2017/03135) the General Manager's monthly audit reports on compliance with AYTC Orders to the Director, Youth Justice, form part of a broader monthly secure report for the AYTC. Reporting in relation to AYTC Orders is by exception (ie identified non-compliances). The relevant section of each monthly report within your query period indicates that there were no non-compliances identified for AYTC Security Order 26 - *Use of Mechanical Restraint*, AYTC Operational Order 68 - *Use of Isolation* or AYTC Operational order 69 - *Use of Segregation*.

117. I have identified that there were non-compliances with the Use of Segregation Order.
118. Given that the department did not consider that Ben and Ryan were placed in 'isolation', the Use of Isolation Order did not apply.
119. The department is of the view that it was not required to follow the legislative and procedural requirements in relation to isolation because it did not consider that Ben and Ryan were isolated in accordance with the Act.²³ The CE's letter dated 7 March 2018 included:

...With regard to your request for evidence of approvals related to isolation of a resident under Regulation 6(7)(c), I advise that planned time residents spend in bedrooms while under segregation is not considered isolation. Isolation, as defined in Youth Justice Administration Regulation 6, is used as an immediate response to a risk to safety and/or security, commonly following an incident or event which requires the resident to be locked in a room (usually their bedroom) for a short period of time. Alternatively, segregation, as described in Youth Justice Administration Regulation 7, is a protective action that provides an individualised regime for a resident based on a dynamic risk management plan and can include restricted contact with other residents, planned periods in bedrooms and regular exercise periods. This individualised regime is then regularly reviewed with the aim of transitioning the resident safely back into the normal routine of the AYTC as soon as possible. Nonetheless, during the segregation periods in question, neither [Ben] nor [Ryan] was secured in a locked room for greater than 24 hours...

120. I disagree. I consider that Ben and Ryan were placed in isolation as described by the Act (given that they were isolated from the other residents of the centre by being placed in a locked room and kept apart from the normal routine of the centre) and, as such, should have been afforded the protections provided by the legislation, regulations and procedures.
121. In any event, irrespective of whether the department considered that Ben and Ryan had been 'segregated' or 'isolated', the evidence shows instances in which the treatment of Ben and Ryan constituted solitary confinement, in contravention of the Mandela Rules which 'prohibit both prolonged and indefinite solitary confinement'.²⁴
122. Further, regulation 7 of the Youth Justice Administration Regulations provides that a segregated resident must not be restricted from having contact with other residents for more than 22 hours in any 24 hour period 'unless such contact would be detrimental to the wellbeing of the resident or other residents'. It appears that staff took the view that if residents were let out of their room for at least two hours a day, this was sufficient.
123. So whilst I understand that Ben and Ryan were 'segregated' as per the Youth Justice Administration Regulations and Act, I am of the view that, at times, their segregation included extended periods of isolation and solitary confinement. As such, I may refer to these terms interchangeably and in a broader sense throughout this report.

²³ Letter from the CE to the Ombudsman, 7 March 2018.

²⁴ Schetzer, Alana, 'Could you cope with solitary confinement?', 11 July 2017, SBS Life.

BEN'S PERIODS OF SEGREGATION

124. The CE provided me with the following information summarising Ben's periods of segregation from 6 December 2016 until Ben was transferred to adult prison custody on 5 April 2017.

	Start Date	End Date	Details
1	27 December 2016	27 December 2016	Restricted schedule for part of one shift in response to bullying.
2	11 January 2017	14 January 2017	Initiated due to violent behaviour towards staff. From 14 January 2017 to 16 January 2017 the DRMP was changed to "free association" (not segregation).
3	17 January 2017	24 January 2017	Initiated due to rooftop incident on 17 January 2017.
	25 January 2017	2 February 2017	DRMP continues, but may mix with one other young person at a time, dynamically assessed.
	3 February 2017	14 February 2017	No longer able to mix due to incident on 3 February 2017.
	15 February 2017	21 February 2017	DRMP continues but may mix with one other young person at a time, dynamically assessed.
	22 February 2017	7 March 2017	Alternative progression arrangement implemented. The following are in addition to entitlements on a structured routine: <ul style="list-style-type: none"> Mix with one young person at a time, dynamically assessed Daily morning gym session with 3 staff Daily young person visitation.
	8 March 2017	5 April 2017	Further privileges due to extended stay in Frangipani unit include: <ul style="list-style-type: none"> Mon/Thurs 1-2pm exercise program Radio issued daily between 1200hrs and 2230hrs Games room/xbox at staff discretion Extra or extended exercise periods AM phone calls permitted. <p>All privileges dependent on dynamic assessment of resident behaviour and operational requirements.</p> <p>Assaulted a young person on 4 April 2017. Transferred to DCS on 5 April 2017.</p>

125. As per the table above, Ben had three periods of segregation after the commencement of the Youth Justice Administration Act, with:
- the first period of segregation being for 1 day²⁵ (**Ben's first period of segregation**)
 - the second period of segregation being for 3 days²⁶ (**Ben's second period of segregation**), and
 - the third period of segregation being for 78 days²⁷ before he was transferred to the adult system (**Ben's third period of segregation**).
126. My investigation was initially unable to determine how much time Ben spent isolated in a cell during these periods of segregation. After numerous requests, the department provided me with the unit logs, C3MS records, telephone records and visitor records. From these I was able to determine to a certain degree the periods of time Ben was confined in the cell.

Ben's first period of segregation

127. Ben's first period of segregation was for one day on 27 December 2016.

128. The Unit records:

13:00 'Panadol x 2 issued to [Ben] as requested [redacted] [Ben] were all participating in sly bullying of [redacted] at lunch time. They were swearing and calling other residents "dog cunts". [redacted] continued to turn around in his seat and stare at [redacted] after being warned by staff to stop. BSO's were called to unit and in consultation with staff it was decided to regress [redacted] to [Frangipani]. [Ben] has been given a structured routine in the unit and remains in his room for remainder of shift. He has also been warned by BSO's to cease his bullying behaviour as he too will be regressed. Staff to monitor.

129. It appears from the above that Ben was placed on a Structured Routine which involved him being confined to his room. From the information available to me, I am unable to determine with certainty how long Ben was confined to his room, although it appears it may have been until the end of the am staff shift at 3pm. I am also unable to determine if Ben was moved to a different unit. I have been provided with four pages of Observation Logs with two pages recording Ben as being in Kilo Unit, and two pages recording him as being in Kangaroo Paw unit. There is no record of Ben moving units.

Ben's second period of segregation

130. Ben's second period of segregation was for three days from 11 January 2017 to 14 January 2017, following an incident that occurred in the Blue Gum Unit.

131. The Blue Gum Unit Log records the incident as follows:

17:15 'writer and resident [redacted] playing on staff table when [Ben] approached and made remarks "fucking dog cunts put you to your room" or words to that effect in reference to staff member directed [redacted] to for structured time out for his behaviour. Writer gave [Ben] a 10 minutes structured time out in room for his remarks. [Ben] was non-compliant and refused to follow staff direction saying repeatedly "what for" "I am not

²⁵ 27 December 2017.

²⁶ 11 January 2017 to 14 January 2017.

²⁷ 17 January 2017 to 5 April 2017.

going to my room". Writer went and open [sic] his door and attempted to encourage [Ben] to follow in the direction with no success. [Ben] then proceeded to tear up uno cards cover pack throwing the pieces on the floor saying repeatedly "I'm not going to my fucking room", Writer informed [Ben] that he needs to follow direction or the unit will be lock[ed] down. [Ben] moved towards writer in an aggressive manner attempting to intimidate writer saying "I am not fucking going to my room" "what for" or words to that effect. Writer called a unit lock down. Once lock down was called [Ben] then started moving to his room along with other residents. Residents questioning why they lockdown because of one resident. Once lockdown completed writer informed BSO's and Deputy Supervisor who attended unit after consultation between unit staff, BSO and duty supervisor. A decision was made to regressed [sic] [Ben]. AC staff, duty supervisor approached [Ben's] door and asked to speak with him. [Ben] denied any responsibility. He was informed that he is to be regressed to unit Frangipani. [Ben] refused saying "I am not fucking going". BSO and duty supervisor attempted with no success to encourage [Ben] to be escorted to unit Frangipani. [Ben] was given time to think it over. [Ben] presented non-compliant to BSO's and duty supervisor. Approximately 10 minutes later, BSO attended [Ben's] room. [Ben] had removed his shirt and had armed himself with deodorant and bottle. [Ben] was not listening to staff or following directions. [Ben] continued to make threats to BSO and unit staff and racially abusive towards writer. Duty manager attended the unit. Plan intervention was implemented. [Ben] threw bottle of deodorant at staff and punched staff several times before he was restrained. Code yellow to Blue Gum called. [Ben] restraint, handcuff applied and escorted to unit Frangipani'.

132. No CCTV footage was provided to my investigation of this incident. However, CCTV of this incident was provided to my Office as a part of another investigation I am conducting into the use of spit hoods at the AYTC. Given that section 18(3) of the Ombudsman Act provides that I can obtain information from such persons and in such a manner as I see fit, I consider it appropriate for me to use this CCTV footage in relation to this investigation also.
133. The CCTV footage shows that 14 officers entered the room to ensure that Ben was restrained.
134. Ben was taken to the Frangipani Unit at 18:08 on 11 January 2017. At 19:30 he was taken to the hospital after alleging that he was hurt when he was restrained by staff. The Frangipani Unit Log records that he returned to the unit at 23:35 and was secured in a room. The room did not have blinds and light was coming in, which upset Ben and he became verbally abusive and kicked the door. Staff attempted to secure a sheet on the outside of the window to keep the light out, but this appeared to be unsuccessful and Ben continued to request that he be moved to another room. Staff refused his requests to move rooms, saying that they were unable to because he was on 'hand cuff routine'.
135. It is difficult from the records provided to determine how long Ben spent restricted in his cell on 12 January 2017. The records include the following information:
 - the Unit Log records that at 09:50 Ben refused to follow direction to shower
 - the Visitor Log records that a Red Cross Facilitator visited Ben between 10:00 and 14:30
 - the Unit Log records that Ben was taken out of his room, in handcuffs, at 10:40
 - the Unit Log records that Ben was returned to his room at 11:15
 - the Telephone Log records that Ben made a phone call at 11:04 for ten minutes
 - the Unit Log records that at 16:05 there was a staff shortage so the unit was restricted
 - the Unit Log records that Ben was taken, in handcuffs, for exercise in the courtyard at 17:50
 - the Unit log records that Ben was returned to his room at 18:20
 - the Unit Log records that Ben was escorted out of his cell for a phone call between 20:45 and 20:55

- the Telephone Log records that Ben made a ten minute phone call at 20:44.
136. I consider that it is correct to assume that Ben did not leave his room to visit with a Red Cross Facilitator, as such a visit does not appear in the Unit Log. Given this, it appears that, on 12 January 2017, Ben was only taken out of his cell for 35 minutes in the morning (during which time he made a phone call), 30 minutes in the evening for exercise, and 10 minutes for a phone call later in the evening. This totals 75 minutes that Ben was out of his cell on 12 January 2017.
137. Ben's DRMP provided that he was not to attend school, programs or any group activities, and only the following items were allowed in his room:
- finger food
 - paper cups
 - TV
 - books
 - fidget toys
 - thongs
 - flexi-toothbrush.
138. The DRMP also required that Ben be separated from other residents and that he was to be handcuffed during all movements out of his room (but that handcuffs could be removed from outside the caged court yard during exercise periods) and the DRMP notes:
- 3x staff (including 1xOPS4 or above) for movements to visits. Consider whether visits are necessary, due to restricted handcuff routine.
139. It is again difficult from the records provided to determine how long Ben spent restricted in his cell on 13 January 2017. The records include the following information:
- the Unit Log records that at 09:35 Ben was taken to the courtyard for recreation
 - the Unit Log records that Ben made a phone call to his lawyer at 09:50
 - the Telephone Log records that Ben made four phone calls between 09:52 and 09:56 but all the calls were less than 20 seconds
 - the Unit Log records that Ben was returned to his room at 10:00
 - the Unit Log and Visitor Records record that Ben left the unit for a court appearance via video link at 12:00
 - the Visitor Log records that Ben had a visit from Adelaide Youth Court between 11:45 and 12:30
 - the Unit Log records that at 12:10 Ben returned to the unit and continued with recreation
 - the Telephone Log records that Ben made a number of phone calls between 12:09 and 12:26
 - the Unit Log records that Ben was 'secured' at 12:25
 - the Unit Log records that Ben was 'out for recreation' at 13:45
 - the Unit Log records that Ben was 'secured' at 14:25
 - the Unit Log records that Ben made a phone call at 16:55
 - the Telephone Log records that Ben made a phone call between 16:56 and 17:06
 - the Unit Log records that Ben was secured in the courtyard at 19:07
 - the Unit Log records that Ben was 'secured in room' at 17:25
 - the Unit Log records that at 19:05 Ben was 'unsecured for phone call and recreation'
 - the Telephone Log records that Ben attempted to make a phone call at 19:04 and again at 19:06 but did not get through
 - the Unit Log records that at 19:07 Ben was 'secured in west courtyard'
 - the Unit Log records that Ben was secured at 19:35.

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140. I consider that it is correct to assume that Ben did not leave his room to meet with a Red Cross Facilitator, as such a visit does not appear in the Unit Log. Given this, and excluding Ben leaving the unit for a court appearance via video link, it appears that, on 13 January 2017, Ben was only taken out of his cell for 25 minutes in the morning (during which time he made phone calls), 15 minutes at lunchtime (in which he again made phone calls), 40 minutes in the afternoon for recreation, 30 minutes at the end of the day (during which he again made phone calls) and 30 minutes in the evening (again during which he made phone calls). This totals 140 minutes that Ben was out of his cell on 13 January 2017.
141. It is difficult from the records provided to determine how long Ben spent restricted in his cell on 14 January 2017. The records include the following information:
- the Unit Log records that at 10:05 Ben was 'out for recreation'
 - the Unit Log records that Ben was 'secured' at 10:40
 - the Unit Log records at 11:15 Ben was 'out of his room [for] work program and recreation'
 - the Unit Log records that Ben was 'secured' at 11:45
 - the Unit Log records that Ben was 'doing kitchen chores' at 12:55
 - the Telephone Log records that Ben made a ten minute phone call at 13:14
 - the Unit Log records that Ben was returned to his room at 13:25
 - the Unit Log records that Ben was 'unsecured for recreation' at 16:18
 - the Unit Log records that Ben was returned to his room at 16:48
 - the Unit Log records that Ben was 'out for chores and recreation' at 18:59
 - the Unit Log records that Ben was 'secured in room' at 19:53
 - the Structured and Restricted Routine Activity Log records that Ben was secured in his room at 20:35.
142. It appears that, on 14 January 2017, Ben was taken out of his cell for two periods in the morning, of 35 minutes and 30 minutes, 30 minutes at lunchtime, 30 minutes in the afternoon, and 36 minutes in the evening. Given this, it is likely that Ben was out of his cell for a total of 161 minutes on 14 January 2017.
143. The records include the following information for Ben on 15 January 2017:
- the Unit Log records that in the morning 'it was necessary to isolate the residents to preserve the security of the AYTC'
 - the Unit Log records that Ben was out of his room for 'chore and exercise at 12:03
 - the Unit Log records that Ben was 'secured' at 12:45
 - the Unit Log records that Ben was 'unsecured for recreation at 16:00
 - the Unit Log records that Ben was 'secured' at 16:45
 - the Unit Log records that Ben was 'out for chore and recreation' at 18:20
 - the Unit Log records that Ben was 'secured' at 19:05.
144. It appears that, on 15 January 2017, Ben was taken out of his cell for 42 minutes at lunchtime, 45 minutes in the afternoon, and 45 minutes in the evening. Given this, it appears that Ben was out of his cell for a total of two hours and 21 minutes on 15 January 2017.
145. The records include the following information for Ben on 16 January 2017:
- the Unit Log records Ben was 'out of [his] room' at 09:35
 - the Unit Log records that Ben was returned to his room at 09:40
 - the Unit Log records that while Ben was out of his room he said 'to staff that if he does not move units tonight he will start being naughty again' and when he was 'secured in his room' he started 'banging on the window' so staff put the shutter down

- the Unit Log records that Ben was out of his room at 11:15
 - the Unit Log records that Ben was returned to his room at 11:48
 - the Unit Log records that Ben was out of his room at 13:51 (where he went when he was out of his room is ineligible)
 - the Unit Log records that Ben was returned to his room at 14:15
 - the Unit Log records that Ben was out of his room at 16:50
 - the Unit Log records that 'all' residents were in their rooms at 17:30
 - the Unit Log records that Ben vacuumed at 18:30. It is not clear to me if this was in his room or outside of the room.
 - the Unit Log records 'chores complete' at 18:45.
146. If I assume that Ben was vacuuming in his room, it appears that, on 16 January 2017, Ben was taken out of his cell for two periods in the morning, being for 5 minutes and 33 minutes, 24 minutes after lunch, and 40 minutes in the evening. Given this, it appears that Ben was out of his cell for a total of 102 minutes on 16 January 2017.
147. On 17 January 2017, Ben met with a psychologist in the morning. He then transitioned out of the frangipani Unit. The Visitor Log records that a Red Cross Facilitator visited Ben between 10:00 and 14:30. Given that this is not recorded on the Unit Log I assume that Ben did not meet with the Red Cross.

Ben's third period of segregation

148. Ben's third period of segregation followed an incident that occurred on 17 January 2016 (**the rooftop incident**). Following the rooftop incident Ben was segregated for 78 days, from 17 January 2017 to 5 April 2017.
149. On 17 January 2017, Ben ran away from staff as he was being transitioned between units. Four other residents, including Ryan, followed Ben and also ran away from staff. One of the residents was restrained but the four other residents, including Ben and Ryan, climbed on to the roof. One resident came down from the roof of his own accord but Ben, Ryan and a third resident remained on the roof. The department's Incident Detail report states that they then 'began kicking the poles and removing items from the roof to arm themselves with weapons'.
150. SAPOL was called and the STAR Force attended. The residents subsequently agreed to come down off the roof. Handcuffs were applied and they were removed from the centre for police charges.
151. My investigation has analysed the Unit Logs, Visitor Logs, Telephone Logs, Case Note Assessments, and Structured and Restricted Routine Activity Logs (**SRRA Logs**) and determined that Ben was frequently confined to his room for more than 22 hours out of 24 during this period of segregation.
152. On 18 January 2017, Ben was in police custody until he was transferred to Frangipani Unit at 17:27.
153. On 19 January 2017, Ben spent a total of 60 minutes out of his room, consisting of two 30 minutes periods, one which included a ten minute phone call. The assessment at 8:30am provided that during the time out of his room Ben was to be handcuffed behind his back and three staff were to 'assist with physical escort' while Ben was walking. Another assessment at 10:40 amended the DRMP to permit the handcuffs to be removed through the fence, with three staff present, while Ben was in the courtyard. A further Case Note Assessment at 14:10 stated that at 15:15 '[Ben] became abusive over the intercom because he had rights and wanted to come out of his room.' The

- 14:10 Case Note Assessment also stated that Ben 'only came out of his room once due to staffing issues.'
154. On 20 January 2017, the records state that Ben came out of isolation for 24 minutes at 12:47 for a video conference with the Youth Court and a telephone call. He was again taken from his room at 18:32 for 34 minutes. The Case Note at 15:00 records that Ben was 'reviewed at 1500hrs handcuffs can be removed from outside of courtyard fence with three staff present.' The Visitor Log records that Ben had a visit from Red Cross between 09:30 and 11:30 but I assume that this did not occur, given the DRMP in place and that the visit was not recorded on the Unit Log.
155. On 21 January 2017, Ben was taken out of his room for 35 minutes at 11:50. The Unit Log records that this was for 'exercise', however, the Telephone Log records that Ben made a number of phone calls between 12:14 and 12:20. The Unit Log records that during this time Ben was 'attempting to manipulate more time out of his room whilst having p/call.' Ben was again out of his room for ten minutes for a phone call at 13:30. At 17:15 Ben was out of his room again for 'phone call and recreation' for 35 minutes. The Telephone Log records that Ben spent more than ten minutes on the phone during this period. At 20:05 and 20:25 the Unit Log records that Ben was 'demanding to move rooms' and 'abuse[d] staff when told it may not be possible' and was swearing at staff on the intercom.
156. In my view, given that Ben was only permitted out of the room for a total of eighty minutes during the day, much of which was for phone calls, and was isolated in a small, basic cell for the remainder of the day, it is understandable that he was frustrated and angry.
157. On 22 January 2017, according to the Unit Log, Ben was out of his room for 30 minutes from 11:37. At 13:10 Ben visited with his mother, sister and brother. The Unit Log notes that 'Staff inform [Ben] that his visit today is a non-contact visit as per his current DRMP. [Ben] is not happy with this and tells staff it's bullshit and threatens to go off.' The Case Note Assessment records that, as a result of Ben becoming angry that the visit was non-contact, and his comments which were 'perceived as a threat towards staff', he would 'remain in mechanical restraint for his next exercise period to ensure staff safety and centre security.' The Unit Log records that Ben returned from his visit at 13:40. The Unit Log records that he was again out of his room between 20:30 and 21:10 for 'recreation and phone calls.' In summary, according to the records, Ben was out of his room for a total of one hundred minutes on 22 January 2017.
158. On 23 January 2017, the Unit Log records that Ben was out of his room at 09:40 and returned at 10:30. It also records that he had an 'appointment with visitor' at 10:10. The Visitor Log records no visitor at this time. The Case Note records that Ben met, in handcuffs, with the Case Coordinator Manager (CCM), at 10:58. I assume that it was the CCM that Ben met with at 10:10 and the time recorded was the time that the CCM made the Case Note. The Visitor Log records that Ben had a visit from the physiotherapist between 13:15 and 14:30. The Unit Log also records that Ben was 'unsecured for exercise at 19:05, made a phone call at 19:30, and was secured in his room at 19:40. The Telephone Log records this call, and also records that Ben made a phone call at 12:48. It is difficult to determine how long Ben was permitted out of his room for recreation or exercise on 23 January 2017. It appears likely, however, that, aside from phone calls and visits, Ben had 30 minutes recreation out of his room in the morning before he met with the CCM and 25 minutes in the evening, being a total of 55 minutes.
159. The Case Note from the CCM's meeting with Ben records, *inter alia*:
- stating not in a good place due to being on a restricted routine.

- struggling with emotions regarding [relative] in critical condition ... Also reports anniversary of death of [...] and Step Father will be difficult.

160. On 24 January 2017, the Unit Log records that Ben was 'out for visit' from 09:30 to 10:35. The SRRA Log and Visitors Log record that this was a visit with a Youth Justice psychologist. Ben was not let out of his room again until 17:15, when it is recorded that was 'out for recreation & phone'. The Telephone Log, however, does not record any phone calls by Ben at this time. A lockdown was called at 17:30 and Ben was returned to his room. Ben was again let out of his room for phone calls from 20:03 to 20:30. According to the records available to me, it appears that Ben was taken from his room for a total of 107 minutes on 24 January 2017, all of which was for phone calls and a visit, in handcuffs, with the psychologist. It appears that Ben received only 15 minutes of recreation or exercise time out of his cell.
161. On 25 January 2017, Ben did not leave his room until he was unsecured for half an hour of 'recreation' at 11:30. The Telephone Log records that he made a phone call during this time. Ben was not unsecured again until 17:43, when it is recorded that he was 'out of room' for 'recreation and phone call' until being secured in his room at 18:15. The Unit Log records that he was 'out of room for recreation' again at 20:50. The Telephone Log records that he made a phone call during this period. The Unit Log either does not record, or it has been redacted, the time when Ben is secured in his room again. As such, I am unable to determine how long Ben was confined on 25 January 2017. According to the DRMP, Ben was permitted now to able to mix with one other young person at a time, dynamically assessed.
162. On 26 January 2017, Ben was unsecured for 30 minutes between 11:10 and 11:40, for 11 minutes at 13:32, for 30 minutes at 17:15 and for 20 minutes at 20:30. That is, Ben was out of his cell for a total period of 91 minutes of the day. The Telephone Log records that during this time Ben made two phone calls of approximately ten minutes each.
163. On 27 January 2017, the Unit Log records that Ben was 'unsecured for recreation' from 10:36 to 11:10, and was unsecured for a phone call from 13:29 to 13:43. He is then recorded as being unsecured from 15:30 to 16:00 and 18:45 to 19:00. It appears that throughout the day Ben was out of his cell for 123 minutes in total (including phone calls of approximately 20 minutes).
164. On 28 January 2017, Ben spent 30 minutes out of his cell with another young person between 12:15 and 12:45. Ben also spent 25 minutes out of his cell at 16:40, much of which, according to the Telephone Log he spent on the phone. The SRRA records that Ben was unsecured again for 20 minutes at 19:10 for exercise and a phone call. This is not recorded on the Unit Log and there is no record on the Telephone Log of a phone call during this period. However, the Telephone Log does record Ben making a phone call for approximately 10 minutes at 20:02. Whilst the records are confusing, it appears that Ben spent between 75 and 85 minutes out of isolation on 28 January 2017.
165. On 29 January 2017, Ben was out of his room for 32 minutes at 11:10 for 'breakfast, recreation and phone calls'. The Unit Log records that he was out again for 21 minutes at 13:16 for 'recreation', although the Telephone Log records that Ben spent this time on the phone. He was unsecured again at 17:40 for 25 minutes, during which he spoke with the Assistant General Manager. The Unit Log records that Ben was again unsecured at 19:45 for 25 minute, although the Telephone Log records that he was on the phone from 20:15 to 20:28. According to the Unit Log, Ben was outside his room for a total of 103 minutes on 29 January 2017. The SRRA Log records the same information. However, taking into account the Telephone Log, it could have been 123 minutes. In any event, there is no evidence that Ben did any exercise on 29 January 2017.

166. On 30 January 2017, Ben was out of his room at 11:40 for 30 minutes. He and another resident were in the courtyard and were spitting, so Ben was returned to his room and remained secured there until he was let out again at 16:55 for 30 minutes, during which time he made a phone call. Ben was again unsecured at 20:05 for 15 minutes to make a phone call. Given this, it appears that Ben spent a total time of 75 minutes (including approximately 20 minutes on the phone) out of his room on 30 January 2017.
167. On 31 January 2017, the Visitor Log and the Case Notes record that Ben had an appointment with the Youth Justice psychologist at 10:30. However, the Unit Log records the visit being at 11:05. The Case Note records:

...[Ben] reported feelings of frustration as a result of being on a restricted regime. He also stated that feelings of frustration/annoyance arose because other residents involved in the incident were engaging in a transition, whereas he was told that he remains on a restricted regime indefinitely...

The Unit Log does not record, or it has been redacted, when Ben was returned to his cell, but the Telephone Log shows he made a phone call that ended at 12:03. The Unit Log records that at 17:00 Ben was 'knocking and banging on his door' and 'wants to come out'. Ben was let out for 'recreation' at 17:30 for 32 minutes, during which time the Telephone Log records that he made a ten minute phone call. He was let out of his cell again at 20:21 for 14 minutes to make another phone call. The SRRA Log I have been provided does not record anything prior to 17:32. As such, I am unable to determine how long Ben spent confined in his cell on 31 January 2017.

168. On 1 February 2017, the Unit Log records that Ben had was let out his cell for 30 minutes of exercise at 9:20 and again for 30 minutes at 11:45. At 13:45 handcuffs were applied and three staff escorted him to an appointment with a counsellor. He was secured in his cell 25 minutes later. Ben was unsecured for a 'visit in east games room' at 16:34 for 41 minutes. The Unit Log records that at 19:40 Ben was 'kicking and banging on his door'. He was unsecured for 14 minutes at 20:11 to make a phone call.
169. At this point, Ben had spent two weeks secured in his cell for long periods of time, with less than two hours out of his cell on most days, limited access to exercise, other stimulation and other young people. From what I can determine from the records, on at least six of these days, I consider that Ben's confinement constituted solitary confinement, given that he was out of his cell for less than two hours. During these periods out of his cell, Ben often made phone calls or had visits. I consider it reasonably likely that on many of the other days Ben's isolation constituted solitary confinement, although it is difficult for me to confirm this with certainty from the records.
170. I consider that, given the level of confinement, lack of exercise and other stimulation, and lack of access to education, programs or group activities, combined with the fact that Ben does not appear to have been given any indication of when this level of confinement would end, it is understandable that Ben was frustrated with his situation.
171. On 2 February 2017, the Unit Log records that Ben was out of his room for exercise for 30 minute periods at 8:30 and at 13:30. The Unit Log records Ben as 'displaying negative behaviour and testing staff'. I have no doubt that Ben would be extremely frustrated by now as a result of the prolonged periods of time he was confined to his room. The Unit Log records that Ben was unsecured from exercise for 32 minutes at 16:26, and again for 30 minutes at 19:30, although the Telephone Log records that he also made phone calls during these periods. The Visitor Log records that Ben had a 'friend' visit from 19:00 to 20:00, however there is no record of this on the Unit Log. If I assume that Ben did not attend a visit, it appears that, on 2 February 2017, Ben was confined to his cell for all of the day aside from 122 minutes.

172. On 3 February 2017, it is apparent from the Unit Log that Ben was becoming very frustrated with the confinement. It is recorded that at 8:30 Ben was 'still not showered' and when staff explained that he must shower before he is given breakfast Ben 'became aggressive' and 'began calling staff dogs'. He was let out of his room at 10:25 for 20 minutes. At 13:50 Ben was let out again and the Log records that it was 'only a short exercise due to not enough staff because of a meeting'. It then records that Ben was 'telling staff that he will not be coming back in because he is not getting enough time out.' It is then recorded that Ben refused to move and swore at staff when they tried to return him to his room. At 14:25 Ben 'kick[ed] the door handle off and begins attempting to smash the window'. Staff then restrained Ben and placed him in the safe room for 90 minutes, after which he was handcuffed and escorted back to his cell. The Case Note records:
- [Ben] is now on restricted associated and handcuffed to back due to incident on 03.03.2017 in EAST courtyard of Frangipani unit.
[Ben] caused property damage and armed himself with a weapon, during restraint actual/attempt assault on staff. While in safe room head butted staff member. [Ben] shattered sight glass in laundry and cleaning room doors.
173. Four and a half hours later Ben requested to be let out of the cell for exercise. He was told that they were waiting for a Behavioural Support Officer to see him, to which he replied "I'm gonna fuckin' go off soon".
174. Ben was advised that, as a result of his behaviour, his personal visit with his parents that day had been cancelled and he would only be allowed phone contact with them. The Case Note also states that '[Ben] was informed' that 'his behaviour would not earn his stuff back into his room'. An hour later a further Case Note recorded Ben as stating that 'he hasn't finished making trouble for staff and will keep going until he is moved to the adult system'.
175. Ben was let out of his room at 21:00 for 25 minutes, which included a ten minute phone call. When Ben was returned to his room the Unit Log records '[Ben] seemed overly fascinated with what he needs to do to get moved to adult system'. On 3 February 2017, Ben spent a total of 95 minutes out of his room, some of which was spent in a confrontation with staff when he refused to return to his room.
176. As result of his behaviour on 3 February 2017, Ben's DRMP was amended to provide that he was allowed only the following items in his cell: finger food, paper cups, thongs, limited toilet paper, portion controlled toiletries and a flexi-toothbrush. He was no longer allowed television, radio, books, puzzles or fidget toys. It is my understanding that these restrictions remained in place until 15 February 2017.
177. Further, the DRMP also stated that, when Ben left his cell he was required to have his hands cuffed behind his back and to be escorted by four staff for any movement around the centre and for any exercise periods. He was also not permitted to mix with any other residents.
178. On 4 February 2017, the Unit Log records that Ben was 'not being compliant' and, as a result he was informed that 'he has now lost his privilege to first exercise'. Ben became upset and began kicking and punching his door and swearing at staff. At 12:51 Ben requested that staff let him out of his room. He was informed that 'there is a centre lock-down and that no-one will be coming out'. Ben became abusive and began trying to smash things in his cell and swearing at staff. At this time, Ben had not been out of his room since the previous evening, and was confined in his room with no radio, television or stimulation. At 14:19 Ben threatened to kill himself. The Unit Log then records:
- 14:20 Ben 'can now be heard banging in his room'

- 14:26 Ben 'was witnessed lying on his bedroom floor. Staff "cracked" the door but [Ben] was not replying. He could be seen to be breathing but staff & Duty Supervisor decided to call a code blue'
 - 14:41 Ben 'begins to respond to staff and said he hurt his back and could not feel his legs'
 - 14:46 'ambulance arrives on site and begin to attend to [Ben]'
 - 15:19 '[Ben] off site to hospital'
 - 21:41 '[Ben] returns to unit, handcuffed and taken directly to safe room'
 - 'INFO As staff remove hand and leg cuffs [Ben] is constantly threatening to attack and assault staff, he also made specific threats to several staff "come see me when I get out of cuffs you cunts", "I'll fuckin smash your head in you fuckin cunts"
 - 21:48 '[Ben] has covered the safe room camera. [Ben] reported to staff on escort that "this was all a hoax" and laughed about it. He has also claimed to have a bolt down his pants and stated he is "out to hurt, I'll dog shot anyone I don't give a fuck"
 - 22:22 '[Ben] handcuffed and moved to bedroom 7 in canvas after an unclothed search. Soon as door is secured [Ben] yells out to staff "you guys are dumb ya never found my bolt". He then can be heard tapping something metal on his window and states "I'm gonna use it to break my bathroom window". Staff disengage. [Ben] given medication as prescribed while giving [Ben] his medication he showed staff a small bolt and claimed he will wreck [sic] havoc with it'.
179. On 5 February 2017, the SRRA Log and Unit Log records that Ben was let out of his room, with handcuffs and three staff, for phone calls and exercise for 32 minutes at 14:13 and again at 19:50 for 30 minutes. During both of these periods Ben made phone calls of approximately ten minutes. The total time Ben spent out of his room on 5 February 2017 was 62 minutes.
180. On 6 February 2017, the Unit Log records that, at 11:27 Ben refused exercise 'due to being in canvas'. He was offered exercise again at 13:10 but again refused 'to come out in canvas'. It is noted that Ben was 'very abusive and non-compliant. At 15:30 it is recorded that Ben was 'demanding' and 'kicking the door for his clothes.' The Case Note records that Ben was 'unable to attend Visits Centre due to being in Frangipani Unit on restricted routine in canvas and handcuffs.' It was arranged that a CAMHS Clinician would visit Ben, and this occurred at 14:40. It is recorded that clinician spoke to Ben 'through his door...as he did not wish to come out of his room due to being embarrassed about wearing a canvas smock.' The Case Note further records:
- ...Requested an explanation from [Ben] for wearing canvas - [Ben] said he "pretended" to jump off the sink in his bedroom because he wanted to get out of his room. He acknowledged that this manipulation had now backfired on him, because he strongly dislikes wearing a canvas smock and desperately wants in usual clothes and bedding returned to him. [Ben] denied current thoughts, plans or intent to harm himself or suicide, however disclosed continued thoughts to harm others in the Centre. [Ben] requested a psychiatric review of his medication...
181. Ben was taken out of his room for the first time that day, in cuffs, at 19:10. However, ten minutes later a code yellow was called and he was returned to his room. The Unit Log records that Ben was taken out again at 20:15 for phone calls for 25 minutes.
182. On 7 February 2017, Ben visited with the Youth Justice Psychologist at 09:45. He was returned to his cell at 10:15 and remained there until he was let out at 14:10 for 15 minutes - the Telephone Log shows he spent this time on the telephone. The Unit Log records that between 15:40 and 16:10 Ben was 'out for exercise cuffed behind'. The Telephone Log and the SRRA Log show that he called his lawyer during this period. Ben was taken out of his room and escorted, with his hands cuffed behind his back,

between 19:40 and 20:05. Aside from the time Ben was out to see his psychologist, it appears from the records that, on 7 February 2017, he spent a total of 70 minutes out of isolation (which included approximately 15 minutes of phone calls). The Case Note of Ben's appointment with the psychologist includes:

...[Ben] reported that, over the course of the week, a couple of factors affected his mood in a negative manner, these were:

- the other residents who were involved in the affray were given transition prior to [Ben]
- he developed the belief that staff were lying to him because he said he was told that a teacher would visit him in Frangipani Unit and that he would go to the gym. And these things did not happen...

