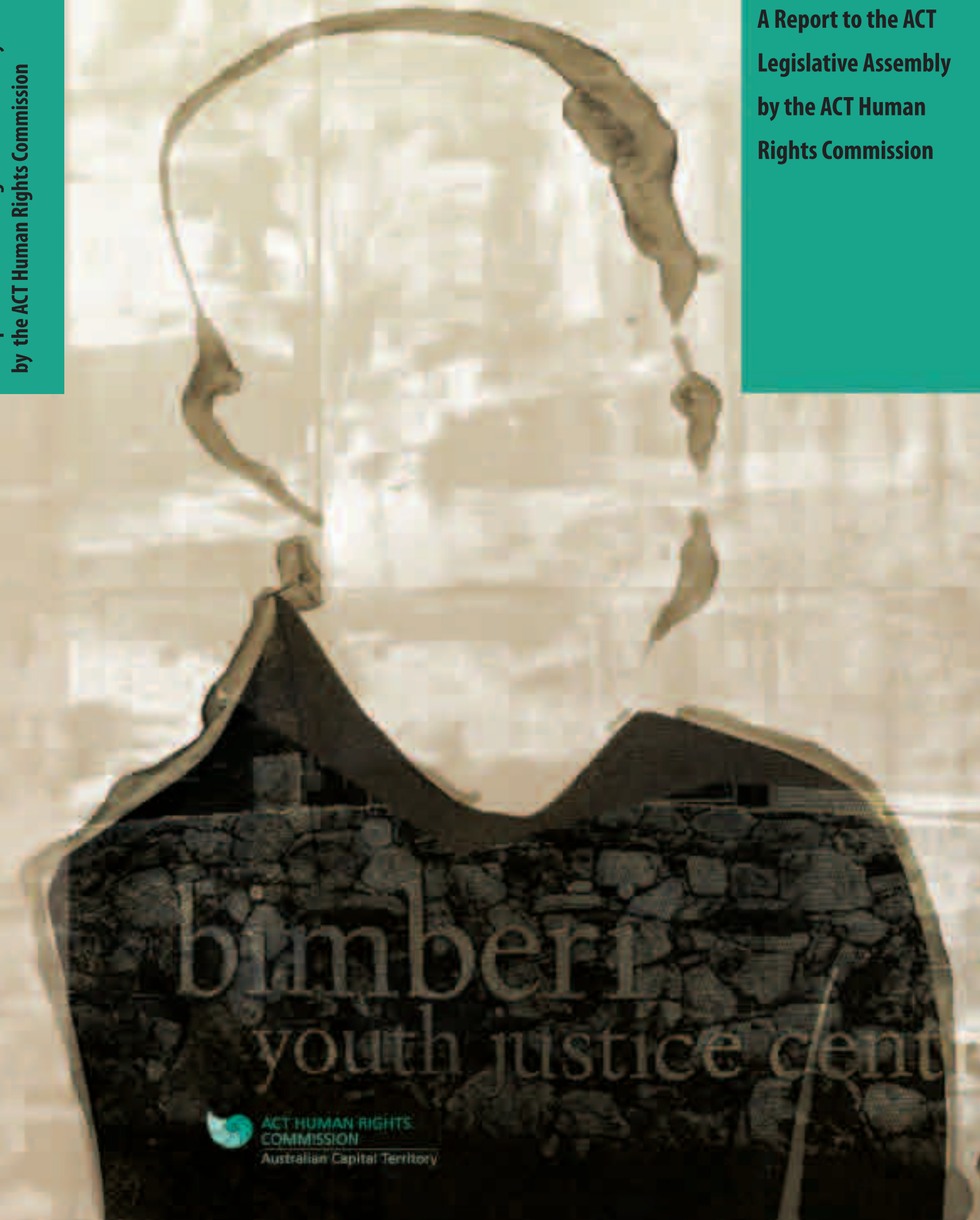


The ACT Youth Justice System 2011:
A Report to the ACT Legislative Assembly
by the ACT Human Rights Commission

The ACT Youth
Justice System
2011 :
A Report to the ACT
Legislative Assembly
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Rights Commission



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Legislative Assembly
by the ACT Human
Rights Commission**



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Letter of Transmittal

Mr Simon Corbell MLA
Attorney-General
Legislative Assembly for the ACT
CANBERRA ACT 2601

Dear Attorney-General

We present to you the report of the Inquiry into the youth justice system in the ACT, including the Bimberi Youth Justice Centre and Community Youth Justice, and the accompanying Human Rights Audit into conditions of detention in Bimberi Youth Justice Centre.

The report has been prepared in response to your written directions to the Children & Young People Commissioner and the Human Rights & Discrimination Commissioner dated 7 January 2011.

To comply with this direction, the Children & Young People Commissioner invoked s.48 of the *Human Rights Commission Act 2005*, and undertook a commission initiated consideration.

The Human Rights & Discrimination Commissioner invoked s.17(1), s.42(1) and s.87 of the *Human Rights Commission Act 2005*, and s.41 of the *Human Rights Act 2004*.

The report highlights the outcomes of both the Inquiry and the Human Rights Audit, and makes a number of recommendations for reform.

As required under s.80(2) of the *Human Rights Commission Act 2005*, a draft copy of the report was previously provided to those potentially the subject of adverse comments contained within the report.

Yours sincerely

Alasdair Roy
Children & Young People Commissioner

Dr Helen Watchirs
Human Rights & Discrimination Commissioner

28 July 2011



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Appendix B: Report to the ACT Human Rights Commission on Structural and Organisational Arrangements to Support Reform in ACT Youth Justice

Appendix C: Summary of Survey Results - Young People

Appendix D: Summary of Survey Results - Staff

Appendix E: Forging New Pathways

Executive Summary

In December 2010, the Legislative Assembly for the ACT (the Legislative Assembly) asked the Attorney-General to direct the ACT Human Rights Commission (the Commission) to conduct an inquiry into the youth justice system, and to undertake a Human Rights Audit of Bimberi Youth Justice Centre (the Review). In January 2011 the Commission received this direction.

This is an appropriate time for an independent Review of the youth justice system in the ACT. In 2008 the *Children and Young People Act 2008* (CYP Act) for the first time elaborated the functions and powers of the youth detention centre in legislation. In the same year, the former Quamby Youth Detention Centre was closed, and Bimberi Youth Justice Centre began operation. Three years later, it is timely to examine the outcomes of such significant change.

The Commission was granted a period of six months to undertake this Review. In this time the Commission obtained information using the following methods:

- Researched national and international literature to understand the evidence base underlying the provision of services to young people in youth justice systems;
- Interviewed 147 people, including:
 - 25 young people currently or formerly resident in Bimberi (19 young people also completed an 80-question survey designed by the Commission);¹
 - five young people in the Alexander Maconochie Centre (AMC) with previous experience of the youth justice system, including Bimberi;
 - 34 current or former staff of Bimberi (18 current or former staff also completed a 90-question survey designed by the Commission, with an anonymous on-line version of the survey available)²;
 - 14 current or former staff of Community Youth Justice;
 - 18 executive and senior managers from the Community Services Directorate (CSD);
 - 18 current or former staff of other ACT Government agencies connected with the youth justice system or Bimberi; and
 - 33 non-government stakeholders.
- Wrote to over 100 government and non-government stakeholders, inviting them to participate in the Review;
- Received and reviewed 62 written submissions;
- Requested material from the ACT Government, and examined 14 lever folders of documents that were provided in response;
- Inspected records stored on site at Bimberi;
- Distributed posters and surveys inviting community involvement in the Review at 16 locations across Canberra, including the ACT Childrens Court, Legal Aid ACT, youth centres, and other venues accessible to young people and their families. The Commission received 74 responses to the survey;
- Designed and distributed an online survey, to provide current and former staff with another opportunity to contribute their views if they preferred not to speak with the Commission by phone or in person;
- Conducted four focus groups with 12 young people in Bimberi, exploring issues such as: early intervention and prevention, diversion, safety and security at the Centre, community connectedness, programming and support, relationships with staff, discipline, throughcare and aftercare and complaints handling;
- Conducted a full-day community forum with 32 participants from a wide range of government and non-government stakeholders in the youth justice system. The forum included workshops presented by experts in youth justice from the Australian Institute of Criminology (AIC), the University of Canberra, and headspace ACT;
- With assistance from Northside Community Service, conducted a half-day forum for parents and families of Aboriginal and Torres Strait Islander young people in the youth justice system. The forum was attended by 18 parents and family members, and was the first such forum to be held in the ACT;
- Conducted three 'drop in' sessions (in the City, Tuggeranong and Belconnen) for members of the community to share their views with the Commission;
- Established a Young Persons Reference Group made up of eight residents of Bimberi. The Reference Group met on five occasions, to provide advice to the Commission about how we could best communicate with young people in Bimberi, and involve them in the Review process;
- Engaged three expert consultants to provide advice in specialist areas; and

¹ Results of the survey can be found at Appendix C.

² Results of the survey can be found at Appendix D.

- Participated in a Youth Justice Reference Group, established by the Youth Coalition of the ACT (YCACT) which brought together interested stakeholders and experts in the youth sector.

The Review was required to investigate and report on systemic issues in relation to youth justice in the ACT and Bimberi. In accordance with the Legislative Assembly's resolution, the Review did not make any direct findings in relation to the performance or conduct of any individuals.

A number of serious allegations were reported in the Legislative Assembly and media before and during the course of this Review. The Commission was also informed of these and other allegations from participants in this Review. CSD provided the Commission with details of the background and subsequent investigations of critical incidents, including whether they were subject to external scrutiny. In the most part, the Commission was satisfied with the level of scrutiny provided by other external agencies to these incidents. However, they do highlight some issues of concern that we believe warrant changes to policy and practice, and which are discussed in the report.

In submitting this Report to the Legislative Assembly, the Commission wishes to particularly acknowledge the contribution of three groups of people: children and young people in the youth justice system, many of whom have faced significant challenges in their young lives; staff working in the youth justice system, who do valuable and important work in difficult circumstances; and victims of crime, who have suffered loss or trauma and need to have confidence that the system is working effectively to reduce offending.

The Commission had completed its work by mid June 2011, and was prepared to submit the completed report to the Assembly by 30 June 2011; however, the ACT Government requested that the tabling be delayed. Under s.80(2) of the *Human Rights Commission Act 2005* (HRC Act) the Commission is required to provide parties who may be the subject of adverse comment an opportunity to respond before publication of the Report. Consistent with these obligations, the Commission provided a copy of the draft Report to a number of agencies in early June 2011. The Government formed the view that these agencies required further time to provide comment and, on 24 June 2011, the Legislative Assembly passed a resolution to extend the date for tabling to 31 July 2011.

On 23 June 2011, after the Commission provided our report to agencies for comment, the Government made a number of welcome announcements regarding the youth justice system, including increased funding, reforms to parole and bail conditions for young people, and changes to the youth justice case management structure. The Commission welcomes these reforms, particularly as many give expression to recommendations in our report.

The Review was informed by three fundamental principles:

Human Rights Standards

The ACT was the first jurisdiction in Australia to enact human rights legislation. The *Human Rights Act 2004* (HR Act) provides a statutory basis for respecting, protecting and promoting civil and political rights. Under the HR Act, public authorities in the ACT are obliged to act compatibly with human rights, and to give proper consideration to relevant human rights when making decisions.

Evidence Based Practice

Government decisions should be based on evidence of 'what works'. Evaluation processes should be used regularly to assess the effectiveness of policies, program design and service delivery.

Participation of Young People

Young people have the right to express their views on decisions which affect their lives, and for their opinions to be treated seriously.

The structure of the Report outlines the essential components of an effective youth justice system. The first six chapters discuss important 'big picture' issues: human rights standards, engagement with community, a clear vision, a culture of performance, a skilled and supported workforce, and evidence based practice. The next eight chapters examine the fundamental elements of a system designed to respect, protect and fulfil human rights and achieve rehabilitation: diversion, therapeutic programming, meeting the needs of vulnerable population groups, education and health services, and human rights compliance in conditions of detention. The final chapter raises issues of ongoing monitoring: effective management and external oversight.

The Commission was asked to examine both Bimberi and the broader youth justice system. Parts of the Report examine the wider system, which comprises ACT Policing, the Director of Public Prosecutions (DPP), the Childrens Court, the Supreme Court, solicitors, Community Youth Justice (CYJ), Bimberi, and community organisations. Other sections of the Report focus on the youth justice services provided by the ACT Government (specifically Bimberi and CYJ). Several chapters focus solely on Bimberi.

A version of this Report has been produced for young people, in a language and format that is accessible to them. Copies will be provided to young people living in Bimberi, and young people involved with CYJ.

This Report presents suggestions on making the youth justice system more effective; however, it cannot identify all the answers. The Commission hopes to contribute to ongoing public discussion about what we want our youth justice system to be and to do in the years ahead. The recommendations throughout the Report are lengthy and specific, because we see this as an opportunity to identify areas for change and improvement. The Commission is willing to assist the Government to implement change, and we encourage the Government to engage all stakeholders in determining the way forward.

There are 12 key messages arising from the Review:

1. Embed youth justice in the community

To be successful the youth justice system needs to be connected with the ACT community, including the Legislative Assembly, the youth and community sectors, young people and their families, victims of crime and the broad community.

2. Identify and implement a vision

The Government needs to be clear about the purpose of the youth justice system, and the vision needs to be articulated in policies, procedures and performance measures.

3. Whole-of-government coordination

The Office of Children Youth and Family Support (OCYFS) is responsible for the youth detention centre and the community supervision program. However, the youth justice system needs a whole-of-government commitment that at a minimum engages the ACT Government agencies responsible for child protection, housing, education and health services.

4. Coordination across the system

The ACT Government is not responsible for the whole youth justice system; in particular, it does not control decisions made by ACT Policing, the DPP, the ACT Childrens Court, the ACT Supreme Court, solicitors or community services. The independent agencies across the youth justice system also need to be engaged in conversations about systemic issues, and areas for reform and improvement.

5. Prevention and diversion

While Bimberi receives detailed attention in this Report, the Commission does not wish to suggest the detention centre is the focus or the most important part of the ACT youth justice system. International human rights standards require that children and young people under the age of 18 years be placed in detention only as a last resort. Further, research shows that investment in early intervention, prevention, and diversion programs lead to better outcomes for individual young people, and for the community as a whole. Evidence based early intervention, prevention, and diversion programs are cost effective, and reduce overall expenditure in the youth justice system.

6. Build services around vulnerable young people

The youth justice system should be redesigned to meet the needs of young people. When young people are placed in detention, they should be provided with specialised rehabilitation and therapeutic interventions to help them change their thoughts, feelings and behaviour and achieve more positive outcomes. Further, as young people enter and leave detention, they should receive continuity of case management services to ensure adequate throughcare and aftercare.

7. Support the workforce

Staff play an important role in the rehabilitation of young people in Bimberi and in CYJ. Staff shortages have had a detrimental impact at Bimberi, and high caseloads in CYJ limit the capacity of the program to help young people achieve positive outcomes. The ACT Government needs to devote attention to staff training and support.

8. Commit adequate resources

The ACT Government must commit adequate resources to address young people's rehabilitation needs; otherwise the youth justice system can be harmful and counterproductive.

9. Risk management not risk aversion

Risk management is an appropriate activity within the youth justice system, however, the system has become overly risk averse at the expense of rehabilitation of young people.

10. Integrate Bimberi into the youth justice system

The detention centre needs to be integrated into the wider youth justice system for three reasons: to provide continuity of service for young people; to ensure accountability; and to protect and support staff at Bimberi by ensuring they are not isolated.

11. Human rights compliance requires ongoing monitoring

The enactment of the CYP Act and the design and construction of Bimberi were significant achievements for the assurance of human rights in the youth justice system. The legislation, standing orders and policy documents applying to Bimberi were created in compliance with the HR Act. On its website and in policy documents CSD frequently claims that Bimberi is a 'human rights compliant' detention centre. However, attention to a wider range of issues than just the legislation and policies is needed to ensure human rights compliance. Operational practices have a significant impact on the rights and well being of both young people and staff, therefore procedures and practices need to be included in any assessment. Further, human rights compliance is not something that is achieved once and forever; it requires an ongoing process of review and improvement.

12. Child centred practice

When working within the youth justice system organisations and workers should place young people at the centre of their decisions and actions. Improved rehabilitation outcomes for young people benefit the community as a whole. During the Review, the Commission became aware of the following statement of principles, which are adopted in another jurisdiction as the basis for their youth justice system:

- Every young person wants to succeed, and can succeed.
- Change can only result from internal choices made by the young people themselves.
- Relationships are critical to overcoming resistance and fostering positive change.
- Young people are more likely to succeed in a safe, nurturing, and non-blaming environment.
- Every young person is unique.
- Many young people lapse into delinquency as a coping mechanism in response to earlier abuse, neglect, or trauma.
- Delinquent young people typically suffer from a lack of emotional maturity.
- All behaviour, no matter how maladaptive or destructive, has an underlying emotional purpose.
- Most young people entering custody have very low confidence in their ability to succeed as students, or adults, and lack exposure to mentors or positive role models.
- Parents and other family members remain the most crucial people in young people's lives—and the keys to their long-term success.³

³ Richard A Mendel, 'The Missouri Model: Reinventing the practice of rehabilitating youthful offenders' (2010); the Missouri youth justice system in the United States adopted these principles and as a result saw fewer critical incidents, better educational outcomes, reduced cost per young person, reduced rates of detention, and more positive psychosocial outcomes for young people.

Key Findings by Chapter

Introduction

Chapter 1 outlines the background to the Review, role of the Commission, process for gathering information for the Review, participation of stakeholders during the Review, and protections for participants in the Review. It provides an overview of the ACT youth justice system, and a profile of young people in the ACT youth justice system.

Human Rights Audit of Bimberi

Chapter 2 summarises the outcomes of the Human Rights Audit of Bimberi. Throughout this Report, the Commission cites and applies the human rights standards applicable across the whole youth justice system. However, we are mindful of the Legislative Assembly's request for a comprehensive Human Rights Audit of Bimberi alone. In this Chapter, we compile elements of such an audit, summarising the findings of the Report across all areas relevant to Bimberi, including conditions of detention (namely behaviour management; use of force; restraints; segregation; searches; classification; communication; and food and clothing, discussed further in Chapter 14), the provision of education and health services (Chapters 12 and 13), and industrial conditions (Chapter 5). We also summarise the human rights relevant to the primary participants in the system and at Bimberi – staff, young people, their families, and victims of crime.

Embedded in Community: A quality youth justice system is embedded in the wider community

Chapter 3 discusses the place of the youth justice system within the wider ACT community.

Role of the community

Evidence shows that youth justice systems are most successful (and least harmful) when they are embedded in the community. First, the community can be involved in determining the vision for the youth justice system; there are different views of what purpose the youth justice system should fill, and the Government has a role in facilitating discussion and agreement. Second, to achieve positive outcomes and bring about change in their lives, young people need to be connected to community resources.

Role of the ACT Government

No single stakeholder is more empowered to facilitate the process of embedding youth justice in the community than the ACT Government. The ACT Government manages Bimberi and CYJ, and it also provides education, health, housing and child protection services to young people in the youth justice system. The Commission recommends a whole-of-government approach to the youth justice system.

Role of the Legislative Assembly

The ACT Legislative Assembly has sought to improve the youth justice system by holding to account the Government of the day. Commentators have observed that the bipartisan approach to youth justice which has been adopted in Victoria is a factor contributing to successful outcomes in that state; decisions are more removed from political debate, and are based on analysis of evidence.

Working with the ACT youth and community sector

Youth justice services should be integrated with the wider youth and community sectors, and draw on the resources, skills and expertise of non-government services. The Commission has observed lower levels of community sector engagement, scrutiny and influence at Bimberi, compared with the Alexander Maconochie Centre (AMC), the adult detention centre in the ACT. At Bimberi there is potential for greater collaboration with the community sector in governance, program planning, program implementation, and individual service provision. Young people in Bimberi have broad and complex needs; no one service can meet their needs, and community-wide responses can achieve sustainable outcomes. There are some examples of positive collaboration between Bimberi and youth services. However, there needs to be more discussion about coordination of services for young people as they move in and out of Bimberi.

Role of family

Family plays a significant role in young people's lives. Evidence shows that family-focused early intervention and prevention programs can reduce young people's criminal behaviour, interactions with youth justice systems and likelihood of becoming life-course persistent offenders. Family-focused supports are urgently required throughout the system. The Commission makes several recommendations to facilitate family involvement in the youth justice system.

Participation of young people

Young people have the right to participate in decisions and legal or administrative processes that affect their lives. Individual young people should be provided with accessible information throughout the criminal process so they understand what is happening, and have the opportunity to express their views and ask questions. Young people should also be involved in the design and implementation of services and programs. The Commission recommends a Youth Justice Participation Strategy and a Charter of Rights for young people in detention.

Victims of crime

Victims of crime have an important place in the legal system, and it is important to provide support and assistance to victims of crime to ensure their well being. Some young people in Bimberi are victims of crimes, including child abuse, domestic violence, and assault. Research suggests that, in general terms, victims and offenders come from largely overlapping populations, and it can be difficult to discern between young victims and young offenders in the system. The Commission recommends that agencies involved in the administration of the youth justice system establish procedures to ensure they protect the rights of victims of crime, and are responsive to their needs.

Vision: A quality youth justice system is aligned under a clear and shared vision

Chapter 4 highlights the necessity for vision, strategy, leadership, and accountability systems in the youth justice system.

In its submission to the Review, the ACT Government articulated four objectives for the youth justice system:

Within a human rights framework and applying the best interests principle, the objectives of the ACT youth justice system are:

- 1. To prevent young people from entering the youth justice system and to divert those young people who do come into contact with the youth justice system at all opportunities;*
- 2. To support the holistic development and wellbeing of young people in the youth justice system to keep them safe and to maximise their opportunities to achieve positive life outcomes;*
- 3. To promote young people's rehabilitation and reduce recidivism; and*
- 4. To facilitate effective throughcare and transitioning to assist a young person's reintegration into the community.⁴*

The Commission did not observe that this vision was implemented throughout the youth justice system. It appears that risk aversion and fear of adverse attention caused Bimberi to respond to incidents in a way that diverted the agency from its rehabilitative purpose. Further, limited resources for case management and service provision in Bimberi and CYJ mean that the system cannot always fulfil these objectives.

Accordingly, one of the fundamental challenges for the ACT Government is to gain commitment to a shared vision for the youth justice system; the vision needs to be understood and agreed by internal and external stakeholders. Another challenge is to translate the vision into achievement of outcomes.

The Commission recommends the ACT Government take action in four areas to meet these challenges:

- Use whole-of-government and whole-of-community approaches to determine the vision;
- Facilitate whole-of-government coordination. A range of ACT Government agencies are involved in the provision of services at Bimberi and to clients of CYJ. The introduction of the ACT Strategic Board, following the Hawke Report, presents an opportunity for improved whole-of-government coordination for vulnerable children, young people and their families, including those involved in the youth justice system. The Commission has been told that the Government is planning two subcommittees of the ACT Strategic Board, to facilitate whole-of-government coordination in the areas of Aboriginal and Torres Strait Islander issues, and justice issues;

4 ACT Government submission.

- Design systems and processes to better support the achievement of the vision, including outcome-based performance measures and planning processes that identify a clear path towards the intended outcomes of rehabilitation; and
- Foster and support leaders who: are strongly aligned on a professional and personal level with the vision and values of youth justice; are skilled at communicating the vision and outcome framework to ensure the entire system is acting in concert to achieve its vision; understand how to lead and manage change; are skilled at aligning their workforce to the vision; and can work with staff at all levels to embed the systems of a high performance culture.

Staffing: A quality youth justice system employs skilled staff and provides them with ongoing training, support and supervision

Chapter 5 emphasises the value and importance of the staff who work in the youth justice system. It is not possible to have a quality youth justice system that respects the human rights of young people unless the human rights of workers are also respected and their contributions are properly valued.

The success of the youth justice system depends on the skills and capacity of the staff who deliver services to young people. The ACT Government needs to recruit skilled and committed workers who share the values and vision of youth justice services, and to support and develop staff through training, supervision and good management.

The Commission was encouraged by the commitment of most staff to make a difference in the lives of young people, and the skills and dedication they display every day in providing services in a challenging environment. However, staff are constrained by low staffing levels, which limits the progress they can achieve with young people and their families.

Staffing levels and recruitment at Bimberi

The decision to commence operations at Bimberi with the same staffing budget as the Quamby facility, and the inadequate supervision and support provided to staff at the new Centre in its critical first two years, has had serious repercussions for both staff and young people at the Centre, and has prevented it from meeting the expectations of a human rights compliant youth justice facility. It is a contributing factor in many of the problems identified in this Report, and was also instrumental in the Legislative Assembly's decision to call for this Review. The Commission makes a series of recommendations to support staff recruitment and retention at Bimberi.

Staffing levels and recruitment at community youth justice

Current and former staff across CYJ have raised concerns with the Commission about inadequate staffing levels. There is a widespread view that high case loads mean CYJ staff must prioritise the statutory functions of court reports and compliance, and are unable to provide full case management support for young people. The Commission recommends reduced case loads to enable CYJ case workers to do more than court ordered reports and supervision.

improving working conditions and support


The Commission also discusses the need to improve staffing levels, training, conditions and support for youth justice staff so they can work effectively with young people. We make recommendations for improvement in Bimberi and CYJ in the areas of classification and pay, training, supervision, work safety, critical incident debriefing and ongoing support, and communication between management and workers.

Evidence based practice: A quality youth justice system is based on evidence and strives to continuously improve

Chapter 6 outlines the importance of evidence based practice in the youth justice system. The history of youth justice systems in Australia shows that policies and programs are often designed on the basis of ideology and assumptions, not facts and evidence. As Seymour stated:

*'In general, decisions affecting the treatment of young offenders in Australia have been based on personal and political ideologies and untested assumptions, rather than on information about how the various systems actually work.'*⁵

5 John Seymour, *Dealing with Young Offenders* (1988), 430.



Decisions about youth justice policy, program planning, and service delivery should be based on evidence of ‘what works’. Evidence needs to be systematically collected and analysed, both from the literature and from evaluation of local programs. This chapter is in three parts: it begins by outlining the literature relating to evidence based practice, and then discusses data collection and record keeping, two processes that directly inform the capacity of the system to capture and analyse evidence.

Use programs that are proven to work; Evaluate programs to assess whether they are effective

Programs and services should be evaluated to assess whether they are effective in achieving their intended outcomes. Evaluation findings should be used to modify programs or to shape alternative approaches when required. To be evaluated, programs need clearly stated outcomes and indicators, and a set of measures to assess the impact of the program. Currently, there is limited indication that programs developed within the ACT youth justice system have a clear intent or articulated outcomes or indicators. The Commission recommends the ACT Government develop clear program goals, intended outcomes and performance indicators; and an evaluation framework to assess the effectiveness of programs in meeting these goals, outcomes and performance indicators.

Data collection practices across the youth justice system

The aim of data collection is to facilitate accountability, and to provide an evidence base from which to make informed decisions. Several agencies, including ACT Policing, the DPP, the Childrens Court, the Supreme Court, the Restorative Justice Unit and CSD, collect information about young people who are involved with the youth justice system in the ACT. The Commission engaged the Australian Institute of Criminology to provide expert advice on gaps or shortcomings in data collection in the ACT.

During the Review it became evident that the data collection activities at Bimberi and throughout the youth justice system are limited. Basic information such as the numbers of young people with dual engagement in youth justice and care and protection, the number of young people with disabilities and mental health issues, and the numbers of life-course persistent offenders in the ACT is not currently accessible.

Chapter 6 outlines recommendations for the ACT Government and independent agencies on actions they could take to maximise the value of the data they collect.

Record keeping systems in Bimberi

An evaluation framework will require sound record keeping and data collection practices across the youth justice system. Despite the improvements to record keeping that have been made since the closure of Quamby, the Commission has concerns about the way information is managed at Bimberi. Record keeping, while an administrative activity, is essential to support the primary work of the Centre. Some of the problems at Bimberi that have been highlighted in the Report occurred because information was not properly recorded, or was not accessible to people who needed to know about it. The absence of an effective electronic database at Bimberi is a significant problem. The Commission recommends an audit of record keeping systems at Bimberi.

Prevention and diversion: A quality youth justice system is embedded in a human service system that seeks to prevent young people’s criminal behaviour and divert young people from unnecessary engagement

Chapter 7 discusses the importance of prevention and diversion in the youth justice system. Detention should not be the primary focus or outcome of the system, as evidence shows that detention often contributes to poor outcomes for young people, including an increased likelihood of reoffending.

