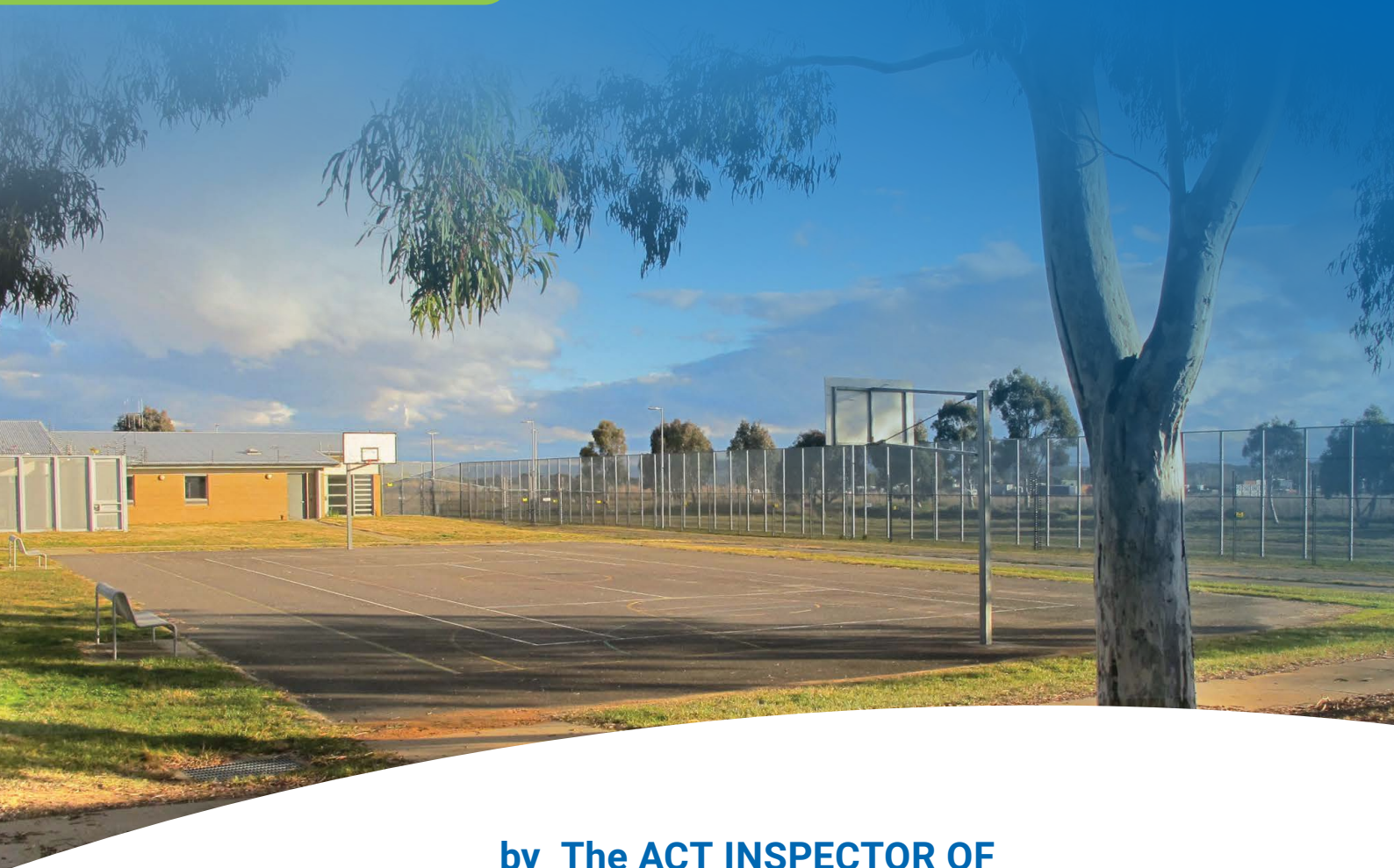


National Preventive Mechanism (NPM) Pilot Visit

Thematic Review of a Correctional Service



by **The ACT INSPECTOR OF
CORRECTIONAL SERVICES**

Isolation of children
and young people at
Bimberi Youth Justice Centre

NOVEMBER 2023



ACT Inspector of Correctional Services
GPO Box 158
Canberra ACT 2601

T 1800 932 010

www.ics.act.gov.au

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ACT Inspector of Correctional Services

We acknowledge the Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection to the lands of the ACT and region. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

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Rebecca Minty
ACT Inspector of Correctional Services

NOVEMBER 2023



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Glossary and abbreviations

Term	Meaning
BMP	Behaviour Management Plan
BMF	Behaviour Management Framework
cell	A child or young person's secure room within an accommodation unit. It contains a bed, desk, shelves and bathroom area. This terminology is used in the <i>Children and Young People Act 2008 (ACT)</i>
children and young people	<i>The Children and Young People Act 2008 (ACT)</i> uses the terminology 'young detainee', 'young offender' and 'young remandee'. The CYP Act provides that a child or young person could be detained in Bimberi from the age of 10 to 21 years
CHS	Canberra Health Services
CSD	Community Services Directorate (the government directorate responsible for Bimberi)
CTU	Court Transport Unit (ACT Corrective Services)
CYP Act	<i>Children and Young People Act 2008 (ACT)</i>
CYRIS	Child and Youth Record Information System – an electronic record-keeping system used at Bimberi Youth Justice Centre
FMHS	Forensic Mental Health Services (Justice Health Services)
ICS Act	<i>Inspector of Correctional Services Act 2017 (ACT)</i>
isolation	This term is used through the report to describe the physical confinement of a child or young person in an area on their own for a notable period of time (eg, greater than 10 minutes)
JHS	Justice Health Services, part of Canberra Health Services
lockdown	A period of time when children and young people are secured in their cell or residential unit or required to remain in a particular location at a detention place, as an operational response to manage an incident or other risk to safety and security or as a result of staff shortages
NPM	National Preventive Mechanism – independent bodies designated under OPCAT, which carry out regular preventive visits to places of detention. OICS is one of three bodies designated for the multi-body ACT NPM
OICS	Office of the ACT Inspector of Correctional Services
OPCAT	<i>The Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)</i> , a human rights treaty that Australia ratified in 2017. It aims to strengthen protections for people who are detained (or otherwise deprived of their liberty)
OV	Official Visitor for Children and Young People, appointed under the <i>Official Visitor Act 2012 (ACT)</i>
PBL	Positive Behaviour for Learning, part of the Bimberi Behaviour Management Framework

Term	Meaning
reset	Part of the Bimberi Behaviour Management Framework, which describes a reset as 'an opportunity for a circuit-breaker for a young person who is escalated or demonstrating inappropriate behaviour and is not responding to other strategies'
ROGS	Report on Government Services
Rolling lockdowns	Successive lockdowns
safe room	Safe room is defined in the <i>Children and Young People (Segregation) Policy and Procedures 2018 (No.1)</i> as part of a detention place declared by the Director-General to be the safe room for the purpose of safe room segregation under section 208 of the CYP Act. In order to declare the safe room, the Director-General must be satisfied that its design will minimise the harms that a young person can do to himself or herself while in the room; and it allows monitoring of, and communication with, the young person by the Director General and health professionals
segregation	Segregation is defined in section 204 of the CYP Act as: the restriction or denial of the young detainee's opportunity to go into, or be in, a particular part of a detention place; or to associate with other children or young people; and includes separate confinement. Reasons for segregation directions may include the use of the safe room (at risk of self-harm), safety and security, protective custody and health. Segregation must not be used for disciplinary purposes
Segregation directions register	Register of directions made under s 205 of the CYP requiring a child or young person to be segregated
separation	The placement of children and young people in a residential unit based on their legal status (remanded or sentenced), gender, or age; separate use of centre facilities; or separate participation in education or other activities
SMD	Special Management Direction
time out	A behaviour management response where a child or young person is withdrawn from an area or situation and placed in their cell or another location (usually in increments of 10 minutes). See discussion of terminology on page 12
Youth detention officer	An operational staff member at Bimberi Youth Justice Centre who is responsible for the day-to-day care and management of children and young people in detention (referred to in Bimberi/CSD documentation as 'youth worker')

Executive Summary

The ACT has one youth detention centre, Bimberi Youth Justice Centre. The Office of the Inspector of Correctional Services (OICS) provides independent preventive oversight of Bimberi. This is the first thematic review we have conducted of Bimberi, and we are grateful for the assistance of the Community Services Directorate (CSD), Justice Health Services (JHS) and ACT Corrective Services' Court Transport Unit (CTU) in facilitating access to people, places and information.

This review considers the topic of isolation of children and young people. In this report, isolation is used as a catch all term for a broad group of practices including: segregation, separation, isolation, solitary confinement and time out. The practice may be used for a range of reasons including on health grounds, for 'safety and security', for protective custody, or if children and young people must remain in their cells for operational reasons. Importantly, however, under the *Children and Young People Act 2008* (ACT) (CYP Act) segregation cannot be used for punishment or disciplinary purposes. In some cases, the practice is regulated by the CYP Act with safeguards in place such as a requirement for regular reviews, and a right for a child or young person to appeal. In other cases, isolation can take place without any legislation governing the practice.

This topic was chosen because of the potential for isolation, particularly when it is prolonged, to cause significant harm to children and young people in detention. As isolation is known to cause harm, it must be avoided where possible, and when it cannot be avoided, isolation should be for the shortest possible time, in the least restrictive way and with safeguards such as regular reviews and right to appeal built in.

The most significant issue identified by the Review Team was in relation to COVID-19 health segregation. The Review Team acknowledges that the height of the COVID-19 pandemic had a significant impact on places of detention, and that Bimberi staff and management should be commended for their commitment to keeping children, young people, staff and visitors safe through such a challenging period. However, the Review Team was deeply concerned to observe when onsite in June 2023 that on admission to custody, children and young people were still being required to undergo an initial period of health segregation that was usually 6–7 days. This was despite youth detention not being considered a 'high risk setting' by the ACT Chief Health Officer since October 2022 and no other formal COVID-19 restrictions in place in the community. The initial hours and days in custody are considered to be a high-risk time for detained people in terms of their mental health and may be a traumatic experience particularly if it is their first time in custody. Many of the children and young people coming into custody have experienced significant trauma in their lives and so it is imperative that as much is done as possible to make initial hours in custody as humane as possible. Every effort must be made to limit the time a young person is locked in their cell alone, unless there is a pressing need to do so. By June 2023 COVID-19 did not justify 6–7 days isolation.

The Review Team brought this matter to the attention of CSD, JHS and the Assistant Minister for Families and Community Services (Minister responsible for Youth Justice and Justice Health Services). Pleasingly, there was a timely response, resulting in changes to COVID-19 health segregation practices on admission, removing the need for 2 PCR tests and instead only requiring a negative Rapid Antigen Test (RAT) and to be asymptomatic for a child or young person to be released from health segregation. An important lesson to be learned from this experience is that continued focus is required on proportionality of restrictions as the threat to health posed by a virus eases.

Relaxing of restrictions in the community should serve as a reminder to assess whether restrictions remain justified and proportionate in any detention setting.

The other issues identified by the review included the lack of legal framework and safeguards for when children and young people are accommodated by themselves on a wing, extended overnight lock in due to operational requirements, and a concern previously raised by OICS in the Healthy Centre Review of Bimberi 2020 (HCR20) that centre-wide lock ins due to incident codes was negatively impacting centre routine and leading to children and young people spending longer in their cells during the day. Thirteen recommendations have been made in relation to these issues.

Unfortunately, due to legislative impediments in the CYP Act, the Review Team was unable to access the Bimberi online database Child and Youth Record Information System (CYRIS). This limited the Review Team's ability to examine individual cases of separation with sufficient guarantees of confidentiality. For this reason, the Review Team relied on registers to understand practices. OICS is hopeful this can be addressed by the ACT Government as a priority.

Recommendations

Recommendation 1:

That Justice Health Services ensure that the 'treating doctor' under s 97 of the *Children and Young People Act 2008* plays an ongoing role in monitoring any restrictions on children and young people in Bimberi resulting from health segregation, to ensure limitations are proportionate.

Recommendation 2:

That Bimberi take urgent steps to guarantee confidential communication between children and young people and their lawyers, in an appropriate setting.

Recommendation 3:

That children and young people are only ever isolated with legislated, legal safeguards such as access to review processes.

Recommendation 4:

That the Community Services Directorate ensure compliance with the Bimberi Emergency Operating Plan including in terms of the Chief Warden documenting their risk assessment against the relevant code checklist and their determination of each incident level and response.