183. A further Case Note on 7 February 2017 recorded:

...[Ben] went on to say that if his routines don't progress the way he wants them to after returning from court he will continue to cause issues. All staff present reminded [Ben] that it is [his] actions that deem what routine he is able to achieve.'

184. On 8 February 2017, Ben attended the Adelaide Youth Court in the morning, returning to his room at 13:40. He was let out 'for exercise' at 16:15 for 35 minutes. The Telephone Log shows that Ben made two phone calls of ten minutes each during this time. A Case Note records:

One good exercise period but due to unavailability of BSO's and Duty Supervisor due to code yellow in kilo unit a second exercise period was not forth coming [sic].

185. On 9 February 2017, a Case Note records that Ben's 'handcuffs moved from back to be applied to front now for all exercise and all movements around the centre'. On the morning of 9 February 2017, there was a management meeting 'so residents [were] unable to be given exercise'. Ben was first let out of his room at 13:45 for 30 minutes - during this time he made a 10 minute phone call. Ben was taken from his room again at 19:45 for 30 minutes. The Unit Log records that this was for 'exercise' - the Telephone Log records that Ben made a ten minute phone call during this time. According to the records, Ben spent a total of 60 minutes out of his cell on 9 February 2017. He still had no access to television, books, radio or other stimulation in his room.

186. Ben remained in his room for significant periods of time over the following days. He was out of his room for a total of 75 minutes on 10 February 2017 and 87 minutes on 11 February 2017. On 11 February 2017 a Case Note recorded:

...Due to [Ben's] compliance on shifts, restrictions for visits has been reviewed. [Ben] will have access to a contact visit with family but will remain cuffed throughout the visit and movements. Management advises that a BSO or above be present during visit, and that staff to remain extremely vigilant during visits...

187. On 12 February 2017, the Visitor Log recorded that Ben's father, step-mother and three siblings visited him at 13:15 for an hour. This is not recorded in the Unit Log, which shows no record of Ben leaving his room during this time. As such, I consider it possible that no such visit occurred. The Unit Log records that Ben spent 84 minutes out of his room on 12 February 2017 (20 minutes of this time Ben was on the phone).

188. On 13 February 2017, the Visitor Log records that Ben's father, step-mother and three siblings visited him at 17:30. Again, this is not recorded on the Unit Log, which does not record Ben as being out of his room during this period of time. According to the Unit Log, Ben spent two periods of 30 minutes, and one of 15 minutes, out of his room for phone calls and exercise on 13 February 2017. He also spent 25 minutes out for a visit with CAMHS and a Case Coordinator. The Case Note for 13 February 2017 states that Ben:

...spends most of his day secured in his cabin or courtyard due to poor behaviour...

The Case Note also states that Ben would not require handcuffs during his exercise period the next day, but he would have to have four officers present. After this the BSO was to review his plan.

189. On 14 February 2017, Ben had four periods out of his room, totalling 126 minutes. According to the Telephone Log, Ben spent approximately 23 minutes of this time on the phone. The Unit Log records that Ben was handcuffed during the phone calls in accordance with the DRMP. It is not clear to me if Ben was handcuffed or not during the exercise periods.

190. A Case Note on 14 February 2017 recorded:

[Ben] had an ok shift, he was whining while in his room banging on his door and continuously asking when he was going to come out of his room. When out of his room he was no issues [sic] and interacted well with staff.

191. On 15 February 2017, Ben spent a total of 93 minutes out of his room for exercise and phone calls. During this time he spent approximately 25 minutes on the phone. Ben also spent 50 minutes out of his room for a video conference with the Adelaide Youth Court.

192. On the evening of 15 February 2017, Ben's DRMP was amended to permit him to have a radio, tv and fidget toys in his room. He was also permitted contact visits. Ben was, however, still not permitted to attend school, programs or activities. He was to be handcuffed during escorts, but the handcuffs could be removed externally for exercise. The DRMP records that Ben was not allowed to associate with any other residents, with the reason for this being recorded on the DRMP as:

- 'Requires separation from other residents to maintain order and/or preserve the security of the centre'
- 'Behaviour presents a threat to the DRMP resident's safety'
- 'Behaviour presents a threat to the safety of others'.

However, in the 'other relevant information' section at the bottom of the DRMP it states:

MIX WITH 1 x RESIDENT in the courtyard ONLY.

193. On 16 February 2017, it appears that Ben was not taken out of his room in the morning due to lack of staff availability as a result of a code yellow somewhere in the centre. If I am correct in my understanding of the records, Ben was first allowed out of his room at 16:05 for 30 minutes, and he was allowed out again at 17:15 for another thirty minutes. Ben was allowed out a third time that day at 19:30 but was returned to his room 15 minutes later due to a code yellow being called in another unit. As such, it appears that Ben spent a total of 75 minutes out of his room on 16 February 2017. The Telephone Log records that approximately 30 minutes of this time was spent on the phone.

194. On 16 February 2017, Ben was allowed contact with one other resident during his periods out of his room. This was the first contact Ben had with any other young people since 2 February 2017.

195. On 17 February 2017, according to the Unit Log, Ben spent 85 minutes out of his room. According to the SRRA Log, Ben spent 120 minutes out of his room. The Telephone Log records two phone calls in the day, totalling approximately 20 minutes.

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196. On 18 February 2017, it appears that Ben spent a total of 140 minutes out of his room for exercise periods, phone calls, attending the gym and chores. The Telephone Log records two phone calls in the day, totalling approximately 20 minutes.
197. The Logs are unclear for 19 February 2017, but from analysing the Unit Logs, the Telephone Logs, the Visitor Logs, and the SRRA Log, it appears that Ben spent a total of 140 minutes out of his room for a haircut, exercise periods, phone calls, and kitchen chores. Ben also had a visit with his family for 50 minutes. This appears to be the first visit Ben has been permitted to have with any members of his family since 22 January 2017.
198. On 20 February 2017, Ben spent 113 minutes out of his room for recreation, which included approximately 20 minutes of phone calls. He also was let out for 10 minutes to make his breakfast and for 25 minutes to meet the Case Coordinator. The Case Notes of the meeting record:

... [Ben] wants to start working towards transition out of Frangipani and wants to be discussed at ATRIG meeting. Case Coordinator informed.

Case Coordinator [...] says he has been advised by management that [Ben] is to remain in Frangipani indefinitely due to security risk...

199. Whilst the records for 21 February 2017 are unclear, it appears that Ben was out of his room for more than two hours and was able to attend the gym.
200. On 22 February 2017, Ben was allowed extra time out of his room in the morning 'due to good behaviour'.²⁸ He was out of his room for more than two hours throughout the day. However, at 21:12 the Unit Log records that Ben was informed that the visit that had been planned for him the following day with another young person had been cancelled due to poor behaviour of residents in another unit, and:

...[Ben] began abusing staff and accusing them of getting him "happy" to see [...] then just use an excuse to not bring him over. [Ben] was rather disrespectful towards staff, even after being awarded extra time out on both his exercise periods, due to good behavior. This team does not believe [Ben] should be allowed exercise in the morning due to his outburst.

201. At 8:30 on the morning of 23 February 2017, a note was made on the Unit Log that Ben was 'frustrated about the situation that he would not be moving units' and that 'he seems to be unhappy'.
202. On 23 February 2017, Ben's DRMP was amended. He was now allowed in the games room, gym and pool. Ben attended the gym for 35 minutes in the morning and was out of his room for a total of 227 minutes throughout the day (which included approximately 30 minutes of phone calls). The DRMP notes:

[Ben] has displayed appropriate behaviour for a period of time, but is unable to transition to another unit. As a progression, [Ben] will be offered a morning gym session 0745-0815hrs daily. [Ben] will attend the gym with 3 staff and no other residents. [Ben] will also be allowed to have a peer to come visit Frangipani at 2100hrs to 2130hrs daily. [Ben] has requested this person to be [...]. [...] is required to meet behavioural expectations in his unit to be eligible to attend Frangipani. The above mentioned exercise periods are in addition to entitlements of Structured Routine. This will commence on the 22/02/17 and be reviewed on the 27/02/17 at 2100hrs. This revision is subject to continued positive behaviour and may be rescinded if behaviour declines.

²⁸ Unit Log 22/02/2017, 21:12.

203. It appears that on 23 February 2017 Ben was told that he would be remaining in the Frangipani Unit. The Unit Log records:

[Ben] was given some Gym and pool time first thing this morning, S.Green accompanied staff, upon returning to the unit [Ben] expressed his disappointment at how slow his transition was going compared to other residents. Despite this [Ben] had a reasonable shift engaging well with staff and his peers.²⁹

...

[Ben] made reference to “cracking up” and “going off” several times this evening due to being told that he will remain in Frangipani Unit. He also asked one of the BSO staff to tell the accommodation manager that “I’m gonna be running amuck soon since I’m staying in this shit unit”. [Ben] was reminded his poor behaviour is what led to him spending an extended period of time in Frangipani unit but this information was disregarded and he continued to reiterate that he would be “cracking up again soon”.³⁰

...

Please note that [Ben] has made comments about “cracking up” as he is aware that he won’t be transitioning out of Frangipani.³¹

204. The records for 24 February 2017 are unclear, but it appears that Ben was out of his room for more than two hours. During one exercise period, a staff member from education (who was not a teacher) brought Ben some school work. The Unit Log states that Ben had requested school work. It is recorded that Ben:

...‘became argumentative and told [the staff member] that he wants a teacher with him as it’s his right. [Ben] said he had rung the Guardian and then said “I’m gonna go off and smash this place”. “I’m going to Yatala and I’m going out with a bang” “This place is fucked up” “I’m not doing that work”. Staff tried to explain to [Ben] that he had asked for this. He was also informed that his extra exercise time in the morning may be cancelled. [Ben] said “I don’t fucking care, I’m not going there anymore and I’m definitely not going on a Saturday or Sunday, fuck that”.

205. The Case Note for 24 February 2017 records:

Second exercise [Ben] was visited by [name] from Education. She had brought some school work for him, which he had requested. [Ben] became angry, and rude with [name] and staff as he was demanding a teacher as well. [Ben] also began saying that he was not doing that shit. [Ben] then said I have done that already. [name] said she would go and sort some other work for him. [Ben] was still demanding a teacher as it was his right. Staff attempted to explain that there were no teachers to come down. [Ben] said,
 “I’m gonna be bad again”
 “I’m gonna go off and smash this place”
 “I’m going to Yatala and I’m gonna go out with a bang!”
 “This place is fucked up”
 “I’m not doing that work”...

206. On 25 February 2017, Ben’s DRMP was reviewed as a result of his behaviour. He was to be handcuffed when he was out of the unit and to be escorted by three staff whenever he was let out of his room, including for phone calls. All visits were to be non-contact and his gym periods and ‘peer contacts’ were ‘suspended until next review’. He was not entitled to have a radio in his room. On 25 February 2017, Ben was only out of his room for a total of 100 minutes, of which approximately 30 minutes was phone calls.
207. On 26 February 2017, Ben was out of his room for a total of 110 minutes, of which approximately 28 minutes was phone calls. The Case Note state that he was ‘at times a little bit demanding about coming out of his room but overall had a good shift’.

²⁹ Unit Log, 23/02/2017, 14:07.

³⁰ Unit Log, 23/02/2017, 20:00.

³¹ Unit Log, 23/02/2017, 21:20.

208. On 27 February 2017. Ben spent a total of 173 minutes out of his room. The Visitor Log records that he had a visit from a Community Justice case manager between 13:15 and 14:30. However, the Unit Log records that Ben only spoke with the social worker for 12 minutes in the games room. The Visitor Log also records that Ben saw a psychologist between 15:30 and 17:00. However, this visit did not occur because the psychologist was told by staff that Ben 'was not in a good mood' and advised her to speak to him from outside the room, through the trap, 'as a safety precaution'. Ben became angry about not being allowed out of the cell and 'was informed by staff that if he didn't want to engage through the trap he was choosing to give up the visit altogether.'³²

209. On 27 February 2017, at 16:47 a Case Note records:

...[Ben] unhappy as has been advised by staff at AYTC that he will need to stay in Frangipani for the remainder of his Court Order, [Ben] stating he wants to transfer to adult system at 18. He stated if he was to stay at AYTC and not get CR he would be on a restricted routine in Frangipani for 5 months, [Ben] said he has called the Office of the Guardian and spoken with an advocate he feels he is being denied access to his education. He reported being brought worksheets that were irrelevant to completing his SACE...'

210. Another Case Note, at 17:30 on 27 February 2017, records:

This afternoon [Ben] requested to speak with Accommodation Manager, [Ben] was enquiring about his future transition plans and his inability to attend the learning centre, [Ben] was informed that every effort had been made to assist him, but his behaviour constantly let him down.

When informed he was given opportunity to attend the gym in the morning to exercise he responded that is bullshit and when reminded that he was issued with learning material to get him started on his education goals, he responded "I don't want education..."

Accommodation Manager attempted to discuss with [Ben] his ongoing behaviour, even encouraging him he has improved, where [Ben] responded "you know my behaviour can get worse" it appeared that [Ben] threatened to be more disruptive because he is not getting what he wants.

Accommodation Manager, [...] attempted to encourage [Ben] to continue with appropriate behaviours so he could move forward, [Ben] appeared indifferent at this point.

211. On the morning of 28 February 2017, Ben remained locked in his cell until he was 'unsecured to meet with CAMHS worker for 30 minutes at 10:15. Ben then made a phone call before being secured in his room again at 11:00. The Case Note for the CAMHS Review records:

...[Ben] appeared bright and reactive in affect, however stated that he is "going to crack up soon" because he is sick of being confined to his room. [Ben] added that he was recently informed by BSOs and Management (Steve Green) that he is never going to have the opportunity to shift to a mainstream unit. He explained that this has left him feeling unmotivated to improve his behaviour, because from his perspective there is no longer any incentive to behave well. [Ben] said that the only incentive he is aware of, if he behaves well, are visits to the gym on his own, which he said he has not interested him because it has been offered to him first thing in the morning when he has wanted to sleep. [Ben] also mentioned that he was "promised" a visit with his best mate (fellow resident, [...]) if he behaved well, but claimed that the visit did not occur despite having improved his behaviour. [Ben] said he feels frustrated by this and "will bash staff" if they continue to keep him in his room.

[Ben] said he has spoken to a Child Advocate from the Guardian and is waiting to meet with AYTC Management regarding his concerns... [Ben] said he feels he is being "forced"

³² YJ Psychologist Case Note, 16:00, 27/02/17.

to move to the adult system, because he cannot face the concept of being kept in his room for the duration of his Detention Order. ... CAMHS to review again next week or as needed.'

212. At 13:10 the Unit Log records:

As [Ben] was returning back to his room he made a statement to the writer that he will "go off tonight". Writer asked [Ben] what his reasons for going off were. [Ben] replied he is sick of being in this unit and he has nothing to lose as he has already been told he is staying in Frangipani for the rest of his time...

213. A Case Note of this incident later recorded:

As [Ben] was returning back to his room, he made a statement to the writer that he will "Go off tonight". Writer asked [Ben] what his reasoning was for potentially going off tonight was. [Ben] stated that he is sick of being in Frangipani unit and he has nothing to lose as he has already been told by management he wouldn't be moving out of the unit and will remain in Frangipani for the rest of his time here. While talking [Ben] brought up that he doesn't care if he is on handcuffs or not as he will still come out and get time out of his room. Writer chatted to [Ben] at length about his thoughts of going off and encouraged him not to and to think more about the bigger picture.

214. It is apparent that the isolation was having an effect on Ben. At 12:10 a Case Note recorded:

Late yesterday afternoon [Ben] spoke to me in regards to being very bored and about his education. [Ben] appeared very frustrated and annoyed whilst talking to me. I did remind [Ben] about his behaviour towards [name] when she went to speak with him and give him modules that he needs to do to obtain his certificates that he was very rude and abusive. [Ben] said because it is fucked he wanted to go to school not do school work in the unit. I said well at this stage that is what is going to happen and went into some of his behaviour that has placed him in Frangipani. [Ben] said well I might as well not be good because it is not getting me anywhere and I will speak to my lawyer and ask him to do the paperwork for the Adult System. He said I am really bored and need to spend more time out in the unit and bedroom. I said it's your choice as to how you want to behave or if you want to go to the Adult System.

215. According to the Unit Log Ben was only unsecured again that day for 10 minutes at 13:20, and for 45 minutes at 19: 20 to make a phone call. On 28 February 2017, the total time Ben spent out of his room appears from the records to be 100 minutes (including the CAMHS visit and approximately 20 minutes of phone calls).

216. A later Case Note, at 15:30 on 28 February 2017 recorded that handcuffs were to be re-instated for Ben's exercise periods and that they were to remain on 'at all times (even during phone calls)' for his first exercise period. For his second exercise period the handcuffs were to be removed 'once secured in courtyard via handcuff trap and applied prior to returning to his room via handcuff trap in courtyard door.'

217. At 21:35 the Case Note records that Ben was 'verbally abusive towards staff for 'the majority of the shift' and whilst he 'eventually calmed down' and his 'mood improved by the end of the shift' he 'voiced his frustrations several times about being in this unit.'

218. On 1 March 2017, Ben was out of his cell for a total of 100 minutes. The Unit Log records that these periods were for 'exercise'. One records that he was 'on cuffs'. The Telephone Log shows that approximately 20 minutes of the time Ben was recorded as being out of his cell for exercise was spent on the phone. The Case Notes for 1 March 2017 include:

'A/Supervisor and Case Manager met for regular case Consultation.

...

Behaviour has been deteriorating recently - has expressed distress that he's not moved out of Frangipani, continues on restricted routine.

Has expressed that he wants to transfer to adult system at 18 - sees this as his future.

Has new psychologist and engaging well with CAMHS.¹³³

219. On 1 March 2017, Ben's DRMP was amended. The following note of the assessment was recorded:

[Ben] is to be physically escorted to courtyard for PM exercise periods after compliance test (refer to section 9) and secured in courtyard for exercise. If [Ben] requests a phone call during exercise periods handcuffs are to be applied in front for phone call as well as physical escort to and from phone booth, secured and in room and handcuffs removed (due to history of stand off with staff after phone calls). Review to consider physical escort for AM exercise periods 02.03.17 and no use of handcuffs.'

The DRMP now recorded that Ben was allowed on a flexi-toothbrush and fidget toys as in his room, with the option for this to be 'dynamically assessed by unit staff'. He was to be handcuffed for movement out of the unit and during phone calls, and previous gym and 'peer contact' were to remain suspended.

220. On 2 March 2017, Ben was out of his cell for a total of 142 minutes (approximately 20 minutes of which were phone calls).
221. On 3 March 2017, Ben had one period out of his room in the morning for 35 minutes, another period of 35 minutes in the afternoon and another period of 30 minutes in the evening. At 19:10 Ben was handcuffed and escorted by three staff to a visit with his mother and brother. Prior to the visit, a Case Note recorded:

[Ben] approached the writer about the possibility of him having a contact visit with his mother and young brother?

The writer spoke with AGM Steven Green and it was agreed that due to [Ben's] improved behaviour he would be given the opportunity to have contact visit, however he would still need to be handcuffed for movement. It was also explained to [Ben] that this would be reviewed and possibly stopped if behaviour slipped.

222. On 4 March 2017, Ben spent a total of 108 minutes out of his room. The Telephone Log records that approximately 30 minutes of this was spent on the phone. At the end of the day a Case Note recorded that Ben 'may be offered extended or extra exercise periods if behaviour warrants and operationally possible' and that a review would be conducted in 24 hours'.

223. On 4 March 2017, Ben's DRMP was amended to record the following:

[Ben] no longer requires a room with a cuff trap. [Ben] may be given extra or extended exercise periods to reward positive behaviour. This is to occur as [Ben] is unable to be transferred to another unit. The manner in which the extra time and amount of time given is to occur at the discretion of unit staff, depending upon operational requirements and [Ben's] behaviour'.

224. On 5 March 2017, Ben spent a total of 130 minutes out of his cell. Approximately 30 minutes of this time was spent on phone calls.

225. On 5 March 2017, Ben's DRMP was amended to record the following:

³³ Case Note 1 March 2017, 14:00.

[Ben] has progressed from 'No association' to 'Association restrictions' [Ben] may associate with one resident at a time. The resident must be willing to associate with [Ben] and deemed appropriate by staff.'

226. On 6 March 2017, Ben spent a total of 125 minutes out of his cell. Approximately 30 minutes of this time was spent on phone calls. At 21:25 a Case Note was made recording that a DRMP review had been conducted, however there was to be 'no change at this stage'.
227. On 7 March 2017, Ben spent a total of 147 out of his cell (with approximately 20 minutes being phone calls).
228. On 8 March 2017, Ben was unsecured from his cell for a total of 139 minutes (including approximately 20 minutes of phone calls), plus 90 minutes for a meeting with the Department of Correctional Services (DCS) in relation to his potential transfer to the adult system.
229. On 8 March 2017, Ben's DRMP was reviewed but no changes were made 'due to negative, non-compliant behaviour to comply with routines'.³⁴ This is contrary to what is provided by the department in the table above, at paragraph 124.
230. On 9 March 2017, Ben was unsecured for recreation for 133 minutes (including approximately 35 minutes of phone calls), and for 52 minutes for a 'unit based program', being an exercise workout class.
231. A Progress Report by the Case Coordinator, dated 9 March 2017, records:

...[Ben's] behaviour has gradually deteriorated after sentencing particularly since 23rd February 2017 when he was advised that he will remain in Frangipani Unit. On the 28 February 2017 [Ben] threatened to assault staff and was placed on a handcuff program to maintain the safety of the Centre...

...[Ben] advised the writer in a supervision session on the 27th of February 2017 that he would like to transfer to the adult prison system. ... [Ben's] reasons for wanting to transfer include feeling at risk of further offending due to wanting to assault staff as a result of his anger at being on a restricted routine and not being able to participate in the regular schooling program at AYTC...

...Unfortunately whilst in detention and at AYTC [Ben] was the subject of ongoing behavioural management plans due to recurring poor behaviour. [Ben] has struggled with his participation in education programming within the school setting because of behavioural issues. He has chosen not to study independently within the Frangipani Unit because he feels it is unjust for AYTC not to provide him with the opportunity to study SACE topics with the mainstream population...

...[Ben] has received a high level of intervention from CAMHS, Youth Justice Psychology and Streetlink Alcohol and Other Drug Services whilst at AYTC...

...[Ben] is currently unhappy with the restricted routine he is subject to in the Frangipani Unit at AYTC, which makes him feel transfer to YLP is preferable.'

232. On 9 March 2017, a Case Note at 15:30 records:

A discussion was had with [Ben], he was informed that his new plan has added privileges associated with phase progression. [Ben] understands that extra privileges received will be behaviour based. Unit staff were present and reinforced expected behaviours, [Ben] was pleased with this and received it in a very positive manner. [Ben] appeared to really appreciate the exercise program that he had participated in and informed staff that he

³⁴ Case Note, 08:31, 08/03/17.

desires to do his best to respond to staff so as to progress to the gym and have more exercise programs / periods.

233. On 9 March 2017, Ben's DRMP was amended to record the following:

08/03/17 Due to [Ben's] extended stay in Frangipani the following privileges will be permitted alongside his structured routine if behaviour is maintained [assessed by staff daily]

1. Monday & Thursdays 1pm-2pm exercise program in unit recreation with programs staff.
2. Radio issued daily between 12 midday till 10.30pm.
3. Games room / X-Box - Times at staff discretion and staff to follow individual association restrictions based on staff / BSO consultation.
4. AM phone calls permitted.

234. On 10 March 2017, Ben left his room for 26 minutes for a video conference with the Youth Court. Aside from this, he spent 129 minutes out of his room (including a phone call of approximately 10 minutes).

235. On 11 March 2017, the Unit Log records that Ben spent 165 minutes out of his room (including approximately 20 minutes of phone calls). The information recorded on the SRRA Log differs to the Unit Log, and is not clear as to how long Ben was unsecured.

236. On 12 March 2017, the Unit Log records that Ben was unsecured for 176 minutes (including approximately 30 minutes of phone calls). It appears that he was permitted to associate with another young person during one of the periods he was unsecured. This appears to be the first contact Ben has had with another resident since 16 February 2017. The SRRA Log records that Ben spent a total of 200 minutes unsecured on 12 March 2017. A Case Note was made at 13:36 recording:

'[Ben] was compliant whilst out for his exercise period and completed his chore. When he was asked to go back to his room, so another resident could come out, he became demanding and started swearing at staff. He was still secured but continued to demand staff attention.'

A Case Note was made at 19:29 recording:

'During this evenings meal [Ben] used the intercom to speak with the writer. On answering the intercom [Ben] immediately became aggressive in his tone... [Ben] continued to debate the matter but after the writer pointed out to [Ben] that he was presenting as aggressive [Ben] stated "I'm just fucking frustrated being stuck in this unit". ... As unit staff collected cutlery from [Ben's] room [Ben] presented as abrupt with staff speaking with rapid cadence. [Ben] stated 'I'm fucking sick of this unit, I'm sick of this shit...'.... [took his radio and toiletries] [Ben] came out of his room for his second exercise period of the evening and spoke at length with staff about how he was feeling. [Ben] stated that he felt he was not being given the opportunity to progress and that was why he was feeling frustrated....'

237. On 13 March 2017, Ben was unsecured for total of 194 minutes (including phone calls of approximately 20 minutes). A Case Note at 14:18 records that Ben had a 'positive shift and interacted well with staff' but he 'became demanding about having to follow his normal routine as there are extra residents on regression.'

238. A Case Note of a session Ben had with a Youth Justice psychologist includes that he said "I feel like most days I don't even care if I die. If it happens, it happens."

239. On 14 March 2017, Ben was unsecured for total of 128 minutes (including phone calls of approximately 20 minutes). The Visitor Log records a visit from the psychologist but the Case Note records that this visit did not occur due to a double booking. Ben met with Red Cross for 59 minutes. Aside from the Red Cross Visit, it appears that Ben

spent a total of 128 minutes out of his room (which included approximately 20 minutes of phone calls).

240. On 15 March 2017, Ben spent approximately 165 minutes unsecured (including approximately 30 minutes of phone calls). Ben made a phone call to the OGCYP, I presume that this was in relation to his treatment and ongoing confinement.
241. On 16 March 2017, it appears that Ben spent a total of 163 minutes out of isolation (including approximately 30 minutes of phone calls). Ben also met with the psychologist. The Visitor Log records that Ben received a visit from the dental clinic but this visit is not recorded on the Unit Log. As such, I consider it reasonable to conclude that the visit did not occur.

At 14:06 a Case Note was made recording:

Whilst staff were providing breakfast to [Ben] he relayed some of the conversation which occurred via phone call to the guardian. [Ben] advised staff that he had informed the Guardian that the accommodation manager was holding him back by not letting him attend education. Staff advised [Ben] that the learning centre had supplied school work for himself and [...] as already discussed. [Ben] informed staff that he did not want it and would flush it down the toilet if it was provided. [Ben] also stated that he also made the accommodation manager look bad in the eyes of the guardian and he would be having an interview with the guardian tomorrow. [Ben] at times has tried to negotiate extra time out of his room, staff explained to [Ben] that when numbers were low in the unit staff could at times allow for longer periods of recreation time, but due to an increase in resident numbers this was not always possible as is the case at present.

At 14:41 a Case Note was made recording:

[Ben] participated in a fitness session with writer in the courtyard of Frangipani Unit. [Ben] was very enthusiastic for the duration of the session and was grateful to the writer for facilitating the session. [Ben] mentioned he looks forward to future sessions.

At 15:30 the psychologist made a Case Note recording:

Saw [Ben] in the unit for the first time following handover from his previous YJ Psychologist [...]. [Ben] appeared calm and open during discussion. [Ben] began the session by apologising for being in a "shitty mood" last time I had tried to visit him in Frangipani, and stated that he was angry because he hates talking through the door - it makes him feel like a "dog". I expressed that I understood, and that we wouldn't have had been able to have a proper session through the trap anyway, it would have just been a quick check-in. I further explained to [Ben] that I had been unable to see him for an additional 3 booked appointments due to various reasons including staff shortages, so it was mostly not his fault that there had been such a delay. ... He stated that he was struggling with the regime in Frangipani. ...

242. On 17 March 2017, Ben was unsecured for total of 134 minutes, which included being escorted in handcuffs by three staff to a visit with the OGCYP (of approximately 20 minutes) and having a ten minute phone call. Ben also made a complaint to my Office by letter dated this day.
243. On 18 March 2017, Ben spent a total of 125 minutes out of his cell (including a phone call of approximately 10 minutes).
244. On 19 March 2017, Ben spent 125 minutes out of his cell (including approximately 25 minutes of phone calls).
245. On 20 March 2017, Ben spent 205 minutes out of his cell (including approximately 20 minutes of phone calls) as well as 30 minutes for a visit with the psychologist. The Unit

Log indicates that Ben was getting increasingly frustrated about the periods of time he was confined to his cell, recording:

...[Ben] demanding as he returns to his room once there [Ben] becomes abusive towards staff due to his radio be removed for swearing at staff. [Ben] kicks at his door, once it is closed continuing to abuse staff...

...[Ben] spoken to by unit staff about his demanding behaviour and excessive swearing. [Ben] upset his radio was taken due to behaviour. [Ben] telling staff he is sick of the unit and is starting to get frustrated with staff. [Ben] calling staff dog cunts and stated "I will assault your new superior soon." [Ben] informed that those threats are unacceptable and have to stop. [Ben] admitting he doesn't mean it but he cannot help what he says when angry...

At 10:11 a Case Note was made recording:

[Ben] became demanding of staff upon returning to his room after having recreation time, he was abusive towards staff due to his radio being removed for his swearing and poor behaviour. [Ben] was later spoken to about his poor behaviour, who advised staff that he was upset his radio was taken from him and sick of being in unit frangipani and frustrated with staff.'

At 15:30 the psychologist recorded:

Saw [Ben] for an individual therapy session in Frangipani. [Ben] presented as somewhat heightened and agitated and stated that he was in a "shit mood". He expressed feeling frustrated and angry about his current regime and particularly about not being able to mix with other residents and go to school. ... He stated that he was not coping currently, and that he wanted staff to "work with [him] to move out of Frangipani" but he knew this would not happen...