Primary prevention

Primary prevention policy and services are provided by the Commonwealth Government as well as the ACT Government, and are directed towards children in the early years of life. Such programs include maternal and child health, parental support, early learning and nutrition services.

Secondary prevention

The ACT Government's 'Youth and Family Support Service Delivery Framework 2011–2014' outlines how community organisations will be funded to provide services to vulnerable children, young people and their families. The intent of the Framework is to support the effective operation of secondary prevention programs by the non-government sector. The Framework has the potential to address many of the concerns held about the current effectiveness of secondary prevention programs, however, there are some concerns with its proposed design and implementation.

Tertiary prevention

The ACT Government invests in tertiary prevention for young people through the child protection and youth justice systems. There are gaps in the ACT's tertiary prevention system in the areas of case management for young people in the youth justice system, and housing for young people at high risk. This conclusion is confirmed by the ACT Government submission to the Review, which acknowledged that the system is not currently meeting the needs of high-risk young people who are in regular contact with youth justice.

Diversion from the youth justice system

Diverting young people from involvement with the criminal justice system is a critical issue of public policy. Diversion policies and strategies are influenced not just by the ACT Government, but by independent agencies in the youth justice system, including ACT Policing, the DPP and the Childrens Court. The Commission welcomes the ACT Government's recent efforts to facilitate community discussion about diversion through the discussion paper 'Towards a Diversionary Framework for the ACT'. However, the ACT's performance in relation to diverting young people from the youth justice system is difficult to ascertain, and the ACT Government was unable to present a holistic picture of the current state of diversion in its recent discussion paper. The Commission hopes the current policy work on diversion will result in a framework for youth diversion that includes clear objectives, with indicators and targets for specific types of diversion, investment in evaluation to ensure that diversionary strategies are meeting their stated objectives, and a governance model that allows the framework to be monitored by the range of stakeholders involved. The Commission welcomes the announcement by the ACT Government on 23 June 2011 of new initiatives and policies in the area of diversion.

Diversion from custody

Article 37 of the United Nations Convention on the Rights of the Child states that '*the arrest, detention or imprisonment of a child must be in conformity with the law and used only as a measure of last resort and for the shortest appropriate period of time*'. Research shows that detention in itself has no deterrent effect on young people; spending time in custody without quality rehabilitative intervention can increase the likelihood of a young person reoffending. Remanding a young person in custody when it is not necessary also comes at significant economic cost to the community. There are indications that some young people are being placed in Bimberi on remand, not due to the seriousness of the alleged offence or their risk to the community, but because of insufficient support or accommodation options in the community. The Commission makes several recommendations for agencies across the youth justice system to reduce the number of young people detained in Bimberi on remand.


Justice reinvestment

Justice reinvestment is a strategy by which public funds currently allocated to dealing with the consequences of crime are redirected to address the causes of crime. In practice, justice reinvestment is the integrated investment in programs such as nurse home visits, mental health assessments for new mothers, parenting education, early education before starting kindergarten, restorative justice for low-risk offenders, anger management and other therapeutic interventions, and youth drug courts. Investing over the long term in an integrated prevention and diversion strategy will provide the best opportunity to reduce offending and deliver significant long-term benefits to the ACT community.

Case management: A quality youth justice system is supported by an effective case management system

Chapter 8 examines an important area of practice in the youth justice system: case management.

Experts in the youth justice field are in agreement that positive outcomes are most likely to be achieved if supports and services are well designed, managed and implemented. Case management is a key tool for enabling effective collaboration between agencies, and enhanced outcomes for young people.



Case management is a process to coordinate the diverse and complex roles and responsibilities different organisations may have with a client. Case management incorporates assessment and case planning; it involves setting objectives, and planning and scheduling tasks and activities.

Case management services are provided at Bimberi and within CYJ, as well as by a range of government and non-government service providers, including in the education, health, mental health, alcohol and other drug, youth and family sectors.

Some of the key challenges in implementing an effective case management system include: establishing a shared vision for case management, establishing clarity about the roles of different players, designating a key case manager, facilitating information sharing and communication, maintaining professional respect, facilitating participation of young people and their families, and establishing effective monitoring and evaluation.

The Commission recommends a new model for case management services across the youth justice system, including: alignment of the case management model to reflect the vision, goals and objectives of the youth justice system; a single Care Team across Bimberi and CYJ, a single Case Plan for young people whether they are in Bimberi or CYJ, a single Case Manager for young people whether they are in Bimberi or CYJ, involvement of advocates, timely case conferences, and a memorandum of understanding across OCYFS.

Programming: A quality youth justice system has a clearly articulated practice framework

Chapter 9 examines an important area of policy and practice in the youth justice system: providing therapeutic programs.

Placing a young person in detention puts an obligation on the ACT Government to do everything within its power to provide the structures and support that are integral to their rehabilitation. Without effective rehabilitation programs, detention may have lasting negative consequences for young people and ultimately increase the likelihood of them committing further crime.

The Commission outlines the principles on which interventions and programs in the youth justice system should be based. Youth justice centres that operate under a therapeutic, restorative and skill-building philosophy are more effective than those focused on discipline, deterrence or surveillance. Chapter 9 discusses the literature on good practice in program design, including focusing on rehabilitation; countering the negative impacts of detention; enabling throughcare, reintegration and aftercare; ample and engaging options; and relationship-based practice. Further, the literature shows that services need to be individualised, and targeted to particular young people following effective assessments of their needs.

Currently Bimberi is not oriented towards rehabilitation, and there is an insufficient range of programs and services to meet young people's needs. A key issue is the absence of therapeutic interventions to assist young people to change their thoughts, feelings and behaviour. Another issue is the division between community based services and services provided at Bimberi. Young people need continuity of service provision as they move through the youth justice system. The Commission welcomes the proposal by Bimberi management to develop a transition facility to assist young people to move from institutional care to independent living, but makes a series of further recommendations to facilitate more effective programs.

Individual needs: A quality youth justice centre responds to individual needs

Chapter 10 outlines some of the groups of young people who are at greater risk of involvement in the youth justice system, or are particularly vulnerable, or have specific needs in detention: Aboriginal and Torres Strait Islander young people; young women; gay, lesbian and gender diverse young people; younger detainees (age 10 to 14); young adults (age 18 to 21); and young people with a disability or mental illness. Other groups that should be specially considered by the ACT Government include young people from culturally and linguistically diverse backgrounds and young people in out of home care. The Commission makes several recommendations to assist the youth justice system to focus on identifying and meeting the needs of individual young people.

Responsivity

For rehabilitation to be successful, interventions must be responsive to young people's individual characteristics and needs. In detention settings a range of individual factors, including culture, gender, sexuality, age and disability, need to be considered in the management of the facility, and when designing and delivering programs and services.

Aboriginal and Torres Strait Islander young people

Aboriginal and Torres Strait Islander young people are dramatically over-represented at all levels of the ACT youth justice system. Aboriginal and Torres Strait Islander young people often experience multiple disadvantages and share a range of criminogenic risks and needs with other young people, such as family abuse or neglect, cognitive disability, mental health issues and drug and alcohol use. Aboriginal and Torres Strait Islander young people may face higher levels of anxiety and distress in a detention environment than other young people, and may require specific program interventions to assist them to adapt to this environment.

The policy framework for Bimberi contains an important recognition of the rights and needs of Aboriginal and Torres Strait Islander young people in custody. However, in practice it is not clear that there has been sufficient attention given to the special needs of Aboriginal and Torres Strait Islander young people in detention at Bimberi. Programs at Bimberi and in CYJ should be culturally appropriate, and should involve the Aboriginal and Torres Strait Islander community in the process of design and delivery. Currently there is only one ongoing Aboriginal and Torres Strait Islander specific program at Bimberi (one other service is provided during informal visits, and there have been one-off programs offered as part of the school holiday recreation program).

Young women

Young women are considerably less represented at all levels of the ACT youth justice system than young men, although the level of involvement of young women in the youth justice system in the ACT is somewhat higher than in other jurisdictions in Australia. Many studies have found high levels of abuse and experiences of trauma among young women in detention. Young women in detention are thus likely to have particular need for mental health support and programs that address the connection between trauma and offending behaviour. Young women in custody are also likely to need assistance to navigate relationships with families and partners to reduce further victimisation, and to develop positive parenting skills to address intergenerational cycles of abuse.

Other larger jurisdictions, such as NSW, have separate detention centres for young men and young women. However, due to the small population in the ACT, Bimberi is used as a detention facility for both young women and young men. The very small number of young women in custody in the ACT places them at a structural disadvantage compared to young men in terms of available resources for programming and services to meet their needs within the facility.

Gay, lesbian, bisexual, transgender and intersex young people


Gay, lesbian, transgender, bisexual and intersex (GLBTI) young people may be at increased risk of involvement in the youth justice system and may also be particularly vulnerable within the system. The spectrum of GLBTI young people is broad, covering same sex attracted young people and young people with diverse gender identities. The Commission acknowledges that their experiences and interests cannot be assumed to be the same, however, all may be at increased risk of prejudice and discrimination within the youth justice system. GLBTI young people who are 'out' in youth detention centres experience identified challenges. Participants raised concerns about the capacity of Bimberi to adequately support and protect young people at Bimberi who identified as being gay, lesbian, bisexual, transgender or intersex. There is a view that staff are not adequately trained to deal with discrimination or harassment levelled at GLBTI young people and that there were instances where young people were physically and verbally bullied by others, without protection.

Age and development

In the ACT young people may be held criminally responsible for their actions from ten years of age, and may remain within the youth justice system beyond the age of 18 years for offences committed before they reached adulthood. Therefore young people at Bimberi may range in age from 10 to 21 years, covering a significant span of development and maturity, from late childhood through adolescence to early adulthood. The differing needs of this diverse group of young people must be considered in the design and delivery of programs and services for young people at Bimberi. Currently young people in the lower age range of 10 to 14 years, and young adults aged 18 to 21 years, experience increased vulnerability, and may not be adequately catered for by mainstream programming at Bimberi.

Young people with a disability

Young people with disabilities are over-represented in the youth justice system; studies in Australia and overseas suggest that between 10% and 100% of young people in detention have a physical, intellectual or learning disability, or have a mental health issue. Although statistics on the number of all young people with a disability in the ACT youth justice system are difficult to gather, participants expressed the view that as many as one-third have a cognitive impairment, are on the autistic spectrum or suffer from foetal alcohol syndrome. Teachers at Bimberi told us that most of their students experience learning difficulties, and that this influenced their ability to positively engage in the classroom.



There are concerns about the ability of the ACT youth justice system to identify, assess, support or respond to the needs of young people with disabilities. The Commission recommends that a protocol be developed to articulate the ACT Government's approach to working with young people with a disability in the youth justice system.

Mental health issues (including alcohol and other drug issues)

Mental health issues (including alcohol and other drug issues) are some of the most pressing and influential for young people in Australia, particularly those in the youth justice system. Three issues should be considered when responding to mental health issues in youth justice settings: the experience of detention can negatively affect a young person's mental health; mental health issues can undermine the impact of rehabilitation programs, particularly when young people have impaired capacity to process information and to develop new cognitive skills; and young people with significant mental health needs can present considerable difficulties for services and workers supporting them.

Young people who have experienced child abuse and neglect and involvement in out of home care

There is a strong correlation between young people's experiences of child abuse and neglect, their involvement in out of home care, and their participation in crime. One of the reasons that many young people who have experienced abuse and are estranged from their families are over-represented in custody is a lack of available and appropriate accommodation where young people can be remanded. Without stable accommodation, young people may be remanded until trial, even when a custodial sentence is an unlikely outcome.

Young people who are part of the care system who are incarcerated present with a number of significant issues that must be acknowledged when developing supports to assist them, including high rates of grief and loss, post traumatic stress disorder, suicidal ideation and poor mental health outcomes generally. There is growing evidence to suggest that unless the legacy of childhood abuse and neglect is fully appreciated and responded to within youth justice systems, positive outcomes (including the rehabilitation of young offenders) are likely to be limited.

Young people who are engaged in both care and protection and youth justice systems are some of the most vulnerable and disadvantaged of all young people, and they are at particular risk when leaving these systems. Transitioning planning that helps young people create new support networks is essential.

Although the links between childhood experiences of abuse and neglect, engagement in care and protection systems and youth offending are well recognised, and despite the co-location of the ACT child protection and youth justice authorities within the same Directorate, there is limited evidence of coordination between systems.

Young people from culturally and linguistically diverse backgrounds

According to the most recent census data, people born overseas comprise 22% of the population in the ACT, and 15.2% of people in the ACT speak a language other than English at home. The available evidence suggests that overall, migrants have the lowest rates of criminality in Australia, followed by first generation Australians, while the remaining Australian-born population exhibits the highest rates of criminality. However, some groups of first generation migrant young people have been found to be over-represented in Australian youth justice systems, with young Lebanese, Turkish, Vietnamese, Indo-Chinese, New Zealanders (including Maori), and Pacific Islanders seen to be at particular risk. This may be due in part to the disproportionate social disadvantage experienced by these communities. Young people from new and emerging communities from the Sudan and Somalia may also be at risk of over-policing and subsequent involvement in the youth justice system. While the group is not homogenous, young people from culturally and linguistically diverse backgrounds may have a range of criminogenic needs and responsivity factors which must be considered in providing appropriate interventions. These include language and community barriers (including accessibility to reliable interpreters), difficulty accessing legal services, inadequate and inappropriately targeted information, and problematic relationships with police.

Housing: a quality youth justice system meets young people's housing needs

Chapter 11 discusses the significance of housing for successful outcomes in early intervention, diversion and rehabilitation programs. Lack of suitable housing is a risk factor for involvement in the youth justice system; it is a contributing factor to high rates of remand in the ACT; and it is associated with recidivism when young people leave detention.

Housing and early intervention

Safe, affordable and secure housing can contribute to early intervention and crime prevention. However, the current circumstance in the ACT and other Australian jurisdictions is that homelessness remains a contributing factor for involvement in the youth justice system. There are established links between homelessness and youth justice. Homelessness, particularly among young people and people with an intellectual disability or mental illness, is a major risk factor for a young person becoming a perpetrator or victim of crime.

The Commission heard the view expressed by many people that there are insufficient accommodation options for young people at risk of involvement in the youth justice system. CSD are currently redesigning the funding structure for the ACT youth housing and homelessness sector, which could offer potential for systemic improvement.

Housing and diversion

For some young people in the youth justice system, placement in suitable housing can allow them to be diverted from custody. However, the current situation in the ACT and other Australian jurisdictions is that there is an increasing proportion of young people on remand, and many people claim the underlying cause of this increase is a lack of suitable housing in the community.

Housing, throughcare and aftercare

Suitable housing can help contribute to young people achieving positive outcomes and avoiding recidivism when they leave detention. However, there are indication of barriers to young people accessing suitable housing on release from Bimberi: there is limited pre-release planning at Bimberi; it is difficult to find suitable housing options for some young people; the transition from Bimberi to housing in the community is not always well managed; and there are some concerns about the provision of follow up support and aftercare.

The Commission makes a series of recommendations to improve the suitability and accessibility of housing options for young people in the youth justice system.

Education: a quality youth justice system meets young people's education needs

Chapter 12 presents the outcomes of the review of education services in the youth justice system.

Education and early intervention


There is a well established connection between poor education outcomes and involvement in the youth justice system. Research indicates that successful education programs improve life outcomes for individual students, and reduce future community expenditure in the youth justice system. Therefore the delivery of education services for young people at risk or in the youth justice system should be a priority for the ACT Government.

Schools are important settings in which to base prevention and early intervention services. The Commission recommends increased investment in services to prevent disengagement from primary school and high school.

Education programs for young people at Bimberi

Evidence shows that education programs can have a transformative impact on young people in detention – improving their life outcomes, and reducing recidivism. However, the environment of a detention centre can present barriers to young people's participation and achievement in education. Young people's access to education at Bimberi has been interrupted by staff shortages, communication problems between teachers and Bimberi management, and an over-emphasis on security.

For education and vocational programs to withstand the pressures of other competing priorities in Bimberi, they must be mainstreamed into the management of the Centre. The school at Bimberi is the Murrumbidgee Education and Training Centre (METC), which is operated by the Education and Training Directorate (ETD). METC is not fully integrated within Bimberi, and there are several areas in which communication could improve, including induction for teachers, shared planning, shared decision-making about programs for individual young people, and staff meetings between teachers, youth workers and case managers.



The ACT Government has a strong imperative to ensure METC has sufficient resources to operate effectively, for the well being of the young people and teachers, and for the potential long-term cost savings in reducing recidivism. However, some teachers reported that METC is not adequately funded to provide intensive individualised education for young people. Increased teaching resources would allow smaller class sizes, more intensive literacy and numeracy work, and better provision for young people on segregation.

The Commission makes a series of recommendations to facilitate young people's access to education, and to improve communication between the school and Bimberi management.

Vocational training and employment programs at Bimberi

The Commission recommends increased planning and resources in the area of vocational training and employment programs. Some young people in detention are above the age of compulsory school attendance, and other young people are more suited to learning in a vocational setting. The goal of vocational programs in Bimberi should be to connect young people with training or employment opportunities once they leave detention. Some vocational education programs have been made available to some young people in Bimberi over the past few years, however, there could be improved planning and consistency in this area. The ACT Government informed the Commission it is placing increased emphasis on vocational programming in 2011.

Independent living skills programs at Bimberi

There is not yet a coordinated, consistent approach to providing living skills programs at Bimberi, to help young people to develop their experience and confidence in areas such as cooking, cleaning, budgeting, shopping and parenting skills. The Commission supports the proposal for a 'transition unit' where young people will have the opportunity to maintain the unit as if it were their own home, as they prepare to leave Bimberi and move to independent living, and recommends a more systematic approach to living skills programs at Bimberi.

Education and throughcare

Young people face significant challenges when they leave detention, and it is difficult for them to maintain their engagement in education or vocational programs as they transition to the community. Planning should begin months before the young person is released, and a training or employment place should be organised and confirmed before a young person leaves Bimberi. It is also highly preferable that young people have time to visit their new placement, build relationships and develop confidence before they are formally released. At Quamby young people could apply for day release to attend school or work in the community, however, so far Bimberi management have not allowed this, despite clear provision for it in the CYP Act. The Commission recommends ETD and CSD continue to work to ensure young people receive adequate follow up and support after release from Bimberi.

Health: a quality youth justice system meets young people's health care needs

Chapter 13 presents the outcomes of the review of health services in the youth justice system. In addition to physical health services, two areas of health services at Bimberi that warrant particular discussion are mental health and alcohol and other drug treatment. Both services are typically the most important in any detention environment, but are particularly important for young people, for whom early intervention can make a critical long-term difference.

Health services in Bimberi

Justice Health (formerly known as the Corrections Health Program) provides health services at Bimberi. Any emergencies are treated in accordance with clinical need, either by an on-call medical officer or at Calvary Hospital or The Canberra Hospital. Dental services are provided by the ACT Health, Dental Health Program at the Civic Dental Clinic.

Several issues of concern were raised with the Commission about health services at Bimberi, and the Commission makes recommendations in the areas of: access to young people, notification of admissions, respect for clinical judgement, delivery of medication, role of doctors after use of force, consent, second opinions, parental involvement in medical decisions and use of handcuffs to transfer young people to health services in the community.

Mental health services in Bimberi

Mental health services in Bimberi are provided by ACT Forensic Mental Health Services. Outside Bimberi, services are provided by Child and Adolescent Mental Health Services. These agencies therefore have an important relationship, handing over care as young people move through the system. However, the agencies have conflicting philosophies and approaches to service provision, which undermines continuity of care. The Commission suggests that ACT Health review the provision of mental health services in the youth justice system, and develop an agreed model of care to facilitate continuity of care through the system.

The Commission is concerned about the lack of in-depth long-term counselling available for young people at Bimberi. Participants told the Review that the medical and forensic models of mental health care meet the needs of only some young people in Bimberi, primarily those with a mental health diagnosis. Other issues, such as poor impulse control, communication problems, difficulties with inter-personal relationships, thought disorders or anger management problems, are not considered within existing care models, despite the influence such conditions have on young people's behaviour and capacity to desist from crime.

The Commission recommends CSD and ACT Health develop a protocol for information sharing within Bimberi, to ensure concerns about young people's mental health are responded to appropriately.

Alcohol and other drug intervention at Bimberi

Participants reported a gap in the provision of alcohol and other drug counselling at Bimberi. The Commission recommends ACT Health and CSD negotiate a protocol on alcohol and other drug interventions in Bimberi. A guiding principle for this protocol should be that health professionals (not Bimberi management) have the ultimate authority to decide the use of any interventions, based on clinical indication.

Throughcare and aftercare

Several reports and inquiries have emphasised the need for continuity of health care for people in the youth or adult justice systems. One suggestion put to the Commission was that Justice Health retain carriage of primary health care services for young people after release from Bimberi. The Commission understands that Justice Health funds general practitioners to provide alcohol and other drug services to detainees when they leave the AMC. The Commission supports such a model being applied for young people leaving Bimberi. A period of transitional care after Bimberi could ensure that young people continue receiving services, and give time for an effective transfer to be made to another general practitioner.

Conditions of detention: a quality youth justice centre respects human rights


Chapter 14 focuses on Bimberi, and presents the findings and recommendations arising from the Human Rights Audit into the conditions of detention at the Centre.

One of the factors behind the decision of the Legislative Assembly to commission this Review was concern about safety at Bimberi. Bimberi is required to balance the rights of staff with the rights of young people. These are not necessarily competing aims; in fact, evidence shows that a supportive, therapeutic environment for young people realises their rights, and protects the rights of staff.

The last Human Rights Audit of the ACT youth detention centre (then the Quamby detention centre) occurred in 2005. In comparing the results of the two audits, it is clear that substantial improvements have been made in the transition from Quamby to Bimberi, although there are still gaps in practice. However, human rights compliance is an ongoing process; constant monitoring is necessary to ensure that a closed residential institution respects human rights, and provides a therapeutic environment that is safe and secure for staff and residents alike. At times, Bimberi has not achieved these aims.

The Human Rights Audit covered the following issues: behaviour management and discipline, use of force and restraints, segregation, searching, participation, food, classification, communication, clothing, visits, access to information, access to lawyers, and transfers to the AMC. The types of human rights that were limited included rights to humane treatment in detention, privacy, freedom of expression, and separation of sentenced from accused young people, who have the right to be presumed innocent until convicted.

The new Behaviour Management System was developed as a result of the 2005 Human Rights Audit of Quamby, and although it is much improved, it needs to be enhanced in terms of practical implementation, avoidance of discrimination, and better procedural fairness to ensure that young people are not being punished twice for matters that are also the subject of criminal charges.



The Commission identified several problems in relation to the use of force and restraints, in particular that they had been used for minor breaches, staff shortages had meant that they were not always used as a last resort, and de-escalation had not been implemented as often as it should have been. The Commission is concerned that restraints were sometimes used routinely for escorts within Bimberi as a behaviour management technique and without adequate risk assessment. Further, the Use of Force Policy seems not to be used consistently in practice, and records were not properly kept in accordance with legal requirements.

The Commission has similar concerns in relation to the use of segregation, in that records were not being kept appropriately, and the review process is not sufficiently transparent and rigorous. It appears that young people on segregation were often denied access to full educational programs, contrary to policies. Bimberi has developed the practice of locking young people in their cabins for 'time out' if they are noncompliant, without authority under policies and procedures. Also there was inadequate recording of reasons for locking down units for 'operational reasons', for example staff shortages.

Although the number of strips searches had declined from their routine use at Quamby, there are worrying signs that they are again increasing. The Commission suggests that alternative search techniques be used, in line with best practice in other jurisdictions. There were some problems in relation to unit searches conducted in the absence of the young person, and the often automatic subsequent requirement of a strip search.

The Commission found that the environment of the Admissions Unit is unnecessarily stark, and is concerned that other young people are co-located here for behaviour management, meaning that remand and sentenced young people were inappropriately mixing contrary to human rights requirements. Although Bimberi has conjoining cabins for young people, as recommended in the Royal Commission into Aboriginal Deaths in Custody, in practice these were not used.

In relation to communication and other rights, the Commission is concerned that young people do not often participate in decision-making, and are not provided with the *Resident's Handbook* which explains their rights and obligations. Some young people had their phone calls limited due to disciplinary matters, and the free phone call system to oversight bodies was not operating properly. Sometimes legal visits were postponed at short notice due to staff shortages, and there is no general visiting legal service for young people at Bimberi. Also young people complained that their clothing was not warm enough, and footwear was of low quality. The Commission recommends that CSD develop criteria and procedures for transferring young people over the age of 18 years to the AMC, in order to ensure transparency and consistency in decision-making, and give young people an opportunity to know their rights and put forward their views, notify advocates and be given an opportunity to appeal.

Management and oversight: a quality youth justice system is well managed and operated

Chapter 15 concludes the Report with a discussion of some overarching management and operational issues.

Management and operation of the youth justice system in the ACT

While the ACT Government has responsibility for the management of Bimberi and CYJ, it is not in control of the whole youth justice system, which comprises a range of independent organisations, including ACT Policing, the DPP, the Childrens Court, the Supreme Court, solicitors, and community organisations. Each of these agencies has different authority, functions and accountability structures. The Commission makes several recommendations to encourage these organisations to work collaboratively in the interests of better rehabilitation outcomes for young people.

Management and operation of Bimberi

A significant part of this Report addresses the management and operation of Bimberi. The problems with staff shortages, staff training and support, program delivery, behaviour management and record keeping that are described in the Report reflect the management and operation of Bimberi. The Commission recommends that management of Bimberi can be improved in five areas: leadership and communication with staff and young people; design, communication and review of operational procedures; management of the facility and equipment; ensuring appropriate action following incidents; and transparent and evidence based decision-making.

Directorate oversight of Bimberi

The Commission recommends five areas in which OCYFS Directors and CSD Executives need to ensure they are informed, increase their involvement, and provide support for Bimberi management: developing and reviewing operational procedures; budgetary decisions; scrutiny of incident reports; scrutiny of complaints from staff, young people and families; and seeking advice from experts.

External oversight of Bimberi

The people who live and work in detention centres are particularly vulnerable to mistreatment and violations of their human rights. Throughout history we have seen that, without robust mechanisms for transparency and accountability, closed residential institutions can become harmful and abusive.

There are several ways in which outsiders can enter Bimberi and gain some understanding of the Centre. Judges, Magistrates and Members of the Legislative Assembly may enter and inspect Bimberi at any reasonable time; a lawyer representing a young person may visit that young person in Bimberi; family members and friends can request permission to visit; community or government service providers can request permission to visit; and investigative authorities may assist young people or staff at Bimberi in relation to specific complaints. However, the primary agencies with formal powers of oversight and inspection at Bimberi are the Official Visitor (OV), the Public Advocate of the ACT (PA), and the Commission. The Commission makes several recommendations to strengthen and coordinate the external oversight of Bimberi.

Complaints handling system at Bimberi

Complaints processes are an important part of any organisation. They provide an opportunity to obtain feedback, and identify areas for improvement. A detention centre is a particularly important place in which to have a robust complaints process. Bimberi should welcome comments, questions and complaints from young people, staff, families and external workers who attend the Centre. There are fundamental problems with the complaints handling processes at Bimberi, and the Commission recommends improvement in five areas: create a culture of listening to young people, workers and families; pre-empt complaints by establishing communication channels; review and improve the design of the complaints process; record and analyse complaints; and identify common themes in complaints and address systemic problems.

Recommendations

Section 82 of the *Human Rights Commission Act 2005* notes that if a recommendation in a final report recommends that action be taken, it must state the reasonable time within which the action should be taken.

Due to the number and breadth of the recommendations contained in this Report, the Commission was unable to nominate a realistic timeframe for each individual recommendation and, instead, nominated *within 18 months* for all recommendations to be implemented or substantially progressed.

In doing so, the Commission is of the view that a number of the recommendations have a higher priority than others, and that some of the recommendations could (and should) be implemented within a relatively short timeframe (within 6 months). Similarly, while full implementation of some of the recommendations may take longer than 18 months, the Commission expects that substantial progress could be made on those recommendations within 18 months.

Accordingly, the Commission asks that the ACT Government provide the Commission with a detailed *schedule of implementation* by 30 September 2011, and with a *detailed implementation report* by 31 December 2011, 30 June 2012 and 31 December 2012. The Commission would anticipate being consulted about the *schedule of implementation*.