Recommendation 5:

That the Community Services Directorate ensure the Emergency Operating Plan is properly made under s 143 of the *Children and Young People Act 2008*, given it may be the basis for isolating children and young people.

Recommendation 6:

That the Community Services Directorate resource and prioritise the review and notification of policies and procedures relating to segregation and isolation.

Recommendation 7:

That Bimberi specifically state on the Court Transfer Advice form whether any of the children and young people in the court escort group can mix (or not).

Recommendation 8:

That Justice Health Services ensure periodic notes are kept where a child or young person does not request (consent to) contact by a qualified health practitioner.

Recommendation 9:

That the Community Services Directorate ensure minimum entitlements are maintained whenever children and young people are isolated in their cells for prolonged periods particularly access to sufficient food or drink to avoid hunger (including when children and young people's usual breakfast is delayed).

Recommendation 10:

That the Community Services Directorate provide a chair as a minimum standard item to all children and young people in their cells.

Recommendation 11:

That the Community Services Directorate dedicate sufficient resources to maintenance of cells, common areas and visit areas including windows and doors to ensure that radicalised/offensive and other graffiti is removed or covered in a timely manner.

Recommendation 12:

That the Community Services Directorate develop and maintain a consolidated register of Bimberi lockdowns of all categories, duration, location, reason, and number of children and young people affected, gender and Aboriginality on each occasion; and conduct regular compliance checks; to facilitate accountability and regular review by Bimberi senior management, and to allow effective external monitoring of the use of these restrictive interventions.

Recommendation 13:

That the ACT Government publicly report on time out of cells as a service delivery output as an indicator of governments' objective of providing a safe, secure and humane youth detention environment.

1 Introduction

This is a review of correctional service (thematic review) conducted under s 18(1)(b) of the *Inspector of Correctional Services Act 2017* (ACT) (ICS Act), a provision which requires that the Inspector examine and review 'correctional services' at least once every two years. This is the first thematic review at Bimberi Youth Justice Centre (Bimberi) conducted by the Office of the Inspector of Correctional Services (OICS) since the Inspector's role expanded to include Bimberi in 2019.

This review also serves as a pilot National Preventive Mechanism (NPM) visit under the *Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). In 2022 OICS was designated as part of the multi-body ACT NPM under OPCAT (see [Annex B](#)). The purpose of conducting this visit as a pilot was to develop and test aspects of NPM visit methodology (for example, conducting the visit unannounced), to raise awareness about OPCAT, and to determine a realistic estimate of the cost involved in conducting an NPM-style thematic visit. The visit highlighted deficiencies in legislation concerning OICS role as an NPM, further detailed in its recent submission to the review of the ICS Act.¹

The theme of the review is isolation of children and young people at Bimberi. The term isolation is used broadly and includes health and COVID-19 segregation, safety and security segregation, use of 'time outs' or 'resets', centre-wide lockdowns, late unlocks as well as meaningful contact. The review also considered how time in isolation at Bimberi might prolong isolation that children and young people had already experienced in holding cells in the police watch house (operated by ACT Policing), or Court Transport Unit (CTU) and transport vehicles (operated by ACT Corrective Services) prior to admission to Bimberi. Planning for this review began in February 2023, and the onsite visit taking place from 1–6 June 2023.

More information about the legislative authority for this review and OICS can be found at [Annex A](#). OICS also used the experience of this review to develop a set of isolation expectations based on international human rights law and other authoritative guidance for minimising the use of isolation in youth detention. These expectations also outline safeguards to help protect detained children and young people from the harmful effects of isolation. OICS will also prepare a 'lessons learned' report to consider how the office can approach NPM visits of this type in the future.

1 For more information see <https://www.ics.act.gov.au/latest-news/articles/oics-submission-to-the-review-of-the-inspector-of-correctional-services-act-2017>

What is isolation?

Segregation, isolation, separation, seclusion, solitary confinement, time out, reset and lack of meaningful contact are various terms that are used to describe the general practice of isolating a detained child or young person separate from others and with no or limited contact with the outside world. In this report, the term isolation is used in a general sense to describe all forms of this practice.

Isolation has been demonstrated to cause significant and, in some cases, irreversible harm to a person's physical and mental health.² The impacts of isolation on detained people with disabilities, and children and young people has been shown to be particularly severe. The Royal Commission into Aboriginal Deaths in Custody found solitary confinement has a particularly detrimental impact on Aboriginal and Torres Strait Islander people and noted that "it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention."³ Due to potential for significant harm, international human rights law requires that isolation should be avoided. Where it does occur, it should be for the shortest time possible, with safeguards in place.

International human rights standards are directly relevant in the ACT through the application of the *Human Rights Act 2004* (ACT) (HR Act). As a public authority, Bimberi must properly consider relevant human rights when making decisions, and act compatibly with human rights.

Isolation of children and young people engages and limits rights under the HR Act including the rights of the child, and right to humane treatment when deprived of liberty. Further, isolation of children and young people may limit other rights such as the right to access school, or stay connected with family and community, which are also reflected in rights protected in the HR Act. The HR Act provides that rights may be limited by Bimberi, but only if done according to law, for a legitimate purpose, the restrictions have a rational connection to that purpose (such as to protect the health of children and young people) and there are no less restrictive means to achieve the same outcome.

2 See, eg, Report of the United Nations Special Rapporteur on Torture who concludes, according to literature surveyed, that some of the harmful psychological effects of isolation can become irreversible after 15 days. A/66/268, August 2011, paragraph 26.

3 Royal Commission into Aboriginal Deaths in Custody (1991), Volume 5, para 181.

Terminology

This box provides a general overview of terminology around segregation and isolation in the context of detention of children and young people in the ACT, noting that some terms may be given other specific definitions in legislation or international law.

Isolation: a broad term that encompasses keeping detained people apart from one another. It may include, for example, one person being accommodated in a unit by themselves. This includes for example: segregation (for safety and security, protective custody, or health reasons), separation placements, time out, 'reset' activities alone in another area, lockdowns, and time held alone in police and court holding cells.

Segregation: Segregation is defined in section 204 of the CYP Act as the restriction or denial of the young detainee's opportunity to go into, or be in, a particular part of a detention place; or to associate with other children or young people. Reasons for segregation directions may include the use of the safe room (at risk of self-harm), safety and security, protective custody and health. Segregation must not be used for disciplinary purposes.

Separation: Separation under section 166 of the CYP Act may include the placement of children and young people in a residential unit based on their legal status (remanded or sentenced), gender, or age; separate use of centre facilities; or separate participation in education or other activities.

Reset: Part of the Bimberi Behaviour Management Framework, which describes a reset as 'an opportunity for a circuit-breaker for a young person who is escalated or demonstrating inappropriate behaviour and is not responding to other strategies'.

Time out: An operational behaviour management response where a child or young person is withdrawn from an area or situation and placed in their cell or another location (usually in increments of 10 minutes), to address behaviour that a youth detention officer has assessed to be inappropriate, or where there is an immediate risk to people or property – see *Children and Young People (Behaviour Management) Policy and Procedures 2018*.

Lack of Meaningful Contact: This concept emphasizes the importance of human interaction and social contact in maintaining mental and emotional well-being. When individuals are deprived of meaningful contact, it implies that they are not receiving adequate social, emotional, or psychological support.⁴

Solitary Confinement: the confinement of detained people for 22 hours or more a day without meaningful human contact.

Prolonged Solitary Confinement: solitary confinement of more than 15 consecutive days.⁵ Under international law, under certain circumstances such as when used for persons with mental disabilities or juveniles, it may amount to torture.⁶

Lockdown: when all children and young people in part or all of Bimberi are confined to a particular area.

4 Naylor, B., & Shalev, S. (2022) 'Solitary Confinement and the Meaning of "Meaningful Human Contact"' *Human Rights Behind Bars* (pp. 293–318). Springer. https://link.springer.com/chapter/10.1007/978-3-031-11484-7_13

5 United Nations *Standard Minimum Rules for the Treatment of Prisoners* ('Mandela Rules') General Assembly Resolution 70/175, adopted on 17 December 2015, UN Doc E/CN.15/2015/L.6/Rev.1, rules 43 and 44.

6 Juan E Mendez, Interim Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment (solitary confinement) UN DOC A/66/268 (5 August 2011) [32].

What are the known impacts of isolation on detained children and young people?

Detention generally is known to impact on children and young people’s development. Among other things, it increases children’s risk of depression, suicide and self harm; leads to poor emotional development; results in poor education outcomes and further fractures family relationships.⁷

Children and young people are particularly vulnerable to the impacts of separation and isolation in detention. It has been noted that:

Until around 25 years, people are developing physically, mentally, neurologically and socially. Subjecting children and young people to isolation and solitary confinement during this crucial stage of development exposes them to serious risk of long-term psychiatric and developmental harm.⁸

Many children and young people that are detained have further factors which may exacerbate the negative impacts of separation and isolation such as a history of trauma, or a disability.

Each of the three main factors inherent in solitary confinement- social isolation, reduced environmental stimulation and loss of control over almost all aspects of daily life- is potentially distressing. Together they create a potent mix.⁹

Furthermore, the experience of the lead up to detention and detention itself (particularly the early hours of detention) may cause further trauma.

Why review the theme of isolation at Bimberi?

Bimberi is ACT’s only youth detention facility. It has a design capacity of 40, and is currently staffed for a capacity of 21 children and young people. Although there have been periods where numbers have exceeded 21, in general numbers are lower, as indicated by the table below.

Table: Average daily state at Bimberi, 2018–2023

	2018–19	2019–20	2020–21	2021–22	YTD 2022–23
Number of Young People in Bimberi Youth Justice Centre on an Average Day	10	16	10	12	19

Source Bimberi Headline Indicators Report, May 2023

7 Baldry, E., and Cunneen C. (2019) 'Locking up kids damages their mental health and leads to more disadvantage. Is this what we want?' *Opinion: University of New South Wales Newsroom, 21 June; Australian Institution of Criminology, Youth justice in Australia: Themes from recent inquiries* (Trends and issues in crime and criminal justice, 2020).

8 Victorian Ombudsman (2019) OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people, 73 citing various sources.

9 Shalev, S (2008) *A sourcebook on solitary confinement*, solitary confinement, 17.

Low numbers of detained children and young people in the ACT is positive, as detention should be a last resort, may well be detrimental, and has little benefit in reducing recidivism.¹⁰ However, low numbers of children and young people in Bimberi may result in greater periods of isolation and lack of meaningful human contact. For example, if there is only one child or young person that identifies as a girl, she may be accommodated in a unit on her own, with reduced opportunities for meaningful contact with other children and young people. Likewise, if children and young people must be segregated or isolated for other reasons (such as being on protection), fewer detained people overall mean fewer opportunities for mixing.

Given these structural challenges in running a small youth detention facility as the only facility within a jurisdiction, and the known harms that isolation can have on children and young people who are detained, it is important that every effort is made to ensure that practices avoid isolation in its various forms to the maximum extent possible. Where isolation is unavoidable, consideration must be given to ways to minimise the impacts of isolation on children and young people (for example, ability to contact family and friends via phone/video calls, means for entertainment and self-expression in cells, food etc). This review seeks to examine practices broadly and take a constructive approach to identify any areas for improvement.

Limitations of this review

Isolation of female children and young people

During the Review Team's visit period from 1 to 6 June 2023, Bimberi accommodated between 11 to 12 children and young people each day, aged between 14 and 19 years. Most of the children and young people were male, with one female young person released on the first day of the review, and a second female young person released following overnight remand (and therefore not able to be offered the opportunity to be part of this review). As a result, the Review Team was unable to directly speak with female children and young people to examine the circumstances and effects of isolation for this cohort at Bimberi (including the potential results of being placed separately due to gender).

Inability to access relevant database (CYRIS)

The ICS Act sets out that the Inspector must be able to access all required information and documents when conducting a review (see s 22).¹¹ Further, the OPCAT requires that an NPM body must be provided unfettered and unrestricted access to all places of detention, and information records. CSD was able to provide the Review Team with full and timely access to all requested policies, procedures, operational documentation and registers, and the Review Team gratefully acknowledge the assistance of CSD and Bimberi staff in facilitating this access. Unfortunately, however, the Review Team was unable to access the Child and Youth Record Information System (CYRIS), an electronic information system operated by the Community Services Directorate (CSD).

10 Australian Institute of Criminology (2020) 'Youth Justice in Australia: Themes from recent inquiries', 605 *Trends & Issues in Crime and Criminal Justice*.

11 As a protective mechanism, s 37 of the ICS Act provides that any information collected by OICS about another person is 'protected information', and that it is an offence for a person to use or divulge (communicate or publish) that protected information unless authorised by, or in relation to the exercise of a function under the ICS Act or another territory law, or in a court proceeding; or the information is disclosed with the person's consent. Non-compliance may result in criminal prosecution and penalties.