246. On 21 March 2017, Ben was unsecured from his room for a total of 90 minutes, which included approximately 30 minutes of phone calls.
247. On 22 March 2017, Ben was unsecured for 210 minutes, including approximately 30 minutes of phone calls. A Case Note recorded that he 'had extra time out of his room for good behaviour'.
248. On 23 March 2017, Ben was again given extra time out of his room for 'good behaviour'. He was out of his room for a total of 174 minutes, which included time to speak with his Case Coordinator and approximately 45 minutes of phone calls. Ben was also allowed out to attend a 60 minute exercise session.
249. On 23 March 2017, a determination was made by the Review Board that Ben would be transferred to an adult prison 'on or after his eighteenth birthday'.
250. On 24 March 2017, Ben's DRMP was reviewed. It still required Ben to be separated from other residents and did not permit him to attend school or programs. It did allow contact visits and stated that the items he was permitted in his room were to be 'dynamically assessed' by staff.
251. On 24 March 2017, Ben had 248 minutes out of his room. The Visitor Log records a visit from a friend but the Unit Log does not record that Ben was out of his room at that time.
252. On 25 March 2017, a Case Note records that Ben 'was awarded tuckshop, and 2 extra phone calls for positive behaviour'. Ben was unsecured from his room for a total of 195 minutes, which included approximately 20 minutes of phone calls.

253. On 26 March 2017, a Case Note records 'bad behaviour', stating that Ben refused to do chores and argued with staff. The Case Note states that 'it was acknowledged that [Ben] is possibly feeling anxious about his recent decision to move to the adult system, but this was no excuse for his poor behaviour and not following direction'. The Unit Log records that the radio was removed from Ben's room as a result of his 'poor behaviour'. Ben was unsecured from his room for a total of 143 minutes, including for a haircut, to do chores and for approximately 35 minutes of phone calls.
254. On 27 March 2017, Ben was not allowed out of his cell in the morning to make his own breakfast. At 08:40 the Unit Log recorded:
- Staff attend [Ben's] room with breakfast. [Ben] immediately questions as to why he can't make his own breakfast, Staff attempt to explain to [Ben] due to his poor behavior on both AM & PM shift his compliance needs to be tested, [Ben] says "this is fucked". Staff close door and exit the area.
- The psychologist attended and Ben participated in a work program. I am unable to determine how long Ben spent out of his room on 27 March 2018 because the Unit Log provided to my investigation has been redacted and no SRRA Log was provided.
255. On 27 March 2017, a Youth Justice Assessment Update was completed. It states that Ben suffered from 'acute drug withdrawal symptoms' and 'acute grief' and records that Ben regularly saw the Youth Justice Psychologist, the CAMHS Clinician and the CAMHS Psychiatrist.
256. It appears from the records that Ben saw a psychiatrist four times in 2016 with the last appointment being in September 2016.³⁵ There is no record of Ben seeing a psychiatrist in 2017 despite him having requested to on 6 February 2017, after he made threats to commit suicide, and having a history of mental health issues.
257. On 28 March 2017, the Visitor Log records that a CAMHS clinician visited Ben. However, the Unit Log does not record that this visit occurred. On 28 March 2017, Ben was unsecured for 183 minutes, which included approximately 40 minutes of phone calls and possibly a meeting with the CAMHS clinician. At 21:00, after being secured since 19:40, Ben began kicking on his door and shouting and swearing at staff. In response, the staff removed Ben's radio from his room.
258. On 29 March 2017, Ben was unsecured for 165 minutes, which included approximately 30 minutes of phone calls.
259. On 30 March 2017, Ben was unsecured for 300 minutes, which included approximately 30 minutes of phone calls. It is recorded that Ben was 'disrespectful' to a staff member and, as a result, his access to television was revoked.
260. On 31 March 2017, Ben was unsecured for 155 minutes, including approximately 50 minutes of phone calls. It was Ben's birthday. He was escorted with handcuffs and three staff members to a visit with Red Cross in the morning and to a visit with his family in the evening.
261. On 1 April 2017, Ben was unsecured for an unknown time to make his breakfast.³⁶ He was later unsecured for 50 minutes for a personal visit.³⁷ The records suggest that Ben was unsecured for a total of 93 minutes for exercise and unit activities, including approximately 20 minutes of phone calls.

³⁵ CAMHS Report for handover to adult system. ISBAR, 30/03/2017.

³⁶ The time is unknown, with the record either missing or redacted.

³⁷ Although I note that the Visitor Log for 1 April 2017 only records that "two friends" visited between 10:45 and 11:00. And he was not unsecured, according to the Unit Log until 11:10.

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262. On 2 April 2017, Ben was unsecured for 195 minutes, including approximately 80 minutes of phone calls. He was also unsecured for 65 minutes when he was escorted to a visit with his family.
263. On 3 April 2017, Ben was unsecured for chores and exercise for a total of 155 minutes, including approximately 30 minutes of phone calls. He was also unsecured for 20 minutes to talk to the AGM, Mr Green.
264. On 3 April 2017, the Case Notes indicate that Ben was becoming increasingly frustrated with the amount of time he was secured in his room and was viewing moving to the adult prison as the only solution. At 14:00 a Case Note was made recording:

[Ben] throughout the shift was threatening to go off and threatening that he'd be sent to Yatala "one way or another"

[Ben] constantly banged on door and was spoken to by staff numerous times. [Ben] initially verbally refused to return to his room after his last exercise period but returned to his room without issue.

At 19:58 a Case Note was made recording:

AGM met with [Ben] in Frangipani games room. [a] immediately asked when he would be transferring to DCS stating "this is bullshit now Steve I have behaved for long enough I don't understand why", I advised [Ben] of the process that needed to be followed and information sharing. [Ben] was unable to understand why and whilst he remained calm he made reference to previous threats of creating an incident to quicken his transfer...

265. On 4 April 2017, Ben was first unsecured at 09:30. He was allowed to be in the common area, where was involved in a physical altercation with another resident. After the incident Ben was secured in a different room. He was unhappy about this and advised staff that the room "had shit in it". After the incident Ben was recorded as asking staff if he could go to the adult system now. The Unit Log records that Ben banged on the door and swore at staff members until 15:00, when he was transferred to police custody and charged as an adult for assault.
266. On 5 April 2017, the Visitor Log records that Ben had a visit from a drug and alcohol support counsellor. However, Ben was no longer at the AYTC. I note that in the records I examined, I did not see any other visits to Ben for drug and alcohol support.

SUMMARY OF SEGREGATION – Ben

267. In summary, my investigation did not identify any days on which Ben was confined continuously in his room for longer than 24 hours.
268. My investigation found Ben was confined in his room for more than 22 hours, which, in my view, constituted solitary confinement, on 25 days during the period between 6 December 2016 and 5 April 2017, as follows:
- on 12 January 2017, Ben spent a total of 75 minutes out of isolation (approximately 20 minutes of which was phone calls)
 - on 16 January 2017, Ben spent a total of 102 minutes out of isolation
 - on 19 January 2017, Ben spent a total of 60 minutes out of isolation (including a ten minute phone call)
 - on 20 January 2017, Ben spent a total of 58 minutes out of isolation (approximately 30 minutes of which was phone calls)
 - on 21 January 2017, Ben spent a total of 80 minutes out of isolation (approximately 25 minutes of which was phone calls)
 - on 22 January 2017, Ben spent a total of 100 minutes out of isolation (approximately 10 minutes of which was a phone call)
 - on 24 January 2017, Ben spent a total of 107 minutes out of isolation for phone calls and a visit with psychologist (with only 15 minutes out of his room for recreation time)
 - on 26 January 2017, Ben spent a total of 91 minutes out of isolation (approximately 20 minutes of which was phone calls)
 - on 30 January 2017, Ben spent a total of 75 minutes out of isolation (approximately 20 minutes of which was phone calls)
 - on 3 February 2017, Ben spent a total of 95 minutes out of isolation (approximately 10 minutes of which was a phone call)
 - on 5 February 2017, Ben spent a total of 62 minutes out of isolation (including phone calls of approximately 20 minutes)
 - on 6 February 2017, Ben spent a total of 35 minutes out of isolation (including phone calls of approximately 20 minutes)
 - on 7 February 2017, Ben spent a total of 100 minutes out of isolation (including phone calls of approximately 15 minutes, and a visit with a psychologist for 30 minutes)
 - on 9 February 2017, Ben spent a total of 60 minutes out of isolation (including phone calls of approximately 20 minutes)
 - on 10 February 2017, Ben spent a total of 75 minutes out of isolation (including phone calls of approximately 30 minutes)
 - on 11 February 2017, Ben spent a total of 87 minutes out of isolation (including phone calls of approximately 20 minutes)
 - on 12 February 2017, Ben spent a total of 84 minutes out of isolation (including phone calls of approximately 25 minutes)
 - on 13 February 2017, Ben spent a total of 95 minutes out of isolation (including phone calls of approximately 30 minutes and a professional visit of 25 minutes)
 - on 16 February 2017, Ben spent a total of 75 minutes out of isolation (including phone calls of approximately 25 minutes)
 - on 25 February 2017, Ben spent a total of 100 minutes out of isolation (including phone calls of approximately 30 minutes)
 - on 26 February 2017, Ben spent a total of 110 minutes out of isolation
 - on 28 February 2017, Ben spent a total of 100 minutes out of isolation (including phone calls of approximately 20 minutes and a professional visit)
 - on 1 March 2017, Ben spent a total of 100 minutes out of isolation (including phone calls of approximately 20 minutes)

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- on 4 March 2017, Ben spent a total of 108 minutes out of isolation (including phone calls of approximately 30 minutes)
 - on 21 March 2017, Ben spent a total of 90 minutes out of isolation (including phone calls of approximately 30 minutes).
269. Further, there were six days in the period between 6 December 2016 and 5 April 2017 of which, from the records provided to my investigation, I was unable to determine how long Ben spent confined in his cell. This is because the Unit Logs provided to me were unclear or had been redacted, and the SRRRA Logs were either not provided to me, not created or were incomplete. My investigation was unable to determine how long Ben spent confined in his cell on the following days:
- 25 January 2017
 - 29 January 2017
 - 31 January 2017
 - 19 February 2017
 - 1 April 2017.
270. My investigation also identified 20 days in the period between 6 December 2016 and 5 April 2017 when Ben was unsecured from his cell for 120 minutes or less for recreation and/or exercise, but additional time was spent on the phone and/or attending visits with professionals or family members:
- on 23 January 2017, Ben spent a total of 160 minutes out of isolation (50 minutes when he wasn't having phone calls or visits)
 - on 27 January 2017, Ben spent a total of 123 minutes out of isolation (including phone calls of approximately 20 minutes)
 - on 1 February 2017, Ben spent a total of 140 minutes out of isolation (including phone calls of approximately 20 minutes)
 - on 2 February 2017, Ben spent a total of 122 minutes out of isolation (including phone calls of approximately 20 minutes)
 - on 14 February 2017, Ben spent a total of 126 minutes out of isolation (including phone calls of approximately 20 minutes)
 - on 15 February 2017, Ben spent a total of 143 minutes out of isolation (including phone calls of approximately 25 minutes). He also spent 50 minutes out of his room to attend a video conference in the centre with the Youth Court
 - on 8 February 2017, Ben was returned to his room from the Youth Court at 13:40, after which he was only unsecured for 35 minutes for the remainder of the day (which included approximately 20 minutes of phone calls)
 - on 18 February 2017, Ben spent a total of 140 minutes out of isolation (including phone calls of approximately 20 minutes)
 - on 20 February 2017, Ben spent a total of 148 minutes out of isolation (including phone calls of approximately 20 minutes and a meeting with his case Coordinator for 25 minutes)
 - on 3 March 2017, Ben spent a total of 100 minutes out of isolation and was taken from his room, in handcuffs and escorted by three staff, to a meeting with his family for 45 minutes
 - on 5 March 2017, Ben spent a total of 130 minutes out of isolation (including phone calls of approximately 30 minutes)
 - on 6 March 2017, Ben spent a total of 125 minutes out of isolation (including phone calls of approximately 30 minutes)
 - on 8 March 2017, Ben spent a total of 139 minutes out of isolation (including phone calls of approximately 20 minutes) as well as 90 minutes for a visit from DCS
 - on 10 March 2017, Ben spent a total of 129 minutes out of isolation (including a phone call of approximately 10 minutes)

- on 14 March 2017, Ben spent a total of 128 minutes out of isolation (including phone calls of approximately 20 minutes)
- on 17 March 2017, Ben spent a total of 134 minutes out of isolation (including a phone call of approximately 10 minutes and being handcuffed and escorted by three staff to a visit with the GCYP)
- on 18 March 2017, Ben spent a total of 125 minutes out of isolation (including a phone call of approximately 10 minutes)
- on 19 March 2017, Ben spent a total of 125 minutes out of isolation (including phone calls of approximately 25 minutes)
- on 26 March 2017, Ben spent a total of 143 minutes out of isolation (including phone calls of approximately 35 minutes)
- on 2 April 2017, Ben spent a total of 195 minutes out of isolation (including phone calls of approximately 80 minutes) and was taken from his room to a visit with his family for 65 minutes.

271. The department, in its response to my provisional report, disputed some of the times my investigation found that Ben spent out of his room, and calculated the time spent on the days that I was unable to. The department determined its times from analysis of the records provided to my investigation and from considering the door opening and closing data from the room. The department did not provide the door opening and closing data to my investigation.

272. The department's reviewing of the records determined different times from my investigation that Ben was confined in his room during the period between 6 December 2016 and 5 April 2017, as follows:

- on 16 January 2017, Ben spent a total of 172 minutes or 182 minutes out of his room³⁸
- on 23 January 2017, Ben spent a total of 85 minutes out of his room
- on 27 January 2017, Ben spent a total of 93 minutes out of his room
- on 29 January 2017, Ben spent a total of 103 minutes out of his room
- on 31 January 2017, Ben spent a total of 44 minutes out of his room according to analysis of the records provided to my investigation or 118 minutes from the door opening and closing data
- on 3 February 2017, Ben spent a total of 99 minutes out of his room
- on 7 February 2017, Ben spent a total of 95 minutes out of his room
- on 8 February 2017, the department agreed that Ben spent a total of 35 minutes out of his room after he returned from the youth court at 13:40 but advised that he spent 365 minutes out of his room for the court attendance
- on 10 February 2017, Ben spent a total of 81 minutes out of his room
- on 11 February 2017, Ben spent a total of 92 minutes out of his room
- on 13 February 2017, Ben spent a total of 112 minutes out of his room
- on 14 February 2017, Ben spent a total of 127 minutes out of his room
- on 16 February 2017, Ben spent a total of 135 minutes out of his room
- on 18 February 2017, Ben spent a total of 150 minutes out of his room
- on 19 February 2017, Ben spent a total of 200 minutes out of his room
- on 20 February 2017, Ben spent a total of 138 minutes out of his room
- on 26 February 2017, Ben spent a total of 200 minutes out of his room
- on 1 March 2017, Ben spent a total of 104 minutes out of his room
- on 3 March 2017, Ben spent a total of 167 minutes out of his room
- on 5 March 2017, Ben spent a total of 128 minutes out of his room
- on 8 March 2017, Ben spent a total of 234 minutes out of his room
- on 10 March 2017, Ben spent a total of 145 minutes out of his room

³⁸ Page 14 of the department's response to my provisional report states 172 minutes and page 4 of Attachment 9.2 of the department's response states 182 minutes.

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- on 14 March 2017, Ben spent a total of 187 minutes out of his room
 - on 17 March 2017, Ben spent a total of 150 minutes out of his room
 - on 18 March 2017, Ben spent a total of 126 minutes out of his room
 - on 19 March 2017, Ben spent a total of 160 minutes out of his room
 - on 1 April 2017, Ben spent a total of in excess of 133 minutes out of his room according to analysis of the records provided to my investigation or 292 minutes from the door opening and closing data
 - on 2 April 2017, Ben spent a total of 227 minutes out of his room.
273. Whilst my investigation found that Ben was confined in his room for more than 22 hours on 25 days during the period between 6 December 2016 and 5 April 2017, the department found that Ben was confined in his room for more than 22 hours on 22 days during the period.
274. Further, my investigation found that Ben was unsecured from his cell for 120 minutes or less for recreation and/or exercise, but additional time was spent on the phone and/or attending visits with professionals or family members on 20 days. The department identified 11 days in the same period.
275. I discuss these apparent discrepancies later in this report.
276. It is apparent from the records that the reasons Ben was secured in his room for more than 22 hours per day included:
- as punishment for poor behavior
 - as a result of a lack of staffing, and
 - as a result of lockdowns occurring in the centre.
277. The department, in its response to my provisional report, submitted that the time that Ben spent secured in his room was 'based on assessment of risk' and not as punishment.

RYAN'S PERIODS OF SEGREGATION

278. The CE provided me with the following information summarising Ryan's periods of segregation from 9 January 2017 until Ryan was transferred to adult prison custody on 28 March 2017.

	Start Date	End Date	Details
1	17 January 2017	24 January 2017	Initiated due to roof incident on 17 January 2017.
	25 January 2017	5 February 2017	DRMP continues, but may mix with one young person at a time, dynamically assessed.
	6 February 2017	13 February 2017	DRMP continues as above. May also attend gym and pool with young people from Kangaroo Paw unit.
	14 February 2017	16 February 2017	DRMP continues as above. May also attend one education session per day with Kangaroo Paw unit. May also have dinner and chore with Kangaroo Paw if possible.
	17 February 2017	20 February 2017	DRMP continues as above. May also attend all education sessions and spend PM shifts with Kangaroo Paw if possible. Transition to Kangaroo Paw completed 20 February 2017. DRMP closed.
2	24 February 2017	8 March 2017	Initiated due to assault on young person. Transition to Kangaroo Paw completed 8 March 2017. DRMP closed.
3	15 March 2017	17 March 2017	Initiated due to physical altercation. Transitioned back to Kangaroo Paw on 17 March 2017. DRMP closed.
4	28 March 2017	28 March 2017	Initiated due to altercation with young person at school. Transferred to DCS same day.

279. As per the table above, Ryan had four periods of segregation after the commencement of the Youth Justice Administration Act, with:

- the first period of segregation being for 34 days³⁹ (**Ryan's first period of segregation**)
- the second period of segregation being for 12 days⁴⁰ (**Ryan's second period of segregation**)
- the third period of segregation being for 2 days⁴¹ (**Ryan's third period of segregation**), and
- the fourth period of segregation being for one day before he was transferred to the adult system (**Ryan's fourth period of segregation**).

280. My investigation was initially unable to determine how much time Ryan spent isolated in a cell during these periods of segregation. After numerous requests, the department provided me with the Unit Logs, C3MS records, telephone records and visitor records. From these I was able to determine for what periods of time Ryan was confined in the cell.

Ryan's first period of segregation

281. Ryan's first period of segregation followed the rooftop incident that occurred on 17 January 2017. He was returned to Frangipani Unit at AYTC from police custody and placed on a restricted DRMP at 21:40. He was issued bedding at 22:40.
282. The DRMP recorded 'N/A under the heading 'Cultural Considerations', although Ryan is of Aboriginal cultural background.
283. The DRMP stipulated that Ryan was only allowed to be in his room or in the courtyard, and was to be handcuffed and escorted when out of his cell, and hands were to be cuffed behind his back during exercise.
284. Ryan's visits had to be 'non-contact' visits, he was not able to participate in education or activities, and he was not allowed any association with, or exposure to, other residents. Ryan was permitted the following items in his cell:
- tv
 - books
 - fidget toys
 - limited toilet paper
 - portion controlled toiletries
 - flexi-toothbrush
 - paper cups

The DRMP recorded that it was to be reviewed at 15:00 the next day (however, it was not reviewed until 08:30 on 19 January 2017).

285. At 23:30 Ryan complained to staff about the heat in the room. The Unit Log records that the 'AM shift advised earlier that air conditioning had been damaged.' I note that, on 17 January 2017, Adelaide recorded the highest temperature for January 2017, being 41 degrees Celsius.⁴²

³⁹ 17 January 2017 to 20 February 2017.

⁴⁰ 24 February 2017 to 8 March 2017.

⁴¹ 15 March 2017 to 17 March 2017.

⁴² <http://www.bom.gov.au/climate/current/month/sa/archive/201701.adelaide.shtml>.

286. It appears from the information available to my investigation that Ryan remained in the cell until 16:10 the next day, being 18 January 2017, when he was unsecured for 30 minutes of exercise in the courtyard. The SRRA Log records that he was unsecured for 35 minutes for exercise again at 18:35. The Unit Log is not clear about this. At 21:00 a Case Note was made recording:

Remains on restricted due to the serious nature of offence and history. Further compliance and consistency in conforming behavior required.

287. At 08:30 on 19 January 2017, the DRMP was amended and a Case Note was made:

When on exercise in courtyard staff are to remain in courtyard due to resident being handcuffed behind back, when resident is walking staff are to assist with physical escort. When resident is seated staff can remove physical escort position.

288. The amended DRMP recorded that Ryan 'identifies as Aboriginal'. A Case Note was made - 'Follow up senior cultural advisor...' The box for 'Cultural referral/support required' was checked.

289. A 'Dynamic Appraisal of Situational Aggression: Youth Version' (**DASAYV**) was undertaken. This is a risk assessment tool that is used to predict the likelihood of aggression. Ryan scored 'zero/low' for the final risk rating.

290. At 14:15 a Case Note was made as follows:

[Ryan] had a good shift, very compliant, and also respectful to staff. Only out once due to staffing issues. Whilst in courtyard, [Ryan] said he did it because residents were being locked down too much and two staff members were talking to them like shit.

291. Ryan's DRMP was reviewed again at 13:30 to permit him to have handcuffs removed externally through the fence during exercise periods in the courtyard. The Case Note recorded:

DRMP has been reviewed handcuffs can now be removed from [Ryan] through courtyard fence with three staff members present controlling [Ryan's] hands for removal and fitting of cuffs.

292. On 19 January 2017, Ryan remained in his cell until 13:05, when he was taken out and secured in the courtyard until he requested to return to his room at 13:30. At 16:10, Ryan was unsecured for 25 minutes. At 16:30 a Cultural Advisor came and spoke to Ryan through the cuff trap of his cell. Ryan was unsecured again for 27 minutes at 20:13 for 'a phone call and exercise'. That is, Ryan was confined in his cell for the entire day, aside from 52 minutes. The SRRA Log records that 'facilitation of exercise periods' was 'restricted' because of 'staff shortages across the centre...due to an incident within the facility'.

293. On 20 January 2017, Ryan's DRMP was reviewed. Ryan could now be handcuffed at the front during movement rather than the back. This was the only change made to the DRMP, despite the records stating that he had been 'compliant' and there being no behavioural issues recorded.

294. On 20 January 2017, the Visitor Log records that Ryan attended a visit with the Aboriginal Legal Rights Movement (**the ALRM**) at 10:50. The SRRA Log does not record when he was secured after this visit. The Unit Log either does not record the visit, or it has been redacted from the copy provided to my investigation. As such, it is unclear to me whether Ryan was permitted to meet with the ALRM or, if he was, for how long.

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295. Ryan was unsecured at 14:20 to attend a video conference with the Youth Court at 14:20 for 25 minutes. He was taken out of his cell for 'phone call and recreation' at 17:15 but was returned 20 minutes later at his request.
296. The Visitor Log records that Ryan's grandmother visited him from 19:00 to 20:00 but other records indicate that this visit did not occur. Given this, I am unable to determine how long Ryan spend out of his cell of 20 January 2017.
297. On 21 January 2017, Ryan was unsecured for 'exercise and phone call' at 10:20 for 30 minutes. He was let out again at 13:05 for ten minutes for a phone call. At 14:00 a Case Note was made:

[Ryan] engaged well with staff while in courtyard. BSO's converse with [Ryan] through courtyard fence. [Ryan] stated he intended to apply for the adult centre once he was 18 on ... When asked why he got involved in a major disturbance he claimed it was to 'make a statement'. [Ryan] claimed he was angry at the constant lockdowns and restricted periods in the centre due to staff shortages. [Ryan] was reminded that he should not get angry at the staff on shift as they are here working with him on daily basis trying to meet his needs. [Ryan] was also reminded that major disturbances cause routines to slow down to ensure staff safety. [Ryan] appeared to acknowledge this.

The records are not clear but it appears likely that Ryan was let out of his cell again for a ten minute phone call at 15:50. He was taken for exercise at 18:55 but was returned to his cell 5 minutes later 'due to an incident' in the centre and 'low staffing'.

If my understanding of the records is correct, it appears that Ryan spent a total of 55 minutes out of his cell (which include approximately 20 minutes on the phone) on 21 January 2017.

298. On 21 January 2017, Ryan's DRMP was amended to provide that the handcuffs could be removed externally during exercise and that he no longer had to only be provided with finger food.
299. I am unable, from the information available to me, to determine how long Ryan spent out of his room on 22 January 2017. The Unit Log and the SRRRA Log are inconsistent. I note that the SRRRA states that 'exercise periods limited by incidents and dynamics in the centre'.
300. On 23 January 2017, Ryan's DRMP was reviewed again. The only change made was that the areas he could access could now be dynamically assessed by staff. Otherwise, there were no changes made to his DRMP despite records of good behaviour and a DASAYV assessment score of zero.
301. On 23 January 2017, Ryan was escorted from his room for a visit with HYPA for 45 minutes. Aside from this visit, it appears that Ryan was only unsecured from his room for exercise and phone calls for a total of 74 minutes, and that he had a phone call of approximately 10 minutes during this time.
302. On 24 January 2017, Ryan's DRMP was reviewed. A Case Note recorded:

Mechanical restraints removed for movement in accommodation and will remain on mechanical restrained utilizing physical escort for movement around centre and remain with non-contact personal visits. Portion controlled toiletries removed, unit issue toiletries now able to be supplied to resident. Toiletries to be removed after use and not to remain in rooms. Physical escort to be utilized while moving around accommodation unit.⁴³

⁴³ Case Note, 15:00, 24/01/17.

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303. On 24 January 2017, Ryan was out of his cell for a total of 71 minutes.
304. On 25 January 2017, Ryan was out of his cell for a total of 83 minutes. The Case Notes record that Ryan was 'good' and there were 'no issues'.
305. On 25 January 2017, Ryan's DRMP was reviewed and amended to provide that the areas he was allowed in, and the items he was allowed to have in his room, could now be dynamically assessed by staff. Ryan was still not permitted access to education or to associate with any other residents.
306. On 26 January 2017, Ryan's DRMP was reviewed three times. However, following these reviews the DRMP still stated that Ryan's behaviour was a threat to the safety of others. This is despite the records showing that Ryan had displayed good behaviour. The DRMP was changed to 'association restrictions' rather than 'no association' and noted that he 'may mix with another resident dynamically assessed by staff for suitability.'
307. On 26 January 2017, Ryan was let out of his cell for a total of 90 minutes and was allowed to spend this time with another resident. One exercise period was only for 10 minutes, which the Unit Log records was 'due to a late unlock today'.
308. On 27 January 2017, Ryan's DRMP was reviewed. The DRMP was to be reviewed again on 30 January 2017.
309. On 27 January 2017, Ryan was let out of his cell for a total of 86 minutes.
310. On 28 January 2017, Ryan was permitted out of his room for a total of 70 minutes. A Case Note records 'good shift quiet no issues'.
311. On 29 January 2017, Ryan was permitted out of his room for a total of 100 minutes, including approximately 12 minutes of phone calls. A Case Note records that Ryan 'had a positive AM shift and engaged well with staff and peers'.
312. On 30 January 2017, Ryan was permitted out of his room for a total of 52 minutes for phone calls and recreation. The Unit Log and SSRA Log record that he was also out for 25 minutes for a visit, although there is no record of any visitors on this date in the Visitor Log. A Case Note recorded:

[Ryan] did his exercise well. When he returned to his room he requested to speak to the Unit Supervisor. When Louie spoke to [Ryan] he asked when he was getting out of the Unit. He told Louie and staff that "Steve Green does not understand, that it gets us mad in here. So we will just do it properly next time." No other issues.

313. On 31 January 2017, Ryan's DRMP was reviewed. It was amended to state that he did not have to be handcuffed during movements.
314. On 31 January 2017, the Unit Log records that Ryan was out of his room for 70 minutes. The SRRA Log records that Ryan was out of his room for 41 minutes in total. A Case Note records that Ryan 'had a good shift. Nil issues'.
315. On 1 February 2017, Ryan was unsecured from his room for three 30 minute exercise periods throughout the day. It was Ryan's birthday. He also spent 40 minutes out of his room having a conversation with the Accommodation Manager and the Manager Assessment and Case Coordination. A Case Note of the discussion records:

...A lengthy conversation was had in relation to his frustrations and expectations; and the departmental expectations which will contribute to his safe transition back into a mainstream unit.

[Ryan] is well aware of the need to demonstrate compliance, respectful behavior, non-threatening language, and positive role modelling to regain trust which will preserve the safety and security of the AYTC.

[Ryan] was told that incremental steps will be taken to ensure he is provided with stimulation and education.

[Ryan] was advised that education is being explored (in unit) on Thursday, and gym access will be provided.

316. On 1 February 2017, the Visitor Log records a visit from his grandmother between 19:00 and 20:00. This visit, however, is not recorded on either the Unit Log or the SRRA Log. Rather, it is recorded that Ryan was let out for 23 minutes in the evening and 'allowed 2 phone calls since it's his birthday.' As such, I consider it reasonable to conclude that Ryan did not attend a visit with his grandmother. Ryan was not unsecured from his room for any exercise after 19:00, with the last time he was out of his room being used in its entirety for phone calls.
317. On 1 February 2017, an Aboriginal Consultant met with Ryan. It is not apparent from the records whether Ryan was allowed out of his room for this meeting or not.
318. At 2:00am on 2 February 2017 the Unit Log records that Ryan and another resident 'continue to talk across the rooms and when asked to sleep they say they are not tired as they have been locked for 22 hours for the last 2 weeks.'
319. On 2 February 2017, the Unit Logs record that Ryan was unsecured for 120 minutes for phone calls and exercise. The SRRA Log records that Ryan was unsecured for a total of 90 minutes. Ryan was also handcuffed and taken from the unit for 65 minutes for an appointment with a physiotherapist. A Case Note records that Ryan was 'well behaved'.
320. On 3 February 2017, Ryan's DRMP was reviewed to record the following:
- [Ryan] will be able to have his exercise period in the gym with 1 other nominated resident.
[Ryan] will be cuffed during all movements. Exercise period to be covered by three staff.
321. No SRRA Log was provided to my investigation for 3 February 2017. Whilst the Unit Logs provided to my investigation have been heavily redacted, it appears that Ryan was unsecured for a total of 85 minutes across the day. It is clear that, after 19:00, Ryan was unsecured for a total of 20 minutes.
322. No SRRA Log was provided to my investigation for 4 February 2017. Due to an incident with another resident, Ryan remained secured in his cell until 17:00 when 'unlock [began] 1 x resident at a time as directed by MO's due to staffing'.⁴⁴ It appears that Ryan was allowed out for 20 minutes, during which time he made a phone call of approximately 10 minutes. At 15:35 a Case Note was made recording that Ryan 'had a very good shift, nil issues.' However, after remaining secured for most of the day, it appears that Ryan became increasingly frustrated by the isolation. At 20:30 a Case Note at 20:30 recorded:

[Ryan] started the shift quite settled however, as the night went on he became disruptive. [Ryan] could be heard trying to incite [...] to "crack up", and making negative comments about staff in what appeared to be an attempt to prompt [...] to be disrespectful to staff. Later on in the shift [Ryan] could be heard yelling out racial slurs to [...] including "black monkey" and "stupid black piece of shit". He was also threatening to "jump on your head" [sic] and "break your skull" to [...].

[Ryan] appeared to settle himself after about 20 minutes,

⁴⁴ Unit Log, 04/01/2017.

323. On 5 February 2017, Ryan was permitted to attend the gym (accompanied by three staff members) for 40 minutes. Ryan's DRMP was reviewed but it was not changed. The Unit Log records are unclear. However, according to the SRRRA Log, Ryan spent a total of 116 minutes out of his cell, which included a phone call of approximately ten minutes. The Case Notes record that Ryan 'had an excellent shift', that there were 'nil issues' and that he 'behaved responsibly' when he was allowed to mix with another resident in the unit courtyard.
324. On 6 February 2017, Ryan's DRMP was reviewed and revised to include:
- [Ryan] will be able to attend the gym and pool with unit Kangaroo Paw. [Ryan] does not need to be handcuffed for this movement. [Ryan] only to attend gym and/or pool once Kangaroo Paw is secured in either of these recreational areas. [Ryan] to return to Frangipani before unit Kangaroo Paw commences movement back to unit. [Ryan] NOT TO WALK WITH THE UNIT ON RETURN OR PICK UP.
325. On 6 February the SRRRA Log records that Ryan spent a total of 175 minutes out of his cell for recreation, including phone calls of approximately 20 minutes. He was also escorted in handcuffs to a visit with a GCYP Advocate for 35 minutes.
326. A Case Note was made on 6 February 2017:
- [Ryan] speaks with BSOs regarding his frustrations in Frangipani and request to move to DCS. Kyle H contacted and will speak with [Ryan] and facilitate a call to his lawyer. [Ryan] also conveys his frustrations at being secured for long periods of time and states "it is sending him mental" and "I'm going to lose my shit soon". [Ryan] has asked for medication to assist his emotional state. BSO's attempt to counsel [Ryan] to continue his positive behavior and transition time. Staff are skeptical that transition could result in [Ryan] being taunted by other residents into an incident which may suit [Ryan's] desire to move to DCS.
327. On 7 February 2017, it appears that Ryan spent time out of his room for exercise in the gym, recreation and two phone calls (of approximately 20 minutes) for a total of 95 minutes. He also met with the Cultural Advisor and the Assessment and Case Coordination Manager for 35 minutes in the unit.
328. On 7 February 2017, a Case Note at 10:04 recorded that Ryan had a 'good transition period in gym with unit kilo with no issues reported back to unit staff.'
329. On 8 February 2017, Ryan was unsecured between 10:30 and 11:37 to meet with management to speak about transferring to the adult system. Later that day, he was unsecured for a 25 minute period, and for two 30 minute periods. As such, on 8 February 2017, Ryan spent a total of 85 minutes unsecured for exercise and recreation. The Visitor Log records that Ryan had a professional visit from a HYPFA facilitator at 15:30 although it appears that this is incorrect as, according to the SRRRA Log and the Unit Log, Ryan was secured in his room at this time.
330. On 9 February 2017, Ryan was unsecured for a total of 41 minutes for exercise, recreation and a phone call. Ryan also was also taken out of the unit for 95 minutes for professional visits.
331. On 9 February 2017, Ryan's DRMP was revised to remove the requirement that he be escorted by four staff. Rather, three staff were required for escorting and supervising Ryan for movements and exercise. A Case Note recorded:
- ...Handcuffs still remain for movement around centre except for transition movement with Kangaroo Paw [Ryan] is to be escorted to gym/pool area by three staff (no handcuffs)

(compliance test) after unit has entered the gym/pool area, and returned to Frangipani prior to unit moving block.