CHAPTER 3: EMBEDDED IN THE COMMUNITY

Number	Recommendation
3.1	The ACT Government develop an MOU between all key agencies which outlines the roles and responsibilities for the provision of services to young people while in Bimberi, and when exiting Bimberi.
3.2	The Community Services Directorate, in consultation with families and family support agencies, develop a Family Engagement Strategy that articulates how families will be supported throughout the youth justice system, and how their participation will be assisted.
3.3	The Community Services Directorate, in consultation with families and family support agencies, develop information resources that assist families to understand their rights, the nature of their child's engagement in the youth justice system, services available to support them, and how they might best work with Bimberi and Community Youth Justice throughcare.
3.4	The Community Services Directorate fund a Family Support Officer to be based at the ACT Childrens Court and to be available to support families, particularly those whose children are appearing in court for the first time.
3.5	The Community Services Directorate appoint a Family Liaison Officer to work within Bimberi to assist families to remain connected to their children and be provided with timely and appropriate information, and to advocate for families in decisions within Bimberi when they are not able to do so in person.
3.6	The Community Services Directorate develop a Youth Justice Participation Strategy.
3.7	The Community Services Directorate develop a Charter of Rights for Young People in Detention.
3.8	Agencies involved in the administration of the youth justice system, including ACT Policing, the Director of Public Prosecutions, Legal Aid ACT, and the Community Services Directorate: <ul style="list-style-type: none"> • Establish procedures to ensure they protect the rights of victims of crime, and are responsive to their needs • Report on the implementation of these procedures (using targets or performance measures) • Provide regular training for all staff on the needs and experiences of victims of crime • Periodically evaluate their responses to victims of crime.
3.9	The ACT Government allocate additional resources to Victim Support ACT to allow them to provide specialised services for children and young people who are victims of crime.
3.10	ACT Policing, the Department of Public Prosecution, the ACT Childrens Court and the Community Services Directorate refer all appropriate matters to the Restorative Justice Unit for conferencing.

CHAPTER 4: VISION

Number	Recommendation
4.1	The ACT Strategic Board establish a sub-committee on vulnerable children, young people and their families.
4.2	The ACT Government commit to introducing Child Impact Statements and work with the Commission and other relevant stakeholders to develop a suitable model.
4.3	The ACT Strategic Board sub-committee adopt a whole-of-government and whole-of-community approach to develop a clear and shared vision for vulnerable children, young people and their families; and that children and young people and the Legislative Assembly Standing Committee on Education, Training and Youth Affairs be meaningfully engaged in the vision-setting process.
4.4	The Community Services Directorate establish a Youth Justice Advisory Panel to guide the development of a statement of purpose for the youth justice system and to monitor the ongoing translation of this purpose into practice.
4.5	The Community Services Directorate adopt a whole-of-government and whole-of-community approach to develop a clear and shared statement of purpose for youth justice in the ACT.
4.6	The ACT Strategic Board sub-committee monitor and report on achievement of the vision for vulnerable children, young people and their families with specific reference to vulnerable young people in the youth justice system.
4.7	The Community Services Directorate adopt a whole-of-government and whole-of-community approach to develop a clear and shared statement of purpose for Bimberi.
4.8	The ACT Strategic Board sub-committee monitor and report on achievement of the vision for vulnerable children, young people and their families with specific reference to vulnerable young people in Bimberi.
4.9	ACT Strategic Board sub-committee translates the vision for vulnerable children, young people and their families into an outcome framework that includes the health, learning, development, safety and well-being of children and young people.
4.10	The Community Services Directorate translates the statement of purpose for the youth justice system into a youth justice practice framework with outcome measures and performance indicators.
4.11	The Community Services Directorate translates the statement of purpose for Bimberi into a Bimberi practice framework with outcomes measures and performance indicators.
4.12	The Community Services Directorate ensure the necessary capacity and skill are in place to develop an outcome based organisational performance measurement system and associated data collection system and translate the data into improved practice.
4.13	The Community Services Directorate consult with Bimberi staff about proactive steps to address any staffing culture concerns, and consider engaging a consultant to work with staff and management to develop a more positive culture.
4.14	The Community Services Directorate introduce matrix model of people performance management to assess measures of leadership behaviour as well as outcome measures.
4.15	The Legislative Assembly Standing Committee on Education, Training and Youth Affairs consider holding public hearings every two years on achievements towards the vision and outcomes for vulnerable young people in the youth justice system.
4.16	The external oversight bodies (the Public Advocate, the Official Visitor, and the Commission) report jointly and annually to the ACT Strategic Board sub-committee and the Legislative Assembly Standing Committee on Education, Training and Youth Affairs on achievements towards the vision and outcomes for vulnerable young people in the youth justice system.
4.17	The Community Services Directorate consider engaging a change management expert to assist with the significant cultural change required to instil a high performance culture across the youth justice system.

CHAPTER 5: STAFFING

Number	Recommendation
5.1	The Community Services Directorate include qualifications and experience in youth work as highly desirable criteria for youth worker positions at Bimberi.
5.2	The Community Services Directorate introduce training for Bimberi management on the AIFP psychometric profiling system to assist in the interpretation of test results and conducting structured interviews.
5.3	The Community Services Directorate ensure that applicants for supervisory staff and management at Bimberi are assessed using appropriate psychometric profiling.
5.4	The Community Services Directorate fill the Aboriginal and Torres Strait Islander Youth Liaison Officer position within Bimberi as a priority, and seek to better reflect the characteristics of the young people at Bimberi by recruiting more Aboriginal and Torres Strait Islander staff generally.
5.5	The Community Services Directorate continue to over-recruit youth workers for Bimberi, and to operate a casual staff pool at Bimberi. Casual youth worker staff who work full-time on an ongoing basis should be offered permanent employment where possible.
5.6	The Government increase resourcing for Community Youth Justice to allow for caseloads to be capped at eight to ten clients for each case manager.
5.7	The Community Services Directorate explore opportunities to work in partnership with local universities to offer practical placements and work experience in youth justice services to students of appropriate degree courses, with a view to recruitment as Community Youth Justice case managers on graduation.

CHAPTER 5: STAFFING

Number	Recommendation
5.8	The Community Services Directorate continue the practice of seeking internal expressions of interest for all temporary acting roles over four weeks in duration within Community Youth Justice to ensure transparency of decision making.
5.9	The Government review the pay structure for youth workers at Bimberi as part of the broader classification review to ensure that it is equitable and comparable to the pay structure for correctional officers in the ACT.
5.10	The Community Services Directorate engage their Learning and Community Education Team to conduct regular training needs assessments with all staff at Bimberi, and to develop a professional development framework to meet emerging needs.
5.11	The Community Services Directorate conduct an assessment of qualification requirements, and the comparability of classifications and minimum qualifications, among all client-related positions in Care and Protection Services and Community Youth Justice.
5.12	<p>The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Bimberi management, to extend the current induction training program for new Bimberi youth workers to include more detailed and practical modules on:</p> <ul style="list-style-type: none"> • The vision of the ACT youth justice system and the role of Bimberi within that system • The role of a youth worker and strategies for managing competing responsibilities • Issues that influence young people's behaviours (such as trauma and abuse, mental health issues, intellectual disability, autism and Asperger's syndrome, cognitive incapacity) • Relationship-based behaviour-management techniques (including de-escalation and life space crisis intervention) • Human rights and how they might be integrated in day-to-day operations • Diversity and discrimination (including strategies to address racism, homophobia and transphobia), and cultural awareness.
5.13	The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Bimberi management, to develop and implement an annual training plan to provide staff with ongoing professional development opportunities both within the Directorate and the broader youth sector, and that the Directorate allocate a budget for the ongoing provision of training to meet staff needs.
5.14	<p>The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Bimberi management, to develop and implement an induction training program for all non-operational staff working at Bimberi which includes sessions on:</p> <ul style="list-style-type: none"> • Vision of the ACT youth justice system and the role of Bimberi • Role and nature of services provided at Bimberi • Fostering a collaborative, rehabilitative and human rights compliant culture • Responding to young people with difficult behaviours • Responding to disclosures of abuse or neglect (including but not limited to mandatory reporting requirements) • First Aid • Work safety • Emergency procedures • Complaints procedures and the functions of oversight agencies.
5.15	<p>The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Bimberi management, to develop and implement a training package for team leaders and unit managers which includes sessions on:</p> <ul style="list-style-type: none"> • Supporting rehabilitation throughcare • Group work and advanced communication skills for working with young people • Youth participation (including receiving feedback, group decision-making and planning and peer support) • Managing staff (including those with difficult behaviours) • Supervision and performance management • Critical incident debriefing • Instilling Human Rights in practice • Respecting diversity and addressing discrimination, bullying and harassment • Managing complaints and grievances and the functions of oversight agencies.
5.16	The Community Services Directorate work with local training providers and universities to scope opportunities for developing and providing youth justice specific qualifications at the Certificate, Diploma and Degree levels.
5.17	The Community Services Directorate engage their Learning and Community Education Team to explore in-house training options that provide experienced workers with opportunities to more actively participate in the delivery of training at Bimberi. Where possible, this involvement would be recognised through accredited 'train-the-trainer' qualifications.

CHAPTER 5: STAFFING

Number	Recommendation
5.18	<p>The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Community Youth Justice (CYJ) management, to develop and implement an induction training program for CYJ case managers which includes sessions on:</p> <ul style="list-style-type: none"> • Vision of the ACT youth justice system and the role of CYJ • Case management and client supervision skills (including relationship based practice, provision of CHART and YLS/CMI) • Supporting rehabilitation throughcare • Introduction to the ACT legislation, and to the role of the courts and CYJ's responsibilities to them • Role and nature of services available to young people in the youth justice system • Responding to young people with difficult behaviours • Responding to disclosures of abuse or neglect (including but not limited to mandatory reporting requirements) • Complaints procedures and the functions of oversight agencies.
5.19	<p>The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Community Youth Justice (CYJ) management, to develop and implement a training package for CYJ team leaders which includes sessions on:</p> <ul style="list-style-type: none"> • Vision of the ACT youth justice system and the role of CYJ • Case management and client supervision skills (including relationship based practice, provision of CHART and YLS/CMI) • Supporting rehabilitation throughcare • Introduction to the ACT legislation, and to the role of the courts and CYJ's responsibilities to them • Role and nature of services available to young people in the youth justice system • Responding to young people with difficult behaviours • Responding to disclosures of abuse or neglect (including but not limited to mandatory reporting requirements) • Complaints procedures and the functions of oversight agencies.
5.20	The Community Services Directorate comply with the Office for Children, Youth and Family Support's <i>Supervision Framework and Supervision Policy</i> and report on compliance in their annual report.
5.21	The Community Services Directorate revise the staffing model for Bimberi to ensure that workers are not required to work in isolation with groups of young people, and that sufficient staff are rostered to allow workers to take breaks at reasonable intervals throughout their shift. The Directorate consult with staff regarding the revised staffing model, but the Commission's preferred model is that two youth workers be allocated to each residential wing on each shift.
5.22	The Community Services Directorate, in collaboration with professional experts and Directorate staff, develop and implement a critical incident debriefing or support model.
5.23	The Community Services Directorate assertively offer all Bimberi staff counselling and assistance to manage any ongoing emotional or mental health concerns connected with their work. This assistance be offered in paid hours and at a location preferred by staff (at the Centre or another location), and be in addition to entitlements under the Employee Assistance Program.
5.24	The Community Services Directorate, in consultation with Bimberi management and staff, develop and implement a Centre-wide performance appraisal scheme which clearly articulates when supervision will be conducted, by who, and how this process will be evaluated.
5.25	<p>The Community Services Directorate, in consultation with Bimberi management, develop and implement an action plan to urgently address work safety issues at Bimberi including the following actions:</p> <ul style="list-style-type: none"> • Implement the ACT Government's RED Framework and Guidelines on Preventing Workplace Bullying , and the ACT Code of Practice on Workplace Bullying in full at Bimberi as soon as possible • Contact Officers be selected by staff and trained • Consultation arrangements with staff be improved to meet obligations under the Work Safety Act • Review record keeping obligations under the Work Safety Act and related legislation and ensure that Bimberi has all necessary risk-management documentation, including a risk-management register and emergency management plan • Request WorkSafe ACT to undertake a comprehensive inspection of Bimberi • Exit interviews be offered to all staff leaving Bimberi • Ensure that rostering allows staff to attend a reasonable number of daily briefings and weekly staff meetings • Consider having whole-of-centre staff meetings, involving as many youth workers as the roster will allow, along with all available non-operational staff. This might also be followed by a union meeting • Examine the peer-support model for staff operating at AMC to consider whether it should be adopted at Bimberi.
5.26	The Community Services Directorate review whether 12-hour shifts for youth workers at Bimberi best serve the interests of the residents and staff of the Centre.
5.27	The Community Services Directorate enhance communication channels between management and case managers in Community Youth Justice to provide greater opportunities for case managers to receive information and contribute to decisions and policy issues relating to their practice.

CHAPTER 6: EVIDENCE BASED

Number	Recommendation
6.1	The Community Services Directorate develop an evaluation framework, informed by the literature and by local experts, to assess the effectiveness of youth justice programs in meeting their goals, outcomes and key performance indicators.
6.2	The Community Services Directorate establish an expert advisory group with clear terms of reference to assist guide the development of evidence-based policy and practice. This advisory group should be made up of researchers, academics and youth justice experts as well as practitioners with expertise in the delivery of services to young people with offending behaviour and their families.
6.3	<p>ACT Policing:</p> <ul style="list-style-type: none"> • Publish data on both alleged young offenders and distinct alleged young offenders • Disaggregate data about alleged young offenders according to age, sex, Aboriginal or Torres Strait Islander status and other demographic characteristics • Report the country of birth and ethnic background of alleged young offenders • Report how they determine Aboriginal or Torres Strait Islander status • Publish data on diversion rates by status, gender and Aboriginal or Torres Strait Islander status.
6.4	The ACT Childrens Court disaggregate data by Aboriginal or Torres Strait Islander status, including offence types, sentencing outcomes, age of first appearance before the court, and rates of acquittal and conviction.
6.5	<p>The Community Services Directorate:</p> <ul style="list-style-type: none"> • Record offence types for which young people are placed under community based or detention based supervision • Disaggregate data on offence types by demographic characteristics such as age, sex and Aboriginal or Torres Strait islander status • Consider ways to improve the current measure of recidivism to meet best practice standards.
6.6	<p>The ACT Government:</p> <ul style="list-style-type: none"> • Conduct qualitative research into the operation of police discretion to warn, caution, charge or refer a young person to diversionary programs • Examine why nearly one third of adjudications in the ACT Childrens Court are withdrawn, in comparison with a national figure of 10 per cent.
6.7	The Community Services Directorate undertake a comprehensive review of all record keeping systems at Bimberi and establish a plan for implementing improvements.
6.8	The Community Services Directorate provide Bimberi with an electronic database to help manage information.
6.9	The Community Services Directorate develop operational procedures to provide guidance to unit managers in Bimberi when investigating reportable incidents.
6.10	The Community Services Directorate comply with the Bimberi Records and Reporting Policy, and provide young people with the opportunity to record their version of events following reportable incidents.
6.11	The Community Services Directorate amend the Bimberi Record and Reporting Policy to require that all relevant CCTV footage be downloaded and saved following any reportable incident.
6.12	The Community Services Directorate upgrade the CCTV system at Bimberi to allow all footage to be kept for a period of 12 months, and to enable the system to include audio coverage.

CHAPTER 7: PREVENTION & DIVERSION	
Number	Recommendation
7.1	The Community Services Directorate offer training on assertive outreach and methods of engaging with hard-to-reach children, young people and families to all organisations funded under the <i>Youth and Family Support Service Delivery Framework</i> .
7.2	The Community Services Directorate require funded prevention programs to report on their level of effective engagement with Aboriginal and Torres Strait Islander children, young people and their families and communities.
7.3	The Community Services Directorate include boys aged eight to 12 years, particularly Aboriginal and Torres Strait Islander boys, as a target group in the <i>Youth and Family Support Service Delivery Framework</i> .
7.4	The Community Services Directorate include children and young people with a parent or sibling in custody as a target group in the <i>Youth and Family Support Service Delivery Framework</i> .
7.5	The Community Services Directorate require organisations funded under the <i>Youth and Family Support Service Delivery Framework</i> to prioritise young people at risk of offending.
7.6	The Community Services Directorate coordinate the development and implementation of strong relationships and referral pathways between ACT Police and schools, and the Information Engagement and Coordination Service, Network Based Services and Youth Engagement Services created under the <i>Youth and Family Support Service Delivery Framework</i> .
7.7	The Community Services Directorate work with the Youth Justice Advisory Panel to develop and implement a suite of risk and protective assessment tools for vulnerable children, young people and their families.
7.8	The Community Services Directorate work with key stakeholders to develop an ACT Prevention Plan which, among other things, clearly draws together the large number of existing plans and frameworks that focus either fully or in part on prevention.
7.9	The Community Services Directorate, in consultation with other Directorates, develop an effective executive oversight mechanism that minimises the critical 'grey area' between the secondary and tertiary prevention systems by identifying those children and young people whose level of need and/or risk is increasing, and by referring them to appropriate tertiary prevention services.
7.10	The ACT Government implement Phase 2 of the <i>Crimes (Restorative Justice) Act 2004</i> to allow young people to be referred to restorative conferencing for more serious crimes.
7.11	The Community Services Directorate liaise with ACT Police to determine the feasibility of young people and their families being referred by the police to Family Group Conferencing options within the Directorate.
7.12	ACT Police develop and implement guidelines regarding the use of discretion in diverting young people from the youth justice system, with these guidelines being as transparent and open as the effective operations of ACT Police allows.
7.13	ACT Police set targets for police referral to all diversionary options, particularly in relation to Aboriginal and Torres Strait Islander young people. Performance against these targets to be reported in the ACT Police annual report.
7.14	ACT Police collect and publish in their annual report data on diversion rates by age, gender and Aboriginal or Torres Strait Islander status.
7.15	The ACT Government amend the <i>ACT Aboriginal Justice Agreement 2010-2013</i> to include increased referral rates of Aboriginal and Torres Strait Islander young people to all forms of diversion.
7.16	ACT Police guidelines be updated to include a direction that young people being diverted from the youth justice system only be placed in police cells as a last resort. The level of compliance with this direction be reported in the ACT Police annual report.
7.17	ACT Police guidelines be updated to include a direction that young people dealt with by way of summons only be placed in police cells as a last resort. The level of compliance with this direction be reported in the ACT Police annual report.
7.18	The ACT Government introduce a mechanism that allows police to issue a summons to a young person without requiring their attendance at a police station.
7.19	The ACT Government amend the <i>Bail Act 1992 (ACT)</i> to remove the presumption against bail for young people accused of domestic or family violence matters.
7.20	The Community Services Directorate establish a Diversion from Custody Support Service for young people in police custody after hours.
7.21	The Community Services Directorate use Youth Level of Service/Case Management Inventory (YLS/CMI) risk assessments to assist ACT Police and the ACT Childrens Court draft bail conditions for young people.
7.22	The Community Services Directorate redraft the pro-forma pre-sentence report used by Community Youth Justice to better reflect the strengths of young people and the opportunities and resources available to them.
7.23	The Community Services Directorate develop and implement a model of supervision that allows Community Youth Justice workers to undertake outreach visits to young people in the community to, among other things, satisfy the reporting condition of a young person's bail.
7.24	The Community Services Directorate 'outsource' the supervision and support of low risk offenders to community service providers, particularly those funded under the <i>Youth and Family Support Service Delivery Framework</i> .
7.25	ACT Police finalise updating the police guidelines in relation to the legislative changes introduced by the <i>Human Rights Act 2004</i> and <i>Children and Young People Act 2008</i> , and ensure that all police officers receive training on the new guidelines.
7.26	The Community Services Directorate finalise guidelines on what Community Youth Justice case managers need to consider when exercising discretion to breach a young person's bail, and ensure that all case managers receive training on the new guidelines.
7.27	The Director of Public Prosecutions determine the reasons why so many adjudications are being withdrawn in the ACT Childrens Court and take any corrective action that may be warranted.

CHAPTER 7: PREVENTION & DIVERSION

Number	Recommendation
7.28	The Community Services Directorate and the Health Directorate work with the ACT Childrens Court to determine why recommendations by the Court Alcohol Drug Assessment Service for referral are not being implemented.
7.29	The Justice and Community Safety Directorate, in partnership with other Directorates, consider implementing and evaluating a two year pilot of a Youth Drug and Alcohol Court.
7.30	<p>The Community Services Directorate:</p> <ul style="list-style-type: none"> • Work with the National Judicial College to develop and implement an annual training program for judges and magistrates on issues relevant to youth justice, including, for example, child development; Aboriginal and Torres Strait Islander culture; the structural causes of youth offending; the What Works principles; the provision of case management to young people involved in the youth justice system; the YSL/CMI risk assessment tool; the new Youth and Family Support Program Framework; and available supported accommodation services • Develop and implement an annual education program for the ACT Police, Director of Public Prosecution, Legal Aid, Aboriginal Legal Services and the private legal profession on a range of issues relevant to youth justice, including: child development; Aboriginal and Torres Strait Islander culture; the structural causes of youth offending; the What Works principles; the YLS/CMI risk assessment tool; the new Youth and Family Support Program Framework; and available supported accommodation services.
7.31	The ACT Government works with key stakeholders to develop an ACT Diversion Plan.
7.32	The ACT Government adopt a long-term Justice Reinvestment Strategy that addresses the underlying causes of crime.
7.33	The ACT Government develop meaningful mechanisms to partner with Aboriginal and Torres Strait Islander communities to design and deliver a long-term Justice Reinvestment Strategy that will reduce offending by Aboriginal and Torres Strait Islander young people. Consideration be given to conducting a thorough 'mapping' of all programs and services offered to Aboriginal and Torres Strait Islander communities, including the level of engagement by Aboriginal and Torres Strait Islander people.

CHAPTER 8: CASE MANAGEMENT

Number	Recommendation
8.1	<p>The Community Services Directorate, in consultation with key stakeholders, develop a new Youth Justice Case Management Model that includes:</p> <ul style="list-style-type: none"> • Mechanisms for operationalising the Youth Justice Practice Framework • A single care team • A single case plan • A single case manager • An advocate for the young person • Timely and regular case conferences.
8.2	The Community Services Directorate develops a Memorandum of Understanding which clearly articulates how the Office for Children, Youth and Family Support's services work together to support implementation of a young person's case plan.
8.3	<p>The Community Services Directorate, in consultation with key stakeholders, develop a new Bimberi Support Model that includes:</p> <ul style="list-style-type: none"> • A single Bimberi support team • A single Bimberi support plan • A single Bimberi support coordinator • Key workers for the young person.
8.4	The Community Services Directorate require that Community Youth Justice report against broad outcome based indicators (such as: achievement at school; ongoing participation in work or vocational education; minimizing alcohol or other drug use) rather than focusing solely on recidivism as a measure of success.
8.5	The Community Services Directorate consider alternative arrangements, including the development of multidisciplinary teams, for the provision of case management services to young people supervised by Community Youth Justice.

CHAPTER 9: PROGRAMMING

Number	Recommendation
9.1	The Community Services Directorate develop a 'program framework' for Bimberi which sits within the Bimberi practice framework (see Recommendation 4.11).

CHAPTER 10: INDIVIDUAL NEEDS

Number	Recommendation
10.1	The Community Services Directorate work with and resource local Aboriginal and Torres Strait Islander organisations to develop programs addressing specific cultural needs for Aboriginal and Torres Strait Islander young people in Bimberi.
10.2	The Community Services Directorate consult local Aboriginal and Torres Strait Islander organisations regarding programs addressing key criminogenic needs for Aboriginal and Torres Strait Islander young people including drug and alcohol abuse, anger management, and offending behaviour, to ensure that these programs are delivered in a way that is culturally appropriate for Aboriginal and Torres Strait Islander young people.
10.3	The Community Services Directorate develop evidence based programs for young women at Bimberi to meet their specific needs on issues including body image, physical self care, sexuality, and respectful relationships with peers, family, partners and children. Young women should be consulted on their needs and preferences for specific programming.
10.4	The Community Services Directorate review and enhance rehabilitation programs provided at Bimberi to ensure that appropriate evidence based programs are developed to meet the criminogenic and developmental needs of young people 10-14 and young adults 18-21 years old.
10.5	The ACT Government review the age of criminal responsibility and consider raising this age to 12 years old in the ACT.
10.6	The Community Services Directorate develop a protocol to articulate the ACT Government's approach to working with young people with a disability in the youth justice system.

CHAPTER 11: HOUSING

Number	Recommendation
11.1	The ACT Strategic Board sub-committee on vulnerable children, young people and their families make a commitment that every vulnerable young person in the ACT will have their housing needs met in a way that serves their best interests.
11.2	The Community Services Directorate measure the level of unmet need for out of home care placements and supported accommodation placements, and provide adequate resources to address this need.
11.3	The Community Services Directorate identify and resource a wider range of supported accommodation options that are proven to meet the needs of young people with challenging behaviours and complex needs.
11.4	The Community Services Directorate increase funding to supported accommodation services to provide a higher number of dedicated places for young people on bail.
11.5	The ACT Government amend the <i>Children and Young People Act 2008</i> to allow the Public Advocate, or another party with leave of the court, to apply for a Therapeutic Protection Order.
11.6	The Community Services Directorate progress the implementation of the proposed Therapeutic Protection Place facility, and also consider the possibility of Therapeutic Protection Orders being applied in the context of other residential settings when in the best interests of a particular young person.
11.7	The Community Services Directorate undertake a review of residential institutions contracted to provide out of home care services for young people, particularly in relation to their practices regarding use of force and enforcement of bail conditions.
11.8	The Community Services Directorate continue to improve transition planning for young people leaving Bimberi by: <ul style="list-style-type: none"> Progressing plans for a Transition Unit to help young people prepare for release into the community Organising pre-release conferences at least several weeks before the young person's date of release, to facilitate case coordination between the agencies supporting the young person Utilising conditional day release to allow young people to visit their proposed accommodation and develop relationships and familiarity before they exit Bimberi Building relationships with supported accommodation service providers to strengthen communication and partnerships.

CHAPTER 12: EDUCATION

Number	Recommendation
12.1	The Education and Training Directorate provide increased support for children and young people to remain engaged with education during periods of suspension from school.
12.2	The Education and Training Directorate and the Community Services Directorate work together to provide alternative support and resources to young people in the Murrumbidgee Education and Training Centre following the removal of youth workers from the classrooms, perhaps through teaching assistants or additional qualified teachers.
12.3	The Education and Training Directorate and the Community Services Directorate give direction and support to Murrumbidgee Education and Training Centre staff and Bimberi staff to: <ul style="list-style-type: none"> Clarify their daily operational relationship and interactions, with the aim of improving education outcomes for young people Negotiate mechanisms to exchange appropriate information about young people, centre operations and school operations, at the beginning and end of the school day.
12.4	The Community Services Directorate give direction and support to Bimberi management to ensure they consult with the Murrumbidgee Education and Training Centre before making decisions that impact on a young person's access to education.