One month prior to the review commencing, OICS sought direct read-only access to the records of children and young people detained in Bimberi held on CYRIS. Direct access to CYRIS records is considered necessary by OICS to examine the treatment and care of children and young people at Bimberi; including triangulating information where children and young people have spoken with and made protected disclosures to the Review Team. Direct and unmonitored access to CYRIS by the Review Teams ensures that the confidentiality of disclosures to OICS can be protected and provides a key safeguarding measure against possible reprisals. Both the OPCAT and ICS Act (see, eg, s 26) place importance on protection against reprisals for people disclosing information to a visiting body.

CSD was not able to facilitate the Review Team's request for direct CYRIS access as the system did not allow Bimberi protected information to be compartmentalised from sensitive child protection-related information on CYRIS. The proposed alternative (printing hard copies of all information required and redacting manually) was not considered feasible as this would be an unreasonable diversion of resources and that the sharing of this voluminous quantity of personal and potentially irrelevant information would not be appropriate. As a result, the Review Team was unable to satisfactorily enquire or verify a range of information, which somewhat limited the methodology and evidence basis for aspects of the review. In summary, under current legislation, CSD is unable to comply with their obligations under OPCAT.

OICS will continue to work with CSD to reach an acceptable resolution for unfettered access to relevant CYRIS information. In the interim, there remains a gap in tools for monitoring the treatment of children and young people being held in places of detention.

Survey of staff

At the commencement of the on-site visit to Bimberi, the Review Team distributed by ACT Government email, a survey to all Bimberi (CSD) staff members about the theme of isolation at Bimberi. There were insufficient responses for the results to be considered statistically representative of the Bimberi staffing population for the purpose of analysis. As a result, the survey and results have not been included in this report, however the comments of individual staff members who responded have been carefully considered by the Review Team.

About Bimberi Youth Justice Centre

Bimberi is the ACT's only youth detention facility. Opened in 2008, it accommodates children and young people aged from 10 to 21 years old who have been brought by ACT Policing prior to a bail hearing, refused bail, or sentenced to a period of detention by a court. Bimberi was the first youth detention facility in Australia designed and purpose-built with the objective of meeting human rights standards.

Child and Youth Protection Services (CYPS) within CSD has administrative responsibility for Bimberi. Primary health services and forensic mental health services are provided by Justice Health Services (JHS) within Canberra Health Services. The Education Directorate is responsible for delivering education to children and young people through Murrumbidgee School, which is onsite. Bimberi facilities also include a gym, a swimming pool, an outdoor basketball court and oval, a visit centre and a multi-purpose room called the spiritual centre.

Bimberi has 40 beds over four separate residential units and is currently funded for staffing levels commensurate with detaining 21 children and young people. Children and young people are accommodated in single cells, each with bathroom facilities. Within each unit are communal spaces, including a kitchen bench, laundry, lounge room and outdoor enclosed courtyard.

Bimberi Youth Justice Centre

1. Gym, indoor pool and oval

Bimberi has a variety of facilities for recreation. These are used for physical education and also for after school and weekend programs.

4. Education

Murrumbidgee School operates from the education building where there are classrooms, a woodwork room, a metalwork room, an art room, a music room and vegetable gardens.

5. Residential units

Each detained child or young person has a cell in a residential unit with a bed, desk and bathroom. There is a communal living space, laundry and courtyard in each wing of the unit. An officer station is in the middle of each unit.

6. Spiritual centre

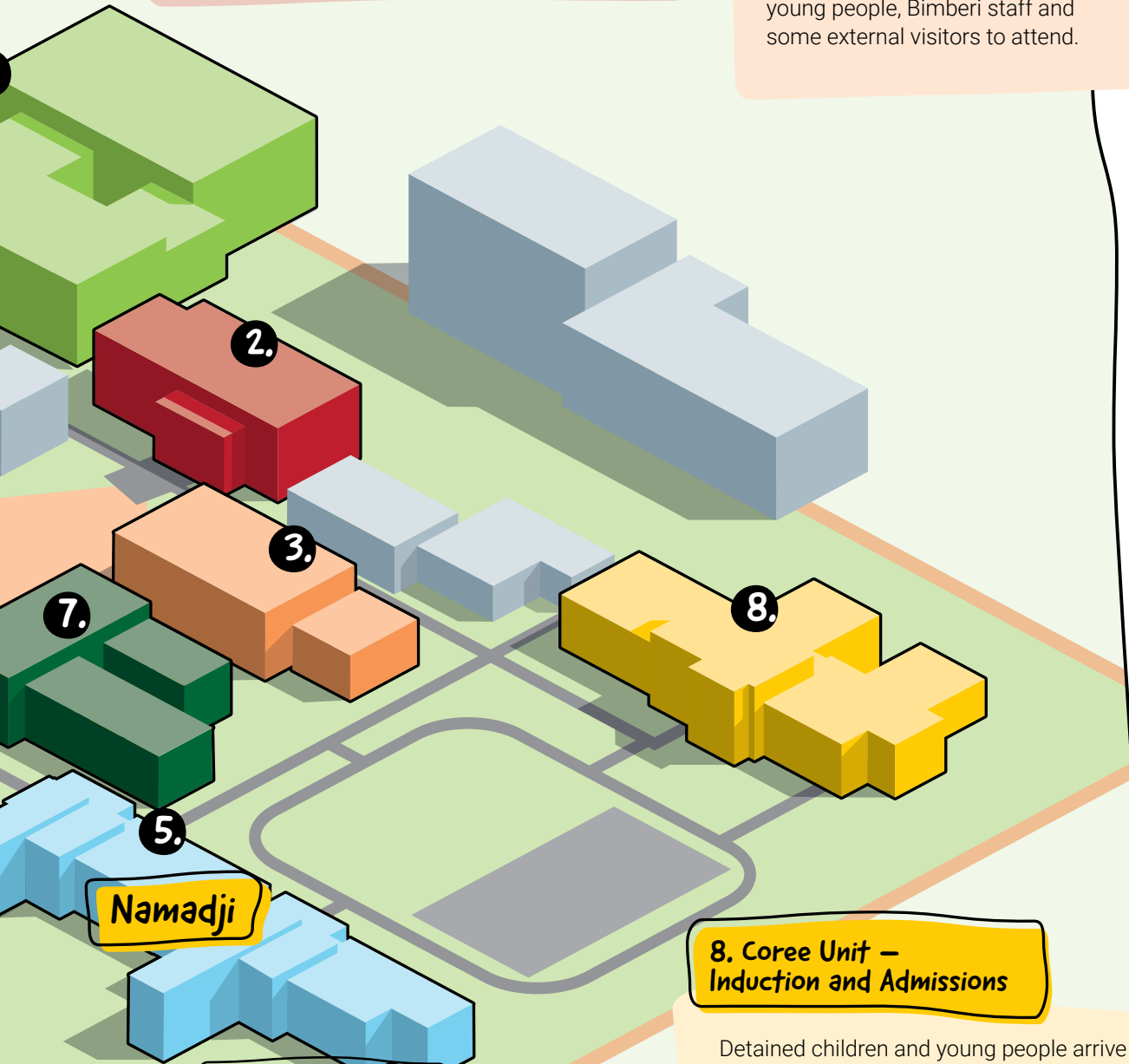
This is a space for spiritual and cultural activities and programs to be held for detained children and young people. There is also a fire pit and yarning circle outside.

2. Visits centre

Family and friends of detained children and young people can visit them in Bimberi. The visits centre is also used for professional visits, such as from lawyers and case managers. This is also where the room for audio-visual link for court appearances is.

3. Dining hall and kitchen

Meals are prepared onsite for detained children and young people and delivered to their accommodation units. On occasion a barbeque lunch is held on Fridays for children and young people, Bimberi staff and some external visitors to attend.



8. Coree Unit – Induction and Admissions

Detained children and young people arrive here and usually stay in this unit for the first few nights. They are given information about Bimberi. Health staff and Murrumbidgee School staff come to assess them and create plans for their health care and education while in Bimberi.

7. Health clinic

Detained children and young people see the doctor, nurse and mental health professionals in the health clinic, and it is where they are given their medication each day.

2 Segregation of children and young people due to COVID-19 risks

The COVID-19 Pandemic

Beginning in 2020, governments around the world implemented a range of restrictions to curb the transmission of the COVID-19 virus, including lockdowns, quarantine and isolation periods, mask mandates, and social distancing measures, which profoundly impacted daily life. Initially during the public health emergency, detention facilities were considered to be high-risk environments, where the virus could easily spread and there were concerns that detained populations may be more vulnerable to the health impacts of the virus due to generally poorer health than the general population. As a result, from 2020 onwards restrictions were placed on adult and youth detention facilities in the ACT including mandated periods of isolation on admission, limitation on in-person visits, and increased health precautions to mitigate the impact of the virus on detained people and staff. In the ACT these restrictions were gradually eased throughout 2022 and in mid-October 2022 Bimberi was no longer considered a high-risk setting. The last remaining COVID-19 Management Declaration was lifted on 28 February 2023.

The Review Team acknowledges the commitment of Bimberi management and staff to keeping children, young people, visitors and staff safe during this challenging period.

Managing health in Bimberi

The CYP Act sets out Justice Health Services and Bimberi's responsibilities in relation to health of children and young people detained in Bimberi.

A **Justice Health Services** 'treating doctor' must be appointed for Bimberi with the following functions:

- a) to provide health services to young detainees; and
- b) to protect the health of young detainees (including preventing the spread of disease at detention places).¹²

The **Community Services Directorate** must ensure

- a) young detainees have a standard of health care equivalent to that available to other people in the ACT; and
- b) arrangements are made to ensure the provision of appropriate health services for young detainees; and
- c) conditions in detention promote the health and wellbeing of young detainees; and
- d) as far as practicable, young detainees are not exposed to risks of infection.¹³

Comments from the Community Service Directorate on a draft of this report noted:

It should be made clear that health requirements for young people in detention are the responsibility of Justice Health. Bimberi were involved in decision making regarding COVID-19 restrictions for young people, but Justice Health set the requirements.

¹² *Children and Young People Act 2008*, section 97.

¹³ *Children and Young People Act 2008*, section 180.

While this review considers all forms of isolation, during the Review Team's visit, the process of COVID-19 health segregation emerged as a significant and critical issue, and became a central focus of the Review Team's work.

Children and young people can be segregated from other children and young people at Bimberi for reasons relating to health. This includes for the purposes of assessing physical and mental health, to protect anyone from harm because of a child or young person's health, or to prevent the spread of disease.

During the COVID-19 pandemic, significant restrictions were imposed on the community, including Bimberi. These restrictions were constantly changing, depending on levels of risk. During the declared public health emergency, the ACT Chief Health Officer (CHO) issued binding Public Health Directions¹⁴ and guidance¹⁵ to JHS and to ACT directorates responsible for adult and youth detention settings.

Through 2020–21, the CHO deemed Bimberi to be a high-risk setting in the context of the COVID-19 public health emergency. Bimberi, JHS and the Health Protection Service¹⁶ worked together to develop and implement the Preparedness and Response Plan to COVID-19. The Plan assured that staff were trained in COVID-safe practices, including appropriate use of personal protective equipment (PPE) and cleaning practices. To keep children and young people safe, there was mandated induction screening, health segregation, and audio-visual linking (AVL) technology was used for children and young people's appearances in Court.¹⁷

However, from mid-2022 the CHO eased public health restrictions in the broader community. From 14 October 2022, the quarantine and isolation requirements for someone who had testing positive to COVID-19 in the community were lifted, and the ACT's COVID-19 Management Declaration was lifted on 28 February 2023.

From **14 October 2022, Bimberi was also no longer considered a 'high-risk setting' in the context of the COVID-19 pandemic.**¹⁸ The CHO's advice of 12 October 2022 stated in relation to places of detention:

*Facility operators have responded appropriately to onsite COVID-19 outbreaks throughout the pandemic and residents of these settings have not experienced more severe disease outcomes associated with these outbreaks ... I therefore no longer consider it proportionate to include places of detention in public health directions. ACT Health will continue to provide relevant advice and support to places of detention, as and when required.*¹⁹

14 Public Health Directions require that certain public health social measures be met (e.g., regulating high-risk activities, and requiring that personal protective equipment be worn in certain circumstances).

15 COVID-19 public health guidance is developed to provide advice on infection prevention and control, risk assessment and risk management for various settings, organisations and individuals.

16 ACT Health's Health Protection Service is responsible for preventing public health incidents, as well as monitoring and enforcing public health regulations and providing public health advice.