332. The DRMP continued to state that Ryan was not to attend at school, and that his behaviour presented a threat to the safety of others. This is despite the records suggesting that his behaviour was, overall, good. For example, on 8 February 2017 a Case Note recorded '2 good exercise periods got along well with unit staff', and on 9 February 2017 a Case Note recorded that Ryan 'had an excellent shift' with 'no issues'.
333. On 10 February 2017, Ryan was unsecured for a 30 minute exercise period in the morning. At 13:00, Ryan was unsecured again for a 20 minute period at 13:00. A Case Note was made recording that Ryan's exercise periods were 'good' and that he 'interacted well with staff and followed direction'. Ryan remained secured until 19:35 when he was let out for 37 minutes.
334. On 11 February 2018, Ryan was unsecured for 40 minutes of recreation time in the unit in the late morning. He was unsecured for 30 minutes for exercise at 15:40, and at 16:50 he went to the gym with Kangaroo Paw for 64 minutes. At 19:27 Ryan was unsecured for 15 minutes, following which the Unit Log records that he was 'complaining that staff are "ripping him off" and always take time off him.' The total time that Ryan spent out of his cell on 11 February 2018 was 149 minutes.
335. On 12 February 2017, Ryan was unsecured for a total of 165 minutes, which included time at the pool and the gym. The first time Ryan was unsecured from his room for the day was at 11:30. The Case Notes record that his behaviour was 'good' and there were no issues.
336. On 13 February 2017, Ryan refused an exercise period in the morning. He was then unsecured in the afternoon and evening for three periods (of 30 minutes, 10 minutes and 20 minutes) totalling 60 minutes for the day.
337. On 13 February 2017, Ryan's DRMP was reviewed to permit him to attend one education session per day 'dynamically assessed'. A Case Note recorded:

[Ryan] will continue to transition to Kangaroo Paw. [Ryan] will attend 1 (one) session at education per day. Behaviour Support Officers, Duty Supervisor and Education Staff will assess which sessions this will be on a daily basis. [Ryan] will NOT walk with the unit to or from education. [Ryan] will have dinner with Kangaroo paw and conduct a chore, if possible.

338. On 14 January 2017, Ryan's DRMP was reviewed and revised to include that he could attend meals with Kangaroo Paw and take part in programs and activities. Ryan was unsecured for a total of 172 minutes throughout the day, which included 30 minutes at the education centre and 59 minutes at the gym/pool. Ryan's first period out of his room for the day was at 10:40am.
339. On 15 February 2017, Ryan was able to attend two sessions at school and spent the evening unsecured with Kangaroo Paw. This was the first day since 17 January 2017 that Ryan spent a significant portion of the day out of his cell. The records include reports of good behaviour.
340. On 16 February 2017, Ryan again spent considerable part of the day unsecured. He attended school and spent the evening in another Unit. A Case Note was made as follows:
- The writer met [Ryan] and enquired as the [sic] whether he wishes to make his own application to transfer to an adult facility as has been his frequent request.

[Ryan] stated he did not wish to transfer, and was again reminded of his need to manage his behavior appropriately if he wished to remain in the AYTC and avail himself of the usual opportunities.

341. On 17 February 2017, as a result of 'continued positive interactions'⁴⁵, Ryan was able to spend from 16:00 to 21:10 out of his cell in another unit. His DRMP was reviewed and revised, and the following note was made:

[Ryan] will continue his transition to Kangaroo Paw, spending the whole PM shift and returning for bedtime in Frangipani Unit at 2100.

342. Ryan's regime continued, with him being able to spend the evenings in Kangaroo Paw, until 20 February 2017 when his DRMP was closed and he was moved to Kangaroo Paw.

Ryan's second period of segregation

343. Ryan's second period of segregation was for 12 days from 24 February 2017 to 8 March 2017.
344. This period of segregation was imposed because of an incident in an education session on 24 February 2018. It was alleged that Ryan assaulted another resident. An Incident Report was prepared by staff (**the Incident Report**). The Incident Report states that it was completed and approved on 30 March 2017, more than a month after the incident was alleged to have occurred. The Incident Report was not signed.
345. A Resident Incident Comment Sheet was completed by Ryan on 1 March 2017. Ryan wrote on the Sheet that the other resident 'was talking shit to me.' In response to a question asking 'What can be done to prevent this from happening again?' Ryan wrote that staff should intervene earlier, stating that the other resident had been 'talking shit' to him for ten minutes before staff intervened.
346. No CCTV footage was provided to my investigation of this incident.
347. As a result of the incident, Ryan was taken to the Frangipani Unit at 13:52 on 24 February 2018 where he was secured in a room. A Case Note records:
- [Ryan] will remain in Frangipani pending a review at ARIG...
348. Ryan was placed on a DRMP which provided that the items he would be allowed to have in his room, and the areas he would be allowed to access, were to be 'dynamically assessed' by staff. Ryan was not permitted to attend school or to participate in any programs or group activities.
349. On 25 February 2017, Ryan was unsecured for recreation, exercise and chores for a total of 180 minutes. Case Notes record that Ryan presented no behavioural issues and was compliant.
350. On 26 February 2017, Ryan was unsecured for chores and recreation time totalling 160 minutes for the day (including phone calls of approximately 40 minutes).
351. On 27 February 2017, Ryan was unsecured for chores and recreation time totalling 230 minutes for day (including phone calls of approximately 45 minutes). He was also taken

⁴⁵ Case Note, 20:50, 17 February 2017.

from his cell for a conversation with the Accommodation Manager that went for 30-45 minutes. It was recorded that there were 'no issues' with Ryan's behaviour.

352. On 28 February 2017, the SRRA Log and Unit Log differ, but it appears that Ryan was unsecured for a total of between 120 and 130 minutes over the day for chores and recreation (including phone calls of approximately 20 minutes). The SRRA Log records a visit of 60 minutes, however there is no record of a visit on the Visitor Log, so it is reasonable to assume that the visit either did not take place, or that it was in the unit with a member of staff.

353. At 20:51 on 28 February 2017, a Case Note was made as follows:

[Ryan] appeared very agitated and was not happy still being in Frangipani. I explained to [Ryan] that I was there to ask him whether he wanted to still transfer to the Adult system as it came to the attention of the managers at a meeting. [Ryan] said no he was not interested in going to the adult system and proceeded to ask me what was happening with him in regards to whether he would be staying in Frangipani or transitioning into another unit. [Ryan] said that he was doing really well until that other kid caused the issue and made him come to Frangipani and why is he still in Frangipani and not in the unit and that it is fucked.

I said to [Ryan] I will not be discussing whether he transitions to another unit or not that a meeting will be held to discuss this and then someone will come and speak with him. [Ryan] nodded and then went to his room.

354. On 1 March 2017, Ryan was unsecured from his room for a total of 120 minutes (including a phone call of approximately 10 minutes). The Unit Log records that Ryan had a 15 minute visit with CAMHS and a Case Worker, although there is no record of this visit in the Visitor Log so I am unable to ascertain whether it occurred. The Unit Log records that Ryan had a 'good shift' with 'nil issues'.

355. On 2 March 2017, Ryan was unsecured for chores and recreation for a total of 135 minutes throughout the day (including phone calls of approximately 13 minutes).

356. On 3 March 2017, Ryan was unsecured for a total of 110 minutes. His last exercise period was cut short due to an incident in another unit. Ryan's DRMP was reviewed and revised to permit him to attend activities (ie. the gym, pool and oval) with the Kangaroo Paw unit on the coming Saturday and Sunday. If his attendance was successful, Ryan would then be permitted to attend the learning centre.

357. On 4 March 2017, Ryan was unsecured for a total of 122 minutes, with the first time he was let out of his room being at 11:00am. Ryan was unable to attend the gym with the Kangaroo Paw unit as planned due to another resident refusing to attend mediation with Ryan.

358. Whilst there are discrepancies between the Unit Log and the SRRA Log for 5 March 2017, it appears that Ryan was allowed out of his room for a total of between 150 and 160 minutes. The first time he was let out of his room for the day was at 11:35am.

359. On 6 March 2017, Ryan was unsecured for 212 minutes for a phone call, learning, recreation and to attend the gym. The first time he was out of his room was at 11:15am. Ryan also attended a professional visit for 65 minutes.

360. On 7 March 2017, Ryan was let out of his room for a total of over four hours across the day. He was able to attend the Education Centre and the pool.

361. The records indicate that, on 7 March 2016, Ryan advised staff that he was 'feeling anxious' and he requested a CAMHS referral.

362. On 8 March 2017, Ryan was transferred to the Kangaroo Paw Unit.

Ryan's third period of segregation

363. Ryan's third period of segregation was for 2 days from 15 March 2017 to 17 March 2017.

364. The Unit Log records that there was a 'verbal altercation' between Ryan and another resident, and that the other resident then stood up and started punching Ryan. It records that 'both residents [were] restrained & taken to Frangipani'.

365. A Case Note of the incident records:

On the 15th March 2017 at 1330 hours resident [...] is observed by Closed Circuit Television (CCTV) to be exchanging dialogue with resident [Ryan].
[...] is then observed jumping up from a seated position on a foam chair and throwing a number of punches to the head area of [Ryan]. [Ryan] is observed defending himself by covering his head with his forearms.
Staff in attendance immediately respond and attempt to separate both residents.
[...] continues to resist staff attempts at physical control and additional staffs arrive to render assistance. Physical control is achieved and [...] is escorted to unit Frangipani.
[Ryan] is observed resisting staff attempts at achieving physical control. Physical control is acquired and [Ryan] is placed onto unit Frangipani.

366. I have viewed the CCTV of the incident and consider that the above account is not accurate. The footage does not have sound, but it does appear that there were words exchanged between Ryan and the other resident. I do not, however, agree that Ryan was 'resisting staff attempts at achieving physical control.' Ryan was clearly seated watching television when the other resident began attacking him. Ryan is seen trying to get away from his attacker when a male officer is seen to aggressively launch at Ryan, and grab him by the neck as he tries to stand up. The officer then attempts to throw Ryan on the floor before pushing him into a room and locking him in. I do not consider that Ryan was attempting to resist the staff member. In my view, Ryan appears the victim, of both the other resident and of forceful treatment by the officer and, as such, I question the decision to place him the Frangipani Unit on segregation in response to this incident.

367. However, Ryan was taken to Frangipani Unit at 13:35 on 15 March 2017. He was provided an ice pack for the swelling around his eye from the other resident punching him, and was secured in a cell. I am unable to determine whether Ryan had any stimulation available to him in his room (i.e. a television or radio) as the DRMP says that items in the room were to be 'dynamically assessed' by staff. The DRMP also provided that staff were to 'dynamically assess' whether Ryan could have access to:

- any other areas of the centre
- exercise
- to schooling and
- programs.

The DRMP stated that a review was required at 21:00 the following day.

368. According to the 15 March 2017 SRRA and Unit Logs, Ryan was allowed out of his cell at 15:50 for 30 minutes and again at 19:20 for 32 minutes. At 22:32 a Case Note recorded:

Tonight [Ryan] was complaining of a headache and presented with some swelling over his right brow. I called a locum and informed the duty manager [...] as [Ryan] had received a blow to the head during an altercation with another resident on the AM shift. The doctor recommended Panadol and some sleep.

369. The Unit Log recorded that a locum assessed Ryan at 22:20.
370. On 16 March 2017, Ryan's DRMP was reviewed, however, most categories remained as 'to be dynamically assessed by unit staff'. The following note was made on the DRMP:
- [Ryan] has displayed compliant behavior in Frangipani. [Ryan] may attend one session of education 17/03/17. [Ryan] has requested to not return to Kangaroo Paw, due to continued tensions with residents in that unit. [Ryan] has requested that his lesson not be in a class that only has Kangaroo Paw residents.
371. On 16 March 2017, Ryan spent a total of 83 minutes out of the room for 'chores' and 'recreation'. He also spent 20 minutes out of his cell to see a physiotherapist and 45 minutes to meet with his Case Coordinator.
372. On 17 March 2017, Ryan spent a total of 115 minutes unsecured for 'chores and exercise' (of which approximately 50 minutes was spent on the phone). Ryan also attended school for 95 minutes. The Logs record that Ryan was offered one additional exercise period during the day but he declined it and chose to stay in his room. At 22:50 Ryan was transferred to Kilo Unit.

Ryan's fourth period of segregation

373. Ryan's fourth period of segregation was for one day from 28 March 2017 to 28 March 2017.
374. The Unit Log records that Ryan and another resident had a verbal altercation during a school lesson and that both residents then stood up and invited the other to fight. They were both directed to sit down and a duress alarm was activated. The records state that both residents were seated when the response team arrived. My investigation has not been provided with any CCTV footage of this incident.
375. At 09:42, following the incident, Ryan was admitted to the Frangipani Unit and a DRMP was prepared. The DRMP did not provide much information, stating that items Ryan was permitted to have in his cell and his access to exercise were to be 'dynamically assessed by unit staff.'
376. In the afternoon, Ryan appeared in court via video. Ryan made an application, through his solicitor, for an order directing that he be transferred to the adult system for the remainder period of his remand under section 63(2) of the Young Offenders Act. The Order was granted and, at 16:00, Ryan was released from AYTC into the custody of DCS.

SUMMARY OF SEGREGATION – RYAN

377. In summary, my investigation did not identify any days on which Ryan was confined continuously in his room for longer than 24 hours.
378. My investigation found Ryan was confined in his room for more than 22 hours, constituting solitary confinement, on 18 days during the period between 9 January 2017 and 17 March 2017, as follows:
- on 18 January 2017, Ryan spent a total of 65 minutes out of isolation (including a 7 minute phone call)
 - on 19 January 2017, Ryan spent a total of 52 minutes out of isolation
 - on 21 January 2017, Ryan spent a total of 55 minutes out of isolation (approximately 20 minutes of which was phone calls)
 - on 23 January 2017, Ryan spent a total of 74 minutes out of isolation (including a 10 minute phone call)
 - on 24 January 2017, Ryan spent a total of 71 minutes out of isolation (including a 6 minute phone call)
 - on 25 January 2017, Ryan spent a total of 83 minutes out of isolation
 - on 26 January 2017, Ryan spent a total of 90 minutes out of isolation (approximately 14 minutes of which was phone calls)
 - on 27 January 2017, Ryan spent a total of 86 minutes out of isolation
 - on 28 January 2017, Ryan spent a total of 70 minutes out of isolation
 - on 29 January 2017, Ryan spent a total of 100 minutes out of isolation (approximately 12 minutes of which was phone calls)
 - on 30 January 2017, Ryan spent a total of 52 minutes out of isolation (plus 25 minutes for a professional visit)
 - on 31 January 2017, Ryan spent a total of 70 minutes out of isolation
 - on 3 February 2017, Ryan spent a total of 85 minutes out of isolation (approximately 20 minutes of which was phone calls)
 - on 4 February 2017, Ryan spent a total of 20 minutes out of isolation (including a 10 minute phone call)
 - on 5 February 2017, Ryan spent a total of 116 minutes out of isolation (including a 10 minute phone call)
 - on 10 February 2017, Ryan spent a total of 87 minutes out of isolation
 - on 12 February 2017, Ryan spent a total of 60 minutes out of isolation
 - on 3 March 2017, Ryan spent a total of 110 minutes out of isolation.
379. Further, there were five days in the period between 9 January 2017 and 17 March 2017 of which, from the records provided to my investigation, I was unable to determine how long Ryan spent confined in his cell. This is because the Unit Logs provided to me were unclear or had been redacted, and the SRRA Logs were either not provided to me, not created or were incomplete. My investigation was unable to determine how long Ryan spent confined in his cell on the following days:
- 20 January 2017
 - 22 January 2017
 - 1 February 2017
 - 28 February 2017
 - 5 March 2017.
380. My investigation also identified seven days in the period between 9 January 2017 and 17 March 2017 where Ryan was unsecured from his cell for 120 minutes or less for recreation and/or exercise, but additional time was spent time on the phone and/or attending visits with professionals or family members:

- on 2 February 2017, Ryan spent a total of 120 minutes out of isolation (including phone calls of approximately 13 minutes). He also spent 65 minutes out of his room to attend a medical appointment.
 - on 7 February 2017, Ryan spent a total of 95 minutes out of isolation (including phone calls of approximately 20 minutes). He also spent 35 minutes out of his room to speak to a AYTC staff member.
 - on 8 February 2017, Ryan spent a total of 85 minutes out of isolation. He also spent 67 minutes out of his room to speak to AYTC staff.
 - on 9 February 2017, Ryan spent a total of 41 minutes out of isolation (including a phone calls of approximately 10 minutes). He also spent 95 minutes out of his room to attend a professional visit.
 - on 1 March 2017, Ryan spent a total of 120 minutes out of isolation (including phone calls of approximately 10 minutes).
 - on 16 March 2017, Ryan spent a total of 83 minutes out of isolation. He also spent 65 minutes out of his room to attend a professional visit.
 - on 17 March 2017, Ryan spent a total of 115 minutes out of isolation (including phone calls of approximately 50 minutes). He also spent 95 minutes out of his room to attend education.
381. The department, in its response to my provisional report, disputed some of the times my investigation found that Ryan spent out of his room, and calculated the time spent on the days that I was unable to. The department determined its times from analysis of the records provided to my investigation and from considering the door opening and closing data from the room. The department did not provide the door opening and closing data to my investigation.
382. The department's reviewing of the records determined different times from my investigation that Ryan was out of his room during the period between 9 January 2017 and 17 March 2017, as follows:
- on 18 January 2017, Ryan spent a total of 1010 minutes out of his room to attend court, after he returned at 14:05 he spent 65 minutes out of his room
 - on 20 January 2017, Ryan spent in excess of 45 minutes out of his room according to analysis of the records provided to my investigation or 111 minutes from the door opening and closing data
 - on 21 January 2017, Ryan spent in excess of 35 minutes out of his room according to analysis of the records provided to my investigation or 82 minutes from the door opening and closing data
 - on 22 January 2017, Ryan spent a total of 90 minutes out of his room
 - on 23 January 2017, Ryan spent a total of 111 minutes out of his room
 - on 1 February 2017, Ryan spent a total of 147 minutes out of his room according to analysis of the records provided to my investigation or 166 minutes from the door opening and closing data
 - on 3 February 2017, Ryan spent either a total of 96 minutes or a total of 70 minutes out of his room⁴⁶
 - on 5 February 2017, Ryan spent a total of 125 minutes out of his room according to analysis of the records provided to my investigation or 127 minutes from the door opening and closing data
 - on 7 February 2017, Ryan spent a total of 55 minutes out of his room (including 35 minutes to speak to an AYTC staff member)
 - on 12 February 2017, Ryan spent a total of 165 minutes out of his room
 - on 13 February 2017, Ryan spent a total of 60 minutes out of his room
 - on 28 February 2017, Ryan spent a total of 230 minutes out of his room
 - on 1 March 2017, Ryan spent a total of 135 minutes out of his room

⁴⁶ Page 19 of the department's response to my provisional report states 96 minutes and page 5 of Attachment 9.2 of the department's response states 70 minutes.

- on 3 March 2017, Ryan spent a total of 112 minutes out of his room
 - on 5 March 2017, Ryan spent a total of 150 minutes out of his room.
383. Whilst the department disputed some of the times my investigation found that Ryan spent out of his room during the period between 9 January 2017 and 17 March 2017, the total number of days that it determined that Ryan was confined in his room for more than 22 hours was determined to be 19 days. My investigation determined that Ryan was confined in his room for more than 22 hours on 18 days.
384. Further, my investigation found that Ryan was unsecured from his cell for 120 minutes or less for recreation and/or exercise, but additional time was spent on the phone and/or attending visits with professionals or family members on seven days. The department identified six days in the same period.
385. It is apparent from the records that the reasons Ryan was secured in his room for more than 22 hours per day included:
- as punishment for poor behavior
 - as a result of a lack of staffing, and
 - as a result of lockdowns occurring in the centre.
386. The department, in its response to my provisional report, submitted that the time that Ryan spent secured in his room was 'based on assessment of risk' and not as punishment.

WHETHER THE DEPARTMENT'S TREATMENT OF BEN AND RYAN
WAS UNREASONABLE, WRONG, OPPRESSIVE, UNJUST AND
CONTRARY TO LAW IN ACCORDANCE WITH SECTION 25 OF THE
OMBUDSMAN ACT

WERE BEN AND RYAN SEGREGATED LAWFULLY?

387. International human rights instruments prohibit the solitary confinement of children.⁴⁷ The United Nations urges an ‘absolute prohibition’ on the solitary confinement of young prisoners and has declared that locking children up for 22 hours a day amounts to cruel, inhuman or degrading treatment or even torture.
388. My investigation found that Ben was confined in his room for more than 22 hours, constituting solitary confinement, on 25 days during the period between 6 December 2016 and 5 April 2017.
389. In its response to my provisional report, the department submitted that Ben was confined in his room for more than 22 hours on 22 days during the period.
390. My investigation found that there were 6 days in the period between 6 December 2016 and 5 April 2017 of which, from the records provided to my investigation, I was unable to determine how long Ben spent confined in his cell. The department determined times for these periods from analysis of the records provided to my investigation and from considering the door opening and closing data from the room. The department did not provide the door opening and closing data to my investigation.
391. My investigation also identified 20 days in the period between 6 December 2016 and 5 April 2017 where Ben was unsecured from his cell for 120 minutes or less for recreation and/or exercise, but additional time was spent on the phone and/or attending visits with professionals or family members. The department identified 11 days in the same period.
392. The department, in its response to my provisional report, questioned why my report had excluded the times Ben spent out of his room for visits, stating it was ‘unclear why’ the times for such visits were excluded from my calculations of the time Ben spent out of his room (at paragraph 270 above). I deliberately excluded the times that Ben spent out of his room in the calculations, as the purpose of my calculations was to determine how long Ben spent out of his room for the purpose of exercise and/or recreation. I consider that, irrespective of what other time Ben spent out of his room to attend visits, whether professional or personal, he ought to have been let out of his room for more than 120 minutes per day for exercise and recreation.
393. The department’s disagreement with my findings of how long Ben spent out of his room does not change my findings as the department’s results as to the number of days that Ben spent more than 22 hours confined in his cell are not considerably different to mine. I consider that, even on the face of the department’s calculations, there is clear evidence of error. It is extremely concerning to me that the department itself was not reliably able to determine, on the information available to it, the periods of time that Ben spent confined in his room. I particularly note that there were occasions when the data recorded on the logs was different to the door opening and closing data.
394. According to my investigation Ben spent:
- five consecutive days secured in his cell for more than 22 hours on 9, 10, 11, 12 and 13 February 2017⁴⁸
 - three consecutive days secured in his cell for more than 22 hours on 5, 6 and 7 February 2017,⁴⁹ and

⁴⁷ For example, Havana Rule 67 and Mandela Rule 43.

⁴⁸ The department, in its response to my provisional report, confirms this.

⁴⁹ The department, in its response to my provisional report, confirms this.

- two consecutive days secured in his cell for more than 22 hours on 25 and 26 February 2017.⁵⁰
395. In addition, the department, in its response to my provisional report, provided information that suggests that Ben spent thirteen consecutive days secured in his cell for more than 22 hours from 19 January 2017 to 31 January 2017. As such, it appears that Ben spent thirteen consecutive days in solitary confinement.
396. The department further submitted that when Ben and Ryan were segregated in their rooms, it did not mean that they were without human contact, as ‘there were regular check-ins by youth workers, dynamic assessment of risk and other daily interactions’. My close analysis of the records available to my investigation suggests that any meaningful interactions that Ben and Ryan had with AYTC staff were recorded on the logs and, as such, were factored into my calculations.
397. My investigation found that Ryan was confined in his room for more than 22 hours, constituting solitary confinement, on 18 days during the period between 9 January 2017 and 17 March 2017. The department identified 19 days in the same period. As such, I consider that little turns on the discrepancies.
398. Further, there were five days in the period between 9 January 2017 and 17 March 2017 of which, from the records provided to my investigation, I was unable to determine how long Ryan spent confined in his cell.
399. My investigation also identified seven days in the period between 9 January 2017 and 17 March 2017 where Ryan was unsecured from his cell for more than 120 minutes but additional time was spent on the phone and/or in visits (professional or family). The department identified six days in the same period.
400. According to my investigation Ryan spent at least:
- nine consecutive days secured in his cell for more than 22 hours on 23, 24, 25, 26, 27, 28, 29, 30 and 31 January 2017.⁵¹
 - two consecutive days secured in his cell for more than 22 hours on 18 and 19 January 2017⁵²
 - three consecutive days secured in his cell for more than 22 hours on 3, 4 and 5 February 2017.⁵³
401. In addition, the department, in its response to my provisional report, provided information that suggests that Ryan was secured in his cell for more than 22 hours from 19 January 2017 to 31 January 2017. As such, it appears that Ryan spent thirteen consecutive days in solitary confinement.
402. I note that the Mandela Rules define ‘prolonged solitary confinement’ as being 15 consecutive days or more.”⁵⁴
403. Section 25 of the Youth Justice Administration Act provides:

Subject to this Act, the Chief Executive has an absolute discretion—

⁵⁰ The department, in its response to my provisional report, disputes this, submitting that Ben was out of his room for 200 minutes on 26 February 2017.

⁵¹ The department, in its response to my provisional report, confirms this.

⁵² The department, in its response to my provisional report, disputes that Ryan was in his room for more than 22 hours on 18 January 2017.

⁵³ The department, in its response to my provisional report, disputed this, submitting that Ryan was out of his room for more than 120 minutes on 18 January 2017.

⁵⁴ Schetzer, Alana, ‘Could you cope with solitary confinement?’, 11 July 2017, SBS Life.

- (a) to place any particular youth or youth of a particular class in such part of a training centre as the Chief Executive thinks fit; and
- (b) to establish in respect of a particular youth, or youth of a particular class, or in respect of youths placed in any particular part of a training centre, such a regime for education, training, work, recreation, contact with other youths or any other aspect of the day-to-day life of youths in detention; and
- (c) to vary any such regime,

as from time to time seems expedient to the Chief Executive.

404. Prima facie then, the CE has the power under the Youth Justice Administration Act to have segregated Ben and Ryan in the Frangipani Unit for extended periods of time, and to have placed them on restrictive regimes. The CE can also delegate this 'absolute discretion' to a specified employee, or class of employees, of the department.⁵⁵ However, isolation or segregation from other residents is prohibited under section 29(b) of the Act, other than in prescribed circumstances. In my view, section 29 of the Act imposes a limit on the CE's discretionary power under section 25.
405. The prescribed circumstances permitting segregation of a young person in the AYTC are set out in regulation 7 of the Youth Justice Administration Regulations.
406. According to Regulation 7, a young person may only be segregated from the other residents of the centre by being placed on an individualised regime separate from the normal routine of the centre that allows the resident only restricted contact with the other residents if:
- the resident's personal safety is in need of protection from other residents; or
 - the resident's behavior presents a threat to the safety of others and all reasonable de-escalation actions have failed; or
 - it is otherwise necessary to segregate the resident from other residents—
 - to maintain order in the centre; or
 - to preserve the security of the centre.
407. All of the DRMPs I analysed recorded that Ben and Ryan had to be segregated because of some or all of the following factors:
- harm to other (staff)
 - heightened state
 - property damage
 - preserve centre security
 - maintain centre order
 - requires separation from other residents to maintain order and/or preserve the security of the centre
 - behavior presents a threat to the DRMP resident's safety
 - behavior presents a threat to the safety of others.
408. The records indicate that staff continued to list the above as reasons for Ben and Ryan remaining in segregation on the DRMP's, without any real consideration being given to whether the factors were still relevant. Frequently such reasons were provided on the DRMP in direct contradiction to what was recorded in the Unit Logs, SRRRA Logs and C3MS records.
409. The DRMPs appear to be more of a box ticking exercise rather than a tool to ensure that any real consideration was given on a regular basis as to whether Ben and Ryan

⁵⁵ Section 6(2) of the *Youth Justice Administration Act 2016*.

actually posed any threats to themselves, others or the order and security of the centre and, as such, whether they should have remained in segregation on restricted regimes.

410. The department, in its response to my provisional report, disagreed with my view that the DRMP is a 'box ticking exercise', submitting that:

The DRMP process reflects structured professional judgement at each of the three employee levels involved in the decision making process (Behaviour Support Officers, Supervisor and Deputy Manager). It is also required that each of these people be independently satisfied that the course of action determined is appropriate as denoted by their signatures.

411. My analysis of the records shows that Ben and Ryan remained segregated when it appeared that they were not at risk of harming others and when it appeared not to have been necessary to preserve centre order and security.

412. The department, in its response to my provisional report, further submitted:

The department concedes that the DRMP process undertaken by staff at the time under review may not have been adequately or consistently reflected by staff on the DRMP form, or in the related case noting to document the ongoing youth worker assessment: Undertaken through interactions with the resident to establish rapport and determine risk levels for returning to standard unit routines.

413. I acknowledge that the department has since implemented a more rigorous assessment of risk review process. However, irrespective of the DRMP process, I do not consider that the records show that Ben and Ryan's behaviour always presented as a threat to themselves or others, yet they remained segregated for prolonged periods of time. A thorough analysis of the records shows that Ben and Ryan's poor behaviour was often as a direct result of prolonged periods of isolation.

414. In my view, the prolonged periods of isolation and segregation of Ben and Ryan were, in effect, punitive.

415. Regulation 7(3)(a) of the Youth Justice Administration Regulations provides that segregating a resident of a training centre must not be used to punish the resident.

416. The Charter of Rights states that young people detained in training centres will not be punished unfairly and will never be isolated from other young people as a punishment.

417. Segregating a young person as a form of punishment is also contrary to international human rights, including the Havana Rules, the CAT and the Mandela Rules.

418. In my view, the segregation frequently appeared to be punitive rather than preventative, and was often used without regard to its effect on Ben and Ryan. I do not consider that the evidence establishes that:

- Ben and Ryan needed to be isolated or segregated from other residents to protect their own personal safety
- Ben and Ryan's ongoing behavior always presented a threat to the safety of others throughout the periods that they were isolated or segregated
- other reasonable de-escalation actions had been attempted
- their isolation or segregation for such long periods of time was necessary to maintain order in the centre or to preserve the security of the centre.

419. Rather, the evidence suggests that segregation was used to punish Ryan and Ben's bad behaviour, with unreasonable restrictions and frequent examples of there being no changes to their segregation and regimes for long periods of time despite records of

good behaviour. For example, it is clear that a decision was made that Ben would not be transitioned back to the normal routine of the centre at all, despite his good behaviour. Further, the following observation was recorded after the rooftop incident:

...the Guardian was also contacted and advised there would be residents on extremely restrictive routines following the incident. This was a proactive approach regarding possible complaints that residents involved may make post incident.

420. As such, a decision had already been made that those residents involved in the rooftop incident would be placed on 'extremely restrictive routines', without consideration being given to the prescribed circumstances which permit the segregation of young people.⁵⁶

421. I consider that the evidence shows that segregation and rationing of basic things such as phone calls and visits was used punitively in relation to Ben and Ryan. Professor James Ogloff wrote:

Rationing of basic things ie phone calls, visits, reading materials and other forms of entertainment cannot be justified under the terms of administrative segregation, as rationing is undoubtedly punitive rather than custodial.⁵⁷

422. I address this issue further later in my report.

423. Regulation 7(4)(a) of the Youth Justice Administration Regulations provides that, if a resident is segregated from other residents of the centre, the segregation must not continue for longer than is reasonably necessary in the circumstances.

424. I consider that Ben and Ryan being segregated for periods of 25 days (in the case of Ben) and 18 days (in the case of Ryan), with limited use of other therapeutic interventions, was longer than was reasonably necessary in the circumstances.

425. Regulation 7(4)(b) of the Youth Justice Administration Regulations provides that, if a resident is segregated from other residents of the centre, the resident must not be prevented from having contact with other residents of the centre for more than 22 hours in any 24 hour period unless such contact would be detrimental to the wellbeing of the resident or other residents.