CHAPTER 12: EDUCATION

Number	Recommendation
12.5	The Education and Training Directorate employ an onsite principal equivalent to the level and authority of Bimberi management.
12.6	The Education and Training Directorate communicate with the Community Services Directorate about any operational decisions that detrimentally impact on young people's education at Bimberi.
12.7	The Education and Training Directorate explore options by which the ACT education system can meet the needs of young people wishing to complete Year 12 qualifications while in Bimberi, instead of referring them to the NSW education system.
12.8	The Community Services Directorate assertively implement the provision in the <i>Children and Young People Act 2008</i> which allows for the conditional day release of young people in Bimberi for purposes of education, training or employment.
12.9	The Education and Training Directorate assist young people to submit applications for day release for education purposes, when it is in the best interests of that young person.
12.10	The Community Services Directorate, in consultation with the Murrumbidgee Education and Training Centre and Bimberi management, develop and implement flexible and accessible methods to facilitate parental involvement in young people's education.
12.11	The Education and Training Directorate and the Community Services Directorate facilitate greater flexibility for the Murrumbidgee Education and Training Centre to determine class composition. Extra resources may be required to allow smaller class sizes that take into account both classification issues and educational need.
12.12	The Education and Training Directorate consider how the Indigenous Education Section in the Directorate could assist Murrumbidgee Education and Training Centre staff with appropriate curriculum content that will support cultural learning for Aboriginal and Torres Strait Islander young people.
12.13	The Community Services Directorate consider the best means to engage government or community service providers to facilitate programs in legal education, sexual health education, drug and alcohol education, anger management groups, human rights education, swimming or lifesaving lessons, and other subject areas relevant to young people in Bimberi.
12.14	The Education and Training Directorate inform the Public Advocate and Official Visitor if a young person is denied permission to attend school for two consecutive days in a row, to ensure transparency of segregation or behaviour management decisions that impact on young people's right to education.
12.15	The Education and Training Directorate and the Community Services Directorate ensure young people receive equal access to appropriate education while in segregation.
12.16	The Education and Training Directorate consult with Murrumbidgee Education and Training Centre staff about the supports that can be provided to assist them in their work.
12.17	The Education and Training Directorate develop professional linkages between Murrumbidgee Education and Training Centre staff and other schools in the community. The Education and Training Directorate develop strategies to promote the Murrumbidgee Education and Training Centre as a place to work among teachers in the ACT.
12.18	The Education and Training Directorate and the Community Services Directorate negotiate funding for additional teaching resources, to ensure the wellbeing of staff at the Murrumbidgee Education and Training Centre, and improved education outcomes for young people at Bimberi.
12.19	The Education and Training Directorate ensure that young people in Bimberi are receiving the full level of service they are entitled to under existing departmental criteria for special education services.
12.20	The Education and Training Directorate reinstitute the extended school year (48 weeks) that previously existed at Quamby, or alternatively develop a planned and coordinated summer school program which provides young people access to quality education and training programs throughout the year.
12.21	ACT Government provide increased resources to the Education and Training Directorate to offer more coordinated and individualised support for young people to continue their educational opportunities when they leave Bimberi.
12.22	<p>The Education and Training Directorate and the Community Services Directorate continue to focus on the following areas to ensure young people have full opportunity to access vocational opportunities while they are in Bimberi:</p> <ul style="list-style-type: none"> • Provide a range of flexible options to meet individual needs • Evaluation of programs • Integrate vocational training and employment programs with other rehabilitative programs • Integrate vocational and employment pathways into Bimberi operations • Pre release planning • Day release for training or employment • Post release support • Partnerships with training providers and employers in the community • Attitudinal barriers and discrimination in the community.
12.23	The Community Services Directorate, in partnership with internal and external providers, develop a living skills program that addresses the needs of young people at Bimberi in relation to the Youth Coalition of the ACT's 12 Living Skills Domains and reflects best practice principles, and for this to be implemented through formal and informal supports.
12.24	The Community Services Directorate provide increased resourcing so that the existing 0.5 FTE living skills position can be made full-time.

CHAPTER 13: HEALTH

Number	Recommendation
13.1	The Health Directorate increase the hours of on-site nursing at Bimberi to at least the levels provided at Quamby.
13.2	The Health Directorate provide access to general practitioners (GPs) for young people exiting Bimberi for a period of 3 months after release, either directly or through funding GPs in the community. This would ensure that a young person's care can be maintained and links with general practitioners in the community can be made.
13.3	The Health Directorate work with CSD to consider a model for young people existing care (including custody) to access ACT Government health services for free for a period of 12 months after release.
13.4	The Health Directorate and the Community Services Directorate consider nurses being able to see young people in their units where this is in the best interests of the young people.
13.5	The Community Services Directorate to develop and implement mechanisms to allow young people placed in the Coree Unit in Bimberi to call the nurse to seek primary health care.
13.6	The ACT Government amend the <i>Children and Young People Act 2008</i> and the Health and Wellbeing Policy to: <ul style="list-style-type: none"> • Better reflect that Bimberi management should follow the recommendations of treating health professionals regarding the treatment of young people, unless exceptional circumstances apply • Include an obligation that management report to the Chief Executive and Public Advocate where a recommendation for treatment has not been actioned in the time recommended by the health professional.
13.7	The Community Services Directorate develop and implement mechanisms to require Bimberi management to consult the Bimberi nurse on the programs and services provided in Bimberi.
13.8	The Health Directorate and Community Services Directorate ensure, in the short term, that only youth workers who are properly trained by Justice Health distribute medication. This should be done with appropriate oversight and auditing.
13.9	The Health Directorate consider in the medium to long term the need to increase nurse staffing at Bimberi, to deliver not only the enhanced services already identified, but also to administer medication.
13.10	The Community Services Directorate address the structural issues that prevent adequate supervision of young people at all times during health appointments.
13.11	The Health Directorate review the practices for order and delivery of supplies to the Bimberi Health Clinic to ensure that supplies are delivered promptly.
13.12	The Health Directorate amend its policy regarding the role of the treating doctor or nurse in relation to the documentation of injuries sustained by young people at Bimberi following the use of force, including the use of restraints.
13.13	The Health Directorate review its Consent to Treatment Policy and Procedures to: <ul style="list-style-type: none"> • Include the development of specific guidance on how consent should be considered in closed environments, particularly for young people at Bimberi. Guidance on how health professionals should involve parents should also be considered • Release corresponding guidance material for specific audiences on its Consent to Treatment Policy, including for children, parents and those in detention.
13.14	The Health Directorate have in place clear guidelines for young people and parents on when and how young people at Bimberi can seek second opinions and how arrangements of costs are to be determined. We recommend that second opinions from Health Directorate doctors be offered free of charge.
13.15	The Community Services Directorate be available at all times to provide consent to medical treatment, including urgent medical treatment. This should include providing Justice Health with alternative emergency after-hours contacts.
13.16	The Community Services Directorate only restrain young people during transfers to health appointments after a thorough risk assessment is conducted. Young people should not be restrained simply because they are remandees.
13.17	The Health Directorate undertake a comprehensive review of the mental health services provided to young people in the youth justice system. This should involve all key stakeholders, including non-government service providers. The result of such a review should be the development of an agreed model of care for young people which is applied consistently across the various service providers, noting that some may have particular expertise, such as in general counselling. This Review should also consider whether the current model of Forensic Mental Health Services providing care within Bimberi, and Child and Adolescent Mental Health Services having primary carriage for young people outside of Bimberi, promotes continuity of care.
13.18	The Health Directorate, as part of its review of mental health services for young people in the criminal justice system, consider how more general and specific counselling services can be provided at Bimberi, with a focus on ensuring such services can deliver throughcare and aftercare.
13.19	The ACT Government provide sufficient facilities and resources so that young people in the youth justice system who require mental health care are accommodated in a health facility for young people.
13.20	The Community Services Directorate and the Health Directorate jointly develop a protocol to resolve issues concerning the sharing of information between their staff, particularly regarding concerns about a young person's mental health at Bimberi.
13.21	The Health Directorate and the Community Services Directorate negotiate an overarching protocol on alcohol and other drug interventions in Bimberi. The Commission would suggest that a guiding principle to this protocol be that clinicians have the ultimate decision making authority for what interventions are utilised.
13.22	The Health Directorate and the Community Services Directorate ensure there is clarity among health providers at Bimberi about Nicotine Replacement Therapy. This should include amending the Local Operating Procedure to state nicotine patches as well as lozenges can be provided. We would see this as a short-term solution, until an over-arching protocol is developed.

CHAPTER 13: HEALTH

Number	Recommendation
13.23	The existing Bimberi alcohol and other drug working group established by the Health Directorate undertake an assessment of the AOD needs of young people in the youth justice system, and map the current supply of services, to ensure the appropriate provision of alcohol and other drug services
13.24	Bimberi management consider adopting a similar program to the Workplace Tobacco Management Project to reduce the impact of smoking behaviours for staff.

CHAPTER 14: CONDITIONS OF DETENTION

Number	Recommendation
14.1	The Community Services Directorate review the <i>Children and Young People (Behaviour Management Framework) Policy and Procedures 2008</i> in consultation with youth workers and young people.
14.2	The Community Services Directorate develop a transparent process of decision making for any restrictions on young people's access to education, vocational classes, mixing or other loss of entitlements on the basis of 'risk management', including those referred to police investigation. This should include objective criteria for decision-making, a clear written statement of reasons for the decision and how a young person can regain entitlement(s).
14.3	If Therapeutic Crisis Intervention (TCI) is to be adopted at Bimberi, the Community Services Directorate review the Behaviour Management System to ensure it is consistent with TCI.
14.4	The Community Services Directorate develop its own Practice Guidelines on Safe Physical Restraint, informed by relevant research.
14.5	The ACT Government amend the <i>Children and Young People Act 2008</i> and <i>Use of Force Policy and Procedure 2008</i> to define 'use of force' and remove references to use of force being used to maintain good order, to achieve compliance with a direction, and to prevent a behaviour breach.
14.6	The Community Services Directorate track use of force statistics at Bimberi more closely to monitor trends, particularly increases in incidents and uses of force, and respond appropriately.
14.7	The Community Services Directorate consider if there are additional areas of Bimberi that should be recorded by CCTV cameras, taking into account the privacy of young people and staff.
14.8	The Community Services Directorate: <ul style="list-style-type: none"> Record all uses of restraints, no matter how planned or authorised, in the use of force register Ensure that young people not be routinely restrained when they leave units (as opposed to Bimberi itself) Consider if mechanical restraints are needed at all within the Centre, where risk of escape is low Ensure that all mechanical restraints are removed as soon as practical, when a young person is in their room.
14.9	The Community Services Directorate: <ul style="list-style-type: none"> Train youth workers on identifying risk factors in uses of force including assessing deterioration in physical condition, as well as first aid and resuscitation. There must be a renewed emphasis on de-escalation techniques Amend the <i>Use of Force Policy and Procedure 2008</i>, Procedures and supporting training, to prevent the use of restraint in the prone position, double basket or the double-seated embrace Consider including de-identified stories or personal accounts of young people's experiences of being restrained as part of training.
14.10	The Community Services Directorate, if it continues to use TCI, ensure that: <ul style="list-style-type: none"> Any elements which utilise the prone restraint be removed Ensure the programs non-restraint elements are taught in their entirety The training is delivered by an accredited trainer.
14.11	The Community Services Directorate mandate specific debriefing procedures after a use of force with the young person concerned. Such debriefing should include an independent advocate, if the young person wishes, and be documented by appropriate record-keeping.
14.12	The ACT Government amend the <i>Children and Young People Act 2008</i> and <i>Use of Force Policy and Procedure 2008</i> to require that a doctor or nurse is notified every time a use of force is used, rather than relying on a young person to request their attendance.
14.13	The Community Services Directorate develop a procedure setting out a structured and transparent process for the review of segregation directions, focusing on objective risk rather than attitude while in segregation. Mental health professionals should be involved in each review to assess the effects of ongoing segregation on young people.
14.14	The Community Services Directorate cease segregating a young person after a segregation direction is revoked. The segregation register must accurately reflect the full duration of any segregation restrictions imposed on young people at Bimberi.
14.15	The ACT Government urgently amend the <i>Children and Young People Act 2008</i> to authorise the use of 'time out' in a controlled way, where de-escalation techniques and voluntary time out are used first where possible, and the period of time out is strictly limited. A policy and procedure for the use of time out should also be developed as soon as possible.
14.16	The Community Services Directorate cease the practice of segregating young people all day in Coree for school refusal as it is not authorised by the <i>Children and Young People Act 2008</i> .

CHAPTER 14: CONDITIONS OF DETENTION	
Number	Recommendation
14.17	The ACT Government amend the <i>Children and Young People Act 2008</i> and <i>Children and Young People Segregation Policy 2008</i> to provide criteria for the use of operational lockdowns, and to require that details of the duration of and reason for operational lockdowns be recorded in the segregation register.
14.18	The Community Services Directorate consider the duration of the period that young people are isolated in their cabin over the evening as a relevant factor in the review of youth worker shifts already recommended.
14.19	The Community Services Directorate direct staff to: <ul style="list-style-type: none"> • Cease conducting strip searching as a matter of routine including when young people go to court • Record further details about the evidence that lead to the reasonable suspicion for strip searching • Cease relying on members of the opposite sex to the young person or CCTV observations to conduct strip searches • Give proper consideration to whether a support person should be present or notified prior to a strip search.
14.20	The ACT Government remove 'good order' as a rationale for strip searching under the <i>Children and Young People Act 2008</i> .
14.21	The Community Services Directorate consider whether the best practice search method described in the Carlile Report be adopted rather than the current strip searching method at Bimberi.
14.22	The Community Services Directorate require staff to wait with a young person while a support person is called for a strip search.
14.23	Bimberi management remind staff of the obligations of the <i>Children and Young People (Search and Seizure) Policy and Procedures 2008</i> , that a young person must be present during a room search if privileged material is likely to be present, and any privileged material found is immediately returned to the young person. Items seized should be documented and this information provided to the young person.
14.24	The Community Services Directorate consult the Commission and other stakeholders prior to any introduction of sniffer dogs.
14.25	The Community Services Directorate: <ul style="list-style-type: none"> • Consider providing sufficient chef resources to cover leave periods and provide opportunities to offer programs for young people in the kitchen • Seek the advice of a nutritionist regarding the food provided at Bimberi.
14.26	The Community Services Directorate refit the cells in Coree with televisions that are secured and do not pose a risk of self-harm.
14.27	The Community Services Directorate segregate young people in a residential unit other than Coree where practicable (other than a direction for safe room segregation), and that young people who are not on a segregation direction be managed within their residential unit as far as practicable.
14.28	The Community Services Directorate classify remandees on objective considerations of individual risk. Young people on remand should be given access to programs and opportunities for leave on at least an equivalent basis to sentenced young people.
14.29	The Community Services Directorate: <ul style="list-style-type: none"> • Continue recent initiatives to review classifications more regularly, to facilitate greater access of young people to a full range of programs • Implement the <i>Children and Young People (Aboriginal and Torres Strait Islander Young Detainees) Policy and Procedure 2008</i> in relation to the use of conjoining rooms for Aboriginal and Torres Strait Islander young people where possible.
14.30	The Community Services Directorate <ul style="list-style-type: none"> • Remind staff that all young people should be offered a phone call at admission, and that young people must receive their minimum entitlements to call family, even when subject to disciplinary action or segregation • Regularly test young people's phones to ensure outgoing calls are operating correctly, and ensure a number of staff across all shifts are trained in using the phone system.
14.31	The Community Services Directorate consider providing properly monitored and supervised email and Internet access to young people at Bimberi.
14.32	The Community Services Directorate: <ul style="list-style-type: none"> • Immediately issue all young people at admission with new footwear in their size. If this is not practicable young people must be allowed to wear their own footwear until new footwear can be obtained for them • Seek advice from a podiatrist on the quality of footwear supplied to young people at Bimberi • Review the adequacy of winter clothing for young people and consider supplying gloves to young people during the colder months.
14.33	The Community Services Directorate consider placing a permanent employee in the position of front desk attendant at Bimberi.
14.34	The Territory and Municipal Services Directorate work with Community Services Directorate work with Bimberi management to provide a public transport service to Bimberi that is co-ordinated with visiting times during the week and on weekends.
14.35	The Community Services Directorate take further measures to properly inform young people at Bimberi of their rights and obligations at the Centre. This could include the development of a DVD to be shown at admission and at regular intervals during a young person's time at the Centre.
14.36	The Community Services Directorate fund Legal Aid ACT or a Community Legal Centre to provide legal advice and minor assistance to young people in Bimberi in relation to internal applications and appeals.

CHAPTER 14: CONDITIONS OF DETENTION

Number	Recommendation
14.37	<p>The ACT Government amend the <i>Children and Young People Act 2008</i> and <i>Children and Young People (Transfers) Policy and Procedures 2008</i> in regards to transfers to adult correctional facilities to provide:</p> <ul style="list-style-type: none"> • Better provision is made for a resident to put their views meaningfully, with the aid of an advocate if they choose • The Public Advocate is notified prior to a decision being made • Clearer review rights for the resident based on the existing behaviour management or segregation review process, which includes ultimately appealing to the Childrens Court • Clear transition planning with information provided to Alexander Maconochie Centre including case plan and health information.

CHAPTER 15: MANAGEMENT AND OVERSIGHT

Number	Recommendation
15.1	The Legislative Assembly Standing Committee responsible for youth justice annually invite ACT Policing, the DPP, the Childrens Court, Legal Aid ACT and peak bodies in the community sector to raise issues of interest or concern about the youth justice system.
15.2	<p>ACT Policing, the Director of Public Prosecutions, the Childrens Court and Legal Aid ACT continue to develop partnerships to:</p> <ul style="list-style-type: none"> • Collect data and measure outcomes of the youth justice system • Review practices across the youth justice system • Review the legislative framework for the ACT youth justice system • Identify and advocate for systemic improvements to the youth justice system.
15.3	The Human Rights Commission convene an annual Youth Justice Forum, in partnership with other stakeholders in the youth justice system.
15.4	The Community Services Directorate review and document all Bimberi operating procedures as a matter of urgency, and ensure staff are fully trained in procedures.
15.5	<p>The Community Services Directorate require Bimberi management to put renewed effort into analysing and responding to incidents, and:</p> <ul style="list-style-type: none"> • Ensure that unit managers conduct a thorough and impartial investigation of incidents, and provide all relevant information for review by senior management • Analyse the wider background factors contributing to an incident, including staff shortages, staff fatigue at the end of a 12 hour shift, and environmental factors • Analyse staff actions to ensure proper conduct, including fulfilling all legislative requirements before undertaking a search or use of force • Make appropriate reports, including police reports or mandatory child protection report in cases of inappropriate use of force or other situations of assault by staff • Engage young people in appropriate therapeutic services or support programs if there is concern that they are displaying self harming behaviour, or have difficulty managing emotions or interacting with other people • Review policies, procedures and staff training in the light of particular incidents, to ensure staff have the skills, guidance and support they need to work with young people effectively.
15.6	The Official Visitor, the Public Advocate and the Human Rights Commission ensure they practice a 'first door is the right door' approach when speaking with young people in Bimberi, and negotiate procedures for effective referrals to the relevant agency when a young person's complaint falls outside the receiving agency's jurisdiction.
15.7	<p>The Official Visitor, the Public Advocate and the Human Rights Commission:</p> <ul style="list-style-type: none"> • Establish a regular meeting schedule to discuss systemic issues at Bimberi and more widely across the youth justice system • Periodically schedule joint meetings with Bimberi senior management to discuss systemic issues.
15.8	The ACT Government amend the <i>Children and Young People Act 2008</i> to grant the Official Visitor, the Public Advocate and the Human Rights Commission legislative authority to inspect Bimberi incident reports when inspecting the other registers, and to require that the Public Advocate receive a copy of all incident reports as soon as practicable. The Public Advocate should receive additional resources from the ACT Government to enable them to monitor incident reports.
15.9	The ACT Government amend the <i>Children and Young People Act 2008</i> to extend the provisions of s.507 to include young people placed in Bimberi, and require the Public Advocate be informed as soon as practicable if there is an allegation of abuse of a young person in Bimberi. The Public Advocate should receive additional resources from the ACT Government to enable them to monitor allegations of abuse in Bimberi.

CHAPTER 15: MANAGEMENT AND OVERSIGHT

Number	Recommendation
15.10	<p>The ACT Government amend the <i>Children and Young People Act 2008</i> (CYP Act) to require that Public Advocate, as the independent advocate for young people in detention, receive copies of the following documents as soon as practicable. The Public Advocate should receive additional resources to enable them to monitor these documents.</p> <ul style="list-style-type: none"> • Incident reports at Bimberi • Classification decisions and reviews of classification decisions under s.190 CYP Act • Behaviour management plans made under <i>Children and Young People (Behaviour Management Framework) Policy and Procedures 2008 (No 1)</i> • Charge notice of behaviour breach issued under s.296 CYP Act • Matters referred to the AFP or DPP for criminal investigation (including copies of the allegation report and any reports the administrator has of investigations already made about the alleged behaviour breach) under s.295(4)(d) and s.295(6) CYP Act • Disciplinary action taken under s.302 CYP Act • Behaviour management consequence imposed under s.317 CYP Act • Notice of disciplinary review under s.324 CYP Act • Record of proceedings of disciplinary review under s.329 CYP Act • Notice of disciplinary hearing under s.330 CYP Act.
15.11	The ACT Government fulfil the commitment made in 2004 following the review of the system of statutory oversight authorities, and place the Official Visitors for children and young people, mental health and corrections administratively with the Public Advocate.
15.12	The ACT Government amend the <i>Children and Young People Act 2008</i> to provide for an Aboriginal or Torres Strait Islander Official Visitor at Bimberi.
15.13	The Community Services Directorate upgrade the Starnet phone system to allow external oversight agencies and a young person's solicitor to call Bimberi and be connected to speak with a young person.
15.14	The Community Services Directorate adopt a practice of scheduling regular internal and external audits of Bimberi, to develop good practice in preparation for the future ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
15.15	The ACT Government fund an independent statutory agency to undertake periodic human rights audits of closed environments.
15.16	<p>The Community Services Directorate require Bimberi management and staff to:</p> <ul style="list-style-type: none"> • Put renewed effort into providing information to young people, explaining reasons for decisions, listening to young people's concerns, and involving them in decision making wherever possible • Hold regular meetings with young people to listen to their concerns and suggestions.
15.17	The Community Services Directorate, in consultation with and Bimberi residents and staff, review the complaints handling policy and design more detailed complaints handling procedures using the manuals and guidelines provided by the Commonwealth Ombudsman and NSW Ombudsman.
15.18	The Community Services Directorate provide training to Bimberi management and staff on responding to complaints and improved recordkeeping for complaints.
15.19	The Community Services Directorate analyse complaints data to identify areas for improvement in the operation of Bimberi and Community Youth Justice.
15.20	The Executive of Community Services Directorate be provided with a monthly report of the issues raised in complaints relating to Bimberi and Community Youth Justice, the process used to manage complaints, and the response provided to complainants.

Chapter 1: Introduction

1.1 Background to the Bimberi Review

- 1.1.1 The Bimberi Youth Justice Centre (Bimberi) was opened on 3 September 2008, and replaced the former Quamby Youth Detention Centre (Quamby) as the ACT's only criminal detention facility for young people.
- 1.1.2 Quamby was opened in Symonston in 1962, as a shelter for homeless young people, or for young people who were on short-term remand. In those days, young people from the ACT who were sentenced to a period of detention were housed across the border in New South Wales. Quamby was converted into a youth detention centre in the mid-1990s, and remained in operation in this role and on the same site until Bimberi opened in a purpose built facility in Mitchell in 2008.
- 1.1.3 At the opening of Bimberi, the then ACT Chief Minister, Mr Jon Stanhope MLA, noted:
*'Bimberi is a milestone in youth justice for the ACT - and in Australia. It is the first Centre of its type to be designed, built and operated under Human Rights legislation. It represents an important step towards the rehabilitation of young people in the youth justice system and reflects the strong commitment that the ACT Government has towards human rights.'*¹
- 1.1.4 Bimberi was constructed to promote an environment in which young people could 'understand, address, and take responsibility for their offending or risk taking behaviour.'²
- 1.1.5 Despite such great expectations, since its opening Bimberi has been in and out of the public spotlight. A number of critical incidents within the Centre, combined with ongoing concerns relating to its operation and the outcomes the Centre achieves for young people, have been vigorously debated in the public domain, including in the media and the Legislative Assembly for the ACT.
- 1.1.6 In recognition of these ongoing concerns, on 8 December 2010, the Legislative Assembly passed a resolution that called on the ACT Attorney-General to:
- 'direct the Children and Young People's [sic] Commissioner to undertake an inquiry into the youth justice system in the ACT, including Bimberi Youth Justice Centre and Community Youth Justice, and report to the Assembly by 30 June 2011' (the Inquiry); and
 - 'direct the Human Rights Commissioner to undertake a comprehensive human rights audit into conditions of detention in Bimberi Youth Justice Centre and report to the Assembly by 30 June 2011' (the Audit).
- 1.1.7 In doing so, the Legislative Assembly asked the Children & Young People Commissioner to report on:
- Staff levels, training and retention;
 - Security;
 - The use of segregation and restraints on detainees;
 - Programs for education and training, health and wellbeing and rehabilitation;
 - Early intervention services;
 - The effectiveness of diversionary strategies and the ongoing monitoring of recidivism particularly for detainees held in remand;
 - Throughcare and aftercare services provided to detainees and Community Youth Justice clients; and
 - Any other matter.
- 1.1.8 At the same time, the Legislative Assembly noted:
- The incidents of violence and security breaches at Bimberi;
 - The staff shortages and high turnover of staff;
 - High levels of staff dissatisfaction; and
 - Generally poor outcomes for children and young people in contact with the youth justice system.
- 1.1.9 The Legislative Assembly also expressed:
- Its concern for the safety and security of residents and staff at Bimberi Youth Detention Centre.

1 Media release by the ACT Chief Minister, Mr Jon Stanhope MLA, dated 3 September 2008.

2 From <http://www.dhcs.act.gov.au/ocyfs/bimberi> accessed 14/2/2011

1.2 The ACT Human Rights Commission

- 1.2.1 The ACT Human Rights Commission (the Commission) is an independent statutory agency established by the *Human Rights Commission Act 2005* (the HRC Act). The roles and functions of the Commission are set out in the HRC Act, and include the provision of an independent, fair and accessible process for the resolution of:
- Complaints about services for children and young people, disability services, health services, and services for older people; and
 - Discrimination complaints.
- 1.2.2 Other key roles and functions of the Commission under the HRC Act include:
- Promoting the provision of community education, information and advice in relation to human rights;
 - Identifying and examining issues that affect the human rights of vulnerable groups in the community;
 - Making recommendations to government and non-government organisations on legislation, policies, practices and services that affect vulnerable groups in the community;
 - Promoting an understanding and acceptance of, and compliance with, the HRC Act and the *Discrimination Act 1991* (the Discrimination Act);
 - Promoting improvements in the provision of disability services, health services, services for children and young people, and services for older people;
 - Promoting the rights of users of disability services, health services, services for children and young people, and services for older people;
 - Providing a process to encourage and assist users and providers of disability services, health services, services for children and young people, and services for older people, to make improvements in the provision of services; and
 - Advising the Minister about any matter in relation to the HRC Act or a related Act.
- 1.2.3 Further functions of the Commission are also provided for in the *ACT Human Rights Act 2004* (the HR Act), the *Health Records (Privacy & Access) Act 1997*, the *Health Professionals Act 2004*, and the *Children and Young People Act 2008* (the CYP Act).
- 1.2.4 The HRC Act establishes Commissioners:
- The Children & Young People Commissioner;
 - The Disability & Community Services Commissioner;
 - The Discrimination Commissioner;
 - The Health Services Commissioner; and
 - The Human Rights Commissioner.
- 1.2.5 Three people are currently appointed to cover the work of the five positions:
- Mr Alasdair Roy is appointed to the role of Children & Young People Commissioner;
 - Ms Mary Durkin is appointed to the roles of Disability & Community Services Commissioner and Health Services Commissioner; and
 - Dr Helen Watchirs is appointed to the roles of Discrimination Commissioner and Human Rights Commissioner.
- 1.2.6 Each of the three Commissioners has statutory responsibilities in accordance with the titles of their position, and the Health Services Commissioner also has responsibilities in relation to services for older people.
- 1.2.7 The Children & Young People Commissioner, the Discrimination Commissioner, the Health Services Commissioner, and the Human Rights Commissioner also have a number of functions specific to their jurisdiction.
- 1.2.8 The Children & Young People Commissioner is encouraged to:
- 1.2.9 Consult with children and young people in ways that promote their participation in decisions.
- 1.2.10 The Discrimination Commissioner is required to:
- Promote the rights of people to be free from unlawful discrimination and sexual harassment; and
 - Promote the recognition and acceptance within the community of the equality of men and women and of the principle of equality of opportunity for all people.
- 1.2.11 The Health Services Commissioner is required to:
- Jointly consider, with the relevant health profession boards, all complaints and reports about health professionals' adherence to standards and suitability to practice requirements.

1.2.12 The Human Rights Commissioner is required to:

- Provide community education about human rights; and
- Advise the Attorney-General on the HR Act.

1.2.13 At this time, the HRC Act does not prescribe any functions for the Disability & Community Services Commissioner.

1.2.14 As an independent and impartial statutory agency that brings together expertise in children and young people, human rights, discrimination, health, disability services, complaints investigation, and an understanding of contemporary research evidence, the Commission was uniquely placed to undertake this Review.³ The Commission also already had well established networks across the government, community, and youth justice sectors, and these networks proved invaluable throughout the Review in obtaining information from participants, including young people, staff (current and former) and external stakeholders. Additionally, the Human Rights & Discrimination Commissioner had previously conducted a Human Rights Audit of the Quamby Youth Detention Centre in 2005.