17 Community Services Directorate (2021), *Annual Report 2020–21*, '[Response to the COVID-19 Pandemic](#)'.

18 The most recent instrument that defined a correctional centre and place of detention as high risk settings was *Public Health (Chief Health Officer) COVID-19 Management Direction and Exemption 2022 (No 1)* – <https://www.legislation.act.gov.au/ni/2022-483/> [effective 30 September 2022 to 13 October 2022]. This was replaced by *Public Health (Chief Health Officer) COVID-19 Management Direction 2022 (No 1)* – <https://www.legislation.act.gov.au/ni/2022-512/> [effective 14 October 2022 to 28 December 2022] which no longer stated a correctional centre and place of detention was a high risk setting, and this has remained the case.

19 Public Health (Ministerial) COVID-19 Management Direction and Exemption 2022 (No 2).

On 5 May 2023 the World Health Organization determined that 'COVID-19 is now an established and ongoing health issue which no longer constitutes a public health emergency of international concern.'²⁰ In June 2023 (at the time of the review) the ACT had no public health COVID-19 restrictions in place.²¹

However, whilst onsite at Bimberi in early June 2023, the Review Team found that significant COVID-19 isolation restrictions on newly admitted children and young people, despite clear downgrading of risk posed by the virus since the height of the pandemic. At the time of the review, the following practices were in place:

- **5–7 days initial segregation:** On admission to Bimberi, children and young people were subject to a COVID-19 PCR test on arrival. They were then to remain in their cell in the admissions unit (Namadgi Unit at the time of the review) until a PCR result was received. If the test was negative the child or young person would remain on COVID-19 health isolation but was permitted to move freely in the unit and fenced courtyard (which may involve mixing with other children or young people who have also had a clear first PCR). CSD advised the Review Team that young people had access to the health centre, visits centre, outdoor recreation areas and gymnasium (when not in use by other units). Without access to CYRIS the frequency with which this occurred could not be ascertained. On Day 5, a COVID-19 surveillance swab would be taken, and if negative, the child or young person would then be released from COVID-19 health segregation, which usually occurred on day 6 or 7 post admission due to delay in receiving results.
- **Health induction confidentiality not protected:** During the COVID-19 segregation period, the health induction was conducted by JHS staff wearing PPE including a disposable gown, face mask, face shield and gloves, with two Bimberi youth detention officers in close proximity (within hearing distance) (see Image 1). Confidentiality of this health admission process was not preserved. Given that the first few days in custody is one of the most crucial, high risk times for any person, the Review Team is of the view that better practice would be for all physical and mental health inductions to be conducted in-person, with privacy ensured.
- **Staff not required to undergo COVID-19 surveillance:** staff working at Bimberi were not required to undergo any COVID-19 surveillance testing upon entry to Bimberi. Bimberi staff who were in proximity of children and young people on COVID-19 segregation were required to wear masks and face shields.
- **Visitors required to provide negative RAT:** Visitors, including children and young people's family/friends were required to provide a negative RAT prior to visits. If they did not provide a RAT, they were required to have a box (non-contact) visit, or no in-person visit with the child or young person. Visitors were able to seek an exemption under the policy.

Image 1: Health induction of young person on admission to Bimberi



20 Statement on the fifteenth meeting of the IHR (2005) Emergency Committee on the COVID-19 pandemic 5 May 2023 [https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-coronavirus-disease-\(covid-19\)-pandemic](https://www.who.int/news/item/05-05-2023-statement-on-the-fifteenth-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-coronavirus-disease-(covid-19)-pandemic)

21 COVID-19 Management, Current Restrictions, ACT Government, accessed on 14 June 2023: <https://www.covid19.act.gov.au/management/current-restrictions>

Impacts of COVID-19 isolation measures on children and young people

During the onsite visit, some of the children and young people at Bimberi who spoke with the Review Team said that they were aware COVID-19 restrictions had been relaxed in the community, and they saw the restrictions as disproportionate, inconsistent and unfair. The Review Team heard from some children and young people who had spent time in custody in other jurisdictions where COVID-19 measures were less onerous. These young people reported that they had only been required to undergo a RAT on admission and were not required to isolate if they returned a negative RAT result and were asymptomatic.

Several children and young people also told the Review Team “it is what it is” and that they felt there was nothing they could do to change the situation, although they were willing to raise it as an issue with the Review Team.

The Review Team observed the material conditions in the cells where children and young people were accommodated on COVID-19 isolation to be austere, with painted concrete brick, steel ablution facilities, significant levels of graffiti on windows, walls and floor, no chairs and few items to distract or entertain children and young people. The main activity mentioned by children and young people was the ability to watch the TV or a DVD in their cell (from the enclosed polycarbonate TV cabinet). The Review Team was of the view that these conditions were likely to exacerbate the impacts of isolation on children and young people.

The extended period of COVID-19 isolation separated the children and young people from contact with other children and young people (except if others were also undergoing isolation and had a negative initial PCR), and delayed participation in education and in person visits until the second PCR test came back negative. CSD provided the following comment on the draft of this report:

Young people on health segregation had access to AVL visits with family and professionals. Oversight agencies (OV [Official Visitors] and Public Advocate) visited with young people in person). It was at their discretion to visit YP [young people] or not.

The Review Team’s access to CYRIS would have assisted in understanding the extent to which AVL and in person visits were utilised for young people undergoing COVID-19 isolation.

Approach in other jurisdictions to COVID-19 isolation measures

At the time of the onsite review (June 2023), there were significant variations between the ACT and other jurisdictions in Australia. As of 22 February 2023, Victoria adopted the approach that ‘prisoners must complete a RAT on arrival. Symptomatic prisoners will be referred to health services and may be held in quarantine pending a PCR test. Infection prevention and control measures, including *quarantine protocols for prisoners who test positive for COVID-19 or who refuse to take a RAT on arrival*, remain in place across the prison system for all other prisoners²² (emphasis added).

In [NSW correctional centres](#), the admissions process as noted in June 2023 was ‘[a]ll fresh custody inmates will be subject to an entry Rapid Antigen Screening (RAS) test on arrival to a correctional centre.’²³

22 Corrections Victoria, *Our response to COVID-19* (Web Page) <https://www.corrections.vic.gov.au/covid19>.

23 NSW Department of Communities and Justice (Corrective Services NSW), *COVID-19 and Correctional Centres* (Web Page) <https://www.dcj.nsw.gov.au/covid-19/dcj-services/corrective-services.html>

In comparison, the ACT COVID-19 health isolation regime at Bimberi was more onerous, both in terms of testing, and duration of mandatory isolation.

Rationale given for ongoing restrictions

During the onsite inspection, it was suggested to the Review Team by Bimberi staff that restrictions remained in place primarily to limit staff exposure to COVID-19, although CSD provided the following comment on the draft report:

At no time has Bimberi had Health Segregations in place to protect staff. Protections are in place because we are legally required under the CYP Act (s180(d)) to not expose young people to infection. That is the primary purpose for restrictions.

It was stated that staff continued to wear PPE with new inductions to protect them from possible infection from any respiratory illness.

Both preventing exposure of children and young people to disease and avoiding staff illness are important objectives.

Staff illness not only impacts their health and wellbeing, but may impact the treatment and care of children and young people in detention, if short staffing due to illness necessitates rolling lock downs, which may cause or prolong separation of children and young people.

However, while limiting exposure to COVID-19 to everyone at Bimberi is an important objective, it is incongruent that staff were not required to RAT on entry to Bimberi, and were able to mix freely in the community (in line with general community standards), while children and young people were PCR tested on admission, isolated even with an initial negative test result then PCR tested again. No satisfactory explanation of the widely divergent approaches to restrictions on children and young people on one hand and staff on the other was provided to the Review Team. Nor was any satisfactory explanation provided as to why children and young people admitted to Bimberi, as compared to staff, posed a greater risk of introducing possible infection.

Urgent letter to Minister and response

In the Review Team's view, the COVID-19 segregation requirements for children and young people at Bimberi were disproportionate to the contemporaneous risks posed by COVID-19 in a youth detention setting, and inconsistent with public health standards in the community. The prolonged (and in our view, unnecessary) period of COVID-19 isolation for children and young people on admission had the potential to cause significant harm to a child or young person's mental health.

As noted previously, there had been no public health directions applying to Bimberi since 14 October 2022. This was also acknowledged in Bimberi's *Risk Management Plan* dated 17 February 2023.

The Review Team raised its concerns about health segregation practices with CSD and Justice Health staff in a meeting with Bimberi management on 5 June 2023, and during a review exit meeting on 6 June 2023.

On 14 June 2023 the Inspector wrote to Emma Davidson MLA, Assistant Minister Families and Community Services (Youth Justice), Minister for Justice Health, and Minister for Mental Health and relevant officials to bring urgent attention to COVID-19 isolation practices. This letter included the following recommendations:

1. Urgently revise the current practice of COVID-19 health segregation of children and young people on arrival at Bimberi, in light of the well-documented, harmful impacts of isolation on children and young people, and the initial hours and days in custody being a period of high risk to their wellbeing and mental health. We recommend favourable consideration of a measure such as RAT on arrival and releasing children and young people to the general population as soon as a negative RAT is recorded.
2. All health interviews with children and young people during induction to be conducted respecting confidentiality, and without the use of face shields.

On 4 July 2023, the Review Team were advised that CSD and CHS had met with the Office of the Chief Health Officer to discuss the current COVID-19 risk to children and young people in custody and to review the health mitigation strategies in place at Bimberi. As a result the following changes would be made:

- The use of a RAT during initial health assessments and removal of the requirement for asymptomatic children and young people to be placed on a Health Segregation. Symptomatic children and young people and those who tested positive to COVID-19 via a RAT and/or other respiratory viruses were to continue to be PCR tested and placed on health segregation; and
- Changes to processes for initial health assessments to increase the confidentiality of children and young people in their engagement with JHS. Health assessments will be completed within an enclosed room of the Coree unit, with Bimberi staff nearby to provide immediate support should it be required.

The Review Team welcomes the commitment to change procedures. These changes will have significant effect for children and young people coming into Bimberi, in reducing their exposure to the harmful effects of isolation at a time of particular vulnerability. Confidentiality of medical consultation is important generally, but particularly so for the first engagement a child or young person has with a medical service in custody.

The Review Team acknowledge the receptive and timely response to this matter by relevant Directorates.

OICS will continue to monitor these issues.

Finding 1:

That the practice observed in June 2023 of COVID-19 health segregation of children and young people on admission to Bimberi for up to a week as a health precaution, went beyond what was necessary and proportionate to the contemporaneous risk posed by the virus.

Role of the doctor under CYP Act

The Clinical Director of JHS holds an important delegation under s 97 of the CYP Act, which includes appointing a 'treating doctor' for each detention place. That treating doctor is to (amongst other things) 'provide health services to young detainees'; 'protect the health of young detainees (including preventing the spread of disease at detention places)'; and 'may give written directions to the director-general' for the purpose of health protection.

JHS advised the Review Team that in relation to COVID-19 management at Bimberi:

Advice provided to Bimberi Youth Justice Centre (BYJC) management in accordance with section 97 of the Children and Young People Act 2008, was primarily provided via collaborative meetings between JHS, Winnunga Nimmityjah Aboriginal and Health Community Services, BYJC and Health Protection and through daily Covid-19 trackers. These meetings were held on a regular basis throughout the period of the pandemic²⁴

However, based on minutes and other documentation provided by JHS to the Review Team, the treating doctor did not appear to attend these meetings. It appears no written directions were provided by the s 97 treating doctor to the director-general on COVID-19 management in Bimberi.

Finding 2:

That the 'treating doctor' under s 97 of the *Children and Young People Act 2008* did not appear to play an ongoing role in ensuring that the COVID-19 health segregation requirements on children and young people in detention were the least restrictive possible in the circumstances.

Recommendation 1:

That Justice Health Services ensure that the 'treating doctor' under s 97 of the *Children and Young People Act 2008* plays an ongoing role in monitoring any restrictions on children and young people in Bimberi resulting from health segregation, to ensure limitations are proportionate.

Access to lawyers while subject to COVID-19 isolation measures

The Review Team was made aware of limitations on children and young people's ability to talk freely and in a confidential manner to their lawyers. From late 2022, if lawyers wished to speak with their clients while they were segregated, Bimberi staff placed a telephone at the bottom of the cell door on speaker phone with the child or young person on the other side of the door, speaking through the gap at the bottom of the door. This was reportedly due to difficulties putting each lawyer's numbers on the centre's telephone system at short notice prior to a young person's court appearance.