426. I do not consider that the records provide evidence to support that Ben or Ryan having such contact with other residents of the centre would have been detrimental to their wellbeing, or to the wellbeing of other residents. Rather, it is clear from the records that securing Ben and Ryan in their rooms and preventing them from having contact with other residents of the centre for more than 22 hours a day was detrimental to their wellbeing.

427. The records clearly show that Ben and Ryan made threats to staff, and acted in a way that suggested they were in a heightened state, in response to extended periods of segregation. It appears to me reasonably foreseeable that Ben and Ryan's isolation and boredom would have resulted in difficult behaviours.

428. The Victorian Commission for Children and Young People, in its recent inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system, stated that 'isolation has been found to be ineffective to manage difficult behaviour, and can

⁵⁶ Regulation 7 of the Youth Justice Administration Regulations.

⁵⁷ Ogloff, Professor James, 'Review of Mental Health and Psychosocial Needs of Prisoners Detained in Restrictive Environments', prepared for Justice Health & Corrections Victoria, September 2008, 22.

instead exacerbate it.⁵⁸ Further, young people reported to the inquiry that ‘prolonged confinement made them angry, anxious and despondent.’⁵⁹

429. Ben and Ryan expressed their anger and frustrations at prolonged periods of segregation and isolation, and Ben was clearly extremely frustrated that he was segregated for such a long period of time and that it was open-ended. It is not unreasonable to believe that this may have exacerbated the effects of his segregation.
430. In submission to the Victorian Inquiry into youth justice centres, the Royal Australian and New Zealand College of Psychiatry submitted:
- Punitive approaches to the management of youth justice services, however, are unlikely to resolve the behavioral issues of detainees; instead, they serve to reinforce the sense of mistrust experienced by many children and young people in custody. Without a trauma-informed approach to the management of youth justice centre, at-risk children and young people will continue to face significant obstacles in their paths to recovery and rehabilitation, and staff in youth detention centre will continue to face significant difficulties in managing children and young people in their care.⁶⁰
431. My view is that, contrary to regulation 7 of the Youth Justice Administration Regulations, Ben and Ryan were prevented from having contact with other residents of the centre for more than 22 hours in 24 hour periods, without it being sufficiently established that such contact would have been detrimental to their wellbeing or to the wellbeing of other residents.
432. I am also of the view that, contrary to regulation 7 of the Youth Justice Administration Regulations, Ben and Ryan were segregated for longer than was reasonably necessary in the circumstances.
433. My view is that Ben and Ryan were placed in solitary confinement, contrary to the Mandela Rules and the Havana Rules, which strictly prohibit the use of solitary confinement for children in detention.⁶¹
434. International human rights instruments prohibit the solitary confinement of children.⁶² The United Nations urges an ‘absolute prohibition’ on the solitary confinement of young prisoners and has declared that locking children up for 22 hours a day amounts to cruel, inhuman or degrading treatment or even torture.
435. Further, any treatment that is ‘cruel, inhuman or degrading’ is prohibited under the Act.⁶³ In my view, the treatment of securing Ben and Ryan in a room for more than 22 hours per day for 25 days (in the case of Ben) and 18 days (in the case of Ryan), was cruel, inhuman and degrading.
436. I am particularly concerned by the length of time Ben and Ryan were held in isolation and the department’s failure to adequately consider their best interests. I consider that, in placing Ben and Ryan in isolation and segregation for extended periods of time, the department acted inconsistently with the children’s rights under the Charter of Rights.

⁵⁸ Commission for Children and Young People, ‘The Same Four Walls - Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system, March 2017, p5.

⁵⁹ Ibid, p6.

⁶⁰ Parliament of Victoria, Legal and Social Issues Committee, Final Report, Inquiry into youth justice centres in Victoria, March 2018, page 93.

⁶¹ UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), adopted by the UN General Assembly resolution 70/175, 17 December 2015, Annex, Rule 45(2); UN Rules for the Protection of Juveniles Deprived of their Liberty, UN Doc A/RES/45/113, 14 December 1990, Rule 67.

⁶² For example, Havana Rule 67 and Mandela Rule 43.

⁶³ Section 29 of the *Youth Justice Administration Act 2016*.

437. I understand that, in some circumstances, the use of isolation of young people is necessary to prevent harm to themselves, others and property. However, a young person should only be placed in isolation as a last resort after every other option has been exhausted, and then only for a short period of time while a more suitable plan is developed and put in place.
438. In the case of Ben and Ryan, there appears to have been little regard for the legislative and policy requirements. The records show that staff appeared to have given little consideration to the gravity or impact prolonged periods of isolation may have been having on Ben and Ryan. There is no doubt that isolation has serious adverse effects for prisoners, and even more so for young people, especially those who have mental health issues. In 2015, the United Nations Special Rapporteur called for States to prohibit solitary confinement of any duration and for any purpose.⁶⁴
439. I also consider that Ben and Ryan's DRMPs were not adequately meaningfully reviewed, and that the permission of 'dynamic' assessments appears to have provided scope for the possibility of too much flexibility.
440. I am particularly concerned at the department's apparent lack of knowledge of the treatment of Ben and Ryan at the AYTC. The CE advised my investigation on two occasions that the AYTC's monthly audit reports in the relevant periods did not identify any non-compliances with the Isolation or Segregation Operational Orders in relation to Ben or Ryan. My investigation has found significant non-compliances with the Isolation and Segregation Operational Orders. I am not suggesting any impropriety or dishonesty on the part of the CE. Rather, it is clear to me that the record keeping and oversight at the AYTC are not sufficient to determine whether the Operational Orders are being complied with.
441. I consider that the burden of proof must always be on the department to show that the placement in isolation is justified. The department has not satisfied me that the isolation of Ben and Ryan was justified in the circumstances.
442. Given the impact of solitary confinement on young people's health, particularly their mental health, the consequences of these shortfalls are significant. The impact of solitary confinement on people's health, particularly their mental health, has been documented in numerous studies. The impacts have been recorded to include increases in stress, anxiety, depression, self-harm, reduced attention span, poor memory and concentration, psychosis, hypersensitivity to noises and smells, post-traumatic stress disorder, drug use and future criminal activity.⁶⁵ The damaging effects of prolonged periods in isolation is even greater in young people than adults, and may cause irreversible damage.⁶⁶

⁶⁴ United Nations Special Rapporteur, United Nations Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, 5 March 2015, para 84.

⁶⁵ See, for example: Schetzer, Alana, 'Could you cope with solitary confinement?', 11 July 2017, SBS Life; Tamar R Birkhead, 'Children in Isolation: The Solitary Confinement of Youth' (2015) 50:1 Wake Forest Law Review 1, 13; Ogloff, Professor James, 'Review of Mental Health and Psychosocial Needs of Prisoners Detained in Restrictive Environments', prepared for Justice Health & Corrections Victoria, September 2008.

⁶⁶ United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, 5 March 2015, para 32.

CULTURAL SUPPORTS

443. Section 3 of the Youth Justice Administration Act provides the objects and guiding principles of the Act, including that the department is to have regard to the particular needs and circumstances relevant to a youth's cultural identity and linguistic background.
444. The department is also required to adhere to 'The Aboriginal and Torres Strait Islander Youth Justice Principle'.
445. Regulation 7 of the Youth Justice Administration Regulations provides that when an Aboriginal resident is segregated, the manager of the centre must ensure that an Aboriginal person who can provide the resident with cultural support is informed of the segregation as soon as reasonably practicable. This is reflected in the 3.1.2.1 of the Segregation Operational Order, which provides that the Duty Supervisor must ensure that, if the resident is Aboriginal, the AYTC Cultural Advisor is notified of the segregation, as soon as reasonably practicable.
446. The Segregation Operational Order provides that it is the responsibility of the AYTC Cultural Advisor to:
- meet with Aboriginal or Torres Strait Islander residents as soon as practicable following notification to provide cultural support, assess their emotional wellbeing and determine whether additional supports are required
 - contribute to the assessment of the cultural impact of the implementation and ongoing use of any segregation routine, and
 - ensure any pertinent cultural information and/or advice relating to the resident's wellbeing is communicated to the Case Coordinator and a case note is recorded on C3MS.
447. Ryan's first period of segregation commenced on 17 January 2017 and continued for 34 days. A Cultural Advisor met with Ryan on the afternoon of 19 January 2018. Given that Ryan did not transfer to Frangipani Unit until 21:40 on 17 January 2017, I do not consider that the delay in the Cultural Advisor meeting with Ryan was unreasonable.
448. A Case Note created by the Cultural Advisor of his visit to Ryan on 19 January 2017 recorded that 'due to [Ryan's] current regime [the Cultural Advisor] was required to speak with [Ryan] through room cuff trap'. In my view, this was entirely unnecessary and inappropriate. In the circumstances, Ryan ought to have been able to have unfettered contact with the Cultural Advisor.
449. The Case Note of the Cultural Advisor's visit on 19 January 2017 recorded the following:

[Ryan] stated that he is doing ok. [Ryan] stated that he "needed to do something because no-one was listening to us". [Ryan] stated that staff in the unit were "abusing their power and us by constantly locking us down." [Ryan] went on and explained that particular staff were "locking us down as soon as we got back to the unit around 2 o'clock." [Ryan] stated that no one was listening to the [sic] about this and no one was believing them. [Ryan] stated that he raised this with a supervisor and [Ryan] felt he was not believed.

CA spoke with [Ryan] about this and that he hadn't spoken to everyone as this was the first the CA had heard about this. CA stated that [Ryan] could have asked for the CA at anytime. CA reiterated a number of positive things about [Ryan] including: recent behaviour in the centre has been good, CA hasn't heard anything bad about [Ryan]. recent time he spent out of AYTC has been over a month which is a real positive. CA spoke to [Ryan] about the incident and that there were other ways of being heard and resolving these issues. [Ryan] stated that he was "sorry but I felt this was the only way".

[Ryan] was observed by CA, through this conversation to have lowered his head and reflective of the incident.

CA asked about [Ryan's] recent comments that he would like to go to the "big house". [Ryan] stated "that's right I want to go there its better than here". CA had a discussion about this with [Ryan]. [Ryan] stated he has heard stories but they are just that and staff is trying to scare us. CA stated "behind every story there is always some truth always no matter how small". [Ryan] was observed by CA to again lower his head and state "yeah". [Ryan] stated "well after this and what we did the staff are going to push for us to go there now not much I can do". CA stated "you can always do something you need to make the decision and turn things around, do the right thing show the staff you can be trusted and play the game you know what is required." [Ryan] stated that he was doing really well and was so close to getting phase 2. CA stated "see you know what's required and you can do it" CA stated "you are a strong, proud, smart Aboriginal man. You need to now do the right thing."

CA stated he would come and see [Ryan] tomorrow during exercise period...

450. There is no record that the Cultural Advisor visited Ryan the following day.
451. An Aboriginal Consultant from the Child & Adolescent Mental Health Service (**CAMHS**), met with Ryan on 1 February 2017. The following Case Note of the visit was recorded:

On Observation [Ryan] seemed distressed, uneasy, discussed how [Ryan] was going, he had raised concern about his sleeping habits saying he can't go to sleep most nights which he believes is effecting him during the day in regards to his behaviour, feeling of stress, frustration, he had asked for some medication, and wishes to see medical staff to assist with sleeping issue, also went on to say he is distressed about being in Frangipani and the regime, explaining that he would like to go back to the unit he was in before so he can move about more freely. General discussion about family also his birthday which was today..., and asked how he felt about it, he said he was distressed about having to have it in the centre and wished he was with family. Distressed and concerned with up and coming court matters and turning 18 how this may effect sentencing and where he will be sent (Yatala/Training Centre).

Ask [Ryan] if he wished to have regular talked with me weekly, he is happy to do so.

ONGOING MANAGEMENT RECOMMENDATIONS

- Aboriginal CAHMS Consultants to have regular contact weekly
- Refer to CAMHS Clinician for therapeutic sessions

SUPPORT / OBSERVATIONS FROM UNIT STAFF

Continue as is

FOLLOW UP / NEXT CONTACT

Wednesday 8/2/2017

452. Ryan was visited by the Cultural Advisor again on 7 February 2017. They met in the courtyard. A Case Note of the visit recorded the following:

CA reiterated conversation ACCM had just had and reiterated that [Ryan] is doing really well and is making great progress. [Ryan] stated that he is being locked down for 23 hours a day and progression is taking too long. [Ryan] stated "I'm being treated like a dog. This is taking way too long. We got on the roofs for a reason and that was because we were being locked down for too long and now all we are is locked down". [Ryan] stated "I just want to go to Yatala, it's better than this bullshit". CA spoke with [Ryan] about this in more detail reiterating previous conversations regarding this matter with [Ryan]. CA asked [Ryan] if he wants to go to the adult system to which he replied "no, I don't but I don't feel like I have any choice, I really don't want to go"...

Unit staff ended visit due to unit regime...

453. Given the above, it appears that during the 48 days Ryan spent in segregation, he met with the Cultural Advisor twice, and with the CAMHS Aboriginal Consultant once. I note that none of these visits are recorded in the Visitor Logs provided to my investigation.
454. I do not consider that the department adhered to the Aboriginal and Torres Strait Islander Youth Justice Principle, in that it only facilitated two visits for Ryan with the Cultural Advisor during the periods of segregation and failed to consider Ryan's individual cultural identity.
455. Culturally appropriate youth justice services for Aboriginal young people in AYTC are crucial. As stated in the final report of the Royal Commission into the Protection and Detention of Children in the Northern Territory:
- All children and young people have the right to be safe, to be treated humanely, and to grow up in an environment where they can develop to their maximum potential. Aboriginal children and young people also have the right to practise their culture and the right to receive special protection measures to address the specific vulnerabilities they face.⁶⁷
456. I see no evidence that the department gave any consideration to such cultural considerations in regard to Ryan's periods of segregation.
457. For example, the evidence does not demonstrate that the department sufficiently considered whether it was appropriate for it to involve family, significant persons and community as participants in assessment, case planning and decision-making for Ryan. As such, my view is that the department acted contrary to part (d) of the Aboriginal and Torres Strait Islander Youth Justice Principle.
458. Further, I note that the Segregation Operational Order states:
- It is recognised that the history of removal of Aboriginal children from their families continues to have impact on children and young people in detention, their families and grandparents. The impact that detention and segregation can have, including feelings of shame and guilt, may therefore have additional cultural significance. Specific health and case management considerations of Aboriginal or Torres Strait Islander residents must be considered.
459. I have insufficient evidence to satisfy me that the department gave any consideration to any specific health and case management considerations of Ryan as an Aboriginal youth and, as such, my view is that it acted in breach of the Segregation Operational Order.
460. I have insufficient evidence to satisfy me that the department had regard to the particular cultural needs of Ryan as an Aboriginal youth and, as such, my view is that it acted in breach of section 3(3) of the Youth Justice Administration Act.
461. I also note with concern the shortcomings of the DRMP in relation to cultural considerations.
462. Ryan's first DRMP, dated 17 January 2017, for his first period of segregation, recorded 'N/A' under the heading 'Cultural Considerations'. All Ryan's subsequent DRMP's recorded 'identifies as Aboriginal'.
463. The DRMP contain a section headed 'Referrals/Supports Required - if checked ensure referrals are actioned'. This box was checked on some, but not all, of Ryan's DRMPs.

⁶⁷ Northern Territory, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) Chapter 5, page 196.

On the DRMPs on which the box was checked there was no record of any referrals being actioned, except for the two occasions when the Cultural Advisor visited Ryan and the one occasion when the CAMHS Aboriginal Consultant visited him.

464. Given this, it appears to me that the DRMP is treated as merely an administrative checklist by AYTC staff and that it fails to alert staff to the requirement for cultural considerations.

465. The CE has acknowledged the shortcomings of the DRMP in relation to cultural considerations. An attachment to his letter to me dated 6 Sept 2017 includes the following statement:

While case notes (Attachment 4) provide evidence of cultural discussions between [Ryan] and the AYTC Cultural Advisory, it is acknowledged that the attached DRMP forms capture only minimal cultural considerations. This is a primary focus in the ongoing review of the DRMP, which is expected to consider and record culture as a contributing factor to incidents, and identify any required follow-up actions including, but not limited to:

- cultural welfare checks
- ongoing cultural support
- assessment for family connections
- culturally specific program and activity referrals

466. I welcome the CE's commitment to addressing the shortcomings of the DRMP in relation to cultural considerations.

467. I also note that The Aboriginal and Torres Strait Islander Youth Justice Principle includes that the Department actively recruits and supports the retention of Aboriginal and Torres Strait Islander staff. I am not aware of any processes, policies or procedures in place to retain Aboriginal and Torres Strait Islander staff in the AYTC. I consider that this is an important step to assist in the rehabilitative function of the youth justice system. Whilst I am of the view that the department should have facilitated more regular visits for Ryan from a cultural advisor, I also consider it should do all it can to ensure that there is Aboriginal and Torres Strait Islander staff employed in the centre to interact with the young people on a daily basis.

468. I note that the department, in response to my provisional report, has acknowledged the struggles it has had to attract and retain Aboriginal and Torres Strait Islander staff and I welcome the CE's commitment to addressing this issue.

ACCESS TO EDUCATION

469. Section 25 of the Youth Justice Administration Act provides that the CE has an absolute discretion to establish a regime for the provision of education and training to a young person in detention, as he sees fit.
470. Section 27 of the Youth Justice Administration Act provides that the CE must, as much as reasonably practicable, encourage a resident of a training centre who is a child of compulsory school age or a child of compulsory education age to continue or otherwise further his or her school education or vocational or other training (as the case requires).
471. A child of compulsory school age is defined in section 4 to mean a child of or above the age of 6 years but under the age of 16 years. A child of compulsory education age means a person who is 16 years of age.
472. Given that Ben and Ryan were not of compulsory school or education age at the time of their segregation periods, the department was not required under the Youth Justice Administration Act to provide them with educational or vocational training.⁶⁸
473. However, access to education or vocational training is a fundamental human right for all prisoners, and particularly for young people in detention. The United Nations has reported that ‘access to education is a fundamental right of children deprived of their liberty’⁶⁹ because detention should ‘not disrupt preparation for adulthood and the full realization of a child’s potential’.
474. The Mandela Rules and Havana Rules provide for mandatory education for young people in detention,⁷⁰ and CROC and ICESCR state that parties must recognise the rights of the child to education, and that such education should be directed to the development of the child’s personality, talents and mental and physical abilities to their fullest potential.⁷¹
475. Further, and notwithstanding sections 25 and 27 of the Youth Justice Administration Act, the right to education or vocational training is reflected in the Charter of Rights, which provides that young people detained in training centres have the right to participate in activities and programs that help their rehabilitation, continue their education, or to do training to learn useful skills for work.
476. Section 3 of the Youth Justice Administration Act sets out the objects and principles of the Act, including that facilities and programs developed for the care, rehabilitation, detention, training, therapeutic treatment or other treatment of youths should be individually designed as much as reasonably practicable to promote the educational and vocational training needs of the youth.
477. Regulation 7 of the Youth Justice Administration Regulations provide that, as far as reasonably practicable and unless it is unsafe to do so, a segregated resident should maintain their access to education and rehabilitative services, in accordance with the case plan prepared for the resident. This is also reflected in the Segregation Operational Order.
478. The CE recognises the importance of education for the young people in AYTC. In his letter to me dated 13 June 2017 he stated:

⁶⁸ Pursuant to sections 25 and 27 of the *Youth Justice Administration Act 2016*.

⁶⁹ United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, 5 March 2015, para 29.

⁷⁰ Mandela Rule 104. Havana Rule 38.

⁷¹ CROC Arts 29 and 30. ICESCR Art13.

...Access to education for all residents of the AYTC is a priority, and the Department for Education and Child Development provide onsite education through the Youth Education Centre (YEC). For those young people who are unable to attend the YEC, alternative access to education is actively considered, for example through a teacher visiting the unit and/or education materials. AYTC management continue to discuss improved access to education for all residents through the AYTC Leadership Group...

479. Notwithstanding the above, I see limited evidence of any planning for education or vocational training for Ben or Ryan during their periods of segregation.
480. The DRMP is supposed to consider continued access to education. As the CE submitted, in a letter dated 13 June 2017:

... To support the appropriate and limited use of segregation, it is required that a Dynamic Risk Management Plan (DRMP) be in place. The DRMP contains a requirement for regular reviews, consideration of continued access to education...

481. This did not occur with Ben and Ryan, who had long periods of time where they were not provided with access to any education and the DRMP's did not include plans to provide them access to education, despite times of good behavior being recorded.

Ben's access to education

482. Ben's letter of complaint to my Office included the allegation that he was not provided 'access to reasonable education' during his segregation.⁷²
483. As Ben's first and second periods of segregation were only one day and three days, I have not considered whether he was provided access to education in these periods.
484. Ben's third period of segregation was for 78 days.⁷³ The first DRMP for this period, dated 17 January 2017, recorded the following:

7. School, Programs and Activities (checked = yes) MANDATORY SECTION

- | | | |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| <input checked="" type="checkbox"/> | No attendance (i.e. unable to attend any school, program or group activity. This assessment relates to any weekday or weekend activities occurring through period of the current DRMP). | |
| <input type="checkbox"/> | Daily dynamic assessment of school, program, and/or group activity participation | |
| <input type="checkbox"/> | School work in unit | <input type="checkbox"/> |
| <input type="checkbox"/> | Attend school | Activities with group |
| <input type="checkbox"/> | Attend recess with transition unit | Activities individual (criminogenic) |
| <input type="checkbox"/> | Attend meals with transition unit | Programs with group |
| <input type="checkbox"/> | Attend gym/pool/oval with transition unit | Programs individual (criminogenic) |
| | | Attend workshop (pre-approved by ARIG) |

485. On 1 February 2017, a Case Note recorded that Ben was told that 'incremental steps' would be taken to ensure that he was 'provided with stimulation and education'. This is the first reference to the provision of any education that was made in Ben's records since 17 January 2017 when the segregation period started.
486. The next reference to education in Ben's records occurred on 7 February 2017, when a psychologist made a Case Note that A had:

...developed the belief that staff were lying to him because he said he was told that a teacher would visit him in frangipani Unit and that he would go to the gym, and these things did not happen.

⁷² Letter to the Ombudsman dated 17 March 2017.

⁷³ 17 January 2017 to 5 April 2017.

487. On 11 February 2017, a Case Note recorded that the restrictions on Ben's visits had been removed as a result of his 'compliance on shifts'. However, there was still no consideration given to the provision of education to Ben and the DRMP's continued to stipulate that he was not to have any access to any school, programs or group activities.

488. On 17 February 2017, the following note was added to Ben's DRMP:

Consider an exercise period in gymnasium. [Ben] must be handcuffed for the movement to the gym and any other external movements. [Ben] not to associate with another unit or attend education until he has successfully complied with three period [sic] of attendance at the gym with a selected resident from ... unit.

489. Ben 'successfully complied' with three periods of attendance at the gym, being on 18, 21 and 23 February 2017, however, Ben's DRMP was not amended to include any access to education.

490. On 23 February 2017, Ben was told that he would not be transitioning from the Frangipani Unit. Given this, he requested that he be provided access to education.

491. On 24 February 2017, a staff member from the learning centre visited Ben during his exercise period to give him some school work. This staff member was not a teacher. The Unit Log recorded that Ben:

...'became argumentative and told [the staff member] that he wants a teacher with him as it's his right. [Ben] said he had rung the Guardian and then said "I'm gonna go off and smash this place". "I'm going to Yatala and I'm going out with a bang" "This place is fucked up" "I'm not doing that work". Staff tried to explain to [Ben] that he had asked for this. He was also informed that his extra exercise time in the morning may be cancelled. [Ben] said "I don't fucking care..."

492. A Case Note recorded the following account of the events:

Second exercise [Ben] was visited by [...] from Education. She had brought some school work for him, which he had requested. [Ben] became angry, and rude with [...] and staff as he was demanding a teacher as well. [Ben] also began that he was doing that shit. [Ben] then said I have done that already. [...] said she would go and sort some other work for him. [Ben] was still demanding a teacher as it was his right. Staff attempted to explain that there were no teachers to come down. Ben said,
 "I'm gonna be bad again"
 "I'm gonna go off and smash this place"
 "I'm going to Yatala and I'm gonna go out with a bang!"
 "This place is fucked up"
 "I'm not doing that work" ...

493. At 4:47pm on 27 February 2017, a Case Note recorded:

...[Ben] said he has called the Office of the Guardian and spoken with an advocate he feels he is being denied access to his education. He reported being brought worksheets that were irrelevant to completing his SACE...'

494. At 5:30pm on 27 February 2017, a Case Note recorded:

This afternoon [Ben] requested to speak with Accommodation Manager, [Ben] was enquiring about his future transition plans and his inability to attend the learning centre, [Ben] was informed that every effort had been made to assist him, but his behaviour constantly let him down.

When informed he was given opportunity to attend the gym in the morning to exercise he responded that is bullshit and when reminded that he was issued with learning material to get him started on his education goals, he responded "I don't want education..."

495. On 28 February 2017, a Case Note recorded:

Late yesterday afternoon [Ben] spoke to me in regards to being very bored and about his education.

[Ben] appeared very frustrated and annoyed whilst talking to me.

I did remind [Ben] about his behaviour towards [the staff member from the learning centre] when she went to speak with him and give him modules that he needs to do to obtain his certificates that he was very rude and abusive. [Ben] said because it is fucked he wanted to go to school not do school work in the unit. I said well at this stage that is what is going to happen and went into some of his behaviour that has placed him in Frangipani.

496. On 4 March 2017, Ben's DRMP was amended to include the following note:

[Ben] no longer requires a room with a cuff trap. [Ben] may be given extra or extended exercise periods to reward positive behaviour. This is to occur as [Ben] is unable to be transferred to another unit. The manner in which the extra time and amount of time given is to occur at the discretion of unit staff, depending upon operational requirements and [Ben's] behaviour.

497. Despite good behaviour, it appears from the records that there was no further consideration given to the provision of education to Ben, until 9 March 2017, when his DRMP was amended and the box marked 'school work in unit' was checked. However, a note on the DRMP records the following, with no reference made to education:

Due to [Ben's] extended stay in Frangipani the following privileges will be permitted alongside his structured routine if behaviour is maintained [assessed by staff daily]

1. Monday & Thursdays 1pm-2pm exercise program in unit recreation area with programs staff.
2. Radio issued daily between 12 midday til 10:30pm.
3. Games room / X-Box - Times at staff discretion and staff to follow individual association restrictions based on staff / BSO consultation.
4. AM phone calls permitted.

498. The box marked 'school work in unit' remained checked until 17 March 2017, when the DRMP was revised and this box was no longer checked. No explanation was recorded as to why this box was no longer checked. In any event, during the period when the DRMP permitted school work in the unit there is no evidence that Ben was provided any.

499. It appears to me that because Ben was given the opportunity to do some worksheets on 24 February 2017 and that he refused these, the staff took the position that Ben had been offered education and had acted unreasonably in refusing it and therefore should not be offered any more.

500. I note that a Progress Report by the Case Coordinator, dated 9 March 2017, recorded:

..Unfortunately whilst in detention and at AYTC [Ben] was the subject of ongoing behavioural management plans due to recurring poor behaviour. [Ben] has struggled with his participation in education programming within the school setting because of behavioural issues. He has chosen not to study independently within the Frangipani Unit because he feels it is unjust for AYTC not to provide him with the opportunity to study SACE topics with the mainstream population...

501. Further, a Case Note on 16 March 2017 recorded:

[Ben] advised that the learning centre had supplied school work for himself and [...] as already discussed. [Ben] informed staff that he did not want it and would flush it down the toilet if it was provided...

502. Ben's engagement in education, both outside and inside of detention, was extremely limited. A Case Plan Review dated 27 March 2017 recorded:

[Ben's] engagement in education at the AYTC was limited due to ongoing behavioural issues. Due to safety concerns, [Ben] had to complete worksheet modules independently which he disapproved of, stating it was a "waste of time" if he could not complete his SACE in mainstream schooling.

503. Further, an email from Ben's Case Manager on 28 March 2017 included the following:

[Ben's] education historically has been sporadic having not attended school for years. [Ben] has completed some educational worksheets whilst in custody, however was reluctant to engage due to ongoing behavioural issues and wanting to attend mainstream school.

504. I consider that a staff member giving Ben some worksheets was not a reasonable or adequate provision of education. Given Ben's background in relation to schooling, and his lack of engagement with education, I do not consider that giving him some worksheets which he did not think would assist him to progress towards anything meaningful, without providing a teacher to assist him, was sufficient. In my view, it was unreasonable in the circumstances, given Ben's educational history, to expect that he would have been able to self-manage completing worksheets without the assistance of a teacher.

505. There is no record of any education being provided to Ben in his room, or of any vocational training during his third period of segregation, aside from the staff member giving him some worksheets during his exercise period on 24 February 2017 and the Unit Log recording that he attended a 'work program' on 27 March 2017. This is the only recording of Ben being provided any vocational training during this 78 day period of segregation.

506. On 27 March 2017, a Case Plan Review was completed for Ben (**the review**). The original Case Plan recorded a goal as "[Ben] to actively engage with education at AYTC". The review recorded that the goal was not achieved and noted the following under the heading 'action taken':

[Ben's] engagement in education at the AYTC was limited due to ongoing behavioural issues. Due to safety concerns, [Ben] had to complete worksheet modules independently which he disapproved of, stating it was a "waste of time" if he could not complete his SACE in mainstream schooling.

507. I note that Ben scored a high level for intervention required in 'education, training & employment' in a Victorian Offending Needs Indicator of Youth (VONIY), which recorded the following assessment of Ben :

5.	EDUCATION, TRAINING & EMPLOYMENT (5 items)	
5.1	Not participating in education, training or employment	Yes
5.2	Left school early (before 15 years old)	Yes
5.3	Low academic achievement	Yes
5.4	Truancy in client's last school year	Yes
5.5	Serious disruptive behaviour at school	Yes
EDUCATION, TRAINING & EMPLOYMENT TOTAL		5

508. Despite this, Ben was transferred to the adult system on 4 April 2017 with the department having only offered education to Ben once in the previous 78 days he spent in segregation.
509. The CE advised me that Ben was 'offered educational resources through the on-site Youth Education Centre, within the capabilities of his management plan'.⁷⁴ However, I do not consider that he was offered sufficient educational resources, or that the management plans (DRMPs) gave sufficient weight or consideration to the provision of education or vocational training for Ben.

Ryan's access to education

510. I am also of the view that Ryan was not provided sufficient access to education or vocational training.
511. Ryan's letter of complaint to my Office included the allegation that he 'had nothing to look forward to and was depressed' having been given no end date to his segregation and no indication when he would be provided with any education.⁷⁵
512. As Ryan's third and fourth periods of segregation were only two days and one day, I have not considered whether he was provided access to education in these periods.
513. Ryan's first period of segregation was for 34 days.⁷⁶ The first DRMP for this period, dated 17 January 2017, recorded the following:

7. School, Programs and Activities (checked = yes) MANDATORY SECTION

- | | | |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| <input checked="" type="checkbox"/> | No attendance (i.e. unable to attend any school, program or group activity. This assessment relates to any weekday or weekend activities occurring through period of the current DRMP). | |
| <input type="checkbox"/> | Daily dynamic assessment of school, program, and/or group activity participation | |
| <input type="checkbox"/> | School work in unit | <input type="checkbox"/> Activities with group |
| <input type="checkbox"/> | Attend school | <input type="checkbox"/> Activities individual (criminogenic) |
| <input type="checkbox"/> | Attend recess with transition unit | <input type="checkbox"/> Programs with group |
| <input type="checkbox"/> | Attend meals with transition unit | <input type="checkbox"/> Programs individual (criminogenic) |
| <input type="checkbox"/> | Attend gym/pool/oval with transition unit | <input type="checkbox"/> Attend workshop (pre-approved by ARIG) |

514. On 1 February 2017, a Case Note recorded:

[Ryan] was told that incremental steps will be taken to ensure he is provided with stimulation and education.

[Ryan] was advised that education is being explored (in unit) on Thursday, and gym access will be provided.

515. Despite this, and numerous records of good behaviour, this section of Ryan's DRMP remained as above until, as a result of good behaviour, it was changed on 6 February 2017 to include that he could attend the gym. There were no amendments to include any provision for any access to education.
516. Despite gym access going well, no consideration of the provision of education was recorded until 13 February 2017, when Ryan's DRMP was reviewed to permit him to attend one education session per day 'dynamically assessed'. A Case Note recorded:

⁷⁴ Letter to the Ombudsman dated 30 March 2017.

⁷⁵ Letter to the Ombudsman dated 9 February 2017.

⁷⁶ 17 January 2017 to 20 February 2017.

[Ryan] will continue to transition to Kangaroo Paw. [Ryan] will attend 1 (one) session at education per day. Behaviour Support Officers, Duty Supervisor and Education Staff will assess which sessions this will be on a daily basis. [Ryan] will NOT walk with the unit to or from education. [Ryan] will have dinner with Kangaroo paw and conduct a chore, if possible.