The review team

1.2.15 The Review was co-led by the Children & Young People Commissioner and the Human Rights & Discrimination Commissioner, and the two Commissioners were supported by a team of five with expertise and experience in law, youth work, human rights, discrimination, social work and public policy, which included:

- **Sean Costello**, the Human Rights and Discrimination Law Policy Adviser at the ACT Human Rights Commission. Sean was formerly a ministerial adviser on youth, mental health and industrial relations in the Legislative Assembly for the ACT. He has Bachelor Degrees in Communications and Law and a Graduate Diploma in Legal Practice. Sean has worked in legal policy at the Scottish Legal Aid Board in the United Kingdom, and in occupational health and safety law in the ACT.
- **Kerry Graham**, who has worked with children and young people for 20 years in research, program and policy capacities. Trained as a lawyer, Kerry worked with Aboriginal Legal Services for seven years as a children's specialist, established the Children's Detention Centre Visiting Legal Service and was the founding solicitor for the NSW Youth Drug and Alcohol Court. Kerry has a Masters in Social Work and a Masters in Community Management, and has undertaken leadership roles in national organisations focusing on improved outcomes for Aboriginal and Torres Strait Islander young people, early childhood development and, most recently, youth mental health. Kerry has previously advised governments on youth policy, e-health reform and suicide prevention. She is a current member of the Australian Social Inclusion Board.
- **Brianna McGill**, a Senior Adviser to the Children & Young People Commissioner. Brianna's background includes complaints investigation, community legal education and community work, primarily with children, young people and people with a disability. Brianna has previously worked with Barnardo's Scotland, Legal Aid ACT, Marymead Child & Family Centre, and St Vincent de Paul Society. Her qualifications include Bachelor of Laws, Bachelor of Arts (Hons) and Master of Public Policy.
- **Gabrielle McKinnon**, a Human Rights Legal Adviser to the ACT Human Rights and Discrimination Commissioner. Gabrielle was formerly Director of the ACT Human Rights Act Research Project at the Australian National University with Professors Hilary Charlesworth and Andrew Byrnes, and is the co-author of the book *Bills of Rights in Australia, History, Politics and Law*. Gabrielle worked as a children's solicitor at Marrickville Legal Centre and Shopfront Youth Legal Centre and was accredited as a specialist practitioner in Children's Law. She was a member of the NSW Juvenile Justice Advisory Council and Secretary of the National Children's and Youth Law Centre. Gabrielle has Bachelor Degrees in Arts and Law.
- **Tim Moore**, a youth worker, PhD candidate and research associate at the Institute of Child Protection Studies at the Australian Catholic University, and an associate trainer with the Thomas Wright Institute. Tim has a Bachelor of Arts, a Masters of Child and Adolescent Welfare, a Masters of Youth Studies, and has 15 years experience working with children, young people, families and practitioners. Tim's expertise lies in participative practice research with children and young people, child-centred and strengths-based practice and systemic advocacy. In 2008 he conducted a research project exploring young people's transitions from youth detention. He sits on a number of local and national government and community-based governance and advisory committees.

3 For the purposes of this Report, we will discuss the Inquiry and the Audit collectively as 'the Review' but, where needed for clarification, separately as 'the Inquiry' and 'the Audit'.

- 1.2.16 The Commission was also assisted by a number of expert consultants engaged by the Commission for the purpose of the Review, including: Dr Kelly Richards, Senior Research Analyst, Australian Institute of Criminology; Michael White, Director, MW Group Consulting; and Dr Gail Winkworth, private consultant and adjunct professor at the Institute of Child Protection Studies, Australian Catholic University.
- 1.2.17 The reports by these consultants can be found at Appendix A and Appendix B of this Report. It should be noted that the views expressed by the authors of these reports are not necessarily endorsed by the Commission.
- 1.2.18 Staff from across the Commission also provided advice and information to the Review, including, in particular: Ms Mary Durkin, Health Services Commissioner and Disability & Community Services Commissioner; Mr Matt Hingston, Principal Health Review Officer; and Ms Kelly Swan, Senior Disability Adviser.

1.3 Legislative basis for the review

- 1.3.1 As noted above, on 8 December 2010, the Legislative Assembly passed a resolution that called on the ACT Attorney-General to direct the Children & Young People Commissioner to undertake an inquiry into the youth justice system in the ACT, including Bimberi and Community Youth Justice, and direct the Human Rights Commissioner to undertake a comprehensive human rights audit into conditions of detention in Bimberi.

The inquiry

- 1.3.2 Section 16 of the HRC Act states that ‘the Commission is not subject to the direction of anyone else in relation to the exercise of a function under [the HRC Act], subject to s.17’. Section 17 of the HRC Act states that ‘the Minister may, in writing, direct a commissioner to inquire into and report to the Minister in relation to a matter that can be complained about under [the HRC Act]’ and that ‘the commission must comply with that direction’.
- 1.3.3 On 7 January 2011, the Attorney-General, Mr Simon Corbell MLA, wrote to the Children & Young People Commissioner directing the Commissioner to undertake the Inquiry as per the Legislative Assembly’s resolution of 8 December 2010.
- 1.3.4 To comply with this direction, the Children & Young People Commissioner invoked the Commission’s powers pursuant to s.48 of the HRC Act, and undertook a ‘commission initiated consideration’ into the matters contained in the Legislative Assembly’s resolution.

The audit

- 1.3.5 On 7 January 2011, the Attorney-General, Mr Simon Corbell MLA, wrote to the Human Rights and Discrimination Commissioner directing the Commissioner to undertake the Audit as per the Legislative Assembly’s resolution.
- 1.3.6 To comply with this direction, the Human Rights and Discrimination Commissioner invoked the powers pursuant to s.17(1), s.42(1) and s.87 of the HRC Act, and s.41 of the HR Act.

1.4 The report

- 1.4.1 This Report highlights the outcomes of both the Inquiry and the Audit (the Review), and makes a number of recommendations for reform. In doing so, the Report does two things: it addresses the resolution passed by the Legislative Assembly; and it looks forwards and presents a number of recommendations about how the ACT can, and should, do things differently for the vulnerable children and young people who are in, or on a path to enter, the ACT’s youth justice system.
- 1.4.2 This Report was informed by contemporary best practice and theory. But, importantly, it was also informed by the views of those who are surrounded by the system, and who frequently have the best ideas about how to improve it, namely:
- Young people who live in Bimberi, or who have had experience with the broader youth justice system;
 - Staff who work within the youth justice system; and
 - Stakeholders who engage with the system on a regular basis.

Gathering evidence

1.4.3 For the purpose of this Review, the Commission:

- Researched national and international literature to understand the evidence base underlying the provision of services to young people in youth justice systems;
- Interviewed 147 people, including:
 - 25 young people currently or formerly resident in Bimberi (19 young people also completed an 80-question survey designed by the Commission);⁴
 - five young people in the Alexander Maconochie Centre (AMC) with previous experience of the youth justice system, including Bimberi;
 - 34 current or former staff of Bimberi (18 current or former staff also completed a 90-question survey designed by the Commission, with an anonymous on-line version of the survey available)⁵;
 - 14 current or former staff of Community Youth Justice;
 - 18 executive and senior managers from the Community Services Directorate (CSD);
 - 18 current or former staff of other ACT Government agencies connected with the youth justice system or Bimberi; and
 - 33 non-government stakeholders.
- Wrote to over 100 government and non-government stakeholders, inviting them to participate in the Review;
- Received and reviewed 62 written submissions;
- Requested material from the ACT Government, and examined 14 lever folders of documents that were provided in response;
- Inspected records stored on site at Bimberi;
- Distributed posters and surveys inviting community involvement in the Review at 16 locations across Canberra, including the ACT Children's Court, Legal Aid ACT, youth centres, and other venues accessible to young people and their families. The Commission received 74 responses to the survey;
- Conducted four focus groups with 12 young people in Bimberi, exploring issues such as: early intervention and prevention, diversion, safety and security at the Centre, community connectedness, programming and support, relationships with staff, discipline, throughcare and aftercare and complaints handling;
- Conducted a full-day community forum with 32 participants from a wide range of government and non-government service providers and stakeholders. The forum included workshops presented by experts in youth justice from the Australian Institute of Criminology (AIC), the University of Canberra, and headspace ACT;
- With assistance from Northside Community Service, conducted an afternoon forum for parents and families of Aboriginal and Torres Strait Islander young people in the youth justice system. The forum was attended by 18 parents and family members, and represented the first such forum to be held in the ACT;
- Conducted three 'drop in' sessions (in the City, Tuggeranong and Belconnen) for members of the community to share their views with the Commission;
- Established a Young Persons Reference Group made up of eight residents of Bimberi. The Reference Group met on five occasions, to provide advice to the Commission about how we could best communicate with young people in Bimberi, and involve them in the Review process;
- Formally engaged three expert consultants to provide advice to the Review in specialist areas; and
- Participated in a Youth Justice Reference Group, established by the Youth Coalition of the ACT (YCACT) which brought together interested stakeholders and experts in the youth sector.

1.4.4 The Review was required to investigate and report on systemic issues in relation to youth justice in the ACT and Bimberi. In accordance with the Legislative Assembly's resolution, the Review did not make any direct findings in relation to the performance or conduct of any individuals.

1.4.5 A number of serious allegations were reported in the Legislative Assembly and media before and during the course of this Review. The Commission was also informed of these and other allegations from participants in this Review. CSD provided the Commission with details of the background and subsequent investigations of critical incidents, including whether they were subject to external scrutiny. In the most part, the Commission was satisfied with the level of scrutiny provided by other external agencies to these incidents. However, they do highlight some issues of concern that we believe warrant changes to policy and practice, and which are discussed in the report.

⁴ Results of the survey can be found at Appendix C.

⁵ Results of the survey can be found at Appendix D.

1.5 Participants

Young people

- 1.5.1 The Commission is committed to the engagement of children and young people in processes that affect their lives. This commitment is consistent with Article 12 of the United Nations' *Convention on the Rights of the Child* (the CROC), which states that:
- 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'*
- 1.5.2 To reflect its commitment to the active participation of children and young people in the Review, the Commission shaped its work with young people based on a number of key beliefs. These included:
- That young people are equal members in our community and deserve the same rights and opportunities as others;
 - That young people have value (in the now and into the future) and should be afforded respect and dignity;
 - That young people are different to adults and have a range of special needs and vulnerabilities, and that these needs and vulnerabilities are often exacerbated during periods of detention;
 - That young people have unique and valuable insights and have the right to participate in processes that affect their lives. This right continues regardless of their incarceration; and
 - That positive change is possible when adults and young people work together.
- 1.5.3 The Commission also acknowledges that young people in detention, or engaged in the broader youth justice system, are a vulnerable and marginalised group whose views and opinions are rarely sought or acted on.
- 1.5.4 The Commission is indebted to the residents of Bimberi for allowing the Review Team to spend so many hours in what is largely their home. Over the course of the Review, the Commission spent many hours in Bimberi, talking with the residents and asking them questions. At all times we were welcomed, treated with respect and interest, and afforded an insight into the lives of these young people, which was not only a privilege, but also invaluable to the Review.

Staff of the youth justice system


- 1.5.5 One of the driving concerns voiced during the public debates and discussions that led to the establishment of this Review regarded the treatment and working conditions of staff at Bimberi. Accordingly, one of the primary groups of people the Commission spoke to throughout the Review was current and former staff of Bimberi and the broader youth justice system.
- 1.5.6 The response the Commission received from the staff who participated in the Review was one of enthusiasm and support for the Review. The majority of participants recognised quite openly that there were many areas where improvements could be made, and were forthcoming with their ideas for change. They also spoke with passion and pride about the positive aspects of the system, their individual triumphs with young people, their commitment, and their capacity to work within what is, ultimately, a difficult environment.
- 1.5.7 The Commission would like to thank these staff, all of whom gave freely of their time to talk with us, show us around, explain things, and respond to our questions. The Review occurred at a time when there was a significant level of public debate about Bimberi, and many staff reported that they felt accused, overwhelmed, and under a significant level of scrutiny. Accordingly, the engagement of staff with the Commission during the review process is especially acknowledged.
- 1.5.8 We would also like to thank the current management team at Bimberi for being so accommodating of our visits and requests. They willingly opened the doors of the Centre, and responded to our requests for assistance and information.

Government agencies

- 1.5.9 Throughout the Review, the Commission sought assistance from a range of government agencies, most notably the Community Services Directorate (CSD). On the most part, all of these agencies responded to our requests promptly and courteously, and often on short deadlines. We would like to thank them for this.

Families and the community sector

- 1.5.10 The Commission spent considerable time engaging with the families of young people in the youth justice system, including those young people in Bimberi. Family members frequently provided intimate and painful accounts of their children's involvement with the youth justice system, and spoke about the difficulties they faced trying to negotiate the systems, agencies and individuals that surrounded them and their children. Many also spoke of feeling stigmatised and criticised as parents of a 'child in Bimberi', and feeling confused about how to best assist their children. Despite this, family members



consistently demonstrated a fierce loyalty and an ongoing devotion to their children. The Commission would like to thank these parents, siblings, grandparents and friends for their involvement.

- 1.5.11 The Commission also spoke with a wide range of community organisations, and the staff of these organisations participated in interviews, focus groups and large workshops. The Commission is aware of the constant demand for community agencies to participate in reviews and consultations, more often than not within limited budgets, and is appreciative of the time and encouragement given to the Commission by the community sector throughout the Review process.

Compelling information

- 1.5.12 Section 73 of the HRC Act allows the Commission to compel the production of documents. Similarly, s.74 allows the Commission to compel a person to appear before the Commission and answer questions. Failure to comply with a s.73 or s.74 notice is a criminal offence. Further, the privilege against self-incrimination cannot be relied upon by a respondent seeking not to comply with such a request. However, any information, document or other thing obtained, directly or indirectly, through this process is generally not admissible in evidence against the person in a civil or criminal proceeding.⁶
- 1.5.13 During the Review, the Commission issued four s.73 notices. These powers were generally invoked where information sought by the Commission was sensitive or protected in some way from release, for example under the secrecy provisions of the CYP Act.
- 1.5.14 During the Review, the Commission did not issue any s.74 notices. As noted already above, during the course of the Review the Commission formally interviewed 125 people and received 62 written submissions. Throughout the Review, the majority of participants we approached, or who approached us, were enthusiastic about the Review, and spoke openly and honestly with the Commission.

Protecting participants

- 1.5.15 Throughout the Review, the Commission operated under strict legislative obligations to protect people who provided information to the Review, including, in particular, s.99 of the HRC Act. The identity of participants, and information provided to the Commission, was not divulged without the written consent of participants, or unless required by another law. During the Review, the Commission made six mandatory reports pursuant to s.356, and one voluntary report pursuant to s.354, of the *Children and Young People Act 2008*. The Commission also received a number of complaints pursuant to the HRC Act.
- 1.5.16 During the Review, the Commission put in place a number of mechanisms to ensure that the privacy of participants was maintained. For example, all young people at Bimberi were visited many times by the Commission, with visits being structured so that the Centre could not identify who participated and who did not. The Commission also installed a designated telephone line at Bimberi, where young people could contact the Commission directly and at no cost.
- 1.5.17 Similarly, current and former staff of Bimberi and youth justice were able to contact the Commission by telephone and email, and were offered interviews off-site and outside of work hours. Additionally, staff were able to complete an anonymous on-line survey.
- 1.5.18 Prior to interview, all participants were given written information regarding the protections that applied to their participation under the HRC Act, including s.98 of the HRC Act, which states that it is an offence to victimise anyone for speaking to the Commission, or for intending to speak with the Commission. In circumstances where participants felt that such victimisation may have occurred, they were encouraged to speak with the Commission, and/or to report their concerns to the police.
- 1.5.19 In the course of the Review the Commission received sensitive information which, if published, would have unreasonably identified young people, participants and others. Where this information warranted further action, the Commission raised these matters directly with the agency involved.
- 1.5.20 Pursuant to s.80 of the HRC Act, the Commission must not include an adverse comment in relation to a person in a Report unless the Commission has given the person a reasonable opportunity to respond to the proposed comment. Consistent with this obligation, the Commission gave relevant agencies and individuals the opportunity to comment prior to finalising the Report.

⁶ Similar provisions exist under the *Ombudsman Act 1989* and *Inquiries Act 1991*

- 1.5.21 In conducting the Review, the Commission was also mindful of its obligations as a public authority under s.40B of the *Human Rights Act 2004* to properly consider human rights when making decisions, and act compatibly with human rights. Obligations particularly relevant to the Review were the rights of equality (s.8), children (s.11) and privacy and reputation (s.12). These were paramount in the minds of the Review Team in the actions and decisions they took throughout the Review.

1.6 Duration of the review

- 1.6.1 The resolution passed by the Legislative Assembly was wide in scope, and required the Commission to undertake both an Inquiry and an Audit into a large, complicated and controversial system. The Commission was given six months to undertake this task and, while we are of the view that we met this challenge, there are some issues which we were unable to consider in the time available.
- 1.6.2 We acknowledge the length of the Report, and the large number of recommendations contained in the Report; however, we were given a significant task, and we feel that the breadth of our findings are commensurate with this task.
- 1.6.3 The Commission had completed its work by mid June 2011, and was prepared to submit the completed report to the Assembly by 30 June 2011; however, the ACT Government requested that the tabling be delayed. Under s.80(2) of the HRC Act the Commission is required to provide parties who may be the subject of adverse comment an opportunity to respond before publication of the Report. Consistent with these obligations, the Commission provided a copy of the draft Report to a number of agencies in early June 2011. The Government formed the view that these agencies required further time to provide comment and, on 24 June 2011, the Legislative Assembly passed a resolution to extend the date for tabling to 31 July 2011.
- 1.6.4 On 23 June 2011, after the Commission provided our report to agencies for comment, the Government made a number of welcome announcements regarding the youth justice system, including increased funding, reforms to parole and bail conditions for young people, and changes to the youth justice case management structure. The Commission welcomes these reforms, particularly as many give expression to recommendations in our report.

1.7 Previous reports and inquiries

- 1.7.1 This Review is one of a number of inquiries or reviews into aspects of the ACT's youth justice system.
- 1.7.2 In 1996, a young person died while in custody in Quamby. In response to this death, Coroner Some conducted an inquest that aimed to understand the nature of the incident and the environment within which it occurred.
- 1.7.3 Since then there have also been a number of Legislative Assembly Standing Committee inquiries, and one other human rights audit, including:
- The Standing Committee on Education, Community Services and Recreation Report No 10, *The Government's Response to Recommendations 1 to 3 of Coroner Some's Inquest into a Death at Quamby*, August 2001;
 - The Standing Committee on Community Services and Social Equity Report No 3, *Inquiry into the Rights, Interests and Wellbeing of Children and Young People*, August 2003;
 - The Standing Committee on Community Services and Social Equity Report No 6, *The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence*, June 2004;
 - The Standing Committee on Community Services and Social Equity Report No 7, *One-Way out of Quamby: Transition Options for Young People Exiting Juvenile Detention in the ACT*, August 2004; and
 - Human Rights and Discrimination Commissioner, ACT Human Rights Office, *Human Rights Audit of Quamby Youth Detention Centre*, June 2005.
- 1.7.4 These inquiries and audit highlighted a number of significant systemic, organisational and operational issues related to the provision of services within the ACT youth justice system. Many of these issues have been resolved yet, despite the passage of 15 years since Coroner Some's inquest into a death at Quamby, some continue to exist, even in light of significant investment and reform.
- 1.7.5 The Commission acknowledges that substantial change often requires time and resources, but we would note that significant reform frequently also requires whole-of-government and whole-of-community engagement and commitment. As discussed in this Report, we believe that without the development of a shared vision, and engagement and commitment across the political, administrative and community sectors, reform of the youth justice system will remain slow.

1.8 The youth justice system in the ACT

Community Youth Justice

- 1.8.1 ACT Community Youth Justice (CYJ) sits administratively within the Office for Children, Youth and Family Support (OCYFS) within CSD. CSD is also responsible for providing a wide range of other human services, including: care and protection; housing and homelessness; disability; and child, youth and family support programs.
- 1.8.2 According to the CSD discussion paper 'Positive Links', CYJ is 'responsible for the supervision of children and young people who have been placed on court orders by either the ACT Childrens Court or the ACT Supreme Court', and is 'committed to providing a service where the rights of each child and young person are respected. CYJ's core aim is to reduce the risk of re-offending by promoting the physical, emotional and social wellbeing of each child and young person.'⁷

Bimberi Youth Justice Centre

- 1.8.3 Bimberi also sits administratively within OCYFS and CSD, and is a purpose-built youth detention centre that provides 24-hour safe and secure custody for up to 40 children and young people aged between 10 and 21 years who are either remanded in custody for allegedly committing an offence or serving a custodial sentence for an offence committed. Designed to reflect a secondary school campus, Bimberi includes a series of units, classrooms, music rooms, a library, a dining hall, a health centre and a recreation hall (which includes gym facilities, a multi-purpose court and a pool).

Legislative basis

- 1.8.4 In the ACT, the youth justice system is primarily administered under the CYP Act, which contains specific requirements for dealing with children and young people who offend. When introduced in 2008, the legislation aimed to reform the youth justice system and improve conditions for incarcerated young people by increasing the level of accountability and transparency, increasing the protection of young people and staff, and by mirroring human rights principles.
- 1.8.5 The legislation also attempted to reduce inconsistencies and to streamline the sentencing and detention of young people, to tailor sentences to individual young people's rehabilitative needs, and to afford courts the opportunity to impose combination sentences (where good behaviour orders might be coupled with supervision conditions after periods of imprisonment).
- 1.8.6 Additional provisions that relate to the sentencing of young people in the ACT are contained in the *Crimes (Sentencing) Act 2005*, and provisions related to bail in the *Bail Act 1992*. Other ACT legislation that relates to the provision of youth justice includes:
- Court Procedures Act 2004;
 - Crimes (Restorative Justice) Act 2003;
 - Crimes Act 1900;
 - Magistrates Court Act 1930; and
 - *Human Rights Act 2004*.

Principles of the ACT youth justice system

- 1.8.7 According to its program brief, the ACT youth justice system operates in accordance with the following principles:
- The community has a right to be protected from crime;
 - The successful rehabilitation and reintegration of children and young people best meets the long-term needs of the community;
 - Children and young people learn better when they have appropriate role models to mentor them;
 - Children and young people who are detained must be provided with similar opportunities as those afforded to children and young people in the community;
 - Children and young people will have the opportunity and support to be actively engaged in education, vocational training, recreation, preventative healthcare and social activities;
 - Living environments, services and programs, staffing and operational practices must be sensitive and responsive to the gender, geographical origins, cultural and religious, developmental and individual needs of children and young people, including and in particular those of Aboriginal and Torres Strait Islander background; and

7 Sue Robinson 'Positive Links' (2007)

- Interaction between children/young people and staff maximises the effectiveness of rehabilitation efforts and increases the chances of successful transitioning back into the community.⁸

1.8.8 These principles are different to, but somewhat consistent with, those articulated in the legislation. Section 94 of the CYP Act sets out a series of youth justice principles that, alongside human rights interests and jurisprudence, must be taken into account when considering criminal matters related to children and young people. These include:

- If a child or young person does something that is contrary to law, he or she should be encouraged to accept responsibility for the behaviour and be held accountable;
- A child or young person should be dealt with in a way that acknowledges his or her needs and will provide the opportunity to develop in socially responsible ways;
- A child or young person should be consulted about, and be given the opportunity to take part in making, decisions that affect the child or young person, to the maximum extent possible taking into consideration their age, maturity and developmental capacity;
- Decisions about an Aboriginal and Torres Strait Islander child or young person should be made in a way that involves their community, if practicable and appropriate;
- If a child or young person is charged with an offence, he or she should have prompt access to legal assistance, and any legal proceeding relating to the offence should begin as soon as possible;
- A child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary;
- Children, young people and other young offenders should be dealt with in the criminal law system in a way consistent with their age, maturity and developmental capacity and have at least the same rights and protection before the law as would adults in similar circumstances; on and after conviction, it is a high priority to give a young offender the opportunity to re-enter the community;
- It is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender's offence and the interests of the community.

Young people involved the ACT youth justice system

1.8.9 Most young people in the ACT do not have any involvement with the youth justice system. Of those young people who are involved with police or the courts, most do not have any contact with Bimberi. In their submission to the Review, the ACT Government presented the following information to contextualise the number of young people in the youth justice system in the ACT.

Table 1.1: Young people engaged in the ACT youth justice system (period unknown) ⁹

All children and young people in the ACT (10-17 years)	34,870
Young people at risk of entering the youth justice system	unknown
Number of young people 10-17 years proceeded against by police - bail or remand in custody	967
Number of young people before the ACT Childrens Court - plea or finding of guilt (principal charge - bail or remand in custody)	322
Number of young people on community based supervision	234
Number of young people referred to restorative justice conferencing	217
Number of young people in detention (remand and committed)	163
Number of young people sentenced to community-based sentences under supervision	83
Number of young people sentenced to imprisonment	11

(Note: these figures come from the ACT Government's Submission to the Review, and have not been verified by the Commission)

8 From http://www.dhcs.act.gov.au/__data/assets/pdf_file/0009/32589/08_09_02_FACTSHEET_Philosophy.pdf accessed 14/2/2011

9 ACT Government submission

- 1.8.10 While the data in Table 1.1 seems to have been compiled over different time periods, it does illustrate the point that most young people in the ACT do not have any contact with the police, courts or Bimberi. In the ACT, 10 years is the age of criminal responsibility, and 18 years is the age at which most young people will be processed through the adult justice system. According to the diagram, in a period when there was approximately 34,870 children and young people aged 10 to 17 years in the ACT, from this population group, 967 children and young people were charged by police, a smaller number (163) were placed in detention, and an even smaller number (11) were sentenced to imprisonment.
- 1.8.11 In its submission to the Review, the ACT Government compiled further information about the numbers of young people involved at the more serious end of the youth justice system in 2008-2009 (see Table 1.2 below). According to this data, throughout the year there were 234 young people under community-based supervision, and 163 young people in detention. On an average day there were 109 young people under community-based supervision, and 15 young people in detention.