24 Email from JHS, 15 August 2023.

It is an important safeguard for children and young people in custody to have a right to confidential access to a lawyer, particularly given that most in the ACT are on remand.²⁵ It is concerning that this issue was not immediately addressed as a high priority. In 2021–22 on an average day, over 90% of children and young people in detention in the ACT were unsentenced and awaiting the outcome of their court matters.²⁶ The Review Team understands that this issue may have impacted (or continue to impact) children and young people not undergoing health segregation. At the time of writing Bimberi were looking at options to address this issue.

Recommendation 2:

That Bimberi take urgent steps to guarantee confidential communication between children and young people and their lawyers, in an appropriate setting.

Health assessment of children and young people during COVID-19 isolation

Human rights standards require that children and young people subject to isolation should be regularly monitored by medical professionals, as a key safeguard for their health and wellbeing.

The Review Team examined health records to assess whether the segregation of children and young people for COVID-19 health isolation or other health reasons was appropriately assessed, monitored, and documented. It is positive to report that all records inspected were completed appropriately. No child or young person was kept longer than was designated under Bimberi's health segregation policy.

25 For example, in the June quarter of 2022, on an average day there were 11 children in detention in the ACT, with nine of these children (81%) unsentenced – Productivity Commission (2023). '17: Youth justice services'. Report on government services 2023, table 17A.1 as cited in Justice Reform Initiative, *State of Incarceration: Insights into Imprisonment in the Australian Capital Territory* (Web Page) https://assets.nationbuilder.com/justicereforminitiative/pages/337/attachments/original/1681695584/11_JRI_Insights_ACT_REPORT_39_.pdf?1681695584

26 Australian Institute of Health and Welfare, 2023, Youth Justice in Australia 2021–22, <https://www.aihw.gov.au/getmedia/3fe01ba6-3917-41fc-a908-39290f9f4b55/aihw-juv-140.pdf.aspx?inline=true>

3 Safety and security segregation

An examination of health records for children and young people who had been segregated for 'safety and security' reasons showed that health staff conducted welfare checks and completed relevant forms. Health staff also recorded assessments for injury following post-incident use of force on children and young people. There was (appropriately) no evidence that the health staff had contributed to the decision to isolate the child or young person.

All health records examined reflected the entry as listed on the Segregation Directions Register. All records conveyed a cohesive story of the processes and results of enquiry.

The Review Team's inability to access CYRIS limited the ability to review CSD records (case notes, general information etc) aside from the relevant registers.

Accommodation placement results in effective isolation

The low numbers of children and young people at Bimberi can at times result in isolation in accommodation arrangements: where children and young people are accommodated in a unit on their own, but not subject to any specific segregation direction under the CYP Act.²⁷ On a case by case basis, the child or young person may be able to mix with other children and young people at some or all of available education, programs, and activities which can provide some meaningful contact, however, there may be limited interaction with other children and young people during time on unit. In relation to this issue, CSD provided the following comment:

Every young person's placement is recorded on a 'Young Person Status Update' form to outline why the placement decision has been made and its compliance with s166. This is recorded on CYRIS. Placements are reviewed at least weekly on Fridays and also upon each review of the young person's SMD (if they are on one). A young person can make a complaint to Bimberi or an oversight agency about their placement. YP's mixing opportunities is considered daily in morning brief. Daily Residents list – showing young people's placements is provided to the Public Advocate's Office and Official Visitors daily, providing ongoing oversight to placements.

At the time of the review there was one such young person who was in this situation. This young person was on a Special Management Direction (SMD), and able to attend some education (with other sessions to be done in the unit), and to attend the gym/oval with specified young people based on security and risk assessment. Under the SMD, the young person was unable to have items in their cell such as photos, books, TV remote, chair, curtain, or 'comfort items' (Bimberi clarified that this a broad term used to refer to items individual to a young person, that can safely be provided and may include for example, tactile objects etc).

²⁷ Specific segregations under the CYP Act include s 209 safe room segregation, s 212 safety and security segregation, s 213 protective custody segregation and s 214 health segregation. Section 166 of the CYP Act generally requires that in placing a young detainee, the director-general must ensure certain things such as separation of young people on remand from those that are sentenced, and separation of male young detainees from female young detainees, unless they believe on reasonable grounds that another placement will be in the best interests of all affected detainees. However, unlike segregation directions, the decisions to separate under s 166 are not subject to the safeguard of being regularly reviewed, and process for seeking external review.

The Review Team was aware that another young person had recently been held on their own in a unit due to being the only individual of that gender. This is not uncommon due to the generally very low number of girls held in Bimberi.

In 2019, it was publicly reported²⁸ that a female Aboriginal young person was placed on her own in the Coree Unit at Bimberi for almost two months. A range of culturally significant Aboriginal art items were removed from her cell, purportedly for safety and security reasons. A segregation direction had not been made, which meant that the young person was unable to seek a review of her separate placement. The young person commenced a human rights-based legal action against CSD which resulted in the Directorate issuing a written formal apology together with an undisclosed financial settlement. CSD stated that they would review Bimberi policies and procedures to clarify the difference between separation and segregation, and review the property policy and procedure regarding access to significant personal property, acknowledging that artistic expression was important for Aboriginal artists to connect with their culture and country.

On 24 May 2023, CSD advised the Review Team that a Bimberi policy and procedure about separate placements remains in draft and has not been notified. The property policy and procedure has also not been updated and notified. The current version of the *Children and Young People (Property) Policy 2018 (No 1)* was notified on 13 August 2018, a year prior to the above legal settlement. On 15 June 2023, CSD advised the Review Team that *'work on updating this policy has not commenced.'*²⁹

Image 2: Holding cell in Coree Unit at Bimberi



There must always be a lawful basis to isolate a child or young person, made in accordance with existing legislation accompanied by relevant safeguards. In particular, the isolation of a child or young person limits several human rights, and Bimberi may only limit such rights under the HR Act when those actions and decisions are lawful (as well as reasonable and proportionate).

A failure to comply with relevant legislation and policy may result in relevant safeguards not being applied. For example, where any decision or action leads to a child or young person being isolated, they should be informed of and have access to the review processes (both internal and external) and be afforded natural justice/procedural fairness throughout these processes.

Two years ago in the [Healthy Centre Review of Bimberi Youth Justice Centre 2020](#) (the HCR) the OICS recommended:

²⁸ [Bimberi detention centre 'breached human rights' by unlawfully separating teen for two months, case alleges - ABC News](#)

²⁹ Response to information request received 1 June 2023 ACT Inspector of Correctional Services (Attachment C), email from Deputy Director General's Office CSD to ACT Inspector of Correctional Services, 15 June 2023.

That the Community Services Directorate notify a policy under section 166 of the Children and Young People Act 2008 that clarifies when a young detainee can be placed under separation by being accommodated in a unit by themselves and provides appropriate safeguards for its use.³⁰

The ACT Government agreed to this recommendation. However, at the time of this review, this recommendation has not been implemented, and OICS remain concerned about the lack of legislative framework in place (law, policy, procedure and required safeguards such as regular reviews and additional supports).

Recommendation 3:

That children and young people are only ever isolated with legislated, legal safeguards such as access to review processes.

Centre-wide lockdowns

A form of isolation not clearly set out in a notified policy is the practice of centre-wide lockdowns. These are generally either in response to emergency incidents, or due to staffing.

Lockdowns in response to emergency incidents

The issue of centre-wide lockdowns in response to emergency incidents was identified in HCR20 as a matter adversely impacting centre routine and resulting in children and young people being isolated, usually in their cells for the duration of the lockdown. In that review, a recommendation was made for Bimberi to consider options to avoid centre-wide operational lockdowns in response to emergencies and other incidents, and mitigate the impacts on children and young people, which was agreed to by Government.³¹ This recommendation was marked as completed as at May 2023.

Despite this, the Review Team found the practice remains a matter of ongoing concern for children and young people. It was unclear to the Review Team as to how frequently strategies to reduce the frequency and impacts of lockdowns are considered, given the paucity of documentation. The Lockdown Register entries made no reference to such strategies and the Incident Log records examined did not include this detail. The Review Team was unable to check CYRIS records for evidence of any individual strategies implemented.

Bimberi's 2022 *Emergency Operating Plan* (the EOP) provides a framework for responding to operational incidents that require an emergency response. The Review Team understands from conversations with staff and young people that it is a continuing common practice that when an incident code is called at Bimberi, the centre is locked down, although we were not able to ascertain the extent of this due to reasons outlined below. Further, the Incident Report register does not indicate the operational response to the incident (ie, partial or full lockdown) nor the duration. Referring to each incident report is an inefficient and unsatisfactory way to understand prevalence (the incident reports viewed did not indicate if partial lockdowns occurred, nor the period for a total lockdown occurred). After the incident

30 Recommendation 8, ACT Inspector of Correctional Services (2021), Report of a healthy centre review of Bimberi Youth Justice Centre 2020, Canberra.

31 The accompanying comment in the Government response notes 'A review of Bimberi's Emergency Operating Procedures is underway in response to recommendations made in the Muir Review and by WorkSafe ACT in response to the August 2019 critical incident. It is expected that this review will be complete by June 2022. The use of lockdowns in response to incidents will be considered as part of the review of Bimberi's Emergency Operating Procedures.'

has been resolved, the centre remains locked down for a period while a debrief is held, and staff involved in the incident have completed their reports. CSD noted the following also occur: the welfare of children and young people and staff is checked, health care is provided, and risk assessment is undertaken to determine any changes to the running of the Centre post incident.

The EOP indicates that when an emergency code is called, all (non-emergency) movements around the centre are to cease and, *if necessary*, children and young people will be secured in place *in their current locations* (or to an evacuation point depending on the incident), along with a head count. The EOP does not require that children and young people will immediately be escorted from their current location and returned to their residential units to be secured in their cells (which may be a further response following a risk assessment). The EOP requires that the Chief Warden demonstrates they have considered the matters outlined in the code checklists for each emergency event, including the nature and scale of the incident.

Inconsistent with this guidance, the Review Team understands that the full centre lockdown process always includes returning all children and young people to their allocated residential units and securing them in their cells. If an incident is in progress at a residential unit, children and young people temporarily outside that unit will be secured. This practice contributes to the disruption of daily routines and key services, such as temporarily withdrawing children and young people from education, health, visits, recreation activities, induction assessments, and court escorts. In turn this reduces meaningful human contact for the children and young people and increases the time that children and young people experience isolation.

The Review Team was informed by Bimberi senior managers that regularly implementing lockdowns in response to incidents was for consistency in the number of staff responding to incidents, capacity to manage the risk of escalation and secondary incidents, and to resolve incidents as quickly as possible. It was unclear to the Review Team as to why the centre needed to remain locked down while staff completed reports, given each residential unit has a duty point (secure workstation area) with computer facilities, and having unit staff rotate through this task may be feasible.

CSD provided the following comment on a draft of this report:

...[Y]oung people may need to remain lockdown when the welfare of involved young people and staff is checked and medical treatment provided etc. It is feasible to release all or most young people when there is only one or a few staff that need to complete reports but when multiple staff members are involved effective supervision is compromised and risk is escalated.

Recommendation 4:

That the Community Services Directorate ensure compliance with the Bimberi Emergency Operating Plan including in terms of the Chief Warden documenting their risk assessment against the relevant code checklist and their determination of each incident level and response.

What does the data say?

It was challenging for the Review Team to ascertain the volume and frequency of full centre lockdowns, due to the disjointed reporting practices at Bimberi. As noted above, the Lockdown Register does not record incident-related lockdowns of less than 90 minutes. Of the 17 lockdowns recorded in that register, 14 were recorded as being due to short staffing, and 3 due to incidents. Other incident lockdowns of less than 90 minutes duration can only be found by examining each incident log. As there is no centralised,

consolidated electronic register of all lockdowns that it is difficult to assess the full impacts of centre-wide lockdowns on the experiences of isolation of children and young people at Bimberi. The matter of data management is discussed further in [section 7](#) of this report.

How children and young people felt

A number of children and young people told the Review Team that they felt that lockdowns in response to an isolated incident were unfair and felt like collective punishment. They also said that some “codes” can last for hours and that during this time they are locked in their cell with nothing to do, not even given access to their television remote control. They stated that during this time they are not given any information about what is going on or how long they should expect to be locked in their cell. Some young people also told the Review Team that they felt some staff would call a “code” as a first response to a minor incident rather than trying to manage the situation locally and avoid a centre-wide lockdown.

CSD provided the following comment on a draft copy of this report:

When codes impact young people’s meals (lunch/dinner) they will be given their meal in their rooms, if the code cannot be stood down in a timely manner. For codes over 90mins young people are often also given drinks and additional snacks (lollies/chips) in their room as a thank you for their patience. They will also be given their remote at these times.