517. On 14 February 2017 Ryan's DRMP was amended to record:

7. School, Programs and Activities (checked = yes) MANDATORY SECTION

- | | | |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| <input type="checkbox"/> | No attendance (i.e. unable to attend any school, program or group activity. This assessment relates to any weekday or weekend activities occurring through period of the current DRMP). | |
| <input checked="" type="checkbox"/> | Daily dynamic assessment of school, program, and/or group activity participation | |
| <input type="checkbox"/> | School work in unit | <input checked="" type="checkbox"/> Activities with group |
| <input checked="" type="checkbox"/> | Attend school | <input checked="" type="checkbox"/> Activities individual (criminogenic) |
| <input type="checkbox"/> | Attend recess with transition unit | <input checked="" type="checkbox"/> Programs with group |
| <input checked="" type="checkbox"/> | Attend meals with transition unit | <input checked="" type="checkbox"/> Programs individual (criminogenic) |
| <input checked="" type="checkbox"/> | Attend gym/pool with transition unit | <input type="checkbox"/> Attend workshop (pre-approved by ARIG) |

518. Following this amendment, the documents provided to my investigation record that Ryan was away from the Frangipani Unit to attend the education centre for 30 minutes on 14 February 2017, 70 minutes on 15 February 2017 and 80 minutes on 16 February 2017.

519. There is no record of any education being provided to Ryan in his room, or of any vocational training during his first period of segregation.

520. Given the above, during Ryan's first period of segregation of 34 days he was provided a total of 180 minutes of access to education.

521. Ryan's second period of segregation was for 12 days.⁷⁷ The first DRMP for this period, dated 24 February 2017, recorded the following:

7. School, Programs and Activities (checked = yes) MANDATORY SECTION

- | | | |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|
| <input checked="" type="checkbox"/> | No attendance (i.e. unable to attend any school, program or group activity. This assessment relates to any weekday or weekend activities occurring through period of the current DRMP). | |
| <input type="checkbox"/> | Daily dynamic assessment of school, program, and/or group activity participation | |
| <input type="checkbox"/> | School work in unit | <input type="checkbox"/> Activities with group |
| <input type="checkbox"/> | Attend school | <input type="checkbox"/> Activities individual (criminogenic) |
| <input type="checkbox"/> | Attend recess with transition unit | <input type="checkbox"/> Programs with group |
| <input type="checkbox"/> | Attend meals with transition unit | <input type="checkbox"/> Programs individual (criminogenic) |
| <input type="checkbox"/> | Attend gym/pool/oval with transition unit | <input type="checkbox"/> Attend workshop (pre-approved by ARIG) |

522. This remained until 3 March 2017 when Ryan's DRMP was amended to record 'daily dynamic assessment of school, program, and/or group activity participation'.

523. Following this amendment, the documents provided to my investigation record that Ryan was away from the Frangipani Unit to attend the education centre for 45 minutes on 7 March 2017 and 58 minutes on 8 March 2017.

524. Given the above, during Ryan's second period of segregation of 12 days he was provided a total of 103 minutes of access to education.

525. There is no record of any education being provided to Ryan in his room, or of any vocational training during his second period of segregation.

526. I note that a Custodial Remand Assessment was done by DCS on 1 March 2017, which recorded the following:

⁷⁷ 24 February 2017 to 8 March 2017.

While [Ryan] was a resident at AYTC in November/December 2016 Mr [...] the Student Services Pathways Coordinator advised that [Ryan] was interested in the area of Building and Construction; however he was not workshop-approved during much of 2016 due to security concerns related to his previous involvement in serious centre incidents. [Ryan's] participation in YEC classes was reported to be inconsistent; however is [sic] was also reported that he made progress over the past two terms of 2016. [Ryan] has expressed an interest in working in hospitality.

...

Intervention targets:

Education/training - For [Ryan] to gain workshop approval so that he can take advantage of the training opportunities at the YEC.

527. It is disheartening to see the lack of focus on providing Ryan with educational or vocational training during his extended period of segregation.
528. An advocate for Ryan advised my Investigating Officer that in March 2017 Ryan had told her that that one of the reasons he wished to transfer to the adult prison system was that he would have more education opportunities there.
529. Whilst I acknowledge that the CE has an absolute discretion in the establishing of a regime for the provision of education and training to a young person in detention, as he sees fit, investing in helping vulnerable young people to stay engaged, or to re-engage, in education and vocational training should be a priority of the youth justice system.
530. The time in custody could have been used as an opportunity to, at the least, attempt to provide Ben and Ryan with education or vocational skills. I consider that, in failing to do so, the youth justice system failed Ben and Ryan. A Custodial Remand Assessment dated 5 January 2017 recorded:
- In the community [Ben] has not attended education for an extended period due to him being in custody for 1 year and 9 months with a short period in the community.
531. Pursuant to Regulation 7 of the Youth Justice Administration Regulations, and the Segregation Operational Order, Ben and Ryan had the right to participate in activities and programs that would have helped their rehabilitation, to continue their education, or do training to learn useful skills for work, as far as reasonably practicable and unless it was unsafe to do so.
532. I consider that the records show that Ben and Ryan were denied education at times when:
- there were no apparent security risks
 - Ben and Ryan had maintained good behavior, and
 - there were no valid reasons recorded as to why Ben and Ryan could not have attended the learning centre.
533. Further, even if there were valid security concerns about Ben or Ryan attending the learning centre, they could have been provided access to adequate educational opportunities in the Frangipani Unit.
534. Given the above, I consider that the withholding of access to education and vocational training during prolonged periods of segregation was in contravention of:
- Ben and Ryan's rights under the Charter of Rights
 - Regulation 7 of the Youth Justice Administration Regulations, and
 - the Segregation Operational Order.
535. My view is that, in failing to provide Ben and Ryan with sufficient education or vocational training, the department acted in a manner that was unreasonable.

536. The department, in its response to my provisional report, conceded that it could have made 'further attempts to engage these residents with education', and I commend the proposed improvements. I further discuss the proposed improvements later in this report.

ACCESS TO EXERCISE

537. Section 25 of the Youth Justice Administration Act provides that the CE has an absolute discretion to establish a regime for recreation, contact with other young people or any aspect of the day-to-day life of young people in detention as he sees fit.
538. Access to exercise and stimulation, however, is a fundamental human right for all prisoners, and particularly so for young people in detention. The United Nations has reported that young people in detention should be provided with a full programme of purposeful out-of-cell activities, and that 'this includes physical exercise for at least two hours every day in the open air, and preferably for a considerably longer time.'⁷⁸
539. Further, the Havana Rules state:
47. Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities...
540. Notwithstanding section 25 of the Youth Justice Administration Act, the right to exercise is reflected in the Charter of Rights, which provides that young people detained in training centres have the right to get exercise, and to go outside, every day.
541. Further, regulation 7(3)(d) of the Youth Justice Administration Regulations, and the Segregation Operational Order, provide that segregating a resident of a training centre must not limit the resident's access to regular exercise periods or other stimulation.
542. I understand that there are two exercise yards in the Frangipani Unit. My Officers inspected one of the courtyards and described it as a bare, fully enclosed small area with concrete floors and wire mesh walls and roof.
543. Ben and Ryan's DRMPs at times during their periods of segregation included that they were permitted to exercise in the courtyard, and specified whether they were to be handcuffed (either in front of them or behind their back).
544. Whilst it has been possible for me to determine that, during their periods of segregation, Ben and Ryan spent limited time out of their rooms, I have not been able to determine exactly how much exercise Ben and Ryan had. This is because when the Unit Logs and SRRA Logs have recorded that Ben or Ryan were unsecured for exercise, it is evident that the time was also used for them to make phone calls, have professional visits and do chores.
545. It appears that there were no accurate records kept of when Ben or Ryan were exercising. 'Exercise period' seems to be used on the Logs to record times when they were out of their rooms, for whatever purpose, or the Unit Logs would record 'out of room' but not whether Ben or Ryan were outside or able to exercise during that time.
546. I am, however, able to reasonably conclude that Ben and Ryan's access to regular exercise periods was significantly limited by their segregation, for reasons I will now explain.
547. There are numerous examples in the Unit Logs and SRRA Logs where it has been recorded that Ben and Ryan were 'unsecured for exercise', but in fact they were making

⁷⁸ United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, 5 March 2015, para 78.

phone calls. I have only been able to determine this by cross referencing the Unit Logs and the SRRA Logs with Ben and Ryan's phone records.

548. It appears that the staff were of the view that, so long as Ben and Ryan were unsecured from their rooms for periods of thirty minutes four times a day, this was satisfactory. For example the following was recorded on the Unit Log on 1 February 2017:

[Ben] kicking and banging on his door. Abusing staff. [...] also shouting out. Staff have informed residents that if they continue they will lose 2nd exercise to make a phone call.

549. Further, the Unit Logs frequently record 'out of room for exercise period and to make breakfast',⁷⁹ or 'out of room for chore and exercise',⁸⁰
550. Often professional visits occurred during the times that Ben and Ryan were out of their rooms for exercise periods,⁸¹ and Ben and Ryan frequently met with centre staff during these periods.⁸² This is acknowledged by the CE, in his letter dated 13 June 2017:

...On occasion, in consideration of individual circumstances, professional visits may occur as part of the time out of bedrooms for residents on restricted routines. However, separate exercise periods are the preferred method, and practice improvement is being progressed in this area. Now implemented, the DRMP and segregation and isolation procedures are currently undergoing thorough review to enable further enhancements...

551. In its response to my provisional report, the department acknowledged that the term 'exercise period' is used by staff to identify 'time out of room' and submitted that 'this does not fully clarify the breadth of activities undertaken by a resident during the that time which could also include professional visits, phone calls and chores.' The department has advised of its commitment to address this issue in order to ensure that 'exercise periods' are a priority and are for exercise 'as opposed to free time for phone calls or recreation, visits etc'.
552. Ben and Ryan's exercise periods were not only limited by professional visits, but were often limited by staff availability and lockdowns.
553. Lockdowns can occur due to the management of an incident, a threat within the unit or the centre, or staffing issues. During a lockdown the young people are confined to their rooms at times when they would otherwise be able to move freely and, as such, lockdowns have the same effect as isolation and separation.⁸³
554. The records show a lot of what appear to be unnecessary lockdowns, which resulted in further confinement for Ben and Ryan and added to their anxiety at spending long periods locked in their cells. An inquiry into youth justice centers in Victoria reported

⁷⁹ For example, Unit Log, 17 March 2017.

⁸⁰ For example, Unit Log, 15 January 2017.

⁸¹ For example:

- on 20 February 2017, Ben was unsecured for a total of 148 minutes which included a professional visit
- on 28 February 2017, Ben was unsecured for a total of 100 minutes which included a professional visit
- on 30 January 2017, Ryan was unsecured for a total of 77 minutes which included a 25 minute professional visit
- on 9 February 2017, Ryan was unsecured for a total of 136 minutes which included a 95 minute professional visit.

⁸² For example:

- on 13 February 2017, Ben was unsecured for a total of 95 minutes which included a 25 minute meeting with his Case Coordinator
- on 8 February 2017, Ryan was unsecured for a total of 150 minutes which included a 67 minute meeting with AYTC staff
- on 16 March 2017, Ryan was unsecured for a total of 128 minutes which included a 45 minute meeting with his Case Coordinator.

⁸³ Commission for Children and Young People, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017, page 77.

that 'lockdowns create or exacerbate tensions within youth justice centres, especially when used excessively or unfairly.'⁸⁴

555. I say that these lockdowns appeared to be unnecessary as, in my view, it appears that an excessive number of staff were used to manage incidents. For example, during the incident on 1 November 2017 when Ben was taken to the Frangipani Unit, it appears from the CCTV that 15 officers attended to restrain Ben. In my view, it seems excessive to require 15 officers to restrain one young person.
556. Further, it appears wrong to me that the Frangipani Unit, a secure unit, should be locked down as a result of an incident occurring in another unit. That this does occur seems to me to be as a result of inadequate numbers of staff.
557. The records included numerous examples of Ben and Ryan not having exercise periods because of a lack of available staff due to incidents and lockdowns in the centre, or for other reasons, such as staff meetings. For example:
- the Unit Log on 3 March 2017 recorded that 'exercise will be short due to unit staff being used to cover visits'
 - Ryan's SRRA Log on 19 January 2017 records 'due to staff shortage across centre, facilitation of exercise periods may be restricted'
 - the Unit Log on 21 January 2017 records '[Ryan] secured due to incident. All to remain secured. No exercise session to proceed due to low staffing and incident'
 - the Unit Log on 3 February 2017 records 'only a short exercise due to not enough staff because of a meeting'
 - Ben's SRRA Log on 8 February 2017 records 'one good exercise period but due to unavailability of BSO's and Duty Supervisor due to code yellow in kilo unit a second exercise period was not forthcoming.'
558. It concerns me that when Ben and Ryan were given exercise periods, they were often handcuffed and escorted by up to three staff members. The handcuff regime meant that, at times, Ben and Ryan were in handcuffs whenever they were not in their cell, which included when they were in the exercise yard.
559. Ben was handcuffed during all of his exercise periods for a total of ten days during his periods of segregation. Ryan was handcuffed during his exercise periods on two days during his periods of segregation. At times Ben and Ryan were handcuffed with their hands behind their backs during their exercise periods. For example, Ben's DRMP dated 28 February 2017 noted:

[Ben] placed back on handcuffs for exercising periods. First exercise period will require [Ben] to be handcuffed for the entire exercise period including phone calls. Second exercise period will require [Ben] to be handcuffed in courtyard door secured and handcuffs removed through handcuff trap door. Three staff present for application and removal of handcuffs, two controlling [Ben's] hands and one applying and removing handcuffs through handcuff traps.

560. It would appear to me impossible for a person to exercise with their hands cuffed, particularly when they were cuffed behind their backs. On 19 February 2017, a Case Note on Ryan's records stated:

...when on exercise in courtyard staff are to remain in courtyard due to resident being handcuffed behind back, when resident is walking staff are to assist with physical escort. When resident is seated staff can remove physical escort position.

⁸⁴ Parliament of Victoria, Legal and Social Issues Committee, Final Report, Inquiry into youth justice centres in Victoria, March 2018, page 166.

561. The Use of Mechanical Restraints Security Order states that the application of mechanical restraint to an individual significantly impairs their balance and ability to control trips and falls. I consider that, with the handcuff regimes, sufficient exercise would not have been possible for Ben and Ryan.
562. The Segregation Operational Order further specifies that a resident subject to segregation must have access to regular exercise periods for, at a minimum, 30 minutes duration in every three hour period. It further provides that exercise periods are not required between the hours of 19:30 and 07:30, but that the final exercise period for the day must occur at or after 19:00.

Ben's access to exercise

563. From the records available to me, it was difficult for me to determine whether Ben had access to a minimum of 30 minutes in every three hour period between 7:30 and 19:30 during his periods of segregation. This is because, as explained above, the records did not always specify whether Ben was unsecured from his cell for exercise, chores, visits or phone calls.
564. I am, however, confident, from my analysis of the Unit Logs, SRRA Logs, Case Notes, Visitor Logs and Telephone Logs, that Ben did not have regular exercise periods of at least 30 minutes in every three hour period between 7:30 and 19:30 on, at least, the following days during his periods of segregation:
- 12 January 2017
 - 13 January 2017
 - 15 January 2017
 - 16 January 2017
 - 19 January 2017
 - 20 January 2017
 - 21 January 2017
 - 22 January 2017
 - 23 January 2017
 - 24 January 2017
 - 25 January 2017
 - 26 January 2017
 - 27 January 2017
 - 28 January 2017
 - 29 January 2017
 - 30 January 2017
 - 31 January 2017
 - 3 February 2017
 - 4 February 2017
 - 5 February 2017
 - 6 February 2017
 - 7 February 2017
 - 8 February 2017
 - 9 February 2017
 - 11 February 2017
 - 12 February 2017
 - 15 February 2017
 - 16 February 2017
 - 17 February 2017
 - 19 February 2017

- 20 February 2017
- 25 February 2017
- 26 February 2017
- 27 February 2017
- 28 February 2017
- 1 March 2017
- 2 March 2017
- 3 March 2017
- 4 March 2017
- 11 March 2017
- 13 March 2017
- 18 March 2017
- 19 March 2017
- 21 March 2017
- 25 March 2017
- 1 April 2017
- 3 April 2017.

565. Given this, Ben was not provided with regular access to exercise on at least 47 days. I say 'at least' because it is likely that times that have been recorded on the Logs as Ben being out of his room for recreation or exercise may well have been spent with him having professional visits, phone calls or doing chores. I have only included dates above where the records are clear that Ben did not have access to regular periods of exercise (being of at least 30 minutes in each three hour period).

566. From the records available to me, it was also difficult for me to determine whether Ben had a final exercise period for the day (of at least 30 minutes) at or after 19:00 during his periods of segregation. However, I am confident, from my analysis of the Unit Logs, SRRA Logs, Case Notes, Visitor Logs and Telephone Logs that Ben did not have an exercise period (of at least 30 minutes) at or after 19:00 on, at least, the following days during his periods of segregation:

- 15 January 2017
- 16 January 2017
- 19 January 2017
- 20 January 2017
- 21 January 2017
- 24 January 2017
- 27 January 2017
- 28 January 2017
- 29 January 2017
- 1 February 2017
- 3 February 2017
- 8 February 2017
- 13 February 2017
- 15 February 2017
- 18 February 2017
- 19 February 2017
- 20 February 2017
- 27 February 2017
- 28 February 2017
- 3 March 2017
- 5 March 2017
- 6 March 2017
- 7 March 2017

- 8 March 2017
- 9 March 2017
- 14 March 2017
- 15 March 2017
- 17 March 2017
- 19 March 2017
- 28 March 2017.

567. Given this, Ben was not provided with a final exercise period for the day at or after 19:00 during his periods of segregation on at least 30 days. I say 'at least' because it is likely that times that have been recorded on the Logs as Ben being out of his room for recreation or exercise may well have been spent with him having professional visits, phone calls or doing chores. I have only included dates above where the records are clear that Ben did not have access to a final exercise period (of at least 30 minutes) for the day at or after 19:00.

Ryan's access to exercise

568. From the records available to me, it was also difficult for me to determine whether Ryan had access to a minimum of 30 minutes exercise during in every three hour period between 7:30 and 19:30 during his periods of segregation.

569. I am, however, confident from my analysis of the Unit Logs, SRRA Logs, Case Notes, Visitor Logs and Telephone Logs, that Ryan did not have regular exercise periods of at least 30 minutes in every three hour period between 7:30 and 19:30 on, at least, the following days during his periods of segregation:

- 18 January 2017
- 19 January 2017
- 20 January 2017
- 21 January 2017
- 22 January 2017
- 23 January 2017
- 24 January 2017
- 25 January 2017
- 27 January 2017
- 28 January 2017
- 29 January 2017
- 30 January 2017
- 31 January 2017
- 1 February 2017
- 3 February 2017
- 4 February 2017
- 5 February 2017
- 7 February 2017
- 9 February 2017
- 10 February 2017
- 11 February 2017
- 12 February 2017
- 13 February 2017
- 14 February 2017
- 1 March 2017
- 3 March 2017
- 4 March 2017

-
- 5 March 2017
 - 6 March 2017.
570. Given this, Ryan was not provided with regular access to exercise on at least 29 days. I say 'at least' because it is likely that times that have been recorded on the Logs as Ryan being out of his room for recreation or exercise may well have been spent with him having professional visits, phone calls or doing chores. I have only included dates above where the records are clear that Ryan did not have access to regular periods of exercise (being of at least 30 minutes in each three hour period).
571. From the records available to me, it was also difficult for me to determine whether Ryan had a final exercise period for the day (of at least 30 minutes) at or after 19:00 during his periods of segregation. However, I am confident, from my analysis of the Unit Logs, SRRA Logs, Case Notes, Visitor Logs and Telephone Logs that Ryan did not have an exercise period (of at least 30 minutes) at or after 19:00 on, at least, the following days during his periods of segregation:
- 18 January 2017
 - 20 January 2017
 - 21 January 2017
 - 22 January 2017
 - 23 January 2017
 - 26 January 2017
 - 28 January 2017
 - 29 January 2017
 - 30 January 2017
 - 31 January 2017
 - 1 February 2017
 - 4 February 2017
 - 5 February 2017
 - 7 February 2017
 - 9 February 2017
 - 11 February 2017
 - 12 February 2017
 - 13 February 2017
 - 14 February 2017
 - 6 March 2017.
572. Given this, Ryan was not provided with a final exercise period (of at least 30 minutes) for the day at or after 19:00 during his periods of segregation on at least 20 days. I say 'at least' because it is likely that times that have been recorded on the Logs as Ryan being out of his room for recreation or exercise may well have been spent with him having personal or professional visits, phone calls or doing chores.⁸⁵ I have only included dates above where the records are clear that Ryan did not have access to a final exercise period (of at least 30 minutes) for the day at or after 19:00.
573. Given the above, my view is that the department acted contrary to the Segregation Operational Order in that Ben and Ryan were not always given access to regular exercise periods for 30 minutes in every three hour period, and a final exercise period on or after 19:00. As such, I consider that Ben and Ryan's access to regular exercise periods and other stimulation were limited, contrary to Regulation 7(3)(d) of the Youth Justice Administration Regulations and to the Segregation Operational Order.

⁸⁵ For example, a Case Note on 22 January 2017 records that Ben had a visit with his mother for his second exercise period.'

574. Further, Regulation 7(3)(b) of the Youth Justice Administration Regulations provides that segregation of a resident must not contravene the resident's rights under the Charter of Rights. The Charter of Rights provides that the young people detained in the centre are entitled to get exercise every day, and to go outside every day except in bad weather. As such, I consider that the department acted contrary to Regulation 7(3)(b) of the Youth Justice Administration Regulations.

575. Further, I am unable to determine from the records available to me whether Ben and Ryan had exercise every day during their periods of segregation. This is because the Unit Logs and SRRA Logs commonly record the following descriptions of the times when Ben and Ryan were out of their rooms:

- 'out of room'
- 'out for exercise'
- 'out of room and into courtyard'
- 'out of room for phone call'
- 'out for recreation time'
- 'out of room - chore & rec time'
- 'out of room for chore and exercise'
- 'out of isolation'.

From these descriptions I am unable to determine whether Ben or Ryan did exercise or if they went outside during the periods that they were unsecured from their rooms.

576. Whilst I am unable to determine whether Ben and Ryan undertook exercise each day during their periods of segregation, it is evident to me from the records that the ability to exercise was seen as a privilege for Ben and Ryan and not as a fundamental right. My analysis of the records available to me suggests that the view of some staff was that exercise time was considered a reward for positive behaviour, rather than a right, and as such, Ben and Ryan were denied exercise as punishment for poor behaviour.

577. For example, on 1 February 2017, Ben had been locked in his room for over two hours and became agitated and was kicking and banging the door. The Unit log records that 'staff have informed residents if they continue they will lose 2nd exercise [period] to make a phone call.'

578. On 4 February 2017, the Unit Log recorded:

Due to not being compliant [Ben] was informed he will not be issue[d] his clean clothing and has now lost his privilege to first exercise. [Ben] began kicking and punching his door calling staff "motherfuckers" "fucking dogs".

579. Also, on 22 February 2017 the following was recorded on Ben's Unit Log:

[Ben] was informed that his visit with [redacted] has been cancelled due to poor behaviour in Bluegum. [Ben] began abusing staff and accusing them of getting him "happy" to see [redacted] then just use an excuse to not bring him over. [Ben] was rather disrespectful towards staff, even after being awarded extra time out on both his exercise periods, due to good behaviour. This team does not believe [Ben] should be allowed exercise in the morning due to his outburst.

580. On 4 March 2017, a Case Note was made on Ryan's records stating that he '...may be offered extended or extra exercise periods if behaviour warrants and operationally possible...'

581. Also, for example, Ben's DRMP dated 4 March 2017 includes the following note:

[Ben] may be given extra or extended exercise period to reward positive behaviour. This is to occur as [Ben] is unable to be transferred to another unit. The manner in which the

extra time and amount of time given is to occur at the discretion of unit staff, depending upon operational requirements and [Ben's] behaviour.

582. Given the above, I consider that the department denied Ben and Ryan their right to daily exercise under the Charter of Rights, and contrary to Regulation 7(3)(b) of the Youth Justice Administration Regulations.

Ben's access to the gym

583. I understand that valid safety and security reasons may, at times, prevent a resident from being able to access sufficient exercise facilities in the centre. I do, however, consider that every effort should be taken to enable young people to access the exercise facilities, such as the gym, as frequently and regularly as possible. Such activities would certainly have a more positive effect on the young people's mental health, and it follows, on the culture of the centre, than isolating them in a small room for extended periods of time.
584. I note that when Ben was assessed by CAMHS on 6 February 2017 it was recorded that he wanted 'to hurt himself to go to adult system' but that he identified 'exercise' as a coping resource and as something that helped him to cope and 'to keep going' in the past.
585. Ben's complaint to my Office included an allegation that the OGCYP and 'psych services' were told that Ben was going to the gym daily but this was not true. As such, I have considered the records as to Ben's gym attendance during his periods of segregation.
586. On 17 February 2017, Ben's DRMP was amended to record that he could attend the gym but that this was to be 'dynamically assessed by unit staff'. The DRMP notes:

Consider an exercise period in the gymnasium. [Ben] MUST BE HANDCUFFED FOR THE MOVEMENT TO THE GYM and any other external movements. [Ben] not to associate with another unit or attend education until he has successfully complied with three period [sic] of attendance at the gym with a selected resident from ... unit.

587. On 18 February 2017, the Unit Log recorded that Ben attended the gym for 30 minutes, and a Case Note recorded that it 'went well'. On 19 February 2017, however, Ben was unable to attend the gym 'due to staff numbers'. On 20 February 2017 Ben was again unable to attend the gym due to staff numbers. A Case Note records:

[Ben] had a decent shift. He became upset that there was not enough staff to take him to the gym, but soon calmed down. No other issues.

588. On 21 February 2017, Ben attended the gym for 30 minutes. It was recorded that he was 'fully compliant'. It does not appear that Ben attended the gym on 22 February 2017, but on 23 February 2017 Ben attended the gym for 35 minutes. A Case Note recorded:

23.02.2017: [Ben] had exercise time 0745-0815hrs with no issues. Played basketball with staff and attended the pool for a swim.

PLEASE NOTE - [Ben] has displayed appropriate behaviour for a period of time, but is unable to transition to another unit. As an alternative progression, [Ben] will be offered a morning gym session 0745-0815hrs daily. [Ben] will attend the gym with 3 staff and no other residents. [Ben] will also be allowed to have a peer to come visit Frangipani at 2100hrs to 2130hrs daily. [Ben] has requested this person to be [...]. [...] is required to meet behavioural expectations in his unit to be eligible to attend Frangipani. The above mentioned exercise periods are in addition to entitlements of Structured Routine. This will

commence on the 22/02/17 and be reviewed on the 27/02/17 at 2100hrs. This revision is subject to continued positive behaviour and may be rescinded if behaviour declines.

589. On 24 February 2017, Ben attended the gym, escorted by three staff, for 30 minutes.
590. On 25 February 2017, Ben's access to the gym and to peers was 'suspended until next review' due to his 'overnight behaviour'.⁸⁶ I note that in the days leading up to this time Ben had been informed that he would not be transitioning out of the Frangipani Unit but would be remaining there indefinitely.⁸⁷ Ben's DRMP was amended to stipulate that he was only allowed in the courtyard.
591. On 28 February 2017, Ben's handcuffs were 're-instated for exercise period on P.M. shift'.⁸⁸ The following notes were made on Ben's DRMP:
- 28/02/17 PM [Ben] continued to make threats, kicking, banging and broke his television by punching it, due to these behaviours he was unable to have his first exercise period. [Ben] however calmed & completed one exercise period cuffed.
- 28.02.17 - [Ben] placed back on handcuffs for exercise periods. First exercise period will require [Ben] to be handcuffed for entire exercise period including phone calls. Second exercise period will require [Ben] to be handcuffed to courtyard door secured and handcuffs removed through handcuff trap door. Three staff present for application and removal of handcuffs, two controlling [Ben's] hands and one applying and removing handcuffs through handcuff traps.
592. On 1 March 2017, Ben's DRMP was amended to note:
- 01.03.2017 - [Ben] is to be physically escorted to courtyard for PM exercise periods after compliance test (refer to section 9) and secured in courtyard for exercise. If [Ben] requests a phone call as well as physical escort to and from phone booth, secured and in room and handcuffs removed (due to history of stand off with staff after phone calls). Review to consider physical escort for AM exercise periods 02.03,2017 and no use of handcuffs.
593. It appears that Ben's handcuffs were then removed for exercise. I note a record made on 1 March 2017 stating that Ben had 'been compliant and engaged well with staff' but 'due to heat in the courtyard he had his first exercise period in the common area with cuff in place.'
594. The table provided to me by the department summarising Ben's periods of segregation states that, from 22 February 2017 to 7 March 2017, Ben was given daily gym sessions, and that after this he was given an exercise program from 1-2pm on Mondays and Thursdays, as well as 'extra or extended exercise periods'. However, there is no record of Ben attending the pool or gym again after 24 February 2017, before he left for Yatala on 5 April 2017.
595. In summary, during his total of 82 days of segregation, the records show that Ben only attended the gym on 4 days, being:
- 18 February 2017
 - 21 February 2017
 - 23 February 2017
 - 24 February 2017.
596. I note that Ben did also attend exercise sessions led by a staff member in the unit on 16 March 2017, 23 March 2017 and 30 March 2017.

⁸⁶ Ben's DRMP, 25/02/17,

⁸⁷ Case Note made on 23 February 2018.

⁸⁸ Case Note, 28 February 2017, 03:30PM.

597. Ben alleged that the OGCYP and 'psych services' were wrongly advised by the department that he was attending the gym 'daily' and 'with his peers'. As provided above, I do not consider that Ben was able to attend the gym daily with his peers and if the department did advise the OGCYP and 'psych services' that he was, it was clearly false.

598. I also note that the CE, in his letter to me dated 13 June 2017, provided the following information:

...[Ben] was involved in a number of incidents during his time in the AYTC and, as a result, was at times subject to restrictions on his routine to manage the assessed risk to the safety and security of other residents, staff and the AYTC infrastructure. As part of transition planning to support [Ben's] return to the general population, he was provided with opportunities to engage in a range of unit-based programs and activities such as visits to the gym. The provision of a radio was an incentive, depending on his behaviour on the morning shift, and was provided in addition to other stimulation [Ben's] restrictions to his routine were dynamically assessed and were continued where there remained active concerns regarding risk posed by [Ben] to safety and security. [Ben] continued to be provided with access to activities, exercise and mental health support during this period...

599. My analysis of the records suggests that this statement is inaccurate in that:

- it was determined that Ben would not be 'returned to the general population', irrespective of his behavior
- Ben was subjected to restrictions in his routine when there was no evidence that he posed a risk to the safety and security of other residents, staff and the AYTC infrastructure
- in my view, Ben was not provided with sufficient 'opportunities to engage in a range of unit-based programs and activities'
- in my view, Ben's behaviour was not sufficiently reviewed and, as a result, restrictions to his routine continued at times when there were no records of any 'active concerns regarding risk[s] posed by Ben to safety and security'.

Ryan's access to the gym

600. The table summarising Ryan's periods of segregation provided to my investigation by the department states that Ryan was first entitled to attend the gym and pool on 6 February 2017.

601. After his first period of segregation commenced on 17 January 2017, Ryan was advised on 1 February 2017 'that ... gym access will be provided.'

602. On 3 February 2017, a Case Note was made stating '[Ryan] may attend gym with 1 x other resident. To be handcuffed to and from the gym. 3x staff to assist,' but it is not clear to me when Ryan actually first attended the gym after the commencement of his segregation.

603. The Unit Logs for 5 and 6 February 2017 are unclear but it appears that Ryan attended the gym on at least one of these days, and possibly both. He attended again on 7 February 2017 with 'no issues'. Ryan did not go to the gym on 8 or 9 February 2017.

604. On 9 February 2017, Ryan's DRMP was amended to include the following note:

3 x staff required for any movement and exercise time.
Handcuffs still remain for movement around centre except for transition movement with kangaroo Paw [Ryan] is to be escorted to gym/pool area by three staff no handcuffs (for

compliance test) after unit has entered the gym/pool area, and returned to Frangipani prior to unit moving back.

605. On the evening of 10 February 2017, the following was recorded on the Unit Log:

[Ryan] being disrespectful and rude towards staff, blaming them for him not going to the gym or pool, [Ryan] told that, it is not the staffs fault that a code yellow was called. [Ryan] argued with staff saying they "ripped me off". Also that this team "won't let me mix with [redacted] when the manager did today". Staff explained it was written on DRMP that both could not mix. [Ryan] did continue to argue but eventually calmed.

606. Ryan went to the gym next in the evening of 12 February 2017, and subsequently on 14 February 2017 and 18 February 2017.

607. Ryan's second period of segregation started on 24 February 2017. During this period of segregation Ryan first went to the gym on 5 March 2017.

608. On 3 March 2017, a Case Note recorded:

Case Note - [Ryan] will attend outside activity time with Unit Kangaroo Paw, both Saturday & Sunday (gym/pool/oval). If these are successful, he will attend the Learning Centre on Monday. This DRMP will be reviewed and discussed after ARIG.

609. Ryan went to the gym on 5 March 2017 and again on 6 March 2017.

610. In summary, during his total of 48 days of segregation, Ryan attended the gym on 8 occasions, being on:

- 5 February 2017
- 6 February 2017
- 7 February 2017
- 12 February 2017
- 14 February 2017
- 18 February 2017
- 5 March 2017
- 6 March 2017.