Table 1.2: Young people in contact with the ACT youth justice system 2008-2009¹⁰

	Total number	Aboriginal & Torres Strait Islander	Non-Aboriginal & Torres Strait Islander	Number average day	Aboriginal & Torres Strait Islander	Non-Aboriginal & Torres Strait Islander
Young people under youth justice supervision - all types (2008-2009)	269 (55 female; 214 male)	47 (7 female; 40 male)	222 (48 female; 174 male)	122 (19 female; 103 male)	27 (3 female; 24 male)	95 (16 female; 79 male)
Rate (per 1,000 population)	6.7 (2.8 female; 10.5 male)	49.7 (15.7 female; 79.2 male)	5.7 (2.5 female; 8.8 male)	3 (1 female; 5 male)	30 (47.7 male)	2.4 (0.8 female; 4.0 male)
		Rate ratio: 8.7			Rate ratio: 12.5	
Young people under community based supervision (2008-2009)	234 (44 female; 190 male)	41 (5 female; 36 male)	193 (39 female; 154 male)	109 (17 female; 93 male)	21 (2 female; 19 male)	88 (15 female; 74 male)
Rate (per 1,000 population)	5.7 (2.2 female; 9.1 male)	42.4 (13 female; 68 male)	4.8 (1.9 female; 7.6 male)	2.6 (0.8 female; 4.4 male)	21.4 (35.4 male)	2.18 (0.75 female; 3.6 male)
		Rate ratio: 8.8			Rate ratio: 9.8	
Young people in detention (2008-2009)	163 (34 female; 129 male)	34 (5 female; 29 male)	129 (29 female; 100 male)	15 (3 female; 12 male)	17 (1 female; 5 male)	8 (1 female; 7 male)
Rate (per 1,000 population)	4.5 (1.9 female; 7 male)	37 (61 male)	3.7 (1.7 female; 5.8 male)	0.4 (0.65 male)	7.6 (11.2 male)	0.22 (0.22 female; 0.4 male)
		Rate ratio: 9.9			Rate ratio: 34.5	

(Note: these figures come from the ACT Government's Submission to the Review, and have not been verified by the Commission)

Population of Bimberi

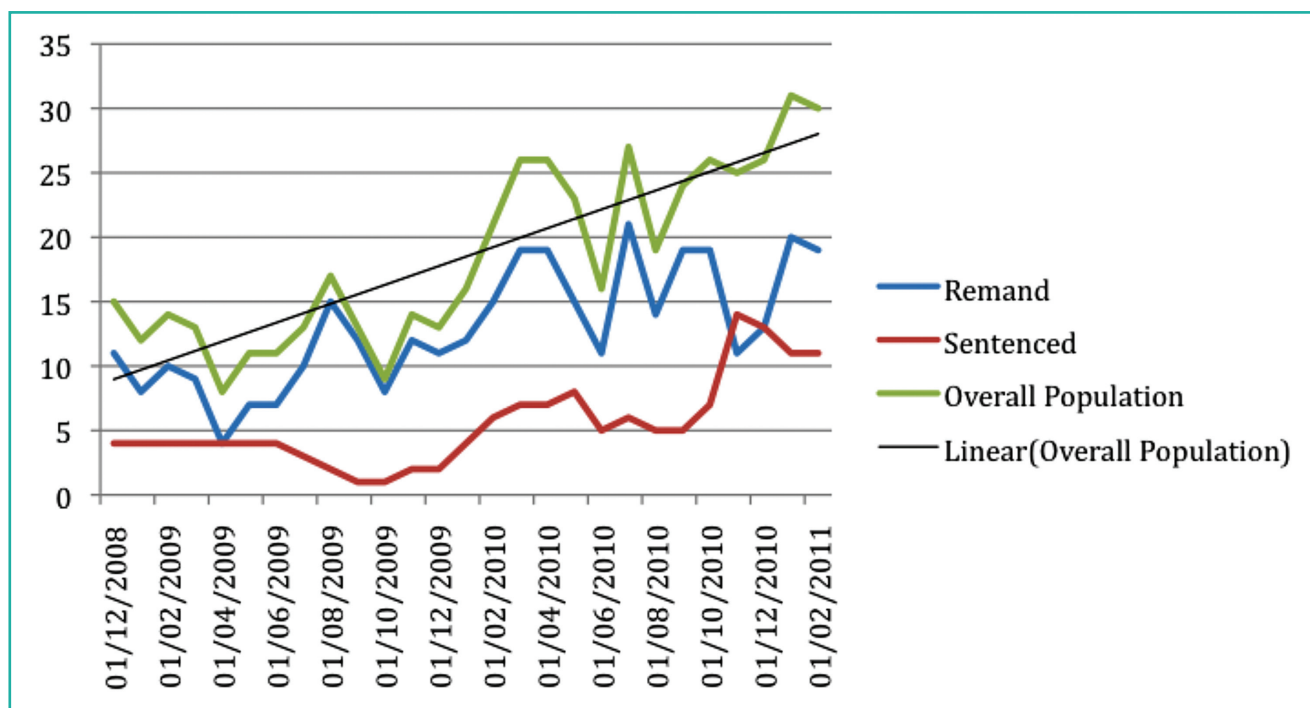
- 1.8.12 The number of young people living in Bimberi changes frequently. The group rarely stays the same for more than a few weeks, as some young people are released, and new young people are admitted. Some young people know they will be living in Bimberi for a defined period of time, as they have been sentenced to a period of detention of months or years. Other young people are placed in Bimberi on remand, perhaps overnight or for a few weeks; these young people are unsure how long they will be in detention, until they hear the decision at their next court date. According to the ACT Government submission to the Review, the average length of time spent on remand in Bimberi during 2008-2009 was 25 days.¹¹

¹⁰ ACT Government Submission

¹¹ ACT Government submission

- 1.8.13 When Bimberi opened in 2008 there were 15 young people in detention (transferred from Quamby), but since that time the numbers have increased (see Diagram 1.1, below). Throughout 2009 the population at Bimberi fluctuated between eight and 17 children and young people. From February 2010 there was a significant increase in the number of young people at Bimberi, and the upward trend has continued.¹²

Figure 1.1: Population in Bimberi: December 2008 to February 2011¹³



(Note: these figures come from the ACT Government's Submission to the Review, and have not been verified by the Commission)

The characteristics of young people in Bimberi

- 1.8.14 Other than legal status, age, gender and Aboriginal or Torres Strait Islander status, the ACT Government does not collect or aggregate data about the characteristics of young people in detention. Therefore, there is limited data available to help us understand the characteristics of young people being detained in Bimberi, and the reasons for their detention. We do have some knowledge of fundamental characteristics, such as:
- Young people in Bimberi are generally aged between 10 and 17 years, though it would be possible for a young person to stay in Bimberi until they turn 21 years;
 - Most young people in Bimberi are male;
 - Most young people in Bimberi have not been found guilty of a criminal offence. Some young people have been sentenced to a period of detention, however, others have only been charged with an offence, and are placed on remand until the court process concludes; and
 - Aboriginal or Torres Strait Islander young people are over-represented in the population at Bimberi.¹⁴
- 1.8.15 Data is also not available to allow us to understand the most common offences for which young people are detained in Bimberi. However, we do have information about the types of offences at earlier stages of the youth justice system, including police charges, and matters adjudicated in court.
- 1.8.16 During 2008-2009 the most common charges laid against young people in the ACT were in relation to offences against justice procedures (such as breach of bail or failure to appear on bail; 13.5%), shop stealing (13%) and other theft (13%).¹⁵
- 1.8.17 The most common principal offences adjudicated in the ACT Children's Court during 2008-2009 were assault (21.7%), unlawful entry with intent (13.7%), other theft (13.7%) and regulatory driving offences (13.4%).¹⁶

¹² ACT Government submission

¹³ ACT Government Submission

¹⁴ See Appendix A

¹⁵ See Appendix A

¹⁶ See Appendix A

- 1.8.18 It is important that the ACT Government develop data collection practices to allow greater understanding of the number of young people detained in Bimberi who:
- Are in out-of-home care or under parental responsibility of the Chief Executive under the CYP Act;
 - Experience cognitive or intellectual disability;
 - Experience mental health concerns;
 - Have a history of drug or alcohol use; and/or
 - Are from culturally or linguistically diverse backgrounds (other than Aboriginal or Torres Strait Islander).
- 1.8.19 The above information is essential to determine the needs of young people in detention, and to inform program development. These issues are discussed further in Chapter 8 (programming) and Chapter 15 (oversight).

Snapshot of young people in Bimberi on 30 June 2009

- 1.8.20 Since 1981 there has been a census of young people in Australian detention facilities on the last day of each quarter of the year (31 March, 30 June, 30 September and 31 December). The AIC analyses this data and produces regular reports describing the changing features of the group of young people in detention. As the data comes from a census count on a particular day, it presents a snapshot of a point in time, not an average across a period of time. Therefore the numbers on that particular day are not necessarily representative of the three month period between census dates. Table 1.3 (below) presents a snapshot of young people in detention on 30 June 2009, six months after the first young people arrived at Bimberi.

Table 1.3: Snapshot of young people in Bimberi on 30 June 2009 ¹⁷

Numbers in detention	<ul style="list-style-type: none"> • Total number: 9 • Rate: 25.9 young people per 100,000 young people in the ACT
Gender	<ul style="list-style-type: none"> • Total number: 6 males and 3 females • Two thirds (33.3%) of the group were young men and boys • Rate of young men: 34 young men per 100,000 population • Rate of young women: 17.5 young women per 100,000 population
Age	<ul style="list-style-type: none"> • 5 young people aged 10 to 14 years (2 Indigenous and 3 non-Indigenous) • 4 young people aged 15 to 17 years (1 Indigenous and 3 non-Indigenous)
Indigenous status	<ul style="list-style-type: none"> • Total number: 3 Indigenous young people • Rate: 278.3 per 100,000 population • Indigenous young people in the ACT were 15.6 times as likely to be detained as non-Indigenous young people, compared with 22.7 nationally.
Legal status	<ul style="list-style-type: none"> • 6 young people on remand, 3 sentenced • Two thirds (67%) of the group were on remand • 5 males on remand, 1 male sentenced • 1 female on remand, 2 females sentenced

Snapshot of young people in Bimberi in early 2011

- 1.8.21 The ACT Human Rights Commission (the Commission) is committed to the engagement of children and young people in processes that affect their lives. This commitment is consistent with Article 12 of the United Nations' *Convention on the Rights of the Child*, which states that:
- 'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'*
- 1.8.22 To reflect this commitment, all young people detained at Bimberi from January to March 2011 were invited to complete an 80 question survey designed and administered by the Commission. The full survey results are provided at Appendix C.

¹⁷ See Appendix A

- 1.8.23 Nineteen young people completed the survey, including 16 young men and three young women. Of those who responded to the question, one reported that they spoke a language other than English at home, and six identified as being from an Aboriginal or Torres Strait Islander background. Participants ranged in age from 14 to 18 years old.
- 1.8.24 Almost 80% of participants (n=15) reported to have been in custody before their current admission. Over half of the participants reported that they had first been detained before they were fourteen (n=10), with 40% reporting that they had spent more than a year in custody (in total).
- 1.8.25 Young people reported a number of reasons for their early involvement in the youth justice system. Some reported family related issues, issues related to money, and issues related to their peer networks. Three young people reported a link between their involvement with care and protection services, being placed in out of home care and acting out as a result. Some young people reported that better financial support and family interventions might have influenced their early criminality.
- 1.8.26 There was a fairly even balance between the number of young people reporting that they were serving a committal (n=10) and those reporting that they were on remand (n=9). Young people reported that they were often sentenced for breaching bail conditions, with some reporting that they believed their bail conditions to be unreasonable and unmanageable.

Significant trends in the detention of young people in the ACT

- 1.8.27 *Increasing detention rates.* The rate of detention of young people in the ACT is rising, from 3.56 (per 1,000 population) in 2005-2006 to 4.53 (per 1,000 population) in 2008-2009.¹⁸
- 1.8.28 *Higher proportion of young people on remand.* The proportion of young people on remand compared with young people on committal is increasing. Fifty-five percent of young people in Bimberi in 2005-2006 were on remand, compared with 73% in 2008-2009. This is particularly concerning considering that nationally only 21% of young people go on to a period of sentenced detention.¹⁹
- 1.8.29 *Overrepresentation of Aboriginal and Torres Strait Islander young people.* Approximately 2.4% of young people in the ACT are Aboriginal or Torres Strait Islander. Yet the proportion of Aboriginal or Torres Strait Islander young people in Bimberi is significantly higher, at 20% or more. Of those young people on remand in Bimberi the proportion that are Aboriginal or Torres Strait Islander is even higher, at 64%.²⁰ These trends present significant legal and policy issues for the ACT community.

18 ACT Government submission

19 See Appendix A

20 ACT Government submission

Chapter 2: Human Rights Audit Of Bimberi

Relevant Terms of Reference

- Human Rights Audit of Bimberi Youth Justice Centre

Relevant Human Rights Standards

- Humane Treatment of Children (CROC, OPCAT, UNCAT, POJ r.67, HR Act ss 10, 11, 19, 20)
- Natural Justice (POJ art 70, SMR r.20)
- Freedom of Association (HR Act s.15)
- Freedom of movement (HR Act s.13)
- Right to Privacy (HR Act s.12)
- Liberty and Security (HR Act s.18)
- Equality (HR Act s.8)
- Freedom of Expression (HR Act s.14)
- Legal status (HR Act s.19)
- Consent to Medical Treatment (HR Act s.10(2))
- Rights to Health and Education (ESCR)

2.1 Introduction

- 2.1.1 Throughout this Report, the Commission seeks to apply the required of international human rights instruments, informed by evidence-based best practice. We see these as complementary standards. Human rights instruments and case law provide a minimum benchmark that must be met, and any limits imposed on human rights must be authorised by ACT law and be reasonable and proportionate.¹ Complementing this approach, evidence-based practice provides the detail of not only how such benchmarks can be reached, but also how they can be exceeded and the best outcomes achieved for young people and the ACT community.
- 2.1.2 This Report brings together two key areas of the Commission – the experience and expertise of the Children & Young People Commissioner, and his team, with the human rights law knowledge and skills from earlier audits of the Human Rights & Discrimination Commissioner, and her team.
- 2.1.3 The original Legislative Assembly resolution that led to this Report sought an Inquiry by the Children & Young People Commissioner into Bimberi and the broader youth justice system, and a corresponding Human Rights Audit of the Bimberi Youth Justice Centre (Bimberi). To more effectively achieve this task, the Commission combined disciplines and conducted an Inquiry and Human Rights Audit into the youth justice system, including Bimberi, as a joint Review, utilising best practice and human rights standards.
- 2.1.4 Throughout this Report, we cite and apply relevant human rights standards across the whole youth justice system, informed by best practice in youth justice. These are most particularly relevant to staffing issues (Chapter 5), the delivery of education (Chapter 12), the provision of health services (Chapter 13), and the conditions of detention in Bimberi (Chapter 14). Conditions of detention cover issues of behavior management; use of force; restraints; segregation; searches; classification; communication; and food and clothing. We have deliberately placed these considerations at the end of the Report, reflecting the principle that detention should be a last resort.
- 2.1.5 However, we are mindful of the Legislative Assembly's request for a comprehensive human rights audit of Bimberi alone. In this Chapter, we compile elements of such an audit, summarising the findings of the remainder of the Report across all areas relevant to Bimberi, including conditions of detention, the provision of education and health services, and industrial conditions.
- 2.1.6 We also summarise the human rights relevant to all major participants in the system and at Bimberi – staff, young people, their families, and victims of crime.

2.2 The ACT Human Rights Act 2004

- 2.2.1 Young people, their families and staff at Bimberi are entitled to enjoy all rights under the *Human Rights Act 2004* (the HR Act). Section 40B of the Act obliges all public authorities in the ACT, which includes all ACT Government agencies, to act compatibly with human rights and, when making decisions, to give proper consideration to human rights. Generally, very few rights are absolute and s.28 of the HR Act states that rights may be limited by ACT laws in certain circumstances.² However, such exceptions must clearly be expressed in law and must be reasonable and proportionate. In deciding whether a limit is reasonable, s.28(2) provides that the following factors must be considered:
- The nature of the right affected;
 - The importance of the purpose of the limitation;
 - The nature and extent of the limitation;
 - The relationship between the limitation and its purpose; and
 - Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.
- 2.2.2 Rights relevant to the various stakeholders at Bimberi are discussed below.

2.3 International instruments

- 2.3.1 There is a range of international human rights standards relevant to an Audit of this kind. Section 31 of the HR Act provides that such instruments may be used to interpret those rights enshrined in the HR Act. Those most relevant to the youth justice system include:
- United Nations (UN) Rules on the Protection of Juveniles Deprived of their Liberty (the POJ);³
 - UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);⁴
 - UN Convention on the Rights of the Child 1989 (the CROC);
 - UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines); and⁵
 - UN Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines).⁶
- 2.3.2 There are also standards which apply generally to any person held in a closed environment:
- UN Standard Minimum Rules for the Treatment of Prisoners (the SMR);⁷
 - UN Basic Principles for the Treatment of Prisoners (the BTP);⁸ and
 - UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the BOP).⁹
- 2.3.3 Locally, in 1999 the Australian Juvenile Justice Administrators (AJJA) released the Standards for Juvenile Custodial Facilities. The Commission is aware that AJJA has developed new standards relevant across the youth justice system, but understands that these are yet to be publicly released. In undertaking this Audit, the Commission has also been mindful of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (the RCIADIC).

2.4 Inspections of youth detention centres

- 2.4.1 Rule 72 of the POJ requires that regular inspections of youth detention centres should be undertaken by independent inspectors. This rule requires that inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles, and to all records of such facilities. The Commission has inspection powers under s.137(e) of the *Children and Young People Act 2008* (the CYP Act), and was given such access as part of this Audit.
- 2.4.2 These requirements have been further enhanced by the recent adoption of the Optional Protocol to the Convention Against Torture (the OPCAT). OPCAT is an international agreement which builds on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the CAT). It was adopted by the United Nations in 2002 and entered into force in 2006. The aim of OPCAT is to prevent the mistreatment of people in detention. Places of detention include prisons, youth detention centres, immigration detention centres, and other places where people are deprived of their liberty, such as mental health facilities and aged care facilities.

2 Most relevantly to this Report, the right against torture and the right to life are both considered as absolute in International law.

3 Adopted by General Assembly resolution 45/113 of 14 December 1990.

4 Adopted by General Assembly resolution 40/33 of 29 November 1985.

5 Adopted by General Assembly resolution 45/112 of 14 December 1990.

6 Annexed to Economic and Social Council resolution 1997/30 of 21 July 1997.

7 Approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

8 Adopted by General Assembly resolution 45/111 of 14 December 1990.

9 Adopted by General Assembly resolution 43/173 of 9 December 1988.

- 2.4.3 Australia is a party to the CAT and signed the OPCAT on 19 May 2009, but has not yet ratified this instrument. A proposal for ratification of the OPCAT is under consideration by the Australian Government. By signing the OPCAT, Australia has agreed to allow inspections of places of detention by the UN and relevant local independent bodies. Once the Australian Government ratifies the OPCAT, the ACT Government will be required to participate in regular annual inspections or audits of a range of facilities, including Bimberi.
- 2.4.4 It has been six years since the then ACT Human Rights Office audited the former Quamby Youth Detention Centre (2005 Quamby Audit). In many ways, the concerns and issues raised in the lead up to this Report demonstrate why regular independent human rights auditing is required. The OPCAT is discussed further throughout this Report, including our recommendation that CSD schedule regular internal and external audits of Bimberi.

2.5 Rights engaged at Bimberi

Rights of young people

- 2.5.1 Several rights of young people under the HR Act are likely to be engaged during their time at Bimberi:
- Section 8: Right to equality. This right provides that all young people at Bimberi should be treated equally without discrimination, including because of their race, colour, sex, disability or other status. The particular needs of young people with specific attributes are discussed at Chapter 10.
 - Section 10(1): Prohibition on torture, cruel, inhuman or degrading treatment or punishment. The prohibition on torture, cruel, inhuman or degrading treatment or punishment is absolute and no derogation is permitted even in times of public emergency. This right is applicable across all policies and practices at Bimberi, but particularly in relation to behaviour management.
 - Section 10(2): No medical treatment without free consent. This is most relevant to the provision of health care to young people at Bimberi. This right is particularly complex for young people, as the parental right to determine whether or not a child receives medical treatment terminates when the child achieves sufficient understanding and intelligence to enable him or her to understand fully what is proposed (the Gillick competence).¹⁰
 - Section 11(1): Protection of the family. The International Covenant on Civil and Political Rights (the ICCPR) and the HR Act recognise the family as the basic unit of society. This right is most likely to be engaged in relation to phone calls, correspondence and visits to young people.
 - Section 11(2): Protection of the child. Young people have special protection under the HR Act by virtue of their inherent vulnerability.
 - Section 12: Privacy and reputation. Young people at Bimberi are entitled to their privacy, particularly in relation to searches of their bodies, cabins and correspondence.
 - Section 16: Freedom of expression. Young people at Bimberi are free to express themselves, particularly in relation to participating in decision-making in the Centre, and having the opportunity to be heard during disciplinary proceedings.
 - Section 19: Humane treatment of those deprived of liberty. Perhaps the most critical right of all for young people at Bimberi, whether on remand or sentenced, is that all young people must be treated humanely.
 - Sections 19(2) & (3): Segregation of accused from convicted prisoners and appropriate treatment. This elaborates further on the right to humane treatment, which provides that remandees are entitled to be presumed innocent until convicted and should receive protection consistent with this status.
 - Section 20: Children in the criminal process. Section 20 specifies the additional guarantees afforded to a child or young person under the age of 18 years who is held in detention. An accused young person must be detained separately from accused adults and be treated in a way that is appropriate to their age and status. They must be brought to trial as quickly as possible rather than within a 'reasonable time', which is the case for adults. Similarly, a young person who is convicted of a criminal offence must be treated in a way that is appropriate to their age and status. The CROC elaborates the rights of children who are deprived of their liberty in more detail, including the principle that detention should be a measure of last resort.
 - Section 27: Rights of minorities. This section is relevant to the Audit's examination of the treatment of Aboriginal and Torres Strait Islander young people, or those from different ethnic, religious or linguistic minorities. This is discussed in detail at Chapter 10.

¹⁰ See House of Lords decision *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112.

Rights of staff

- 2.5.2 Staff at Bimberi are also entitled to have their human rights protected. The safety and security of staff must be a primary consideration in the operation of the Centre. Consistent with this, Chapter 5 of this Report focuses on staff rights across the whole youth justice system. It does so, cognisant of the following particular rights of staff:
- Section 9: Right to life. Staff are entitled to work in a safe environment, without their physical safety being put at risk. These protections in an industrial context are regulated in further detail by occupational health and safety law, such as the *Work Safety Act 2008*. The Commission has some concerns whether requirements for staff safety are being met, most particularly in relation to low staffing numbers making youth workers feel unsafe, and the lack of appropriate supports to protect against bullying and discrimination.
 - Section 8: Right to equality. All staff have the right to be treated equally, and should not be discriminated against on any ground. The HR Act notes such grounds can include race, colour, sex, discrimination and national origin. The Commission is concerned by reports from staff of alleged racism and bullying.
 - Section 16: Freedom of expression. Staff should be consulted on industrial issues that affect their work.
- 2.5.3 Further, there are also specific international human rights standards for staffing in youth justice. The POJ include standards for recruitment, remuneration, qualifications, management and training of youth justice personnel. In particular, Rule 82 of the POJ notes that *'the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work'*. The Beijing Rules also require that staff in youth justice reflect the diversity of young people who come into contact with the system, and that efforts be made to ensure the fair representation of women and minority groups in youth justice agencies.¹¹ In the ACT context this requires that particular consideration be given to the recruitment of Aboriginal and Torres Strait Islander workers, given the significant over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system.¹²
- 2.5.4 Concerns and issues for staff are discussed further at Chapter 5. In summary, we believe that low staff numbers at Bimberi, combined with a lack of sufficient resources, support, and training, have undermined efforts to comply with the human rights of all participants. A key recommendation of this Report is that staffing numbers and resources are increased as a matter of priority. We note that in recent times, the ACT Government has funded more staffing resources at Bimberi.

Rights of families

- 2.5.5 Families play a vital part in the life of young people and can profoundly affect their life experiences and outcomes. Families can provide young people with a sense of belonging and stability, can provide them with social capital and can lead to positive outcomes (such as emotional and physical wellbeing and social connectedness) and reduce the likelihood of current and future criminal behaviour. The importance of families is enshrined in the HR Act, which recognises the family as the basic unit of society.¹³ As noted above, this right is most likely to be engaged in relation to phone calls, correspondence and visits between family members and young people at Bimberi.
- 2.5.6 A number of human rights documents highlight the importance of contact with families and their continued involvement in the life of the young person. For example, Rule 30 of the POJ states that detention facilities should be decentralised and small scale to facilitate access and contact between the juveniles and their families, and to encourage and enable visitation and communication between young people and their families or significant others. Article 20 of the CROC further recognises the special protection a young person removed from their family environment deserves.
- 2.5.7 Families as stakeholders in the youth justice system are discussed at Chapter 3.

Rights of victims of crime

- 2.5.8 The Commission is aware that the rights of victims of crime in the system must also be respected. A victim of crime is a person who has suffered harm because of a criminal act or offence. Harm can include physical or mental injury, emotional suffering, economic loss, or substantial impairment of their fundamental rights. Victims' rights are discussed at length at Chapter 3. The right to life under s.9 and right to liberty and security under s.18 of the HR Act are the rights most relevant to victims of crime.
- 2.5.9 The CROC requires governments to promote the physical and psychological recovery and social reintegration of a child victim of any form of abuse, neglect or exploitation.¹⁴

¹¹ Beijing Rules, rule 22.

¹² See also RCIADC rec.178

¹³ Section 11 of the HR Act

¹⁴ Article 39 of the CROC.

- 2.5.10 The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides a framework for governments to acknowledge and act upon victims' interests, especially within criminal proceedings. It states that victims of crime have rights of access to justice and fair treatment, restitution, assistance, and compensation. In the ACT there is victims of crime legislation, the *Victims of Crime Act 1994* (the VOC Act), which establishes a set of 'governing principles' or guidelines for the treatment of victims by public officers in the criminal justice system.
- 2.5.11 We note that young people detained at Bimberi may also be victims of crime, and deserve access to the same rights and services as other victims.

2.6 Audit summary

Education

- 2.6.1 At Chapter 12 (education) of this Report we consider the provision of education to young people in the youth justice system. The right to education is enshrined in the International Covenant on Economic, Social and Cultural Rights (the ESCR). In applying young people's rights to the conditions for young people at Bimberi, we identify several issues of concern across school-based, vocational and living skills education. Overall we found that education was frequently interrupted by security and staff shortage issues, and that teachers at the Bimberi school, the Murrumbidgee Education and Training Centre (METC), have had to work with reduced resources.

Rights engaged

- Right to education;¹⁵
- Primary education must be available and free to all, and governments should provide different forms of secondary education, including vocational education, available and accessible to every young person;¹⁶
- Young people deprived of liberty should not be denied the economic, social or cultural rights to which they would otherwise be entitled;¹⁷
- Every juvenile of compulsory school age has the right to appropriate education designed to prepare him or her for return to society. Young people who are illiterate or have cognitive or learning difficulties should have the right to special education. Particular attention should also be given to young people with particular cultural or ethnic needs;¹⁸
- Any certificates awarded to young people while in detention should not indicate in any way that the young person was institutionalised;¹⁹
- Young people should have access to an adequately stocked library;²⁰
- A detained or imprisoned person shall have the right to obtain, within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment;²¹
- Every young person has the right to receive vocational training in occupations likely to prepare him or her for future employment. Generally speaking, young people should be able to choose the type of work they wish to perform. Vocational programs should be suited to individual needs, interests and market-place opportunities, provide positive learning experiences, and systematically assess and improve the numeracy levels, literacy levels and the work-place knowledge, experience and qualifications of young people;²² and
- Rights enshrined in the HR Act:
 - right to equality;
 - freedom of expression; and
 - protection of family and children.²³

15 Article 13 of the ESCR.

16 Articles 28 and 29 of the CROC.

17 Rule 13 of the POJ.

18 Rules 38 and 39 of the POJ.

19 Rule 40 of the POJ.

20 Rule 41 of the POJ, Rule 40 of the SMR, and art 17(c) of the CROC.

21 Principle 28 of the BOP.

22 See Rule 41 of the SMR and AJJA Standards Part 4.2.

23 Sections 8, 16 and 11 of the HR Act.

Table 2.1: Summary of major school-based education issues identified

Subject Area	Discussion	Assessment	Report Section
Difficulties in delivering education	Education frequently interrupted by security and staff shortage issues. For several months during 2010 young people were placed in lockdown during the middle of the day to allow staff breaks.	Unreasonable limitation on the right to education, particularly right to have education tailored for young people in detention.	12.3
Resources	Teachers at the Bimberi school, the Murrumbidgee Education and Training Centre (METC), have insufficient supports for classroom teaching.	Unreasonable limitation on the right to education, particularly right to have education tailored for young people with learning difficulties.	12.3
Integration and collaboration between METC and Bimberi	METC is not fully integrated within Bimberi, with several areas in which communication could improve, including: <ul style="list-style-type: none"> • Poor induction; • Lack of shared planning; • Lack of input into decision-making about METC; • Lack of input into decision-making about individual young people; and • Limited communication. 	Unreasonable limitation on the right to education, particularly right to have education tailored for young people in detention.	12.3
Library and research resources	While Bimberi has a library with a range of written material, young people do not have sufficient access to information technology to facilitate their education.	Access to library right not limited, but rights to education and expression perhaps unreasonably limited by lack of internet access.	12.3
General curriculum	Limited opportunities in Bimberi for young people who have already completed Year 10. Access to vocational programs involving tools is sometimes denied by Bimberi management due to security. Lack of provision of day release for school because it is a security issue for Bimberi management.	Potential unreasonable limitation on right to appropriate education designed to prepare for return to society.	12.4 and 12.5
Specific needs for rehabilitation	Programs lacking include: <ul style="list-style-type: none"> • Therapeutic services to help young people address their offending behaviour; • Programs to support the cultural needs of Aboriginal and Torres Strait Islander students; and • Wider education needs, such as legal education and sexual health. 	Potential unreasonable limitation on the right to appropriate education designed to prepare for return to society. Right to equality also engaged.	12.3

Table 2.2: Summary of major vocational education and living skills issues identified

Subject Area	Discussion	Assessment	Report Section
Vocational training generally	Ad hoc and not provided on an ongoing or strategic basis. Vocational training not viewed as a fundamental part of Bimberi.	Potential unreasonable limitation on right to vocational training aimed at employment.	12.5
Security overriding delivery of vocational training	Resulted in prevention or delay of material and equipment being obtained for vocational programs, making it difficult for teachers to plan classes (eg nails not used in woodwork classes). Metalwork room not used for considerable time. Young people excluded from vocational programs in which they may have access to tools, without clear criteria or stated reasons for such decisions.	Potential unreasonable limitation on right to vocational training aimed at employment.	12.5
Living Skills	No formally developed living skills programs at Bimberi focusing on helping young people to develop their domestic skills. However, the Commission is aware that young people are required to keep their units neat and tidy, to wash their own clothes, to make the occasional meal in their unit and, through an incentive scheme, are encouraged to take on domestic tasks throughout the Centre.	Despite general requirements to perform domestic chores, lack of living skills program unreasonably limits right to rehabilitation.	12.6

Health

- 2.6.2 At Chapter 13 (health) of this Report we consider the provision of health care to young people in the youth justice system. We note that human rights principles determine a minimum standard of equivalence, which generally requires that the level of service provided in a closed environment is consistent with that available in the community. However, evidence suggests that specialised intensive services for young people in custody will provide long-term benefits to those young people and the community.
- 2.6.3 The right to health care is enshrined in the ESCR, to which the Australian Government is a signatory. A joint research project between the ANU and the then ACT Department of Justice and Community Safety, funded by an Australian Research Council linkage grant, recommended the inclusion of specific economic, social and cultural rights including education and health care in the HR Act. The ACT Government is currently considering this recommendation.
- 2.6.4 The ACT Government submission to the Review notes that the promotion of the holistic health and wellbeing of children and young people in detention is vital to their rehabilitation and reintegration into the community. It advises that Justice Health (formerly known as the Corrections Health Program) has been providing services at Bimberi since it opened in December 2008. In relation to young people at Bimberi, the following rights and issues were identified.