Given the relatively low numbers of children and young people at Bimberi, the Review Team considers CSD should review its routine practice of centre-wide lockdowns and place emphasis on the need for effective risk assessment for each emergency response event. As the EOP is apparently the basis for isolating children and young people, it should be formally notified under the CYP Act.

Recommendation 5:

That the Community Services Directorate ensure the Emergency Operating Plan is properly made under s 143 of the *Children and Young People Act 2008*, given it may be the basis for isolating children and young people.

Behavioural Management Framework as basis for isolation

Bimberi implemented a new *Behavioural Management Framework* in 2023, amending former ‘time out’ practices and introducing a range of other communication and intervention strategies. However, the *Children and Young People (Behaviour Management) Policy and Procedures 2018 (No 1)* remains unchanged since the new framework commenced. The Review Team has not considered if any changes are necessary, and acknowledges that some aspects of the framework, such as the use of time outs or resets, or any associated safeguards, are prescribed in the *Children and Young People Act 2008*. Nonetheless, the Review Team suggests it is important that the relevant policies and procedure are consistent with the framework, including because human rights restrictions may be subject only to reasonable limits set by laws.³² Currently, the new *Behavioural Management Framework* is not law.

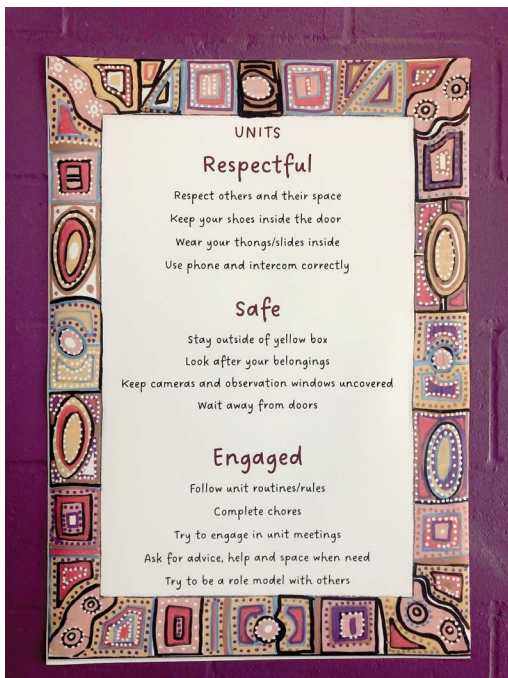
³² Human Rights Act 2004 s 28.

CSD advised the Review Team that 'Bimberi is currently in the process of reviewing all policies and procedures notified under s 143 of the *Children and Young People Act 2008*.³³ Their practice is for the Bimberi management team to review all policies and procedures and notify them 'as a package' on the ACT Legislation Register, rather than notifying individual documents as they are updated. This has resulted in considerable delays and means that a number of notified policies and procedures do not reflect contemporary operational practice at the centre.

Recommendation 6:

That the Community Services Directorate resource and prioritise the review and notification of policies and procedures relating to segregation and isolation.

Image 3: Expectations Poster – BYJC Behaviour Management Framework



Staff training sessions

Bimberi's staff training plan provides that staff training sessions are held twice weekly on Tuesday and Sunday mornings, following the morning briefing. The centre remains locked down during that period. For children and young people, this means that twice a week they are isolated in their cells for approximately 14.5 hours, from 7.30pm to 10.00am. Children and young people are not permitted to retain food in their cells.

For example, the Review Team observed on one Sunday the combination of the morning briefing, staff breakfast, training session, and a unit meeting meant staff were not available to begin providing

33 Response to information request received 1 June 2023 ACT Inspector of Correctional Services (Attachment C), email from Deputy Director General's Office CSD to ACT Inspector of Correctional Services, 15 June 2023.

breakfast to children and young people until 10.05am. The morning medication round had also not taken place.

The children and young people were observed advising staff of their breakfast preferences (cereal/ toast etc) from their cells at 10.10am. Two children and young people who had been admitted on the Saturday evening remained held in their cells, awaiting their health induction assessment. Both of those children and young people were entering custody for the first time. The extended period alone in their cells (and in the absence of a health assessment and a meal) failed to demonstrate a risk- or trauma-informed approach.

The *Children and Young People (Minimum Living Conditions) Policy and Procedure 2018 (No. 1)* requires at paragraph 6.7 that 'Meals are provided for young people at times consistent with the cultural norms of Australia',³⁴ reflecting international standards for youth detention and the Mandela Rules. The Review Team considers that providing breakfast to children and young people after 10.00am does not meet this standard.

The Review Team examined six weeks of the Bimberi Control Room Log, which included records of operational lockdowns from October 2022 to March 2023. The Log recorded that the unlock times on Tuesdays and Sundays were between 9.13am and 10.00am; with a median unlock time of 9.50am.

When the Review Team raised this matter with Bimberi and JHS senior managers, they advised that their expectation was that the medication round and health inductions ought to have been facilitated despite the training lockdown and were unaware of this practice. Bimberi stated they could look into providing alternative breakfast meals for these days.

Children and young people who spoke to the Review Team said that they get hungry during the period they are locked in their cells but that on occasion staff will make toast and give it to them in their cell if there is a late unlock that goes beyond 10.30am. One young person described these mornings as "pretty shit, we don't get any breakfast until after we get let out because we aren't allowed to have food in our rooms."

Bimberi Senior Management stated that Bimberi were focused on maintaining and developing their staff capability as a priority and they had insufficient human resources to deliver ongoing training to staff without locking down the centre.

34 Legislative Instruments, Children and Young People Act 2008, ACT Legislation Register <https://www.legislation.act.gov.au/View/ni/2018-441/current/html/2018-441.html>

4 Isolation before and after detention at Bimberi

Detention before and after Bimberi

Following arrest, section 30 of the *Corrections Management Act 2007* (CM Act) provides that children and young people may be detained at a police cell for up to 12 hours. ACT Policing will routinely escort the child or young person to Bimberi, unless they have identified medical needs that require police escort to a hospital, for assessment and possible admission. While in police custody, the child or young person must be kept separately to adult detainees pursuant to s 100(3) CYP Act. Children and young people may also be escorted directly from the police watchhouse to the court cells pending a court appearance. These escorts are routinely undertaken by the Court Transport Unit (CTU) – part of ACT Corrective Services – which operates the court holding cells for the ACT Children’s Court (ACT Magistrates’ Court) and the ACT Supreme Court.

The CTU also routinely collects children and young people from Bimberi and escorts them to court, and then conducts the return escort to Bimberi in accordance with a Memorandum of Understanding between CSD and the Justice and Community Safety Directorate (JACS), pursuant to section 103 of the CYP Act.

CTU managers advised that children and young people are held separately to detained adults (required under section 33A CM Act). Under section 33(3)(b), children may only be held in court cells for a maximum of 12 hours. The CTU managers advised that the period that children and young people spend at the court cells varies considerably; depending on the time the court matter is listed and has concluded, when the holding warrant/s have been provided from the court to the CTU (which may be up to two hours), and when the CTU has an available escort vehicle and officers. CTU managers advised that they give priority to return escorts for children and young people to Bimberi.

The Review Team considered the experience of cumulative isolation for children and young people during the initial period of their custody, and when returning to court, including visiting the court holding cells which are operated by the CTU.

Image 4: CTU vehicle for transporting children and young people



The period that children and young people may spend in effective isolation from arrest to court holding cells could be up to 24 hours. However, the period of cumulative isolation is not actively monitored and this information is not handed over to Bimberi.

On arriving at Bimberi, there is often a further period of isolation for the induction assessment, health assessment, and classification assessment to be completed, followed by any required health isolation (which at the time of the review was a mandatory 5–7 day period, but this is no longer required due to urgent recommendations made by the Review Team being actioned).³⁵

CSD provided the following comment on a draft of this report: “induction assessment occurs immediately upon induction. Most young people are secured following induction because it is the middle of the night. If they are inducted in the day time then they stay out in the unit and are seen by JHS and CMHS as soon as they are available ... Young people can mix with other young people in Coree during this period. If there are other young people in Coree at the time and there are no known issues/risk between the young people”.

CTU managers advised that children and young people are provided with a meal at lunchtime when held at the courts. However, no provisions are made for a breakfast meal at CTU. In the case of children and young people coming to CTU from Bimberi, CTU managers assumed that the children and young people had been provided a morning meal by Bimberi and any required medications by JHS prior to escort. CSD advised the Review Team that breakfast is offered to children and young people prior to being picked up for court by the CTU staff, yet the Review Team spoke to young people at CTU who stated they had not had breakfast. The Review Team understands that at the time of writing, Bimberi was exploring breakfast pack options for children and young people attending court in the mornings.

Further clarity is needed around protocols for determining if children and young people brought to CTU from Bimberi can share a cell whilst in CTU. There appeared to be inconsistent understanding between Bimberi and CTU of the default approach (ie, is it that young people can share unless otherwise specified, or vice versa). The Court Transfer Advice form provided by Bimberi to the CTU does not advise whether, if there is more than one child or young person on the escort, they can be held in the same cell. CTU managers advised that they would place children and young people separately in holding cells, unless Bimberi expressly advised on the form they could mix. As a result, there is likely to be more instances of children and young people spending time alone in holding cells than may be necessary.

Recommendation 7:

That Bimberi specifically state on the Court Transfer Advice form whether any of the children and young people in the court escort group can mix (or not).

5 Access to healthcare while isolated

Primary healthcare and specialist mental health services at Bimberi are guided by the same general principles as community-based health services.

The Review Team was advised by consultant mental health staff that their appointments with children and young people are on occasion delayed due to late unlock, and they were aware of an instance

³⁵ In the event of a positive COVID-19 test, the child or young person would experience a further period of health isolation.

when a young person did not receive their morning medication until noon. In this case it was a psycho-stimulant medication, where timely administration as directed in the morning is important. Based on a review of a limited sample (examining 4 weeks of medication administration times across a period of four months in 2023) the Review Team did not note any major concerns in terms of delayed administration of time sensitive medications. For medications that had been listed as to be administered 'every morning' the administration time varied from 08:59 to 11:33. The Review Team notes that more consistency of timing of morning medications is desirable to provide a predictable routine for children and young people and limit disruption to other centre activities.

Access to health services provided by a qualified health practitioner is offered at a minimum once daily, upon the request (consent) of the child or young person. At the time of the inspection, the Review Team was advised that there was one young person who was in a separated unit placement who had withdrawn from any contact with health professionals. This led to prolonged periods where no entry was being made in the health record of this young person. Rather than an absence of health records; periodic notes, for example, that 'No contact was requested' would be prudent. The Review Team does not recommend the provision of a formal statement by the young person refusing assessment or treatment, as this may provoke distress.

Recommendation 8:

That Justice Health Services ensure periodic notes are kept where a child or young person does not request (consent to) contact by a qualified health practitioner.

6 Conditions of Isolation

When children and young people are isolated, they often spend hours alone in their cells. The single-occupancy residential cells where children and young people are held at Bimberi are of austere design, with white painted reinforced cement blockwork walls, two cement block walls separating a tiled shower and toilet area with stainless-steel facilities, a plinth bed (with mattress, pillow and basic linen), property shelving, a desktop, and an enclosed television on the wall. The cells have vinyl flooring, other than in Bendora 2 unit, where cells have durable carpeted surfaces. Common areas in the residential units had vinyl and durable carpeted flooring, a fixed table with fixed bench seating, a television, a small number of durable lounge chairs, and a stainless-steel kitchen bench (with no food preparation facilities except in Bendora unit). Children and young people had supervised access to card games and table tennis, as well as electronic gaming consoles in Namadgi, Majura and Bendora units (but not in units where new receptions are accommodated or children and young people are on Safety and Security Segregation Directions). From the common area, a door provides access to a small, fenced yard which had fixed seating, and a blackboard-style wall.