Access to exercise - summary and opinion

611. There is no doubt that all prisoners, and particularly young people, need 'physical and cognitive/intellectual stimulation and that boredom or too much time without constructive activity could contribute to a negative mindset and result in an increase in behavioural management issues.'⁸⁹
612. It is clear to me from analysing the records that Ben and Ryan's behaviour was a lot better when they were given access to time out of their rooms and were provided with exercise and stimulation. It is evident from the records that the examples of poor behaviour, including kicking and banging on the door and abusing staff, were in response to being confined in their rooms for long periods of time, with insufficient exercise periods and stimulation. This is only apparent to me from spending a considerable amount of time reading all of the records chronologically and cross-checking them with each other.
613. For example, when Ben participated in the three sessions of a structured exercise program the Case Notes on each occasion were very positive. Following the first session it was recorded that Ben was 'very enthusiastic for the duration' of the session and 'was very grateful' to the staff member for 'facilitating the session'.⁹⁰ Following the second session, on 23 March 2017, a Case Note recorded that Ben 'participated very well' and 'was engaged throughout the duration of the session'. Ben attended the exercise program again on 30 March 2017 and it was reported in the Case Note that he 'engaged very well'.
614. I do not consider that Ben or Ryan received regular or sufficient exercise during their time in segregation, due to:
- the use of mechanical restraints
 - the making of telephone calls during allocated exercise periods (including to their lawyers)
 - a requirement to do chores during allocated exercise periods
 - a requirement to attend professional visits during allocated exercise periods
 - a small space in which to exercise
 - insufficient access to gym facilities and exercise programs
 - frequent lockdowns and lack of staff available to escort them to exercise.
615. As such, my view is that the department did not provide Ben and Ryan with regular sufficient exercise during their time in segregation, in breach of:
- international human rights standards
 - the Charter of Rights
 - the Youth Justice Administration Act
 - the Youth Justice Administration Regulations, and
 - the Segregation Operational Order.

⁸⁹ Ogloff, Professor James, 'Review of Mental Health and Psychosocial Needs of Prisoners Detained in Restrictive Environments', prepared for Justice Health & Corrections Victoria, September 2008, xiv.

⁹⁰ On 16 March 2017.

ACCESS TO OTHER STIMULATION

616. Regulation 7(3)(d) of the Youth Justice Administration Regulations provides that segregating a resident of a training centre, as well as not limiting their access to exercise, also must not limit the resident's access to other stimulation.
617. The Segregation Operational Order states that, as far as reasonably practicable and unless it is unsafe to do so, the resident should be provided with stimulation items.
618. I am unable to determine from Ben and Ryan's DRMPs how much stimulation they were provided with at times during their periods of segregation. Whilst the DRMPs often stated that Ben and Ryan were allowed items such as a radio, television, books, and fidget toys in their rooms, it was also frequently stated that their access to such items was to be 'dynamically assessed by unit staff'.

Ben's access to other stimulation

619. I do know that on 3 February Ben's DRMP was amended after an incident in which he refused to return to be locked in his room and, as a punishment he was denied access to any stimulation in his room, with the only items allowed in his room being finger food, paper cups, limited toilet paper, portion controlled toiletries, a flexi-toothbrush and thongs. It is my understanding that these restrictions remained in place until 15 February 2017, when he was permitted to have a radio, television and fidget toys.
620. On 1 March 2017, Ben's DRMP was amended to state that Ben could no longer be provided with a radio or television (or any items except for a flexi-toothbrush and fidget toys) but that items permitted were to be 'dynamically assessed by staff'. It is unclear to me if Ben was permitted access to television or radio during this period.
621. On 9 March 2017, Ben's DRMP was amended to include that he was permitted paper cups, thongs, shaving, radio, television, books, puzzles and pencils (although this could be 'dynamically accessed by staff') and the following note was made:

...Due to [Ben's] extended stay in Frangipani the following privileges will be permitted alongside his structured routine if behavior is maintained [assessed by staff daily]

1. Monday & Thursday 1pm-2pm exercise program in unit recreation area with program staff
2. Radio issued daily between 12 midday till 10:30pm
3. Games room / x-box - Times at staff discretion and staff to follow individual association restrictions based on staff / BSO consultation
4. AM phone calls permitted.

622. It is unclear to me if Ben was permitted access to television during this period. Although, given that the times Ben was permitted a radio are specified and nothing is specified for television, I consider it is possible that he was not.
623. On 17 March 2017, Ben's DRMP was amended to remove access to all items except a flexi-toothbrush and to state that the items he would be allowed in his room were to be 'dynamically assessed by unit staff'. The following note was made on the DRMP:
- [Ben] has displayed appropriate behaviour for a period of time, but is unable to transition to another unit. The following privileges may be permitted in addition to his routine:

1. Monday & Thursday 1pm-2pm exercise program in unit recreation area with program staff
 2. Radio issued daily between 12 midday till 10:30pm
 3. Games room / x-box - Times at staff discretion (GAMES ROOM DOOR MUST REMAIN OPEN)
 4. Extra or extended periods of exercise.
624. On 30 March 2017, a Case Note was made that Ben was 'given loss of tv for [being] disrespectful to the writer [sic] will be given television access back after some positive behaviour.' It is not clear to me if, or when, Ben was given access to television again.
625. Ben's DRMPs continued to state that all items permitted in his room would be 'dynamically assessed by staff' until he was transferred to the adult system on 5 April 2017. Given this, I am unable to determine what stimulation was provided to Ben during this period.
626. Given the potential mental health impact that could foreseeably result from placing a person in a small room without stimulation for extended periods of time, as well as the recognition of the need for stimulation provided for in the Youth Justice Administration Regulations and the Segregation Operational Order, I consider that it was wrong for the department not to accurately record what stimulation was provided to Ben during his periods of segregation.
627. Notwithstanding the poor record keeping, it is clear to me that there were significant periods of time while Ben was in segregation when his access to stimulation was limited. As such, my view is that the department acted in breach of Regulation 7(3)(d) of the Youth Justice Administration Regulations.
628. Further, I have not identified sufficient evidence to satisfy me that providing Ben with stimulation was not reasonably practicable or that it was unsafe to do so. As such, I consider that the department breached the Segregation Operational Order.

Ryan's access to other stimulation

629. On 17 January 2017, Ryan's DRMP provided that he could have the following items in his room:
- paper cups
 - TV
 - books
 - fidget toys
 - thongs
 - toilet paper limited
 - portion controlled toiletries
 - flexi-toothbrush.
630. On 19 January 2017, Ryan's DRMP was amended to allow him to have a radio in his room.
631. On 23 January 2017, Ryan's DRMP was amended to state that the items he was permitted were to be 'dynamically assessed by unit staff'. Given that the items Ryan was permitted in his room were 'dynamically assessed by staff' and not recorded, I am unable to determine what access to stimulation Ryan had during the periods he was locked in his room.

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632. I note, however, that on 1 February 2017, a Case Note was made on Ryan's records which stated that he 'was told that incremental steps will be taken to ensure he is provided with stimulations...' The records indicate that, prior to this Case Note, it appeared that Ryan had behaved well and there were no reports of any poor behaviour. As such, it is not clear to me why Ryan was only allowed 'incremental' access to stimulation.
633. I further note, with concern, that on 3 February 2017, 4 February 2017 and 5 February 2017, Ryan was confined to his room for over 22 hours each day (being unsecured for 85, 20 and 116 minutes each day respectively). With stimulation being provided 'incrementally' at this time it is reasonable to conclude that Ryan did not have access to sufficient stimulation. I consider that this constitutes cruel and inhuman treatment or punishment, which is prohibited under section 29 of the Youth Justice Administration Act.
634. On 14 February 2017, Ryan's DRMP was amended to state that the items he was permitted in his room were to be 'dynamically assessed by unit staff', without specifying any items. This remained until he was transferred to the adult prison system on 28 March 2017.
635. Given the above, I am not able to determine whether Ryan was provided sufficient access to stimulation, although given the reference to 'incremental steps' being taken to provide him with stimulations, I consider that it is reasonable to conclude that Ryan's access to stimulation was limited, in breach of Regulation 7(3)(d) of the Youth Justice Administration Regulations.

Access to other stimulation - summary and opinion

636. As I have stated elsewhere in this report, I consider it open to argument as to whether Ben and Ryan were subjected to segregation or isolation during the relevant periods. However, the department is of the view that they were subject to segregation. As such, I have considered Ben and Ryan's access to exercise and other stimulation in accordance with the requirements for segregation.
637. In any event, I note that Regulation 6(7) of the Youth Justice Administration Regulations provides that a resident who is isolated from the other residents of the centre must, if possible, be provided with mental or physical stimulation that does not constitute a risk to the resident's safety. In addition, the Use of Isolation Operational Order provides that a resident who is isolated must be provided with mental or physical stimulation, unless it is unsafe to do so.
638. There is no doubt that exercise and meaningful activities, both in and out of the cell, are important for young people who spend considerable time in restrictive environments. The UN Special Rapporteur stated:
- When children spend most of their time confined in their cells, they may experience a lack of motivation and even depression, which in turn can lead to incidents of abuse and violence between children or with staff members. The Special Rapporteur wishes to point out that, while lack of activities is detrimental for any prisoner, it is especially harmful for children, who have a particular need for physical activity and intellectual stimulation.⁹¹
639. Ben and Ryan were entitled to regular exercise and other stimulation under the Youth Justice Administration Act, the Youth Justice Administration Regulations, the Charter of Rights and international human rights standards. They did not receive it, and I consider their treatment to have been inhumane.
640. As such, my view is that the department limited Ben and Ryan's access to stimulation during their time in segregation, in breach of section 7(3)(d) of the Youth Justice Administration Regulations.

⁹¹ United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, 5 March 2015, para 49.

ACCESS TO FAMILY

641. Section 3 of the Youth Justice Administration Act provides an object of the Act is ‘to recognise the importance of family and community involvement and participation in administering youth justice.’ Further, the right to have regular contact with family and friends through visits and phone calls is stipulated in the Charter of Rights. It is also a human right reflected in international human rights. Havana Rule 60 provides:

Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

642. The right to have regular contact with family and friends, and the importance of family and community involvement and participation in administering youth justice, must not be abrogated by the restrictions of segregation or a DRMP. This is stipulated in Regulation 7(3)(e) of the Youth Justice Administration Regulations, and the Segregation Operational Order, which provide that segregating a resident of a training centre must not, *in any circumstances*, restrict the resident’s access to contact with visitors (whether in person or by telephone) beyond what is normally allowed for the resident. [my emphasis]

643. The Charter of Rights provides that residents have the right to have regular contact with their family and friends through visits and phone calls.

644. My investigation has considered whether Ben and Ryan’s right to have regular contact with family and friends was abrogated, and whether their contact with family and friends was unreasonably restricted during their periods of segregation.

Ben’s contact with his family

645. The records indicate that Ben has a close relationship with a large network of family and friends.⁹²

646. The Visitor Log records that, during Ben’s 82 days in segregation, he had 12 personal visits, as follows:

- 22 January 2017 - mum, sister and brother
- 2 February 2017 - friend
- 12 February 2017 - father, stepmother and three siblings
- 13 February 2017 - father, stepmother and three siblings
- 19 February 2017 - father, stepmother and three siblings
- 24 February 2017 - friend
- 26 February 2017 - friend
- 3 March 2017 - mother and brother
- 24 March 2017 - friend
- 31 March 2017 - mother, grandmother, grandfather, brother and friend
- 1 April 2017 - two friends
- 2 April 2017 - father, stepmother and three siblings.

647. However, my investigation has carefully examined the available evidence and I am satisfied that five of these visits did not occur.

⁹² For example, an Assessment Update completed by his Case Manager on 29 March 2017 recorded “according to Departmental records [A] has a close relationship with his mother”.

648. When Ben's second period of segregation commenced on 11 January 2017 the DRMP recorded the following:

6. Visits

Contact visits Non-contact visits Other information (see section 11)

649. Section 11 of the DRMP included the following note:

3 x staff (including 1xOPS4 or above) for movements to visits. Consider whether visits are necessary, due to restricted handcuff routine.

650. This note remained on Ben's DRMP for the three day segregation period.

651. Ben's third period of segregation commenced on 17 January 2017. The 18 January 2017 DRMP recorded that he was only to have non-contact visits.

652. On 22 January 2017, Ben attended a visit with his mother, sister and brother. According to the SRRA Log and the Unit Log, Ben spent a total of 30 minutes out of the unit for this visit. There is nothing recorded to indicate why the visit was so short.

653. Following the visit a note was made on Ben's DRMP recording that he was 'compliant during movement' to the visit centre. Regardless of this, when Ben's DRMP was reviewed on 24 January 2017 the requirement for non-contact visits remained.

654. On 2 February 2017, the Visitor Log recorded that Ben had a 'friend' visit from 19:00 to 20:00. There is, however, no record in the SRRA Log or the Unit Log of Ben leaving the unit for a visit at this time.

655. A meeting with Ben's family was scheduled to occur on 3 February 2017, however, the meeting was cancelled as a result of Ben's behaviour (see paragraph 172). A Case Note recorded:

[Ben] was informed by the writer his personal visit had been cancelled due to his incident and he would only be able to contact his mum and dad tonight by phone.

656. On 6 February 2017, a Case Note recorded that Ben was 'unable to attend [the] Visits Centre due to being in Frangipani Unit on restricted routine in canvas and handcuffs'.

657. On 11 February 2017, the restrictions on Ben's visits were reviewed and Ben's DRMP was revised to record that 'due to his compliance' he could 'progress to being able to complete a contact visit with family'. Ben was, however, to remain 'cuffed throughout the visits and movements'. This remained on his DRMP until 17 February 2017.

658. On 12 February 2017, the Visitor Log recorded that Ben's father, step-mother and three siblings visited him at 13:15 for an hour. However, a Case Note records that his father cancelled the visit.

659. On 13 February 2017, the Visitor Log recorded that Ben's father, step-mother and three siblings visited him from 17:30 to 18:30. Again, the visit is not recorded on the SRRA Log or the Unit Log. Rather, a Case Note records that Ben spent 'most of his day secured in his cabin or courtyard due to poor behaviour'. This suggests to me that it is possible that Ben was not permitted to see his family because of his 'poor behaviour'.

660. On 17 February 2017, Ben's DRMP was revised and the note stating that he had to remain cuffed during visits was removed.

661. On 19 February 2017, Ben had a visit with his father, step-mother and siblings. The Visitor Log records the visit as occurring between 13:15 and 14:15, however, the Unit Log records that Ben was out of the unit for the visit between 13:45 and 14:50. The SRRA Log records that Ben was out of the Unit between 13:00 and 16:30. As such, I am unable to determine from comparing the Unit Log, the SRRA Log and the Visitor Log, how long the visit was for.
662. On 24 February 2017, the Visitor Log records that Ben had a visit with a friend from 19:00 to 20:00. The SRRA Log records that he was out of his room at 19:00 but does not record that he left the unit for a visit. The Unit Log records that Ben was out of his room 'for exercise' between 19:00 and 19:30. Given this, I consider it is reasonable to conclude that the visit did not occur.
663. On 25 February 2017, after Ben had been told that he was not going to be transitioning out of the Frangipani Unit, his DRMP was revised to stipulate that he was only to have non-contact visits.
664. On 26 February 2017, Ben had a visit with a friend between 13:15 and 14:15. He was upset that the visit was a non-contact visit.⁹³
665. On 3 March 2017, Ben was handcuffed and escorted by three staff to a visit with his mother and brother. Prior to the visit Ben approached a staff member and asked 'about the possibility of' the visit being a contact visit.⁹⁴ A Case Note recorded that the staff member spoke to Mr Green and:
- ... it was agreed that due to [Ben's] improved behaviour he would be given the opportunity to have contact visit, however he would still need to be hand cuffed for movement. It was also explained to [Ben] that this would be reviewed & possibly stopped if his behaviour slipped.
666. After the visit, a Case Note recorded that the visit appeared to be successful' and 'nil behavioural issues [were] observed.'
667. On 4 March 2017, Ben's DRMP was revised to permit contact visits. A note on the DRMP recorded the following:
- [Ben] completed contact visit without issue with cuffs removed during visit as directed by Management. Additional staff provided for movement as listed below.
668. On 24 March 2017, the Visitor Log records that Ben had a visit with a friend between 19:00 and 20:00. However, the SRRA Log records that Ben was secured in his room at this time. The Unit Log for this time is redacted. As such I do not consider it likely that the visit occurred.
669. On 31 March 2017, which was Ben's birthday, he was permitted to visit with his family (mother, brother, friend and grandparents) in the evening. The Visitor Log records that they visited from 17:30 to 18:30.
670. On 1 April 2017, the Visitor Log records that Ben had a visit with two friends between 10:45 and 11:00am. The Unit Log records that he was 'out to visits' between 11:10 and 12:00. No SRRA Log was provided to my investigation for this date.
671. On 2 April 2017, Ben had a visit with his family between 13:15 and 14:15.

⁹³ Case Note, 26 February 2017.

⁹⁴ Case Note 3 March 2017.

672. In summary, whilst the Visitor Log records that Ben had 12 personal visits during his 82 days of segregation, it is reasonable to conclude that Ben had seven visits. Of these, two included the presence of his father and three his mother.
673. I also note that Ben's phone contact with his family was restricted. On 23 January 2017, a Case Note recorded that Ben 'reported that his phone nominations are not being approved due to his behaviour.' Further, Ben had to make phone calls during the limited times he was permitted out of his room for exercise periods.
674. I consider that residents in segregation should be permitted time out of their rooms to make phone calls, in addition to the exercise periods. A resident should not have to choose whether to exercise or to have contact with their family and friends.
675. Further, I note that in all of the records available to me, there is nothing to indicate that Ben had ever behaved in a way that would cause any concerns during visits with his family. Rather, a Risk Review Assessment undertaken by CAMHS while Ben was in canvas recorded that communication with his parents would assist him to cope, as follows:⁹⁵

6. Coping resources/ Positive factors/ Reasons for living/?

Ask the resident if they can identify what things have helped in the past? What helps them to cope/ keep going?

Communication with parents.
Exercise

Ryan's contact with his family

676. It was recorded that Ryan mostly lived in the care of his grandmother throughout his childhood. The records also state that Ryan has 'an extensive network of family and friends across Adelaide.'⁹⁶
677. The Visitor Log records that, during Ryan's 48 days in segregation, he had two personal visits with his grandmother, being on 20 January 2017 and on his birthday on 1 February 2017. No other personal visits are recorded.
678. On 20 January 2017, the Visitor Log records that Ryan's grandmother visited him from 19:00 to 20:00. However, the Unit Log and SRRA Log record Ryan as being secured in his room (at his request) at 17:35 and not leaving the room again that day. Given this, I am satisfied that the visit on 20 January 2017 did not occur.
679. On 1 February 2017, the Visitor Log records that Ryan's grandmother visited him from 19:00 to 20:00. However, the Unit Log and SRRA Log record that Ryan was let out for 23 minutes in the evening and 'allowed 2 phone calls since it's his birthday.'
680. Further, the records provide that Ryan's grandmother was not given approval to visit with Ryan until 16 February 2017.⁹⁷

⁹⁵ Dated 6 February 2017.

⁹⁶ Custodial Remand Assessment, 23 February 2017.

⁹⁷ See AYTC Visitor and Contact Nomination Form dated 16 February 2017.

681. Given the above, it appears that Ryan did not have a visit with his grandmother on 1 February 2017, and it seems possible that Ryan was not permitted the visit with his grandmother, despite records of good behaviour and no indications of any risks.⁹⁸
682. On 7 February 2017, Ryan met with the Cultural Advisor and the Assessment and Case Coordination Manager. A Case Note of the meeting records an offer for Ryan to be able to meet with his father and 'other significant family'. It also records a request by Ryan for a visit with his cousin, as follows:

ACCM asked [Ryan] about recent statements of wanting to go to the adult system. [Ryan] stated "yes that's right, i just want to go". ACCM stated to [Ryan] that he need to speak with his lawyer about this and this can and will be arranged for him however ACCM stated that [Ryan] should have a conversation with his dad and other significant family members and make an Informed decision. [Ryan] agreed to this. ACCM asked if [Ryan] would like for a visit to be arranged with dad and other significant family so these conversations can take place. [Ryan] agreed to this.

...

[Ryan] asked ACCM if he could have a family visit with his 1st cousin ... (resident at AYTC). [Ryan] stated this was about providing support to each other as family. ACCM stated she would look into this.

683. There is no evidence in the documents provided to my investigation to indicate that any action was taken by staff to arrange these visits.
684. On 7 March 2017, Ryan's siblings and a cousin were granted approval to be able to visit Ryan. There is, however, no record that any visits from them occurred.
685. Given the above, I am satisfied that, during Ryan's 48 days of segregation, he had no family contact. This is despite evidence that he has strong family ties and that he had requested contact with his family.
686. Regulation 5 of the Youth Justice Administration Regulations provides the following Aboriginal and Torres Strait Islander Youth Justice Principle:
- (d) that, where it is appropriate to do so, the identified family, significant person and community of an Aboriginal or Torres Strait Islander youth are participants in assessment, case planning and decision-making for the youth;
687. I consider that steps should have been taken to ensure that Ryan had contact with his family.

⁹⁸ Prior to the date DASAYV done on 23 January 2017 - score zero.

Summary and opinion - access to family

688. It is greatly concerning to me that the Visitor Logs are so clearly inaccurate. Given their inaccuracy, the only way to determine if a resident had contact with their family is to read through the SRRA Logs and the Unit Logs.
689. The department, in its response to my provisional report, accepted that the information given to my investigation about visits was inaccurate, and accepted that 'resident visit record keeping was extremely poor'. The department provided me with additional information and alternative views, however recognised that both Ben and Ryan 'had limited visits throughout their time at the AYTC', that 'security considerations impacted Ben's visits' while he was on a restricted routine, and that Ryan did not have any visits with his family while he was in segregation. As such, the department's response to my provisional report has not changed my views.
690. Section 3(1)(j) of the Youth Justice Administration Act provides that a guiding principle of the Act, is 'to recognise the importance of family and community involvement and participation in administering youth justice.' Not only were family and community not encouraged to be involved and participate in the administering of youth justice for Ben and Ryan, it appears to me that Ben and Ryan were restricted in their contact with their families.
691. Ben was permitted non-contact visits only, including at times when he had displayed good behaviour and there were no obvious risks recorded. When Ben was permitted to attend visits with his family, it was usual that there were a number of AYTC officers present and that Ben was handcuffed for the duration of the visit.
692. Ryan did not have any visits with his family during his 48 days of segregation and I consider that the department failed to take reasonable proactive steps taken to ensure that he had visits with members of his family.
693. In my view, the above demonstrates a failure of staff to recognise Ben and Ryan's right to receive regular and frequent visits, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family.⁹⁹ I consider that access to family would be particularly important when a vulnerable young person is in segregation.
694. I consider that it is reasonable to conclude that the department did not sufficiently facilitate meaningful personal contact for Ben and Ryan with their families, and that denying access to visits with their family was, at times, used as a punishment.
695. In my view the department:
- failed to recognize the importance of family and community involvement and participation in administering of youth justice to Ben and Ryan
 - denied Ben and Ryan regular contact with family and friends
 - denied Ben and Ryan the right to private, unrestricted contact and communication with their family
 - restricted Ben and Ryan's access to contact with family and friends as a part of segregation
 - restricted Ben and Ryan's access to contact with family and friends as a form of punishment for poor behavior.
696. In doing so, my view is that the department acted contrary to:
- section 3 of the Youth Justice Administration Act

⁹⁹ Havana Rule 60.

- the Charter of Rights
- regulation 7(3)(e) of the Youth Justice Administration Regulations, and
- section 2.1 of the Segregation Operational Order.

THE USE OF MECHANICAL RESTRAINTS

697. Mechanical Restraints are any device, instrument or physical object used to restrict a resident's freedom of movement.
698. Section 29(f) of the Youth Justice Administration Act provides that residents of a training centre must not be subjected to restriction of free movement by means of mechanical restraints other than in prescribed circumstances.
699. The prescribed circumstances permitting the use of mechanical restraints on a resident of the AYTC are set out in regulation 8 of the Youth Justice Administration Regulations, which provides that a young person may only have their free movement restricted by means of mechanical restraints if:
- the mechanical restraint is of a kind approved by the CE for the purpose, and
 - an employee of the centre believes on reasonable grounds that the resident is about to harm himself or herself or another person, or
 - an employee of the centre believes on reasonable grounds that it is necessary to restrain the resident—
 - to preserve the security of the centre; or
 - to prevent the resident from escaping from custody; or
 - to preserve community safety.
700. Regulation 8 further provides that mechanical restraints:
- may only be used as a last resort following an assessment of the risks associated with using, or not using, the mechanical restraints
 - must not be used to punish the resident or
 - must not be used in contravention of the Charter of Rights.
701. When mechanical restraints are used the Youth Justice Administration Regulations also provide that their use must be reasonable, justified and proportionate in the circumstances, and that the restraint may only be used for as long as necessary in the circumstances.
702. Further, regulation 8(5) provides that the CE must establish procedures to be followed relating to the use of mechanical restraints on residents of a training centre.
703. At the relevant times, the Use of Mechanical Restraint Security Order¹⁰⁰ was in place at the AYTC to provide the circumstances in which a resident could be restrained, and to outline the procedures to be followed and the associated reporting and recording requirements to ensure compliance with the legislation.
704. The Use of Mechanical Restraint Security Order provides that mechanical restraints must also be applied in accordance with Operational Order 24 - Use of Reasonable Force.
705. The Use of Mechanical Restraint Security Order describes the technique of palms facing front as:
- Resident is cuffed with arms in front, palms facing each other.
 - This technique is to be utilised when the resident is compliant and it is reasonably expected that the young person will remain compliant for the duration of the escort.
 - Handcuffs must be double locked at all times when applied.
706. The Use of Mechanical Restraint Security Order describes the technique of palms 'facing-back' as:

¹⁰⁰ Adelaide Youth Training Centre, Security Order, 'Use of Mechanical Restraint', Version 2, 01/12/2016.

- Resident is cuffed behind their back with palms facing out.
- This technique is the preferred technique where the resident is non-compliant.
- Handcuffs must be double locked at all times when applied.

The use of handcuffs on Ben

707. It appears from the records available to me that Ben was not mechanically restrained during his first period of segregation (for one day on 27 December 2017).
708. Ben was mechanically restrained during his second period of segregation of three days (from 11 January 2017 to 14 January 2017).
709. When Ben was taken to the Frangipani Unit on 11 January 2017 handcuffs and a spit mask were used. The use of spit masks in AYTC is the subject of another investigation by my Office. As such, I do not consider that it is necessary for me to address the use of spit hoods in the AYTC in this investigation.
710. After Ben was taken to the Frangipani Unit he was placed under segregation and the DRMP provided that he was to be handcuffed with his palms facing the front during any movement out of his room, including for phone calls. The handcuffs were to be removed externally for exercise in the courtyard. This regime continued until 13 January 2017, when Ben's DRMP was revised and mechanical restraints were no longer required.
711. Given that the records show that Ben's behaviour during this three day second period of segregation was 'threatening and non-compliant'¹⁰¹ it may have been reasonable for the staff to have formed the view that the use of the mechanical restraints was necessary to preserve the security of the centre. As such, the use of restraints may have been reasonable, justified and proportionate in the circumstances.
712. I note, however, that Ben was only unsecured from his cell for 75 minutes on 12 January 2017 and for 140 minutes on 13 January 2017, so it appears possible to me that his behaviour may have been a response to his lack of stimulation and prolonged confinement.
713. At the commencement of Ben's third period of segregation, his DRMP, at 06:50 on 18 January 2017, provided that he was to be handcuffed with 'palms facing front' during movement and for exercise periods. The DRMP was amended at 13:00 to add that Ben also had to be handcuffed while on the phone and to state that Ben had to be handcuffed 'back to back' during movement and for exercise periods.
714. The Use of Mechanical Restraints Security Order states that the 'back to back' handcuffing technique 'is the preferred technique where the resident is non-compliant'. In my view, there is not sufficient evidence recorded to support that Ben was non-compliant and required his hands to be cuffed behind his back at this time.
715. At 19:57 on 18 January 2017, a Case Note recorded that Ben was 'compliant with direction of staff as required.'
716. On 19 January 2017, Case Notes recorded:
- ...[Ben] then asked 'When am I going to come off handcuffs'? To which he was informed that removal of handcuffs is behaviour dependent...

¹⁰¹ Case Note, 06:49PM, 12 January 2017.

When on exercise in courtyard staff are to remain in courtyard due to resident being handcuffed behind back, when resident is walking staff are to assist with physical escort. When resident is seated staff can remove physical escort position.

717. Later on 19 January 2017, a dynamic appraisal of aggression was undertaken and Ben scored a low DASAYV score of 1. As a result, Ben's DRMP was amended. A Case Note recorded:

DRMP will now allow removal of handcuffs while in courtyard via courtyard fence with three staff present for removal once in courtyard and fitting of handcuffs for return to room or phone box after exercise time.

718. On 20 January 2017, Ben's DRMP was revised to provide that he had to be handcuffed with 'palms facing front' during movement and for exercise periods and phone calls. On analysis of the records, it appears unreasonable that Ben was handcuffed behind his back from 18 January 2017 to 20 January 2017.

719. On 21 January 2017, Ben's DRMP was revised to have handcuffs 'removed externally' for exercise periods, and the following note was made:

[Ben] will remain handcuffed to front for movement around accommodation unit once secured in courtyard handcuffs can be removed with three staff present via courtyard fence, two staff controlling [Ben's] hands and third staff controlling fitting and removal of handcuffs. [Ben] on A.M shift has been compliant during movement for exercise and also to visit centre.

720. Given that Ben had been compliant, it appears that the continued use of handcuffs on Ben may have been unnecessary in the circumstances.

721. On 22 January 2017, a Case Note recorded:

[Ben] informed his visit today will be non contact for staff and centre safety. [Ben] became angry upset. [Ben] begins stating "That's fucked" and refers to staff as "fucking dogs". [Ben] then states 'You watch me crack up'. This statement was perceived as a threat towards staff.

[Ben] was observed kicking aggressively on his door in anger.

[Ben] will remain in mechanical restraints for his next exercise period to ensure staff safety and centre security. To be reviewed after next exercise. Duty Supervisor informed.

722. On 24 January 2017, the use of mechanical restraints for Ben's movement in the unit was removed. Ben was still required to be handcuffed for movement in the centre and for attending visits.
723. On 3 February 2017, Ben's DRMP was revised due to poor behaviour (which, as I have stated earlier in my report, seems to me to have occurred as a result of prolonged periods of isolation). Ben was then required to be handcuffed behind his back for movement, for exercise periods and for phone calls. This handcuff regime continued until 9 February 2017, when Ben's DRMP was revised to have his handcuffs changed to the front, rather than behind. Ben remained handcuffed during exercise periods.
724. Ben continued to be handcuffed during exercise periods until at least 12 February 2017. I consider that this was unreasonable in the circumstances, and that such restraint was contrary to regulation 8(5)(d), which provides that restraints are only to be used for as long as necessary in the circumstances.

725. On 12 February 2017, Ben's DRMP was revised to no longer require him to be handcuffed during his exercise periods. I am not, however, able to determine from the records available to me, whether in fact Ben's handcuffs were removed during his exercise periods. I note a Case Note on 13 February 2017 recorded:

[Ben] will not require mechanical restraints tomorrow. During the first exercise period without cuffs [Ben] will require the presence of one Behavior Support Officer and three OPS3 Youth Workers. Behavior Support Officer will then review [Ben's] plan after the first exercise.

726. On 15 February 2017, Ben's DRMP was again revised and he was no longer required to be handcuffed during phone calls. Ben was still to be handcuffed during movements to the courtyard, with the handcuffs to be removed externally.

727. I am unable to determine from the records available to me precisely when Ben was handcuffed and when he was not.

728. I note a Case Note on 14 February 2017 which records that 'when he was out of his room he was no issues [sic] and interacted well with staff'.

729. Given the information available to me, and that Ben did not pose a threat such that it was necessary to handcuff him while he was on the phone, it appears that Ben's handcuff regime for movements in the unit was unnecessary and unjustifiable in the circumstances and that restraints were being used on him for longer than was necessary in the circumstances, possibly as a form of punishment.

730. On 17 February 2017, Ben's DRMP was amended to no longer require Ben to be handcuffed for movements around the centre. However, a Case Note on 18 February 2017 records:

[Ben] as part of his ongoing transition and compliance attend [sic] gym along with one other unit frangipani resident. [Ben] was handcuffed for the movement and accompanied by three staff and the duty manager. The exercise period went well...

731. On 23 February 2017, after Ben was advised that he would not be transitioning out of the Frangipani Unit, his behaviour deteriorated.

732. At 08:30 on 28 February 2017, Ben's DRMP was amended to require that he be handcuffed for all movement around the centre. At 15:30 the DRMP was amended again to require Ben to be handcuffed with 'palms facing front' during his exercise periods. The following Note was recorded on Ben's DRMP:

[Ben] placed back on handcuffs for exercise periods. First exercise period will require [Ben] to be handcuffed for entire exercise period including phone calls. Second exercise period will require [Ben] to be handcuffed to courtyard door secured and handcuffs removed through handcuff trap door. Three staff present for application and removal of handcuffs, two controlling [Ben's] hands and one applying and removing handcuffs through handcuff traps.

733. It cannot, in my view, have been considered necessary for security or safety purposes for Ben to have been handcuffed during the first morning exercise period, and not for the second exercise period. As such, it is reasonable to conclude that the use of the handcuffs for the first exercise period was likely to have been punitive.