Rights engaged

- Right to health generally, which has been defined to include the right to control one's health and body, including sexual and reproductive freedom; and the right to be free from interference, such as the right to be free from non-consensual medical treatment.²⁴
- Equivalence - young people in detention should receive adequate medical care, both preventative and remedial, including dental, ophthalmological and mental health care;²⁵
- Health services should detect and treat any physical or mental illness, substance abuse or other condition that may hinder a young person's re-integration;²⁶
- Prompt medical attention;²⁷
- Examination by a doctor on admission;²⁸
- A doctor who believes a young person is suffering because of continued detention, a hunger strike or any condition of detention should report this immediately;²⁹
- Health information should be kept on a confidential file;³⁰
- The involvement of Aboriginal Health Services in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and the funding arrangements necessary for them to facilitate their greater involvement;³¹
- Rights enshrined in the HR Act:
 - right to life;
 - right to liberty and security;
 - prohibition of torture and inhuman or degrading treatment or punishment;
 - humane treatment while in detention, including special protection of remandees;
 - protection of the family and children;
 - right to privacy;
 - freedom of thought, conscience and religion; and
 - right to equality.³²

24 Article 12 of the International Covenant on Economic, Social and Cultural Rights (ESCR) includes this right. This definition is drawn from General Comment 14 of the UN ESCR Committee. The World Health Organisation also declared in 1946 that the highest attainable standard of health is a fundamental right of every human being, without distinction of race, religion, political belief, economic or social condition.

25 Rule 49 of the POJ.

26 Rule 51 of the POJ.

27 Rule 51 of the POJ. See also Rule 24 of the SMR.

28 Rule 50 of the POJ. See also Rule 24 of the SMR and Rule 24 of the BOP.

29 Rule 52 of the POJ. See also Rule 25 of the SMR.

30 Rule 19 of the POJ.

31 RCIADC Part 127(C).

32 Sections 9,18,10,19,11,12 and 8 respectively of the HR Act

Table 2.3: Summary of major health issues identified

Subject Area	Discussion	Assessment	Report Section
Throughcare and aftercare	Provision of primary care at Bimberi is generally good, but becomes difficult for young people exiting Bimberi to access.	Equivalence satisfied while in Bimberi, but concerns raised with release arrangements.	13.3
Nursing hours	Number of nursing hours at Bimberi has been reduced since Quamby.	Potential unreasonable limitation on right to equivalence and prompt health care.	13.3
Access to doctors and nurses	During periods of chronic staff shortages, it was difficult for doctors and nurses to see young people.	Unreasonable limitation on rights to equivalence and prompt health care.	13.3
Interaction between Bimberi management and health professionals	On some occasions, clinical decision-making was overruled by Bimberi management. This led to confusion regarding the provision of alcohol and other drug (AOD) treatments, and delay in young people receiving medical treatment.	Unreasonable limitation on rights to equivalence and prompt health care.	13.3
Delivery of medication	Difficulties identified with youth workers delivering such medication on time during staff shortages.	Unreasonable limitation on rights to equivalence and prompt health care.	13.3
Second opinions, family involvement and consent	Health Directorate policies/procedures exist on capacity and consent, however, lack of guidance around the provision of second opinions and family involvement in clinical decision-making for young people at Bimberi.	Engages consent to medical treatment right under HR Act. It is questionable whether the current policy and procedures represent a reasonable limitation.	13.3
Use of restraints	Reports of young people being restrained when leaving Bimberi for external health appointments.	Right to liberty, rights of remandees and special protection of child right engaged. Current procedures appear unreasonably limited.	13.3
Conflicting mental health philosophies	Divergent and at times conflicting philosophies among mental health service providers at Bimberi.	Potentially unreasonably limits rights to equivalence and continuity of health care.	13.4
Information sharing	Issues concerning the provision of critical information between health professionals and other staff at Bimberi.	Young people's safety potentially put at risk, but any change must be balanced with their right to privacy.	13.4
Counselling	A lack of general and specific AOD counselling services at Bimberi.	Potentially unreasonably limits rights to equivalence and continuity of health care.	13.5

2.7 Conditions of detention

2.7.1 Six years after the 2005 Quamby Audit, the Commission was impressed at the level of human rights dialogue occurring at all levels of the organisation, and the significant impact the CYP Act and policies were having on the ground. In many areas, we found that the recommendations of the 2005 Audit have been followed.

2.7.2 However, human rights compliance is not a static condition and constant monitoring is necessary to ensure that a closed facility respects human rights, and provides a therapeutic environment that is safe and secure for staff and residents alike. At times, Bimberi has not achieved these aims.

Behaviour management and discipline

2.7.3 Youth justice detention centres such as Bimberi inevitably require a system to effectively manage the behaviour of the young people who reside there. It is a fundamental principle of justice and the rule of law that any sanction imposed under such a system, whether classified as disciplinary or criminal, must be clearly expressed and transparent. Human rights standards also mandate procedural fairness. As the 2005 Quamby Audit noted, it is appropriate in a youth detention environment to ensure that the reasons for a penalty are fully explained and understood. The implementation of the sanction and any conflict over the fairness of the penalty need to be resolved quickly. However, the opportunity to be heard is essential to fair treatment which is a part of the rehabilitative process and plays an important part in preventing unnecessary grievances.

Rights engaged

- A young person has the right to be informed of the offence alleged against them and the right to be heard and given a proper opportunity to present their defence before disciplinary action is taken.³³
- There is also the right to have such action reviewed by an impartial and independent authority.³⁴
- The 2005 Quamby Audit expressed concerns with the remissions system then in place.

Table 2.4: Summary of major behaviour management system issues identified

Subject Area	Discussion	Assessment	Report Section
Remissions	Remissions system removed. Welcome Government's proposals to move to independent parole board.	No limitation on rights	14.2
BMS Policy	New Behaviour Management System Policy contemplates a behaviour management plan being developed for young people that provides the structure in which a young person's negative or challenging behaviour in custody is responded to and managed.	No limitation on rights.	14.2
Staffing levels	Participants raised concerns about how the policy is being implemented in practice, and whether it is possible to reach its goals with the current staffing levels.	Undermines intent of policy and may unreasonably limit right to procedural fairness.	14.2
Discrimination	Concerns raised by young people regarding discrimination, particularly on the grounds of gender, race and sexuality.	May unreasonably limit right to equality.	14.2
Double jeopardy	Contrary to the CYP Act and policies, young people may be being both punished internally and charged for alleged criminal offences within the Centre.	Unreasonable limitation on rights to procedural fairness and freedom from double jeopardy.	14.2

Use of force/restraints

- 2.7.4 The application of physical force on a person in detention is among the most controversial and critical areas of regulating a closed environment. Many human rights standards, legislative provisions, policies, procedures, best practice guidelines and training aim to strike the balance between the security of a facility and the humane treatment of its detainees. Generally, the relevant human rights standards state that use of force by youth workers against young people should be a last resort and only the minimum force needed is permissible.

Rights engaged

- Force may be resorted to in order to prevent young people from inflicting self-injury, injuries to others or serious destruction of property. In such instances, a doctor should be consulted;³⁵
- Obligation on the State to protect the '*child from all forms of physical or mental violence, injury or abuse*';³⁶
- Prohibition against torture; and³⁷
- Rights enshrined in the HR Act:
 - humane treatment when deprived of liberty;
 - protection from torture and cruel, inhuman or degrading treatment;
 - rights of children in the criminal process; and
 - protection of children.³⁸

33 Rule 30.2 of the SMR.

34 Rule 67 of the POJ; Principle 30.1 and 30.2 of the BOP; Rule 29 of the SMR.

35 Rule 64 of the POJ states that instruments of restraint and force can only be used where all other control methods have been exhausted and failed. See also rules 33, 34 and 54 of SMR.

36 See Article 19 of CROC.

37 See CAT, OPCAT, Rule 67 Protection of Juveniles; Rule 31 SMR; and Principle 6 Body of Principles.

38 See sections 19, 10, 11 and 20.

Table 2.5: Summary of major use of force and restraint issues identified

Subject Area	Discussion	Assessment	Report Section
Restraint techniques	Issues identified with the restraint techniques being utilised at Bimberi, based on recent research from the United Kingdom.	Potentially unreasonably limits rights to life, freedom from torture and liberty.	14.3
De-escalation	Evidence that de-escalation techniques are not being implemented as often as they should.	Potentially unreasonably limits rights to life and liberty, and for force to be last resort.	14.3
Staff shortages	The use of force also seems to have increased during periods of staff shortage, suggesting this was due to staff having insufficient time to use de-escalation techniques.	Unreasonable limitation on right for force to be used as last resort.	14.3
Force to ensure compliance or in relation to minor behavior breaches	We are concerned that force is permitted under the CYP Act, the policy, and in practice, in relation to minor behaviour breaches or to achieve compliance with routine directions.	Potentially unreasonably limits right that force be used as last resort.	14.3
Recording of uses of force and restraint	It appears the use of force policy is not being followed, including in relation to the recording of uses of restraints.	Undermines auditing efforts, particularly in relation to the OPCAT.	14.3
Restraints used as routine behavior management technique or without risk assessment	Restraint use has also been used as a routine for some young people when they are escorted around the Centre. Similarly, restraints have been used on remandees attending medical appointments without a prior risk assessment to determine if such force is needed.	Unreasonable limitation on right that force be used as last resort, and specific rights of remandees.	14.3

Segregation

- 2.7.5 The use of isolation or segregation in detention has been described as creating a 'prison within a prison',³⁹ which can exacerbate the negative effects of the detention environment for young people and undermine progress toward rehabilitation. While in some situations it may be necessary to separate a young person to reduce the risk of harm to that young person or others, there is significant evidence to suggest that segregation itself carries a risk of psychological damage, depending on the extent and duration of the isolation, and the individual characteristics of the young person.⁴⁰

Rights engaged

- Rule 67 of the POJ provides that all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned; and
- Rights enshrined in the HR Act:
 - freedom of association;
 - freedom of movement;
 - the right to privacy;
 - right of children to special protection; and
 - the right not to be subjected to torture or cruel, inhuman or degrading treatment.⁴¹

39 UK Independent Monitoring Boards, *A Prison within a Prison: Independent Monitoring Boards Summary of the conditions reported in Segregation Units in Prisons in England and Wales* (2009).

40 Victorian Quality Council & Chief Psychiatrist's Quality Assurance Committee, *Seclusion Practice: A Review of the Literature and an Examination of Current Concerns* V (2007); WT Garrison, 'Aggressive behaviour, seclusion and physical restraint in an inpatient child population', *Journal of the American Academy of Child and Adolescent Psychiatry* 23 (1984), 448-452

41 HR Act sections 15, 13, 12, 11, 10 and 19.

Table 2.6: Summary of major segregation issues identified

Subject Area	Discussion	Assessment	Report Section
Safe room seldom used	As is appropriate for such a method of segregation, there are a high level of safeguards regarding the use of the safe room. These safeguards have been complied with and the safe room has rarely been used.	Reasonable limitation on rights.	14.4
Segregation Direction Reviews	The review process for safety or security segregation directions is insufficiently transparent and rigorous.	Unreasonable limitation on rights of liberty, association and procedural fairness.	14.4
Lack of appropriate recording	Period of segregation recorded in the segregation register is in several cases less than the periods of time in which those young people have been subjected to some form of segregation.	Undermines auditing efforts, and transparency of segregation orders.	14.4
Education during segregation	Provision of education during segregation, despite being mandated in relevant policies, did not occur in practice.	Unreasonable limitation on rights to education.	14.4
Time Out	Although there is no specific authorisation for the practice of 'time out' in the CYP Act or policies, young people at Bimberi are regularly secured in their cabin for time out for minor behavioural breaches. They have also been segregated in holding cells all day for refusing education.	No provision in ACT law for limitation on rights of liberty, association and procedural fairness.	14.4
Operational Segregation	There was also a lack of adequate recording of young people being secured in their units for operational reasons, for example staff shortages.	Unreasonable limitation on rights of liberty, association and procedural fairness.	14.4

Searches

- 2.7.6 Tensions between young people's right to privacy and a detention centre's desire for security and safety are highest in relation to searches. Generally, detention centres will seek to search both the individual and their room and belongings for contraband such as drugs and weapons. The motivations for such actions are generally sound. Management has a duty of care to keep its staff safe and protect young people from hurting themselves or others. Management must also protect the human rights of staff, most particularly their right to life.⁴² Human rights standards apply to all searches, and there are specific rules around the most invasive, such as strip and body cavity searches.

Rights engaged

- Article 16 of the CROC further states that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation;
- Generally, treatment is degrading when it arouses feelings of fear, anguish, inferiority and is debasing regardless of the intention of the policy or the conduct of the individual officer.⁴³ It must attain a minimum level of severity before a breach arises but the assessment of this minimum is relative and depends on all the circumstances of the case, including the sex, age, and state of physical and mental health of the person;
- The European Committee for the Prevention of Torture's Standards further state that persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender. This is reflected in s.260 of the CYP Act, which requires that all staff present for a strip search, whether conducting the search or observing, are the same gender as the young person unless exceptional circumstances apply; and
- Rights enshrined in the HR Act:
 - inhuman or degrading treatment⁴⁴ and humane treatment while in detention; and ⁴⁵
 - privacy.⁴⁶

⁴² Section 8 of the HR Act.

⁴³ European Court of Human Rights in *Ireland v UK* (1978) 2 EHRR 25 para 162; *Soering v UK* (1989) 11 EHRR 439 para 100.

⁴⁴ Section 10(1)(b).

⁴⁵ Section 19.

⁴⁶ Section 12.

Table 2.7: Summary of major searches issues identified

Subject Area	Discussion	Assessment	Report Section
Reduction from Quamby to Bimberi	The number of strip searches conducted in Bimberi has reduced significantly from when Quamby was operational.	Encouraging sign towards reasonable limitation of rights engaged by strip searching.	14.5
Strip searching increasing, nonetheless	In reviewing the search register and hearing from staff and young people, it appeared that strip searching was again returning to a state of routine at Bimberi, and that at times the relevant policies were not being followed. This included young people being routinely strip searched on their way to and from court. Further, strip searches often followed automatically from room searches, and in some such cases, all young people in the wing or unit were strip searched.	Unreasonable limitation on rights to humane treatment and privacy.	14.5
Presence of opposite sex	Suggestion of presence of a member of the opposite sex during strip searching, either in person or via the CCTV camera.	Unreasonable limitation on rights to humane treatment and privacy, and contrary to CYP Act.	14.5
Support person	At times, staff did not consider whether a support person should be present, or seek the young person's consent to a support person not being present.	Unreasonable limitation on rights to humane treatment and privacy.	14.5
Alternatives to strip searching	Alternatives used in other jurisdictions (eg UK method using a gown) may provide the same level of security and compliance as a conventional strip search, but do so in a manner which is more respectful of the young person.	More reasonable limitation on humane treatment and privacy.	14.5
Room searching	Suggestion that young people were not present during room searches and had protected material removed (eg legal documents).	Unreasonable limitation on right to privacy.	14.5

Classification

- 2.7.7 The issue of placement and inappropriate mixing of different categories of young people due to the limitations of the Quamby facility was a significant concern raised in the 2005 Quamby Audit. From the Commission's observations at Bimberi, the criteria for placement in residential units generally appear to be applied appropriately and consistently with human rights standards. Young people of different legal status, gender and age are generally separated into different residential units, although the small number of young women mean that young women of all ages and status are accommodated together, which may be unavoidable to prevent isolation.
- 2.7.8 However, the Commission is concerned about the nature of the cells in the admission unit, Coree. Although the policy and procedures attempt to make the admission experience less intimidating for young people through building rapport and reducing anxiety, the environment of the admission cells is unnecessarily stark and devoid of stimulus, and is likely to reinforce anxiety.

Rights engaged

- The POJ set out a number of requirements for admission, classification and placement of young people, summarised below:
 - Young people should not be received without a valid commitment order;⁴⁷
 - Parents or guardians must be notified immediately on admission and placement;⁴⁸
 - On admission young people should be given a copy of the rules of the Centre and a written description of rights and obligations, complaints mechanisms and legal assistance. For young people who cannot read or understand this written material, the information should be conveyed in a way that they can fully comprehend;⁴⁹
 - All young people should be helped to understand the rules, the goals and methodology of the care provided, the behaviour management system, ways to seek information and make complaints and all matters necessary to fully understand their rights and obligations;⁵⁰
 - Classification and placement should take account of the particular needs, status and special requirements of the young person according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations;⁵¹ and
 - Young people have the right to have personal effects within the centre, and property that cannot be admitted must be properly stored and kept for the young person.⁵²
- Rights enshrined in the HR Act:
 - special protection because of their vulnerability as a child;⁵³
 - treatment that is appropriate to their age and their status;⁵⁴ and
 - Segregation Of Accused From Convicted Persons, Except In Exceptional Circumstances.⁵⁵

Table 2.8: Summary of major classification issues identified

Subject Area	Discussion	Assessment	Report Section
Admission	The majority of young people surveyed reported being treated well on admission, and most reported feeling safe on their first night at Bimberi. Young people generally felt that the issues they presented with on admission (such as letting family know how they were feeling) were addressed.	No limitation of rights.	14.8
Mixing across the Centre	From the Commission's observations at Bimberi, the criteria for placement in residential units generally appear to be applied appropriately and consistently with human rights standards.	Generally, no limitation on rights or such limitations were reasonable. See below for specific concerns.	14.8
Cells in the Coree (Admission) Unit	Although the policy and procedures attempt to make the admission experience less intimidating for young people through building rapport and reducing anxiety, the environment of the admission cells is unnecessarily stark and devoid of stimulus, and is likely to reinforce anxiety. It is also unclear why there are no televisions in other cells in Coree which are used for young people on short term remand as well as for behaviour management.	Unreasonable limitation on rights to treatment appropriate to age, and freedom from inhumane treatment.	14.8

⁴⁷ Rule 20.

⁴⁸ Rule 22.

⁴⁹ Rule 24.

⁵⁰ Rule 25.

⁵¹ Rule 28.,

⁵² Rule 35.

⁵³ Sections 11(2) and 20.

⁵⁴ Sections 11(2) and 20(2) and (4).

⁵⁵ Section 19(2).

Table 2.8: Summary of major classification issues identified, *continued*

Subject Area	Discussion	Assessment	Report Section
Mixing in Coree	Criteria for separation does not appear to be applied so strictly in the Coree Unit, which is currently being used both for an admissions unit and a de facto behaviour management unit.	Unreasonable limitation on right for remandees not to be mixed with sentenced young people.	14.8
Security classifications	In practice remandees are automatically classified as high risk upon admission, and are required to 'work their way down' the classification ladder before they can have access to many opportunities.	Unreasonable limitation on right for remandees to be treated consistently with their status as innocent.	14.8
Accommodation for Aboriginal and Torres Strait Islander young people	Conjoining rooms not used appropriately in practice for Aboriginal and Torres Strait Islander young people.	Not compliant with recommendations of the RCIADC that Aboriginal and Torres Strait Islander young people be accommodated in conjoining cells.	14.8

Communication, participation, visits and access to news

- 2.7.9 The rights of young people to communicate in a closed environment are broad. They span the right to communicate externally with friends, family, lawyers and oversight bodies, and the right to keep abreast of current affairs via news media. The right to communication also includes the right to have a say in the matters which affect young people at Bimberi. Overall, the rights to keep connected with family and others were upheld, but the Commission believes that more must be done to ensure that young people can articulate their views on decision-making in the Centre. Access to legal services could also be improved.

Rights engaged

- Young people have the right to receive regular and frequent visits, not less than once a month and to communicate in writing or by telephone at least twice a week, unless legally restricted;⁵⁶
- In relation to participation and communication, articles 12 and 13 of the CROC require that a child capable of forming his or her own views should be given the right to express those views freely in matters affecting the child and this should include those children being heard in any judicial or administrative proceeding affecting them. Similarly, children should have freedom of expression;
- In relation to mail and phone calls, article 14 of the CROC states that '*no child shall be subjected to arbitrary or unlawful interference with his or her correspondence*'. Rule 59 of the POJ states that young people should be allowed to communicate with family, friends and representatives of external organisations;
- In relation to specific communication, Principle 18 of the BOP gives special protection for a detained or imprisoned person to communicate, without delay or censorship and in full confidentiality, with legal counsel. Rule 78 further provides protection for young people to contact family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint;
- Young people should have the opportunity to keep themselves informed regularly of the news;⁵⁷
- Young people should be helped to understand the regulations governing the closed facility.⁵⁸ If they have low literacy skills, information should be conveyed in a manner to enable full comprehension;⁵⁹
- Rule 18 of the POJ states that young people should have the right of legal counsel and be enabled to apply for free legal aid, and to communicate regularly with their legal advisers; and
- Rights enshrined in the HR Act:
 - protection of family and children;⁶⁰
 - freedom of expression;⁶¹ and
 - right to privacy.⁶²

56 See Rules 59-61 of the POJ, Rule 26.5 of the Beijing Rules, Rule 37 of the SMR, Rule 20 of the Vienna Guidelines, articles 9(3) and 16 of the CROC.

57 See in particular Rule 62 of the POJ.

58 See also Rule 41, Principle 28 of the BOP, Rule 40 of the SMR, and art. 17 of the CROC.

59 Rule 24 of the POJ and Rule 35 of the SMR.

60 Section 11.

61 Section 16.

62 Section 12.

Table 2.9: Summary of major communication issues identified

Subject Area	Discussion	Assessment	Report Section
Visiting area	Visiting area is large open space with café style tables and an outdoor play area for young children. The visiting area also contains a secure visiting area for non-contact visits and a barbeque facility.	Reasonable limitations on right, if there are restrictions	14.11
Visiting times	Parents report difficulty visiting during week but appreciate new visiting Saturday morning visits (in addition to weekend evening visits). Young people surveyed report visitors generally treated 'well'.	Reasonable limitation. Better protects rights for young people to engage with family.	14.11
Public transport	Only one ACTION bus route to Bimberi, with only one bus service scheduled each afternoon. Does not coincide with visiting times. To catch bus visitor must wait for hour before and after visit.	Potentially limits rights for young people to engage with family and community.	14.11
Participation	Young people have insufficient participation opportunities in decision-making currently.	Unreasonable limitation on freedom of expression and participation rights.	14.6
Access to phone calls	Young people often reported limited access to phone calls, particularly in relation to disciplinary matters.	Unreasonable limitation on rights for young people to engage with family.	14.9
Phone call system	Phone system was not working properly for free calls to oversight agencies.	Unreasonable limitation on freedom of expression and independent oversight.	14.9
Explanation of rights and responsibilities	Young people reported that they were not provided with a copy of the residents handbook, which explains their obligations and rights in the Centre.	Unreasonable limitation on freedom of expression and ability to understand rights generally.	14.12
Access to news media	Young people felt that they had reasonable access to news media.	No limitation.	14.12
Access to lawyers	Young people in Bimberi provided free legal representation in criminal matters. Young people may obtain private legal representation also. Solicitors may visit Bimberi by appointment at any suitable time, and are not restricted to public visiting hours. Special protection for phone conversations with lawyers and oversight bodies	No limitation.	14.13
Staff shortages limited access to lawyers in practice	Staff shortages affected legal visits - some legal visits were cancelled at short notice, affecting the ability of solicitors to represent their clients.	Unreasonable limitation on access to justice.	14.13
Visiting legal service	No general visiting legal service for young people at Bimberi, and young people who do not have active representation would need to contact Legal Aid or Aboriginal Legal Service to make an appointment.	Potentially unreasonably limits access to justice and procedural fairness.	14.13

Food and clothing

- 2.7.10 The employment of chefs to prepare meals on site at Bimberi appears to have resulted in a significant improvement to the quality and freshness of food provided to young people in detention since the 2005 Quamby Audit, where poor food quality was of great concern to young people. Similarly, young people were generally happy with the quality of clothing, with some exceptions. However, the greatest area of concern was in relation to footwear.

Rights engaged

- Right to adequate food is fundamental and unconditional, it should be suitably prepared and presented at normal meal times and be of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements.⁶³
- When detainees are removed from or leaving Bimberi for any purpose, they should be allowed to wear their own clothing or other inconspicuous clothing.⁶⁴
- Rights enshrined in the HR Act:
 - right to life;⁶⁵
 - freedom from inhumane or degrading treatment;⁶⁶
 - right to humane treatment when in detention;⁶⁷ and
 - rights of minorities.⁶⁸

Table 2.10: Summary of major food and clothing issues identified

Subject Area	Discussion	Assessment	Report Section
Food provision	Young people were generally very happy about the quality of food at Bimberi. However, young people and staff reported dissatisfaction about the quality of the catered food provided to young people when chefs are away.	No limitation, rights not engaged. However, we note that young people were more satisfied with food when chef on site.	14.7
Warm clothing	Lack of warm clothing identified by young people.	Engages right to humane treatment while in detention. Insufficient evidence to determine if reasonable.	14.10
Quality of footwear	Young people unhappy with quality of footwear, and suggestion of recycling of old shoes.	Potentially unreasonable limitation on right to humane treatment while in detention.	14.10

Conclusion

- 2.7.11 The Commission found that many policies and procedures had changed significantly in the six years since the 2005 Quamby Audit. These changes reflect the recommendations of that Audit, and the requirements of the HR Act and accompanying human rights standards. This has entailed significant time and resources, and we welcome these changes.
- 2.7.12 The construction of Bimberi was also motivated in part by the desire for a Centre that could better provide a human rights compliant environment. We also welcome the Government's investment, and the resulting Centre.
- 2.7.13 However, in practice there continue to be some unreasonable limitations on human rights of young people at Bimberi. This has been largely driven by the lack of staffing numbers and resources, discussed throughout this Report and in particular in Chapter 5. These limitations also reflect the need for regular human rights auditing, to ensure that any gap between human-rights-compliant policies and actual practice can be quickly identified and addressed.

⁶³ Rule 37 of the POJ and Rule 20 of the SMR.

⁶⁴ Rule 36 of the POJ and Rule 17 of the SMR.

⁶⁵ Section 9.

⁶⁶ Section 10(1)(b).

⁶⁷ Section 19.

⁶⁸ Section 27.