Image 5: View to fenced external unit courtyard

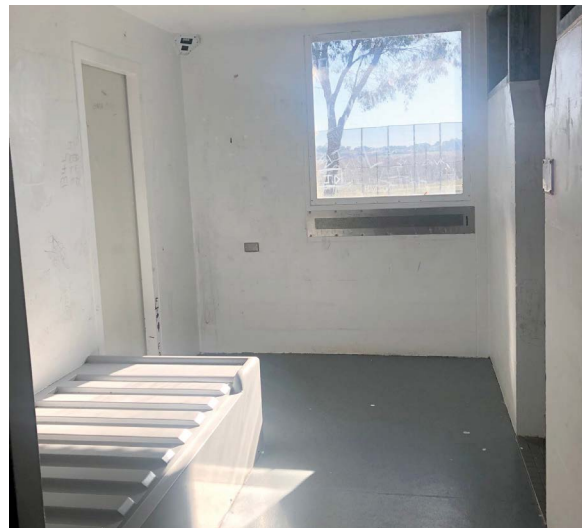


Image 6: Cell in accommodation unit



While architectural design and environment is one of many variables impacting the psychological effects of a custodial setting, the lack of 'warmth' in the Bimberi residential units was conspicuous. Wherever possible, decisions around in-cell materials, colours and fixtures should consider therapeutic dimensions and not be made on security grounds alone. The aim should be to communicate positive expectations and create a more personal environment for children and young people. CSD may wish to consider a more cheerful colour palette for the cells, rather than bright white, taking into account the sensory needs of neurodiverse children and young people.

Image 7: Cell in accommodation unit (note: mattress would be placed on raised bed when cell was in use)



The Review Team are concerned about the conditions experienced by children and young people isolated in sparse cells, such as in Namadgi (and Coree), during the early stages of custody and after induction, particularly for those children and young people in custody for the first time. This may particularly impact children with disability, as noted previously in HCR20.

In 2020, young detained people told OICS they would like a greater selection and variation of activities when isolated. Finding 79 of HCR20 was that young detained people would like more activities to undertake in their cells and units during lock-in times. The Review Team observed limited entertainment options particularly for the children and young people undergoing 5–7 days COVID-19 isolation.

Similarly, in discussing the daily routine for detained children and young people, HCR20 noted that young people reported evenings were particularly challenging period when they are secured in their cells for 13 hours or longer. Without food or many activities to do in their cabins, it is a long period for young detained people to be locked in their cells.

The Review Team consider that wherever possible, isolation should be avoided, but if it is necessary, children and young people must have access to equipment and activities to address boredom. Minimum entitlements must be maintained including the ability to contact family and friends via phone/video calls and options should be provided for entertainment and self-expression. Children and young people should also have access to food (particularly breakfast) if they are going to be locked in their cells until mid-morning.

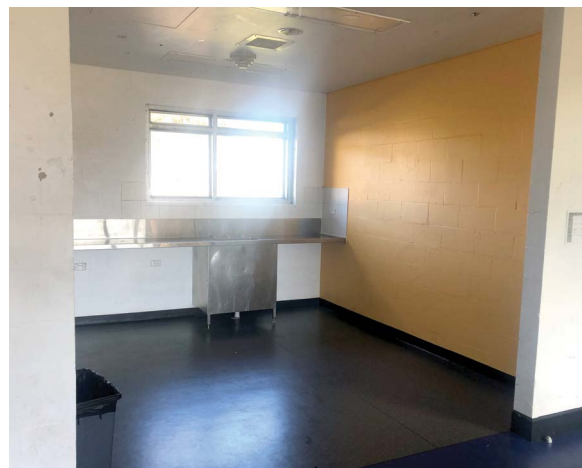
Recommendation 9:

That the Community Services Directorate ensure minimum entitlements are maintained whenever children and young people are isolated in their cells for prolonged periods, particularly access to sufficient food or drink to avoid hunger (including when children and young people's usual breakfast is delayed).

Image 8: Common area in Namadgi Accommodation Unit



Image 9: Kitchen area in accomodation unit



Conditions of segregation

Segregation is defined in s 204 of the CYP Act as the restriction or denial of the young detainee's opportunity to go into, or be in, a particular part of a detention place; or to associate with other children or young people; and includes separate confinement in a safe room. Reasons for segregation directions may include the use of the safe room (where the child or young person is at risk of self-harm), safety and security, protective custody and health. Segregation must not be used for disciplinary purposes.

The children and young people who spoke to the Review Team said that segregation usually occurs in Coree or Namadgi units, and that these units are considered "sterile" areas meaning when placed there they are not allowed to have any of their belongings or clothes with them. One young person said that "when you're in segregation, they take all your stuff. You can only have the clothes you are wearing, and they give you another set of clothes to change into when you have a shower." Another young person said that "Namadgi is a shit place, so you usually act like shit when you are there." The young people felt that being segregated in these conditions did not give them incentive to change the behaviour that had landed them in segregation or take care of their surroundings, rather it had the opposite effect.

Graffiti

The Review Team observed that cell walls of accommodation units and elsewhere (e.g. visit booths for non-contact visits) were covered in graffiti, either written on or scratched into the surface of the block paintwork, and scratched into the windows. The Review Team did not observe window coverings, CSD noted that 'young people in Namadgi and Bendora have curtains in their rooms unless they are considered a safety risk (self-harm) or security risk (covering observation window consistently).'

Image 10: Graffiti on cell window



The Review Team observed significant levels of graffiti on walls and scratched into windows. This included swastikas coupled with Nazi-style 'SS' symbols.

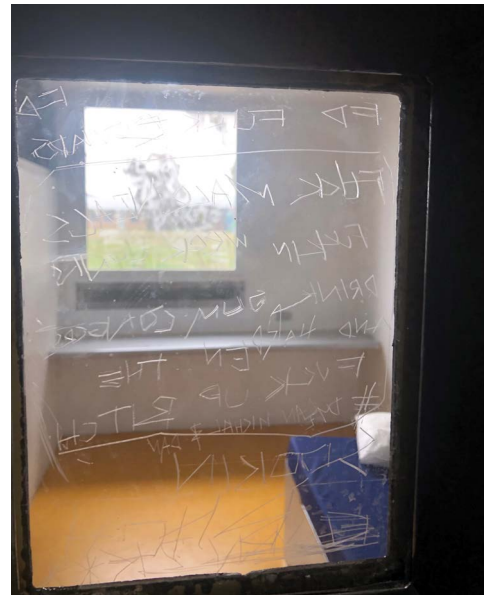
The Review Team appreciates the cultural and historical significance of the swastika for the Buddhist, Hindu, Jain, and other faith communities as an ancient and sacred symbol of peace and good fortune. However, coupled with the reference to a Nazi-style 'SS', the symbol used in this context is likely offensive to most people and particularly to Jewish people, Aboriginal and Torres Strait Islander people and other people of colour.

Symbols matter and the impacts they may have on children and young people who are entering custody should not be underplayed. Allowing this graffiti to remain creates a physically, psychologically, and culturally unsafe environment which children and young people who not free to leave. It further contributes to an experience that may already be highly traumatic for a child or young person.

On 16 May 2023, reflecting OICS mandate as an NPM involves ongoing monitoring beyond formal visits, the Review Team reported to Bimberi management the multiple graffiti symbols observed in one cell (Namadgi cell 11) on two walls and the floor. Management’s response was that the Namadgi unit would be the next unit to undergo renovations. The Review Team’s observations three weeks later, on 5 June 2023, was that this had not been addressed. The cell was operational throughout that time; and the Review Team observed that children or young people (including someone for whom it was their first time in custody) had been placed in the cell during this time.

Bimberi senior managers advised the Review Team that with their limited staff they had to prioritise safety and security tasks (such as replacing lights, broken windows, items pulled apart). They stated that it was a ‘constant battle’ to repaint walls which they preferred not to ‘patch paint’ due to it looking scrappy and that Bimberi has a refurbishment schedule. The refurbishment of the Coree Unit was completed shortly after the onsite review week and the next scheduled repaint would be Namadgi Unit. The Review Team observed that Coree Unit had been repainted throughout, however the windows remained covered in graffiti scratched across the surfaces.

Image 11: Graffiti entry into cell



ACT Legislative Assembly ban symbols of hatred

At the time of writing the ACT Legislative Assembly passed laws making it a criminal offence to publicly display Nazi symbols such as the swastika. The Attorney-General observed: “The new offence sends a strong message to the ACT community that we do not tolerate the public display of symbols intended to incite hatred.” “Everyone has the right to feel safe and live their lives in our community free of intimidation and threats.”

“The offence protects ACT community members including Jewish people, people with a disability and LGBTIQ people, from the harm caused by public displays of Nazi symbols.”

Source: Shane Rattenbury MLA (ACT, 'Nazi symbols banned in ACT' (Media Release, 29/08/2023).

Image 12: Namadgi shower



Recommendation 10:

That the Community Services Directorate dedicate sufficient resources to maintenance of cells, common areas and visit areas including windows and doors to ensure that radicalised/offensive and other graffiti is removed or covered in a timely manner.

Behaviour Management Plan and incentives

Some of the children and young people who were accommodated in Bendora unit (which accommodates children and young people on the lowest security classification and highest privilege levels) told the Review Team how they valued living in the unit and it was a good incentive to work hard towards their Behaviour Management Plan and take care and pride in their surroundings and belongings. Some young people said that they felt it would be more effective to start on the highest privilege level and better accommodation options with the incentive being to maintain these privileges, rather than starting from the bottom and having to work your way up.

Bimberi does not supply a chair to children and young people in their cell unless they have earned sufficient incentive points under the *Behaviour Management Framework*. The Review Team considers that access to a chair should be a minimum standard rather than a privileged item, as children and young people may wish to read or write, or complete artwork or activity packs in their cells. This is especially pertinent, given lengthy overnight lock-ins. This matter was also raised in HCR20. The Review Team notes, in comparison, that detained adults in custody at the Alexander Maconochie Centre in the ACT have a chair in their cell at all classification levels,³⁶ unless they are accommodated in a purpose-built observation cell i.e. assessed at risk of self-harm or for psychiatric observation, or the Management Unit, for assessed safety and security reasons.

Recommendation 11:

That the Community Services Directorate provide a chair as a minimum standard item to all children and young people in their cells.

³⁶ Though noting that some units at AMC have been 'double bunked' meaning that there are two people accommodated in cell designed for one – and so there is only one chair [see ACT Inspector of Correctional Services (2019), Report of a review of the care and management of remandees at the Alexander Maconochie Centre, Canberra. https://www.ics.act.gov.au/__data/assets/pdf_file/0019/1304353/Moss-report.pdf

Visits centre

The Visits centre was originally designed and furnished to be a welcoming environment, with a children's play space and outdoor playground. Visits are an important opportunity for children and young people to have meaningful contact with family and friends. However, the visits centre currently provides an environment that is not conducive to meaningful engagement between children and young people and visitors. The current feel is not particularly welcoming with sparse furnishing. Play items have been removed from the play space, whilst the internal fence surrounding the outdoor area has been made higher in response to a recommendation from Worksafe. In the open area where contact visits take place there is a line of double joined tables along the centre of the room, which Bimberi staff advised was due to continued COVID-19 'social distancing' (notwithstanding the removal of these restrictions in the community). The children and young people were to sit on one side of the tables and the visitors on the other. The physical separation of children and young people from their families and friends further contributes to a sense of separation from their support network (it would require significant reaching across the table from each side to play cards, for example). The Review Team observed two non-contact visit rooms, the walls of which were covered in graffiti with names and dates several years old. Bimberi advised that visits were now frequently held via audio-visual link as an alternative to in-person attendance, since access to this communication format has expanded over the past two years.

Image 13: Visits Centre at Bimberi



Image 14: Non-contact visit booth at Bimberi



7 Data management

The Review Team requested and examined a large range of data prior to and during the review. While some data was immediately available in existing records; most of the data about the segregation and isolation of children and young people had to be extracted by CSD from manual records and through interrogation of CYRIS (relevant fields selected and exported via business intelligence software to an Excel spreadsheet) to produce a report. This included segregation directions, segregation reviews, incident reports and correlating use of force, lockdowns of various types, and time outs.

It was evident from discussions with Bimberi senior managers and the efforts of several CYRIS Business System officers that the information requested was not routinely produced in a report format, and was not regularly analysed and monitored by CSD. The process to compile the data was resource intensive.

CSD made the following comment on a draft of this report:

[OICS] requested data fields different to those held in Bimberi's registers. Bimberi's registers include all information required by the CYP Act ... Bimberi holds registers on segregations, segregation reviews, incident reports, uses of force and time outs/resets. These registers include all information that is legally required under the CYP Act and is reviewed by the Public Advocate on a monthly basis. All Segregation Directions and Segregation Reviews are provided to the Public Advocate within the timeframes required by the CYP Act.

As previously noted, Bimberi only records lockdowns in the Lockdown Register if they were for operational reasons or over 90 minutes duration. This register format was a paper-based file. If lockdowns resulted from incidents of 89 minutes duration or less, the information had to be manually extracted through review of individual incident logs. Incidents of children and young people being locked in their cell due to individual behavioural resets/time outs were also recorded separately and had to be extracted from CYRIS to an Excel spreadsheet. Scheduled overnight extended lockdowns due to staff meetings and/or training which resulting in late unlock could only be determined by the Review Team through manually reviewing the daily entries in the Control Room Log. CSD noted that this information could be accessed in CYRIS by reviewing the young person's observation records

In order to actively monitor the degree to which children and young people are experiencing isolation at Bimberi, a manager would need to consult all of the above records.