734. At 19:00 on 28 February 2017, Ben's DRMP was revised again to permit Ben to have handcuffs removed during his exercise periods. However, a note was made on the DRMP that Ben 'continued to make threats' and was 'kicking' and 'banging' and broke his television. As a result 'of these behaviours', Ben was unable to have his first

exercise period. It was then recorded that Ben 'calmed & completed one exercise period cuffed.'

735. On analysis of the records, there seems to be no consistency in the application of the requirement for handcuffs during exercise periods, or, at times, between what is recorded on the DRMP and what actually occurred.
736. The DRMP continued, with Ben to be handcuffed during movements in the unit, until it was revised at 14:00 on 1 March 2017 to require handcuffs for movements out of the unit and for when on the phone. A note on the DRMP records:
- [Ben] is to be physically escorted to courtyard for P.M exercise periods after compliance test... and secured in courtyard for exercise. If [Ben] requests a phone call during exercise period handcuffs are to be applied to front for phone call as well as physical escort to and from phone booth, secured and in room and handcuffs removed (due to history of stand off with staff after phone calls). Review to consider physical escort for A.M exercise periods 02.03.2017 and no use of handcuffs.
737. It appears to me from this note that handcuffs may still have been applied for Ben's first morning exercise periods.
738. At 19:00 on 1 March 2017, a note was made to the DRMP:
- [Ben] has been compliant and has engaged well with staff. Due to the heat in the courtyard he had his first exercise period in the common area with cuff in place.
739. It is not clear to me from the records that the handcuffs were necessary for Ben's exercise period in the common area, or that this was in accordance with the DRMP.
740. On 4 March 2017, Ben's DRMP was amended to record that he no longer required a room with a cuff trap.
741. It appears that Ben required handcuffs for movement around the centre for the remainder of his time at AYTC.

The use of handcuffs on Ryan

742. Ryan was mechanically restrained during his first period of segregation (from 17 January 2017 to 20 February 2017).
743. Ryan's DRMP at 20:00 on 17 January 2017 provided that he was to be handcuffed 'back to back' during movement, for exercise periods and while on the phone.
744. At 20:00 on 18 January 2017, a Case Note recorded that Ryan 'had 2 good exercise periods followed direction and interacted well with staff.' Yet, at 21:00 a further Case Note recorded:
- Note details:**
Remains on restricted due to the serious nature of offence and history. Further compliance and consistency in confirming behavior required.
- Decision and Rationale:**
Staff and centre security and safety
745. There are no indications of any non-compliant behaviour in the records, or any evidence to suggest that Ryan posed any security threat. However, on the morning of 19 January 2017, a Case Note recorded:

When on exercise in courtyard staff are to remain in courtyard due to resident being handcuffed behind back, when resident is walking staff are to assist with physical escort. When resident is seated staff can remove physical escort position.

746. Another Case Note was made at 13:30 on 19 January 2017, recording that Ryan's DRMP was reviewed and that the handcuffs could be removed through the courtyard fence for his exercise periods. However, the DRMP provided to me, which has the time as 13:30 on 19 January 2017, records that Ryan was to be handcuffed 'back to back' during exercise periods.
747. It was not until 14:00 on 21 January 2017 that Ryan's DRMP was revised to reflect that he could have exercise in the courtyard with the handcuffs externally removed.
748. Ryan was still required to be handcuffed for movements and while he was on the phone, even though the records show he was 'compliant' and 'respectful',¹⁰² there were no records of any security or behavioural concerns and Ryan had DASAYV scores of zero. Given this, it appears that the continued use of handcuffs on Ryan until this time may have been unnecessary in the circumstances.
749. On 24 January 2017, a Case Note recorded the following:
- DRMP reviewed. Mechanical restraints removed for movement in accommodation and will remain on mechanical restrained utilizing physical escort for movement around centre and remain with non-contact personal visits. Portion controlled toiletries removed, unit issue toiletries now able to be supplied to resident. Toiletries to be removed after use and not to remain in rooms. Physical escort to be utilized while moving around accommodation unit.
750. On 24 January 2017, Ryan's DRMP was amended to remove all requirements for handcuffs, however the box requiring 'handcuffs removed externally for exercise' remained checked.
751. On 25 January 2017, Ryan's DRMP was amended and the requirement for handcuffs to be removed externally for exercise was removed. The DRMP no longer included any mechanical restraints for Ryan, just additional staff for movements.
752. On 3 February 2017, a Case Note was made that Ryan could go to the gym and was 'to be handcuffed to and from the gym'. However, the DRMP was not amended to reflect this. The DRMP noted that Ryan was to be 'cuffed during all movement' but the check box requiring handcuffs was not marked and the DRMP did not record whether cuffs were to be applied in front or behind.
753. This mechanical restraint regime remained in place until 6 February 2017, when a note was made on Ryan's DRMP:
- [Ryan] will be able to attend the gym and pool with unit Kangaroo Paw. [Ryan] does not need to be handcuffed for this movement...
754. On 14 February 2017, Ryan's DRMP was changed and there were no longer any requirements for restraints or physical escorts. This remained in place until the end of his first period of segregation on 20 February 2017.
755. I consider that the use of mechanical restraints on Ryan from 17 January 2017 to 14 February 2017 was not always necessary and justifiable in the circumstances, and that

¹⁰² Case Note, 19 January 2017 and 20 January 2017.

restraints were at times used on him for longer than was necessary in the circumstances, possibly as a form of punishment.

756. Ryan's DRMPs for his second, third and fourth periods of segregation did not record any use of mechanical restraints.

The use of mechanical restraints - summary and opinion

757. In summary, it appears from the records available to me that Ben was handcuffed at all times he was out of his room, including for exercise periods, on at least the following dates:
- 18 January 2017
 - 19 January 2017
 - 22 January 2017
 - 5 February 2017
 - 6 February 2017
 - 7 February 2017
 - 8 February 2017
 - 9 February 2017
 - 10 February 2017
 - 11 February 2017.
758. In summary, it appears from the records available to me that Ryan was handcuffed at all times he was out of his room, including for exercise periods, on at least the following dates:
- 18 January 2017
 - 19 January 2017.
759. My view is that the use of mechanical restraints on Ben and Ryan was contrary to section 29(f) of the Youth Justice Administration Act, in that Ben and Ryan's free movement was restricted by means of mechanical restraints when the prescribed circumstances in regulation 8 of the Youth Justice Administration Regulations did not apply.
760. I also consider that the use of mechanical restraints on Ben and Ryan was contrary to Regulation 8, as the use of handcuffs was not always:
- as a last resort
 - reasonable, justified and proportionate in the circumstances
 - only for as long as necessary in the circumstances.
761. I also consider that the use of mechanical restraints on Ben and Ryan was contrary to Regulation 8 as there is not always sufficient evidence to satisfy me that the staff would have believed on reasonable grounds that it was necessary to restrain Ben and Ryan because:
- they were about to harm themselves or others
 - it was necessary to preserve the security of the centre
 - it was necessary to prevent them from escaping, or
 - it was necessary to preserve community safety.
762. I consider that the use of mechanical restraints on Ben and Ryan was contrary to the Charter of Rights, as I am of the view that restraints were used on Ben and Ryan when it was not absolutely necessary and, at times, appeared to have been used as punishment.
763. I also consider that the department acted contrary to the record keeping requirements in Regulation 8 of the Youth Justice Administration Regulations and in the Use of Mechanical Restraints Security Order, in that there do not appear to be accurate records of:
- the date and period of times the restraints were used
 - the reason for the use of the restraint
 - the name of the employee who applied the restraints

-
- the type of restraints used.
764. I note that some of this information can be determined from analysis of the DRMPs, the Unit Logs and the SRRA Logs, for example, how long they were restrained for. Other information, such as who applied the restraints, does not appear to be recorded at all.
765. The Use of Mechanical Restraints Security Order specifies that a regular audit of compliance with this Security Order is undertaken and any non-compliance is reported in the monthly audit report to the Director, Youth Justice.
766. In a letter from the CE to the Ombudsman dated 13 June 2017, the CE stated that ‘the use of mechanical restraints, such as handcuffs, is used in accordance with the procedure’. For the reasons stated above, I do not consider that the mechanical restraint of Ben and Ryan was always in accordance with the Use of Mechanical Restraints Order. Unless there are other records kept of the use of mechanical restraints which have not been provided to my investigation, I do not consider that the AYTC staff would be able to properly identify non-compliance from the records they kept.
767. In its response to my provisional report, the department acknowledged that the record keeping at the time ‘was not sufficient to adequately demonstrate the rationale, justification or necessary details’ required for the use of the mechanical restraints. The department, however, retained the view that the use of mechanical restraints on Ben and Ryan was ‘justified’ and was ‘a last resort considering the difficulties and complexities of managing these young people’.
768. It must be recognised that a high percentage of young offenders have experienced trauma and managing behaviour must be done in a manner that does not cause any further trauma. The use of restraints on young people should be a last resort, particularly during exercise periods. Given this, I consider that there should be a commitment to reducing the use of mechanical restraints on young people in detention.

RECORD KEEPING

769. Depriving a person of meaningful human interaction is one of the most serious forms of confinement that can be imposed on a person. It has serious adverse effects for people, especially young people, and those who have mental health issues or developmental disabilities. Despite these profound consequences, I consider that the department has failed to properly record, track and review the admission and placement of segregated young people in an adequate or effective manner.
770. Regulation 7(4)(d) of the Youth Justice Administration Regulations provides that, if a resident of a training centre is segregated from the other residents of the centre, the manager of the centre must ensure that a record is made containing the following details:
- (A) the name and age of the resident
 - (B) the date and time the period of segregation began
 - (C) the date and time the period of segregation ended
 - (D) the reason for the segregation
 - (E) the frequency and outcome of any risk assessments conducted in relation to the segregation
 - (F) the name of the employee of the centre who ordered the segregation
 - (G) action taken (if any) in respect of the resident before the resident was segregated
 - (H) the resident's contact (if any) during the period of segregation with other residents of the centre.
771. Whilst the details required in regulation 7(4)(d) of the Youth Justice Administration Regulations are recorded by the AYTC, I do not consider that they are recorded in an easily accessible and reviewable manner.
772. My investigation used the following records of the AYTC to get a complete picture of the treatment and experiences of Ben and Ryan:
- copies of hand written Unit Logs
 - C3MS records
 - telephone records for Ben and Ryan
 - visitor records for Ben and Ryan
 - Case Note Assessments, and
 - SRRA Logs
 - Incident Reports.

These records were frequently sparse, incorrect, absent and/or contradictory.

773. The Unit Log includes a description of its purpose and the following instructions to staff:
- The Observation Log is used to record observable behaviour and fact (**not subjective opinion about a young person's behaviour**), staff actions and information which those staff who were not witness to a situation need to be informed about, to do their job effectively.
- **All entries must be clear, legible and easy for all staff to read.**
 - **Each shift unit staff are required to record: resident FULL NAME & Room Number.**
 - **At the beginning of the shift ensure your full name is recorded.**

774. The Unit Log is in the following format:

UNIT: DAY: DATE:

TIME	INFORMATION	H/C	NAME	SIGN

...

Initial		Date:
Manager		
Supervisor		

Initial		Date:
Youth Worker		
Youth Worker		
YSW		
YSW		
Night Officer		

775. I have the concerns about the Unit Logs I have considered in my investigation, including:
- they are very rarely signed by the Manager or Supervisor
 - they are sometimes very difficult to read
 - they are sometimes inaccurate, for example, recording the wrong Unit name and the wrong date
 - there are instances whereby the times seem to have been changed after an initial time was entered
 - there are instances where staff have recorded their subjective opinions about a young person's behavior.
776. C3MS is an electronic case management system. My understanding is that C3MS is supposed to record all the information about a resident of the AYTC and is to be the primary source of information on a resident.
777. The shortcomings of C3Ms were addressed in the Report of the Child Protection Systems Royal Commission, in relation to its use by Families SA. The Report is critical of C3MS, stating:

C3MS is incident-based. It encourages practitioners to only address immediate child protection concerns. It places practitioners at risk of missing critical information about a child's story as it does not promote exploration of the cumulative picture. Instead C3MS was described by one user as being 'like a jigsaw puzzle and it's still in the box... in discrete pieces and, yes, you can eventually put a picture together but not easily and not in a reasonable time.'¹⁰³

This view of C3MS was reflected in my investigation.

778. Despite my investigations best efforts to 'put a picture together' from the multiple records relating to Ben and Ryan, the inaccuracies in the records made the task even more difficult. For example, whilst the telephone records for Ben and Ryan appear to be accurate, they did not match up with what was recorded on the Unit Logs.

¹⁰³ Child Protection Systems Royal Commission, 'The life they deserve: Child Protection Systems Royal Commission Report', Government of South Australia, 2016, page 59.

779. Further, I was unable to rely on the Visitor Logs. As stated previously in my report, visits were recorded on the Visitor Logs which, when cross-referenced with the SRRA Logs and Unit Logs, it became apparent that the visits did not occur. When visits did occur, the times on the Visitor Log did not always correspond with the recorded times on the Unit Logs.
780. In addition, the Case Note Assessments frequently reproduced what was written on the Unit Log and did not give a clear picture without sequentially reading them all.
781. A limited number of SRRA Logs were provided to my investigation. It is not clear to me if these records were withheld from me or if they did not exist. I suspect the latter. Some of the SRRA Logs that were provided to me recorded minimal information.¹⁰⁴
782. So whilst the SRRA Log records information per individual, the Unit Log is per unit and includes information about all residents in the unit. As such, there is no record to simply show how long an individual is placed in segregation or isolation and it was very difficult to determine if Ben and Ryan's treatment constituted solitary confinement.
783. The Incident Reports provided to my investigation were at times unclear. For example, the Incident Report for the rooftop incident has no signatures on it and records that it was:
- completed on 23 February 2017
 - approved by Leslie Turner on 24 January 2017, and
 - approved by Samuel Ledger on 23 March 2017.
784. The DRMPs provided to my investigation appear to be a pro forma exercise, rather than indicating that Ben and Ryan's treatment, conditions, and regime had been rigorously evaluated.
785. I note that the CE has acknowledged some of the shortcomings of the DRMP, including:
- the DRMP template was reviewed and updated multiple times during December 2016 to March 2017
 - the "review number" entered at the top of each DRMP (from Version 3 onward) does not reflect the true number of DRMP reviews, due to template changes and administrative errors
 - reviews most commonly took place once or twice per day, rather than once per shift (three shifts per day) in accordance with AYTC Operational Order 69 - Use of Segregation (0069). Staff training and practice review continues. (Legislation does not require a specific or minimum number of reviews.)
 - some reviews were approved by Duty Supervisors rather than Duty Managers in response to DRMPs changing from "association restrictions" to "individual restrictions". In some cases, due to other details of the DRMP (e.g., no group school participation - [Ryan] review 6-2-2017 - attached), the Duty Manager should have signed to comply with 0069. Although legislation does not require Duty Manager approval, this was included as an operational requirement. This is currently under review.¹⁰⁵
786. I consider that the DRMP reviews were often repetitious and did not necessarily reflect an ongoing consideration of the circumstances of Ben or Ryan, or an ongoing determination of whether their segregations continued to be warranted.
787. Given the above, I consider that it is no surprise that the department had so much difficulty in providing me with the information I requested for my investigation, leading to significant delays. The department had to source the information from numerous

¹⁰⁴ For example, see Ben's SRRA Log for 23 February 2017.

¹⁰⁵ Attachment 3 to the CE's letter to the Ombudsman dated 6 September 2017.

different records that were used for different purposes and, as such, did not have the data to record times that residents were in isolation, without having to piece it together from different records. Given the multiple data sources, the department was not able to quickly and reliably respond to requests for segregation-related statistics.

788. The record keeping failings raise two issues of concern for me. Firstly, the records should assist in protecting the rights of individuals such as Ben and Ryan. It is crucial that an observer can readily determine if they were unreasonably treated, afforded human rights or isolated for unreasonable periods of time.
789. It appears that there are a range of forms that are filled in but otherwise never looked at as a whole and, as such, serve no meaningful purpose in ensuring that the human rights of the young people are not abused. Given this, I consider that the centre failed to accurately record how long Ben and Ryan had been kept in segregation. Therefore it was not possible to easily recognise that the segregation, at times, constituted solitary confinement.
790. Secondly, the records need to be able to identify the extent of the practices of segregating and isolating young people in the AYTC. There seems to be no simple way to track or monitor the use of segregation in the centre. As such, it appears that the department does not have the ability to identify, understand or address any trends as they emerge.
791. Given the above, my view is that the department failed to keep sufficient records about the treatment of Ben and Ryan.
792. Whilst I commend the CE's commitment to improvement, it is crucial that, it is of great concern to me that many of the record keeping methods in use at the time of Ben and Ryan's detention appear to still be in use at the AYTC.¹⁰⁶
793. I consider it is crucial that accurate records that enable tracking of residents and monitoring of the overall use of segregation and isolation in the centre is implemented as a matter of urgency.
794. The department could consider technological solutions to better record details of young people's segregation and isolation. Such a tool should also calculate when segregation reviews need to be completed for each resident.
795. The department should develop policies regarding the use of the tool to ensure staff know who is responsible for inputting data and when this must be completed.
796. Further, I consider that the department should ensure that officers have sufficient resources, including access to computers and time during their shifts, to record details, including changes in residents' placements, as they occur or as soon after as is practicable.
797. Accurately tracking segregation placements is only the first step to ensuring meaningful oversight. Officers must use that tracking information to review the circumstances of each resident and ensure that the placements are justified, in accordance with the legislation and policy requirements, and are only used as a last resort and for the shortest time necessary.
798. The department should also keep and report annually on statistics about the use of segregation and isolation in the AYTC. Meaningful recording of segregation and

¹⁰⁶ Page 34 of the department's response to my provisional report.

isolation will also enable the department to report statistics on the use of segregation and isolation, which will enhance transparency and accountability.

799. Further, given the profound consequences that isolation can have on a young persons' health and well-being, the department should ensure it collects, analyses and reports on whether segregated and isolated young people have mental health issues, developmental disabilities or other human right's needs.
800. In summary, I consider that significantly greater consistency, accuracy and transparency is required in order to protect the young people in the South Australian Youth justice system.
801. I also note that it is concerning to me that the department provided me with heavily redacted copies of its records. Whilst I understand the confidentiality concerns around information about young people, a well-functioning youth justice system should have nothing to hide from Offices such as my own, which treats sensitive information with appropriate confidentiality. I am also entitled to that information in accordance with my powers under the Ombudsman Act and *Royal Commissions Act 1917*.

CONCLUDING COMMENTS

802. A guiding principle of the Youth Justice Administration Act is to promote the rehabilitation of young people by providing them with the care, correction and guidance necessary for their development into responsible members of the community and the proper realisation of their potential.¹⁰⁷ In other words, the main focus of youth justice in South Australia is rehabilitation.
803. Ben and Ryan were locked in small rooms for extended periods of time without sufficient access to other young people, education, vocational training, exercise, stimulation and their families. In doing so, the department failed to provide Ben and Ryan with humane care, which in turn led them, foreseeably, to display poor behaviour and to be propelled into the adult prison system.
804. It has disheartened me greatly to read the records relating to Ben and Ryan. It troubles me that not a great deal of effort was made to provide education or vocational training to Ryan and Ben. It troubles me that not a great deal of effort was made to address Ben and Ryan's mental health, trauma and/or and substance abuse issues during their periods of segregation. It troubles me that Ben and Ryan's behaviour was managed by segregating them without sufficient use of other therapeutic and rehabilitative approaches.
805. A therapeutic model of youth justice is defined by the Victorian Legal and Social issues Committee as:
- Treatment approaches which frame young offenders as vulnerable and in need of support and rehabilitation. Therapeutic approaches focus on behavioural change and personal development of young peoples, as compared to an approach focused on fear or punishment.¹⁰⁸
806. Common features of a therapeutic model of youth justice include:
- teaching young people how to manage their emotions, particularly anger and impulsiveness
 - treating substance abuse
 - increasing social skills
 - improving attitudes to education
 - teaching employment skills and offering employment support
 - teaching 'life skills such' as cooking and personal finances.¹⁰⁹
807. In my view, little effort was taken to provide to Ben and Ryan with the above. For example, it appears that Ben saw a psychologist on seven occasions during his 82 days of segregation and that Ryan did not have any such assistance. This is despite him requesting 'medication to assist his emotional state' after being secured for long periods of time.¹¹⁰ Rather, Ben and Ryan were subject to extended periods of segregation and when they, somewhat inevitably, reacted by instigating the rooftop incident, they were punished with extended periods of isolation and unreasonable restrictions.
808. I also note that a Progress Report by the Case Coordinator, dated 9 March 2017, records:

¹⁰⁷ Section 3(e) of the *Youth Justice Administration Act 2016*.

¹⁰⁸ Parliament of Victoria, Legal and Social Issues Committee, Final Report, Inquiry into youth justice centres in Victoria, March 2018, page 87.

¹⁰⁹ Parliament of Victoria, Legal and Social Issues Committee, Final Report, Inquiry into youth justice centres in Victoria, March 2018, page 88.

¹¹⁰ See paragraph 326 above.

...[Ben] has received a high level of intervention from CAMHS, Youth Justice Psychology and Streetlink Alcohol and Other Drug Services whilst at AYTC...

My analysis of the records during Ben's periods of segregation do not demonstrate what could reasonably be considered as 'a high level of intervention'.

809. Evidence shows that isolation used as punishment can cause, or exacerbate, trauma and that that it 'is also counterproductive as a way of improving behaviour'.¹¹¹ Russell Marks wrote:

The evidence is overwhelming: kids who have already been "punished" throughout their childhood don't suddenly stop behaving badly in response to more of it. On the contrary, responding punitively to bad behaviour is likely to entrench it - children often become more resentful, more defensive. As a former staff member of one of Victoria's youth justice centres told me, "If you kick a dog, it'll bite you."¹¹²

810. Professor James Ogloff, in his 'Review of Mental Health and Psychosocial Needs of Prisoners Detained in Restrictive Environments', states that some of the research suggest that 'such environments increase the anger and hostility of prisoners, thereby having the paradoxical effect of increasing their likelihood of acting out'.¹¹³

811. Further, In submission to the Victorian Inquiry into youth justice centres, the Royal Australian and New Zealand College of Psychiatry submitted:

Punitive approaches to the management of youth justice services, however, are unlikely to resolve the behavioral issues of detainees; instead, they serve to reinforce the sense of mistrust experienced by many children and young people in custody. Without a trauma-informed approach to the management of youth justice centre, at-risk children and young people will continue to face significant obstacles in their paths to recovery and rehabilitation, and staff in youth detention centre will continue to face significant difficulties in managing children and young people in their care.¹¹⁴

812. A functioning youth justice system should not cause the young person further harm or contribute to their reoffending. The system should not do any harm to a young person and young people should leave the youth justice system in a better life position than when they entered it. In my view, the youth justice system failed Ben and Ryan.
813. Whilst I understand that Ben and Ryan's behaviours were frequently difficult to manage, it troubles me that the system seemed to have found them too difficult and, as a result, inflicted further harm on them and contributed to their reoffending. The strategies and approaches to managing Ben and Ryan indicate that the youth justice system struggled to manage their behaviour and may also be struggling to meet the needs of other complex and potentially violent young people.
814. In 2013, the United Nations Special Rapporteur on Torture stated that the effect that a prolonged period in isolation can have on a child's mental health is so severe that countries should implement 'an absolute ban' on solitary confinement and seclusion of any duration for children.
815. My investigation identified that both Ben and Ryan demonstrated an escalating pattern of violent behaviour, in order to get transferred to the adult prison system, believing that it would be better than enduring the extended periods of isolation and the conditions

¹¹¹ Parliament of Victoria, Legal and Social Issues Committee, Final Report, Inquiry into youth justice centres in Victoria, March 2018, page 112.

¹¹² Marks, Russell, 'Call for Backup - How authorities lost control of juvenile detention', The Monthly Essays, March 2017. p3.

¹¹³ Ogloff, Professor James, 'Review of Mental Health and Psychosocial Needs of Prisoners Detained in Restrictive Environments', prepared for Justice Health and Corrections Victoria, September 2008, pvii.

¹¹⁴ Parliament of Victoria, Legal and Social Issues Committee, Final Report, Inquiry into youth justice centres in Victoria, March 2018, page 93.

they were subjected to at the AYTC. Certainly, isolation and degrading treatment can contribute in turning a vulnerable young person into an offender.

816. It has been suggested to my investigation that the staff at the AYTC may deliberately isolate residents whose behaviour they find difficult to manage and who are approaching 18 years of age and treat them in ways that help to ensure that they are transferred to the adult system. If this is true, it is of great concern to me. The youth justice system has a responsibility to do all it can to attempt to rehabilitate young people who have offended against the criminal law, and to provide them with the care, correction and guidance necessary for their development into responsible members of the community. Rather than rehabilitate Ben and Ryan, their treatment at the AYTC did them further harm, and propelled them in to the adult prison system.
817. The department, in its response to my provisional report, disputed that 'there is a pattern of resident management coercing residents to seek transfer to' the adult system or 'that staff were inciting the young people to violence to instigate their transfer'. I acknowledge that my basis for this is purely anecdotal. For example, an advocate from the OGCYP told my officer that it appears to be the practice of AYTC staff to put young people who are approaching 18 in Frangipani Unit and then to do a lot of small things to them to "push them over the edge", so that they are transferred to Yatala and the staff no longer have to deal with them.
818. While I have not found any evidence to support a pattern of incitement, I am, however, satisfied that the treatment of Ben and Ryan contributed to their transfers to the adult system. For example, an advocate from the OGCYP told my officer that Ben told her that he had signed a form to be transferred to Yatala when he turns 18 because he 'cannot take being in isolation any more'.
819. An advocate from the HYPA told my officer that applications for transfers to Yatala are looked on more favourably in terms of risk if the person is "sitting in Frangipani". The advocate said that the staff have all been there long enough to "know what makes the residents tick" and that they push them to react. The advocate said that Ryan had said that 'at least he would have more freedom' and more education opportunities if he was transferred to Yatala.
820. It troubles me that children are willing to commit violent acts in order to be transferred to the adult prison system to escape the conditions they are subjected to at the AYTC. The AYTC had the opportunity to do significantly more to keep Ben and Ryan out of adult prison system by doing more to attempt to rehabilitate them and by providing them with the care, correction and guidance necessary for their development into responsible members of the community. I consider that the youth justice system failed Ben and Ryan.

OPINION

821. My final view is that the department acted in a manner that was unreasonable, wrong, oppressive, unjust and contrary to law by:
- a. segregating Ben for extended periods of time
 - b. segregating Ryan for extended periods of time
 - c. segregating Ben for longer than was reasonably necessary in the circumstances
 - d. segregating Ryan for longer than was reasonably necessary in the circumstances
 - e. securing Ben in a room for more than 22 hours per day
 - f. securing Ryan in a room for more than 22 hours per day
 - g. failing to provide sufficient cultural recognition and support to Ryan
 - h. failing to provide Ben and Ryan with sufficient education or vocational training
 - i. failing to provide Ben and Ryan with sufficient access to regular exercise or other stimulation
 - j. failing to ensure Ben and Ryan had sufficient private, unrestricted contact with their families
 - k. restricting Ben and Ryan's free movement by means of mechanical restraints when the prescribed circumstances in regulation 8 of the Youth Justice Administration Regulations did not apply
 - l. restricting Ben and Ryan's free movement by means of mechanical restraints as a form of punishment
 - m. failing to keep sufficient records.

In light of the above, my final view is that the department acted in a manner that was unreasonable, wrong, oppressive, unjust and contrary to law within the meaning of section 25 of the Ombudsman Act.

To remedy this error, I make the following recommendations under section 25(2) of the Ombudsman Act.

RECOMMENDATIONS

I note that the Operational Orders in relation to segregation, isolation, restricted routines and the use of mechanical restraints have been improved since the commencement of the Youth Justice Administration Act and since Ben and Ryan's periods of segregation. However, it is crucial to ensure that treatment such as that experienced by Ben and Ryan is no longer being inflicted on other young people at the AYTC. As such, I consider that the department should, as a matter of urgency, satisfy itself of what occurs in the AYTC and whether the treatment of the young people is in accordance with the legislative requirements, the Operational Orders and human rights standards. This is what has guided me in determining my recommendations.

In the circumstances, I make the following recommendations under section 25(2) of the Ombudsman Act:

Recommendation 1:

That the South Australian government review Regulations 6 and 7 of the *Youth Justice Administration Regulations 2016* and consider whether the provisions authorising segregation and isolation to maintain order and security be removed.

Recommendation 2:

That the department propose amendments to Regulations 6 of the *Youth Justice Administration Regulations 2016* and associated operational orders to strictly govern the requirements for medical quarantine / isolation due to illness. This is to include a provision stipulating that only a medical practitioner can activate quarantine/isolation; requiring frequent medical monitoring and ensuring medical quarantine / isolation only occurs for the shortest reasonable period.

Recommendation 3:

That the department prohibit extended periods in isolation beyond 22 hours in any circumstances.

Recommendation 4:

That the department implement operational changes to mandate that any use of segregation must be reviewed by authorising officers at a maximum of three hours.

Recommendation 5:

That the department work with the Training Centre Visitor to develop appropriate notification protocols in relation to the use of segregation and isolation.

Recommendation 6:

That the department ensure that residents in isolation or segregation are given sufficient exercise periods in accordance with the regulations by ensuring that additional time is given for professional and personal visits and phone calls (ie that phone calls and visits do not occur within the time residents are allowed out of their rooms for exercise).

Recommendation 7:

That the department ensure that residents in isolation or segregation are given exercise periods in open areas including the oval and gymnasium (ie not limited to the small courtyard), unless doing so would result in serious security or safety risks for other residents and staff. In circumstances where it is considered that there are such serious security or safety risks, the AYTC is to fully record all the justifying factors considered in relation to these events.

Recommendation 8:

That the department review and amend the reporting requirements for AYTC staff to the executive level of the department in order to ensure that Operational Orders are complied with and to increase oversight of the AYTC operations.

Recommendation 9:

That the department issue a reminder to AYTC staff that the use of mechanical restraints should not be routinely used in incident management and only as a last resort and is prohibited as a form of punishment.

Recommendation 10:

That the department conduct a review of the use of segregation in the AYTC since the implementation of version 2 of the Restricted Routine Operational Order, including whether the Order has been complied with in relation to:

- times out of rooms
- cultural considerations
- access to education and/or vocational training
- access to exercise and other stimulation
- access to family
- the use of mechanical restraints.

The review should include input from a senior Aboriginal representative, a qualified clinical psychologist and contributions for the Youth Education Centre.

The review should consider how the potential impact of segregation will be identified, planned for and managed in the routines developed for children and young people with disabilities and experiences of trauma.

This review should ideally review the practice of securing young people in games rooms and courtyards for exercise periods and how this practice continues the segregation period.

Recommendation 11:

That the department conduct a review of the use of isolation in the AYTC since the implementation of version 2 of the Use of Isolation Operational Order, including whether the Order has been complied with in relation to:

- times out of rooms
- cultural considerations
- access to education and/or vocational training
- access to exercise and other stimulation
- access to family
- the use of mechanical restraints.

The review should consider how the potential impact of isolation will be identified, planned for and managed in the routines developed for children and young people with disabilities and experiences of trauma.

This review should ideally review the practice of securing young people in games rooms and courtyards for exercise periods and how this practice continues the isolation period.

Recommendation 12:

That the department review the DRMP to ensure that considerations of culture are properly sought from a cultural advisor, are recorded and that follow-up actions are provided and implemented.

Recommendation 13:

That the department provide evidence to me that reasonable steps are being taken to actively recruit Aboriginal and Torres Strait Islander staff.

Recommendation 14:

That the department review the use of lockdowns in the AYTC, including how centre lockdowns also constitute isolation.

Recommendation 15:

That the department review the record keeping practices of the AYTC and implement an electronic logging system as soon as practicable.

Recommendation 16:

That the department conduct training of all relevant AYTC staff about all of the issues addressed in my report and particularly compliance with:

- the Youth Justice Administration Act
- the Youth Justice Administration Regulations
- the Charter of Rights for Children and Young People Detained in Training Centres
- the Aboriginal and Torres Strait Islander Youth Justice Principle
- the Operational Orders
- human rights standards.

Recommendation 17:

That the department conduct training of all relevant AYTC staff about trauma-informed practices.

Recommendation 18:

That the department conduct a review of how continued access to quality and age-appropriate education can be ensured for young people on Routines resulting in their absence from the Youth Education Centre.

Recommendation 19:

That the department consider how the voice, feedback and experience of residents subject to Routines can be further sought and considered.

Recommendation 20:

That, to increase the likelihood of cultural input, a senior Aboriginal and Torres Strait Islander staff member from within DHS leadership participate in all review panels and committees chaired within the centre and is key in the reviewing of Operational Orders.

FURTHER ACTION

A copy of this report has been supplied to the Minister for Human Services, as required by section 25(3) of the Ombudsman Act 1972.

In accordance with section 25(4) of the *Ombudsman Act 1972* the department should report to the Ombudsman by **13 March 2020** on what steps have been taken to give effect to the recommendations in this report, including:

- details of any actions that have been commenced or completed; and
- relevant dates of the actions taken to implement the recommendations.

In the event that no action has been taken, reasons for the inaction should be provided to the Ombudsman.



Wayne Lines
SA OMBUDSMAN

16 December 2019