In its commission-initiated-review of allegations regarding Bimberi Youth Justice Centre in 2019, the ACT Human Rights Commission recommended:

That Bimberi management record operational lockdowns, code lockdowns, and extended overnight lockdowns in a lockdown register which is subject to oversight by the Official Visitors, Public Advocate and Commissioners within the Human Rights Commission.³⁷

Based on inspection of Bimberi records the Review Team consider that CSD has not satisfactorily implemented this recommendation. CSD produced a four-month sample of consolidated incident lockdown information from July to October 2022 (which had previously been provided

37 Toohey K, Watchirs H, King S, McKinnon G, de Fatima Vierira M, March 2019, Commission initiated review of allegations regarding Bimberi Youth Justice Centre: Report of the ACT Disability and Community Services Commissioner and ACT Human Rights Commissioner, Human Rights Commission, p.5 https://www.hrc.act.gov.au/_data/assets/pdf_file/0007/2306644/Review-of-Allegations-Regarding-Bimberi-Youth-Justice-Centre-2019.pdf

to the ACT Human Rights Commission). CSD advised the Review Team that ‘This is not data that Bimberi usually analyses and is not available for other months.’³⁸

The Australian Government’s Productivity Commission *Report on Government Services* (RoGS) provides information on the equity, effectiveness, and efficiency of government services in Australia. It includes annual performance reporting for Youth Justice Services across Australia.³⁹ The RoGS performance indicator framework does not include measurement of a service delivery output for ‘time out of cells’ for children and young people held in youth detention. This contrasts with the RoGS performance indicator framework for adult corrective services, which requires annual reporting on time out of cells as a service delivery output that ‘*is an indicator of governments’ objective of providing a safe, secure and humane custodial environment*’. This measures the average number of hours in a 24-hour period (across the reporting year) that detained people are not confined to their cells or units. ACT Corrective Services maintains an electronic register of all lockdowns (loss of time out of cell) for all durations, reasons, and numbers of detained adults affected; with the consequent time out of cells externally reported each financial year.

The Review Team considers the variance between adult and youth detention to be a significant gap in performance monitoring and reporting, which results in youth detention services having no business incentive to maintain a centralised register of all events and reasons that reduce time out of cell for children and young people. The Australian Children’s Commissioners and Guardians’ 2017 *Statement on conditions and treatment in youth justice detention* stated that: ‘*Isolation should be publicly reported to an independent oversight mechanism*’; and that ‘*When a lockdown occurs, the duration of the lockdown and the reason it was imposed must be properly recorded and reported for independent review.*’⁴⁰

Even without the obligation to report in RoGS, as an operational performance activity, CSD should actively conduct regular analysis of its data and isolation practices, to monitor trends and risks more effectively, and to identify how it can reduce the use of lockdowns and their resultant impacts on children and young people. This activity would assist to detect whether any residential unit, demographic group, or individuals, have been subject to disproportionate levels of lockdown and isolation. In turn this provides an opportunity to develop strategies for improvement, to ensure that isolation is a measure of last resort.

Recommendation 12:

That the Community Services Directorate develop and maintain a consolidated register of Bimberi lockdowns of all categories, duration, location, reason, and number of children and young people affected, gender and Aboriginality on each occasion; and conduct regular compliance checks; to facilitate accountability and regular review by Bimberi senior management, and to allow effective external monitoring of the use of these restrictive interventions.

Recommendation 13:

That the ACT Government publicly report on time out of cells as a service delivery output as an indicator of governments’ objective of providing a safe, secure and humane youth detention environment.

38 Response to information request received 1 June 2023 ACT Inspector of Correctional Services (Attachment C), email from Deputy Director General’s Office CSD to ACT Inspector of Correctional Services, unpublished 15 June 2023.

39 Productivity Commission, *Report on Government Services 2023, part F 17 Youth justice services*, accessed at: <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice>

40 Australian Children’s Commissioners and Guardians, *Statement on conditions and treatment in youth justice detention* (2017) p.20–21 https://humanrights.gov.au/sites/default/files/document/publication/ACCG_YouthJusticePositionStatement_24Nov2017.pdf

Annexures

Annex A: Authority for this review

The functions of OICS are set out in section 17 of [the *Inspector of Correctional Services Act 2017 \(ACT\)*](#) (ICS Act). They are to:

- Examine and review correctional centres and services;
- Review critical incidents at correctional centres or in the provision of correctional services; and
- Report to the ACT Legislative Assembly on these reviews.

In addition, OICS has a role of preventive monitoring detention, as part of the ACT's National Preventive Mechanism (NPM). The NPM is an entity established or designated by government to conduct regular preventive monitoring of places of detention, required under the UN *Optional Protocol to the Convention Against Torture* (OPCAT) to which Australia became a State Party in 2017.

Section 18(1)(b) requires that the Inspector reviews correctional service at least every two years. This is the first review of a correctional service at Bimberi Youth Justice Centre conducted by OICS pursuant to the ICS Act.

OICS was established with the passage of the ICS Act. This was in response to a number of critical incidents that had occurred at the AMC since it opened in 2009, in particular the death of Mr Steven Freeman in May 2016. This prompted an independent inquiry ([Moss Review](#)) into his treatment and care. The ACT Government's response to the Moss Review included a commitment to establish an independent Inspector of Correctional Services

The focus of OICS is oversight that promotes continual improvement and prevention of ill-treatment in the ACT's adult correctional centres, and from late 2019, the ACT's youth justice facility (Bimberi).

Annex B: Review methodology

Review Team

- Rebecca Minty – ACT Inspector of Correctional Services
- Kate Rice – Acting Deputy Inspector
- Pip Courtney-Bailey – Assistant Inspector
- Andreea Lachs – ACT National Preventive Mechanism Co-ordination Director

Expert Input

Dr Michael Levy AM – Clinical Consultant – Public Health Physician MB BS (Hons II) UNSW, MPH USyd, FAFPHM (RACP). Dr Levy is a Public Health Physician with national and international experience in detainee health, and is an international leader in the field of application of harm minimisation to the custodial environment. He has worked with the World Health Organization (WHO) and the European Committee for the Prevention of Torture, and has been an observer and presenter to the WHO Health in Prisons Program (European Regional Office). Dr Levy is an independent consultant in the field of public health across multiple Australian jurisdictions. Dr Levy has previously worked for ACT JHS from 2007–2019 including in the role of Clinical Director and Treating Doctor under s 97 of the Children and Young People Act. No conflicts of interest were disclosed, and the Review Team formed a view there was a low risk of a real or apparent conflict of interest given the time that had elapsed since he left his role at JHS.

OPCAT

The [Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#) (OPCAT) is a United Nations Treaty that aims to prevent torture and ill-treatment in all places where people are, or may be, deprived of their liberty.

In January 2022 the ACT Office of the Inspector of Correctional Services, along with the ACT Human Rights Commission and the ACT Ombudsman, were designated as the ACT National Preventive Mechanism (NPM) under the OPCAT. The ACT NPM bodies are jointly responsible for visiting places of detention in the ACT, with the aim of strengthening protections against torture and ill-treatment. Under OPCAT, the NPM should have unfettered access to all places of detention and detained people, be able to make recommendations regarding treatment and conditions in detention and be able to submit proposals on legislation.

Planning and Visit

Planning for this review began in February 2023, with the onsite visit taking place from 1–6 June 2023.

The visit was unannounced in both theme and date and was the first time OICS has conducted a partially unannounced visit to a detention centre.

- The visit took place over five days, including some evening and weekend periods
- The OICS Review Team was accompanied by a clinical consultant with expertise in public health
- OICS were provided with key and fingerprint access to the centre, and radios and duress to allow for safe unescorted access to all areas of the detention centre

OICS acknowledges and thanks Bimberi management and staff and Justice Health staff for their assistance and co-operation to facilitate this visit with minimal obstacles.

Unfettered Access

The visiting NPM team should have unfettered access to places of detention.⁴¹ This is also a requirement under s19 of the ICS Act, which requires that the Inspector have access to:

- Places of detention including ability to freely move around the centre unescorted
- Information, documents, records (including CCTV) and registers regarding detained people and conditions of detention, including health records
- Staff, contractors and people in detention (including conducting private interviews)
- The ability to bring in equipment such as cameras and recording devices required for the visit

In advance of the onsite component of the visit, the Review Team participated in a safety and site induction with Bimberi training staff. This induction included the registration of team members fingerprints on the security system and provision of Grand Master Keys to allow for full access to the centre once the visit commenced. Some issues were identified by the team during this onsite visit.

Development of Policies, Procedures and Templates

This pilot visit provided OICS the opportunity to develop and test a number of key policies, procedures and templates for NPM-style visits, including:

- Safe and Effective Youth Engagement Strategy
- Reprisals Policy
- Detention staff and management training presentation on OPCAT and the NPM mandate
- Targeted ACT NPM factsheets for children and young people and detaining authorities; OICS visit poster for children and young people
- Templates: meetings with detaining authorities, reprisals register, civil society engagement register
- Updated consent form for children and young people
- Review Expectations – Isolation
- Aide Memoires for site visit
- Backgrounder regarding use of isolation and segregation in the ACT (e.g. previous Inquiries and litigation, analysis of legislation and publicly available policies and procedures)

41 [OPCAT Article 20.](#)

Stakeholder Engagement

In the months prior to the onsite visit, OICS engaged with a number of key stakeholders to provide background on OPCAT and the mandate of an NPM, to broadly advise of the potential scope of an unannounced visit to take place sometime in 2023, and to outline the expectations of facilitating the visit as per obligations under the OPCAT mandate. Initial meetings were held with;

- Minister for Youth Justice, Justice Health and Mental Health
- Community Services Directorate representatives
- Bimberi Executive Branch Manager and other members of the Senior Management Team
- Senior Executives – Mental Health Justice Health and Alcohol and Drug Services (MHJHADS)
- Senior Executives – Murrumbidgee School and ACT Flexible Education, and
- Bimberi Operational Staff

Engagement with other oversights and members of the ACT NPM

- ACT Human Rights Commission (including the Public Advocate and Children and Young People's Commissioner)
- ACT Ombudsman, and
- Official Visitors

Following commencement of the onsite visit OICS engaged with;

- Aboriginal and Torres Strait Islander Children and Young People's Advocate
- Community and Public Sector Union, and
- Civil Society Organisations including legal and Aboriginal Community Controlled Organisations

Staff Training and Awareness Raising Sessions

OICS delivered two OPCAT/NPM training sessions with Bimberi staff covering;

- Overview of OPCAT
- The mandate of an NPM
- OICS' role as a member of the ACT NPM
- The importance of prevention, and
- What to expect during an NPM visit

Engagement and One-on-One Interviews with Young People

While on-site, the OICS Review Team conducted one-on-one interviews with children and young people detained at Bimberi, to hear their experiences of isolation during their time in custody. The Review Team identified themselves visually by wearing magenta coloured clothing to differentiate them from youth detention officers and other visitors.

During our visit there were between 11 and 12 male young people at Bimberi, aged between 14 and 19 years old. There were no female, transgender or non-binary children and young people at Bimberi during the visit. 20% identified as Aboriginal and/or Torres Strait Islander.

The Review Team provided information sessions with the children and young people, as well as putting up posters and providing 'showbags' with information. The Review Team recognises that while its work is inherently time limited, as much as possible, it is necessary to need to spend time with the children and young people wherever possible to build rapport.

Data and Information Collection

OICS reviewed information in relation to isolation of children and young people at Bimberi – including operational, health and education data.

OICS received electronic copies of requested data and information from CSD, JHS and Education prior to the on-site visit. The information requests were separated into two tranches, one prior to the Review Team arriving onsite and a second request once the visit commenced so as not to reveal the theme of the visit.

CSD and JHS provided a health data assistant (separate from the clinical care team) to assist with navigating digital records whilst the review team were on-site at Bimberi. This was to support the Review Team's public health physician navigate the health records. OICS appreciates the challenges of providing a staff member at short notice and thanks CSD and JHS for their flexibility and assistance with this.

OICS notes that CSD was not able to facilitate direct access to online records, as discussed in the report, which limited OICS confidential access to information.

On-site Observations

OICS Review Team was on-site at Bimberi over a five-day period. During this time the team observed the physical conditions of the centre, with a particular focus in areas of the centre where children and young people are isolated.