Chapter 3: Embedded In Community

A Quality Youth Justice System Is Embedded In The Wider Community

Relevant Human Rights Standards

- Full mobilisation of all possible resources should be made for young people in the youth justice system and youth justice should be conceived as an integral part of the national development process of each country (BR r.1)
- Right to Communicate with Family and Community
- (HR Act s.11, 12, 16; CYP Act s.174; CROC Art 16, 20; RCIADC 170; AJJA 5.1, 5.2; SMR r.92; POJ rs.30, 59, 61)
- Protection of Family and Children (HR Act s.11)
- Authorities should increase awareness that the care of detained juveniles and preparation for their return to society is a social service of great importance (POJ r.8)

3.1 Embedding youth justice

- 3.1.1 There is a growing body of evidence that suggests that youth justice systems are most successful (and least harmful) when they are embedded in communities: where the community helps set the detention centre's vision; where centres develop a significant level of engagement and collaboration with members of the community; and where a broad range of stakeholders take responsibility for guiding and delivering the system's programs.
- 3.1.2 Community embeddedness refers to the active inclusion and integration of people, programs and systems within the communities that surround them: with families, community members, judges and lawyers, politicians, service providers and policy makers. This suggests that youth justice centres need to be not only connected to their communities (where relationships are fragile and episodic), but surrounded by them in such a way that active participation by the community in the centre and the centre in the community is maximised.
- 3.1.3 Embeddedness can have a positive effect on a detention centre: staff who once felt isolated and disconnected should feel supported and encouraged; management that once was removed from broader welfare systems and processes should become more integrated, accountable and streamlined; and systems should become more effective as they share vision, values, resources and expertise that enable positive and sustainable outcomes.
- 3.1.4 Embedding a centre in the community minimises the negative effects of incarceration (it is well documented that incarceration can negatively affect young people's level of community connectedness and without appropriate services lead to higher rates of recidivism and other negative behaviours) by creating, restoring, sustaining and strengthening healthy and resource-facilitating relationships. These relationships also facilitate positive outcomes for young people, where: their offending behaviours are understood in context; siloed and less effective systems and programs are more informed and integrated; and their broad needs are understood and met. As Leone et al observe:
- '[the] benefit of collaborative programs is that rather than temporarily removing offenders from society, they serve to maximise the potential of all young people to become productive law abiding citizens, thus creating a safer society in which to live, work, and raise a family. In essence, instead of focusing only on punishing 'those kids,' these efforts go one step further to identify and address the individual, family, and societal issues that make 'those kids' (our kids) act in unlawful ways. A community-wide collaborative effort enhances interventions in several ways. Such efforts can change the politics and norms of the community ... provide consistency of behavioral expectations across domains, enlist a greater number of volunteers, and improve the likelihood that the interventions will become long term.'*¹

1 Peter Leone, Mary Quinn, David Osher, *Collaboration in the Juvenile Justice System and Youth Serving Agencies* (2002)

- 3.1.5 In this chapter we will explore and assess the youth justice system's level of engagement and community embeddedness, particularly in regards to the operations and programs offered to young people incarcerated at the Bimberi Youth Justice Centre (Bimberi). In Chapter 4 (vision) we suggest how to increase the level of engagement through the development of a community embedded vision for the youth justice system and Bimberi.

3.2 Role of the broad community

- 3.2.1 The ACT Chief Minister, Katy Gallagher MLA, recently observed (as many others have done) that 'it takes a village to bring up a child'.² The ACT community is the village responsible for raising all children and young people in the ACT – including those who are engaged with the youth justice system.

Tensions within the village

- 3.2.2 'The community' is a broad term, often used to describe disparate and competing interests. For the purposes of this Report, 'the ACT community' refers to the broad ACT region: those people who live in it, and the politicians, government bodies, businesses, organisations, systems and programs who serve it.
- 3.2.3 The ACT community has several interests in the youth justice system:
- As the group from which young people in the youth justice system emerge;
 - As the group whose systems are responsible for supporting children and young people to achieve their potential and whose failings and limitations may directly influence children and young people's involvement in the youth justice system;
 - As the group affected by youth crime: as direct victims but also as those whose safety is compromised and those who will ultimately pay for the incarceration and rehabilitation of young people with criminal behaviours; and
 - As the group who will have the most influence on the success of young people's rehabilitation and return to the community.
- 3.2.4 The ACT community, therefore, is the key stakeholder in the youth justice system, and has a wide range of views and concerns about what functions the youth justice system should fulfil. Rule 1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) states that '*full mobilisation of all possible resources should be made for young people in the youth justice system and youth justice should be conceived as an integral part of the national development process of each country.*'
- 3.2.5 In particular, the ACT community must have a role in determining the vision of the youth justice system. As the Australian Institute of Criminology (AIC) noted in its 2005 report *Interventions for Prisoners Returning to the Community*, criminal sanctions may be viewed as fulfilling a range of aims:
- Restraint and incapacitation, which aims to reduce or eliminate the opportunity for further crime, by removing criminals from the mainstream, or at least limiting their activities to reduce crime opportunities;
 - Deterrence, or preventing future crime by increasing the negative outcomes for criminals when offences are detected; and
 - Rehabilitation, or assisting offenders to change their behaviours and so preventing further offending.
- 3.2.6 The AIC also notes that the rationale for incarceration can be grouped into three broad categories:
- A retributionist stance, which aims only for 'just desserts'—for criminal justice dispensing punishment commensurate with crimes;
 - The utilitarian position, that seeks primarily to reduce offending in a cost-effective way, regardless of whether this outcome is brought about by punishment or by rehabilitation; and
 - A humanitarian orientation, which strives for offender rehabilitation as an end in and of itself, to address the many disadvantages that confront prisoners.³
- 3.2.7 The AIC further notes that there is a challenge for Government in reconciling the views on criminal sanctions. The Government can only achieve such reconciliation through engagement with the community. In leading any such discourse, Government must be mindful of striking an appropriate balance between the three often competing views, and managing community expectations. As the AIC concludes,
- 'Australian correctional services therefore hold the unenviable position of guaranteeing public safety, delivering just punishment and restitution, successfully rehabilitating, convincing the public that correctional rehabilitation can produce crime reduction*

2 ABC 666 Canberra, Canberra Drive: 19 May 2011

3 Australian Institute of Criminology, *Interventions for Prisoners Returning to the Community* (2005), 4.

benefits, and doing so with maximum productivity. Further, this must be done under the most intense public and media scrutiny, and in the context of demands for ever-more punitive responses to crime.'

- 3.2.8 Arguably this difficult balance is more pronounced in the youth justice system – where authorities have additional duties to the people in their care, as young people – than it would be in adult justice systems. According to the 2011 Productivity Commission's 'Report on Government Services' (RoGS), juvenile justice services '*aim to promote community safety and reduce youth offending by assisting young people to address their offending behaviour and take responsibility for the effect their behaviour has on victims and the wider community*'. While these are worthy goals of the system, this description does little to inform what the priority areas for the system should be.
- 3.2.9 The recent Noetic Solutions (Noetic) 'Strategic Review of the NSW Juvenile Justice System' (the Noetic Report) suggests that the aims of the youth justice system should be different to those of the adult system:
- 'If it is agreed that children and young people are both important to the community and different to adults, children and young people should be specifically excluded from the law and order debate. This is not to suggest that children and young people are not held accountable for their actions and youth crime not addressed. Rather that any debate is measured, separate from adult issues, evidence based, and recognises that early intervention and diversion are the underpinning principles of the NSW juvenile justice system.'*
- 3.2.10 In their report to this Review, Winkworth and White⁴ note that debates about the ACT youth justice system are prone to vigorous criticism from both ends of the spectrum: on one end there have been claims that the system fails to provide much needed services to vulnerable children or to protect their human rights; at the other end, the ACT Government has been criticised for failing to hold young people accountable or to protect society from dangerous young criminals.

Keeping young people connected to the village

- 3.2.11 In addition to determining the vision for the youth justice system, communities have a key stake in ensuring that its children and young people remain connected to its resources and that through these resources they are able to achieve positive outcomes. To ensure that this occurs, ongoing contact between young people and their 'village' is critical.
- 3.2.12 As discussed later in this chapter, connection with the community, and in particular family, is also enshrined in many relevant human rights standards. For example, s.11 of the ACT *Human Rights Act 2004* (the HR Act) gives special protection to the family, and Principle 170 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the POJ) states that:
- '...juveniles should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organisations.'*
- 3.2.13 These standards reflect the view (enshrined in a number of human rights instruments and in the HR Act) that young people should not be ostracised from their community merely because of their incarceration or involvement in the youth justice system. The community has a vested interest in ensuring this also. As Bazemore and Erbe have observed, the community benefits when it supports a young offender's successful reintegration:
- '...most offenders are not reintegrated by surveillance, the threat of parole violation, or services... Rather, based on the research on desistance and maturational reform, they are reintegrated by the actions of communities - and by their own actions, which may persuade community members and groups that they are worthy of support and guardianship and are even a resource to the community.'*⁵

Current role of the community

- 3.2.14 The ACT community's engagement with the youth justice system is arguably demonstrated by the commissioning of this Report, and the issues that were discussed in the media and the Legislative Assembly that led to its inception. However, several issues have emerged that have caused the Commission some concern about the level of community involvement in the youth justice system.
- 3.2.15 The Commission believes that the ACT Government has not sufficiently engaged the broader community in resolving the inherent tensions within the community regarding the purposes of the youth justice system. This is demonstrated by the participants in this Review who suggested the ACT youth justice system lacked a clear and shared vision. The Commission

⁴ Appendix B

⁵ Gordon Bazemore and Carsten Erbe, 'Operationalizing the Community Variable in Offender Reintegration: Theory and Practice for Developing Intervention Social Capital' (2003) *Youth Violence and Juvenile Justice*, 250

agrees with this view, and makes recommendations in Chapter 4 (vision) as to how the ACT Government can develop a community-embedded vision with accompanying accountability mechanisms.

- 3.2.16 The absence of a clear and shared vision has impacted on the broader community and its ability to engage with the youth justice system, and has fuelled a gap between community expectations of the system and the outcomes it will actually achieve. As one participant noted:
- 'in some ways, all new detention facilities will have a level of expectation from the community...when a Centre has been 'spruiked' like Bimberi this became even more heightened.'*
- 3.2.17 Similarly, the Commission believes the resources within the broader community have not been effectively deployed with a view to keeping young people connected to their 'village'. This is highlighted by the difference in levels of community engagement between the development of the Alexander Maconochie Centre (AMC) and Bimberi.
- 3.2.18 The recent reviews of the AMC by Knowledge Consulting (the Hamburger Review) and the Burnet Institute (the Burnet Review) document considerable community involvement in the oversight and operation of AMC. The reports are also indicative of the greater prominence and attention the AMC has drawn from the wider community. As the Hamburger Review noted:
- 'It is also fair to say that it is unlikely that another correctional centre exists in Australia with the high level of community interest that the AMC has achieved.'*⁶
- 3.2.19 Unfortunately, in the Commission's view, the non-government sector engagement at the AMC has not been mirrored in the development of similar partnerships at Bimberi. As a result, the level of engagement, scrutiny and influence regarding AMC that was achieved by the broad ACT community was not achieved in a similar way for Bimberi.
- 3.2.20 Overall, in the Commission's view, the ACT community has not been engaged effectively or meaningfully in setting a vision for the youth justice system, or in playing a role in its ongoing operations. In Chapter 4 (vision) of this Report, the Commission makes recommendations on how this position could be rectified.

3.3 Role of the ACT Government

- 3.3.1 Government has a vital role to play in embedding the youth justice system in a supportive community. While all stakeholders have a role to play, no single stakeholder is empowered to achieve this outcome more than the ACT Government.
- 3.3.2 The relevant human rights standards reflect this obligation. Rule 8 of the POJ states that '*Authorities should increase awareness that the care of detained juveniles and preparation for their return to society is a social service of great importance*'. This is consistent with the Commission's view that the ACT Government should lead the community in a discussion about the purpose and desired outcomes of the youth justice system.
- 3.3.3 In leading this process, the ACT Government, as a whole and in its individual Directorates, must be mindful of its obligation as a public authority under the HR Act. Section 40B requires that public authorities act in a way that is compatible with human rights, and when making decisions must give proper consideration to human rights.
- 3.3.4 Many human rights are relevant to the Government's role in relation to the youth justice system, and in its functions of leading the community in a conversation about the system. However, of particular note are:
- Protection of the child and family (s.11 HR Act);
 - Right to equality (s.8);
 - Right to life (s.9);
 - Protection from torture and cruel, inhuman or degrading treatment (s.10);
 - Right to privacy (s.12);
 - Freedom of expression (s.16);
 - Right to liberty and security of the person (s.2.18);
 - Humane treatment when deprived of liberty (s.19);
 - Children in the criminal process rights (s.20);
 - Right to fair trial (s.21); and
 - Rights in criminal proceedings (s.22).

6 Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre* (2011), 306.

Current role of the ACT Government

- 3.3.5 As noted above, the ACT Government has a leadership role to play in engaging the broad community.
- 3.3.6 The Commission believes that, in fulfilling that role, the ACT Government must lead a balanced debate within the ACT community in a way that sets and manages community expectations.

Leading a balanced debate and managing expectations

- 3.3.7 The Noetic Report suggests that the Government's responsibility includes '*ensuring that there is a balanced and informed debate on issues that attract community attention*'. The Report notes that juvenile justice is an area that often attracts ill-informed comment by a wide range of stakeholders. In particular, Noetic cites several NSW studies and surveys that have found that the community overestimates the possibility and extent of juvenile crime. There is potential for this overestimation to be even more pronounced in the ACT, as it is a small jurisdiction in which several media outlets seek to report on local news. Matters before the courts, particularly crimes involving young people, are frequently the subject of such reports. Noetic points out that although a large number of young people may commit offences, they do not offend very often. As discussed at Chapter 7, the recidivism rates for young people in custody in 2009-10 were 27%, and 37% for those on community based orders:
- 'This misconception then plays an important role in shaping the law and order policy debate as the often misleading negative views of young people and their involvement in crime focus public thinking. This wrongly diverts the policy discussion towards more punitive approaches, rather than what is suggested by the substantial evidence base.'*⁷
- 3.3.8 Noetic identifies that '*developing and maintaining a well informed and rational public debate is a key challenge in building a safer community and better juvenile justice system*'. The Noetic Report tasks Government with conducting community forums to educate the community about all aspects of the youth justice system. It suggests this should be coupled with positive media strategies to shape public knowledge and understanding.
- 3.3.9 While the Commission can understand Noetic's desire for the ACT Government to 'correct the record' on media reports that may unreasonably represent the issues of concern, it is perhaps unrealistic to expect MLAs to do so, particularly given the high volume of media reports and the at times sub judice nature of them. Commentators frequently include proximity, conflict and emotion as major factors in determining what is newsworthy.⁸ As such, stories about youth crime and Bimberi are likely to remain permanent features in the ACT media.
- 3.3.10 Winkworth and White note, '*One of the key issues with regard to the operation of Bimberi has been the lack of a common view throughout the Government, the Department and the ACT community more broadly, of its purpose and role in the overall response to young people at risk*'. A better approach might then be to ensure that the community's expectations about what the system and Bimberi can achieve are realistic.
- 3.3.11 Dr Allan Hawke AC's *Governing the City State: One ACT Government – One ACT Public Service* (the Hawke Report) cautions against the ACT Government seeking to raise community expectations about perfect solutions:
- 'In a democracy, successful community engagement, consultation and collaboration should not aim to achieve an outcome where everyone will be happy. Processes that seek to achieve that outcome are doomed to fail, or to never end.'*⁹
- 3.3.12 Human rights, Bimberi and the wider ACT youth justice system are intersecting issues where managing expectations will always be a challenge for Government. For example, strong statements that an institution is now, and in perpetuity, human rights compliant can create high expectations in the community about what the goal of these institutions are, and what investments such as new buildings can achieve. The Commission played a role in the planning and construction of Bimberi, and we are acutely mindful of how unique it was for an independent human rights body to play a role in shaping the design, construction and procedures underpinning a new youth justice centre. We are not disputing that human rights played a central role in the development of Bimberi, or that it is a unique facility. However, for the goals articulated by Government to be achieved there must be corresponding investment, support and oversight. Human rights compliance is not a static state, and relies on regular auditing. In short, while a major capital investment goes a long way to addressing these needs, the construction of one building alone cannot achieve these goals.
- 3.3.13 A number of human rights instruments, most particularly the Optional Protocol to the Convention Against Torture (OPCAT), recognise that closed environments must be regularly reviewed and assessed against human rights standards. Inevitably

7 Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System* (2010), 47.

8 Judy McGregor, *Restating news values: contemporary criteria for selecting the news*, <http://www.hss.bond.edu.au/ANZCA/papers/JMcGregorPaper.pdf>

9 Dr Allan Hawke AC, *Governing the City State: One ACT Government – One ACT Public Service* (2011).

there will be room for improvement identified in each audit, although with each review issues are likely to reduce. The Commission has observed the considerable human rights improvements that have occurred between the 2005 Human Rights Audit of the Quamby Youth Detention Centre and this one. However, consistent with the role of Government envisioned by the Noetic Report and others, the Commission believes that the Government should be mindful of being realistic with the community about the goals and achievements of institutions such as Bimberi.

- 3.3.14 Leading a balanced debate and managing expectations are key roles for the ACT Government regarding the youth justice system. In the Commission's view, the absence of a community-embedded vision for the youth justice system has hampered the ACT Government's ability to lead in this way.

Whole of Government approach

- 3.3.15 The Hawke Report also recommended a new collaborative approach to ACT Government generally. In particular, the single ACT Public Service (ACTPS) organisation model has seen all current Administrative Units in the ACTPS reconstituted into a single agency under a single Chief Executive. Some of the driving factors for this change relevant to this Review included:
- To assist in ensuring alignment of effort, creation of a shared understanding of priorities, and a cohesive and common sense of purpose;
 - To allow small groups performing similar work in different agencies, but struggling from a lack of critical mass and narrow collective skill base, to be combined into viable organisational units; and
 - To give impetus to alignment of information systems and other whole-of-government projects relating to records and document management.
- 3.3.16 A range of agencies are involved in the provision of services at Bimberi and to clients of Community Youth Justice (CYJ). The following is an abridged summary from ACT Government submission to this Report.
- 3.3.17 The Community Services Directorate (CSD) has lead responsibility for the ACT Government's response to vulnerable and at risk youth, including youth justice policy and youth justice targeted services. Youth justice policy and services are delivered across five main areas within the Youth Directorate:
- Youth Justice Policy;
 - Community Youth Justice (CYJ) - is responsible for the supervision of children and young people placed on a court order by the ACT Childrens Court or the ACT Supreme Court as well the preparation of court reports about young people as required. A specialist court officer attends all court matters relating to a child or young person to provide reports on current youth justice clients and advice on the custodial and community-based services available to children and young people;
 - Turnaround Program - provides services to young people aged between 12 and 18 years who have high and complex needs to assist them to establish social connectedness and positive life pathways;
 - ACT Youth Connection Program - is an outreach-based case management and support service for children and young people aged between 11 and 17 years; and
 - Bimberi Youth Justice Centre (Bimberi).
- 3.3.18 The Justice and Community Safety Directorate (JACSD) has the following responsibilities :
- Justice Policy – Legislation and justice policy development;
 - ACT Office of the Public Advocate - is an independent statutory office that promotes the interests, rights and dignity of members of the community. The office provides advocacy, advice, information and services for individuals, their families and those who work for them. The office can investigate and take action when people are exploited, neglected, abused or in need of guardianship;
 - ACT Policing;
 - Restorative Justice Unit (RJU) - works under the *Crimes (Restorative Justice) Act 2004* (ACT).
 - Ngambra Circle Sentencing Court - was expanded in 2010 to include Aboriginal and Torres Strait Islander young people. The Circle Sentencing Court provides a culturally relevant sentencing option for Aboriginal and Torres Strait Islander young people in the ACT Magistrate's and Children's Court jurisdictions. An Aboriginal or Torres Strait Islander young person who has pleaded guilty to an offence may be referred to the Circle Sentencing Court for an assessment to have their matter heard in a Circle Court. The administration for the circle court and the coordinator position sit within the RJU;
 - ACT Corrective Services - under an arrangement with CSD the ACT Corrective Services' Court Transport Unit (CTU) provides a transportation and escort service between Bimberi and ACT courts for young people remanded in custody or sentenced at the centre. The CTU's custodial services at the courts also extend to appearances in court of young people in custody. In respect to young people arrested and placed in custody by ACT Policing, the CTU transports young people to Bimberi as soon as practicable after arrest;

- The Victims of Crime Commissioner - is a statutory office established by the *Victims of Crime Act 1994* (ACT). The Commissioner is an independent statutory officer responsible for managing Victim Support ACT, which provides a one-stop shop of services for victims of crime; and
- ACT Children's Court - is a specialised court within the ACT judicial system that deals with matters involving children and young people. The ACT Children's Court is part of the ACT Magistrate's Court.

3.3.19 The Education and Training Directorate (ETD) has the following responsibilities:

- The ACT Youth Commitment - through the National Partnership on Youth Attainment and Transitions, the ACT has agreed to meet a range of targets to improve participation, lift qualifications and support successful transitions. The National Partnership is a joint commitment with the Australian Government to work collaboratively to increase the educational engagement, attainment and successful transitions of young people in the ACT; and
- The Murrumbidgee Education and Training Centre (METC) – is an ETD School Related Institution located within Bimberi. METC provides a diverse range of education and vocation programs for young people remanded and committed to custody. Students participate in a number of integrated programs including numeracy and literacy, an arts and music program, vocational education and training in the areas of wood and metalwork and introductory trade programs. Vocational education is supplemented by short course certificated trade programs in construction and hospitality. 2011 is METC's third year of operation.

3.3.20 The ACT Health Directorate (ACT Health) has the following responsibilities within the youth justice system:

- Delivery of the ACT Children's and Young People's Justice Health Services Plan 2008-2012;
- Provision of general and mental health services to young people in the ACT community including young people on community-based supervision; and
- Funding a range of external providers to provide services to young people in both detention and community-based supervision. These services include alcohol and other drug assessment, case management and support services, medical services, residential programs, group and program assessment, and therapy services.

3.3.21 As will be detailed throughout this Report, many participants in the Review reported to the Commission that often these agencies did not work collaboratively, or they had different priorities in relation to the young people at Bimberi. In Chapter 4 (vision) the Commission makes recommendations on developing mechanisms to drive and foster a whole-of-Government approach.

Transparency

3.3.22 Government's commitment to transparency is critical in driving community confidence in its services and in evaluating its decisions. As the Commonwealth Government's recent Government 2.0 Taskforce observed in its 'Engage' report:

*'Greater openness and transparency will mean that government is more exposed to public scrutiny and criticism. The benefits to be realised include improved access to new ideas and informed feedback.'*¹⁰

3.3.23 Some government and community participants in the Review reported that CSD had, at times, been slow to release reports commissioned by the Directorate, even though these projects had sometimes required significant investment from government and community agencies, families, and/or children and young people, and the results of this research could help improve the quality of supports available to the broad ACT community.

3.3.24 The Commission understands that, in some cases, such research and evaluation projects might include sensitive material and that releasing them in their entirety might be inappropriate, compromise the privacy of individuals, or be detrimental to particular government areas or programs. However, the Commission supports greater transparency, and the wider distribution of research findings so that they may be used to guide service improvement across the sector.

Role of executive government

3.3.25 In summary, it is clear that substantial ACT Government resources have been committed to Bimberi and the wider youth justice system. Nonetheless, throughout this Report we note that there has at times been a lack of cohesion across the various agencies in delivering these services. Some agencies have also suffered from a lack of internal agreement about the manner in which services should be delivered. Contributing to these issues, some participants have also felt let down by the very high expectations that were promoted by the ACT Government with the opening of Bimberi.

10 Commonwealth Government, *Engage: Getting on with Government 2.0: Report of the Government 2.0 Taskforce* (2009), 2.

3.4 Role of the ACT Legislative Assembly

- 3.4.1 The stakeholder that most represents the broad community is the ACT Legislative Assembly. This Report was the result of the Legislative Assembly's continued concerns with issues associated with Bimberi, most particularly concerns raised by staff.
- 3.4.2 Through a variety of means, the Assembly has over many years sought to inform and develop a vision for the youth justice system, and hold the Government to account for that vision. Most specifically, this has occurred through a number of Standing Committee reports, including:
- Standing Committee on Education, Community Services and Recreation, 'The Government's response to recommendations 1 and 3 of Coroner Somes' inquest into a death at Quamby', 2001;
 - Standing Committee on Community Services and Social Equity, 'Inquiry into the Rights, Interests and Wellbeing of Children and Young People', 2003;
 - Standing Committee on Community Services and Social Equity, 'The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence', 2004; and
 - Standing Committee on Community Services and Social Equity, 'One way roads out of Quamby: Transition options for young people exiting juvenile detention in the ACT', 2004.
- 3.4.3 In addition, in recent years, many Questions on Notice, Questions without Notice, Motions, Matters of Public Importance and debates have focused on Bimberi, Quamby and the broader youth justice system. As noted above, a number of the recommendations and ideas canvassed in those Reports and debates have not been actioned and will again be repeated in the recommendations of this Report. The recent Noetic Report of the NSW system noted the importance of the political sphere's influence on the successful improvement of the youth justice system:
- 'There has been a growing body of evidence on effective ways to deal with juvenile offending and there is now an opportunity to utilise this evidence to improve the juvenile justice system, starting with the political level.'*
- 3.4.4 Winkworth and White observe that most Australian youth justice systems articulate goals that are consistent with both utilitarian and humanitarian perspectives towards youth justice. However, they do this often within highly reactive political environments that at times push strongly for punitive and retributive youth justice systems.¹¹
- 3.4.5 Noetic found that the Victorian Government uniquely enjoyed a bipartisan approach to juvenile justice, which was a 'key driver of that state's successful outcomes in the juvenile justice area'.
- 'A bipartisan approach has ensured a focus on evidence based policy, rather than 'scoring political points' by criticizing the opposing party's stance on juvenile justice issues.'*
- 3.4.6 Conversely, Noetic found that New South Wales had greater bipartisan divisiveness on 'law and order issues'. To enable reform in that jurisdiction, the Noetic Report recommended that:
- 'Achieving a bipartisan approach in NSW could be based around agreement of the following key issues:*
- a. recognition that children and young people are both important to the community and different to adults;*
 - b. that law and order discourse will exclude children and young people;*
 - c. that rehabilitation and diversion of children and young people underpin the State's approach to juvenile justice while maintaining that they take responsibility and are held accountable for their actions; and*
 - d. Parliamentary debates on juvenile justice issues will be on evidence rather than an emotive basis.*
- Such an agreement would not be intended to lock a government into specific strategies or policies, but rather, ensure a considered and measured approach by politicians.'*
- 3.4.7 While the ACT youth justice system has been a regular topic of debate in the ACT Legislative Assembly, it is the Commission's view that the level of divisiveness in NSW does not exist here. In fact, both the Hamburger Review and the Hawke Report noted a high level of commitment across all levels of the ACT Government and community to driving a human rights culture in the ACT.¹²
- 3.4.8 However, the Commission does see value in bringing Noetic's recommendations to the NSW Parliament to the attention of ACT MLAs for their consideration. If the Assembly were to resolve an agreement like this of its own accord, it would be a particularly powerful message to the broader community about the importance of collaboration on youth justice issues.
- 3.4.9 In summary, it is the Commission's view that the Legislative Assembly has historically sought to improve the youth justice

¹¹ See Appendix B

¹² Hawke, above n 8; Knowledge Consulting, above n 4.

system in the ACT, by holding the Government of the day to account in various ways. Nonetheless, consistent with the recommendations of the Hawke Review, we believe there are greater opportunities for the Legislative Assembly to contribute.

3.5 Working with the corporate sector

- 3.5.1 Alongside the rest of the community, there is a growing case for more actively engaging business leaders to support vulnerable children, young people and their families, and there are a number of examples of positive outcomes for individuals, communities and businesses when this is done effectively.¹³ According to the Centre for Corporate Public Affairs,¹⁴ the past decade has seen rapid changes in the way that the corporate community invests in the Australian community. The Business Council of Australia observed that businesses can both provide substantial support to communities and receive significant rewards:

*'Corporations operate within the community. For corporations to be sustainable and successful in the long term, they need to engage with the community to take account of community attitudes. Successful companies therefore factor into their forward strategies activities that manage the challenges and risks to the community and capture the opportunities that community engagement can bring. To be valid, these activities must deliver benefits both to the community and shareholders of the corporation.'*¹⁵

- 3.5.2 Corporations can engage with human service systems in a number of ways. They can:
- Promote inclusive workplaces that enable vulnerable groups to find and sustain employment;
 - They can develop business ventures that aim to improve the lives of community members; and
 - They can create philanthropic and charitable ventures that can support community organisations to assist within their local areas.
- 3.5.3 A leading example of corporate engagement in youth justice in Australia is 'Serving Time' – a small T-shirt printing business operated in partnership with Toll and the Penhyn Youth Unit at Victoria's Port Phillip Prison. T-shirts are designed, manufactured and marketed by young people with all profits being donated to charities that support vulnerable children and young people. Serving Time is offered as part of a small-business education program with objectives to develop skills, reduce risk of reoffending, and assist young people to become positive and productive members of the community.¹⁶
- 3.5.4 The Commission was pleased to hear about partnerships that were being developed with local businesses and corporate groups: families spoke positively about employers who had given their children 'a go' by offering them apprenticeships, job mentoring and ongoing employment assistance; organisations spoke about grants they had received from local clubs; and the Commission is aware of sporting teams that visited young people while incarcerated, to offer advice and inspire confidence. A number of staff who participated in the Review said that these ventures were some of the most effective in supporting young people in the system.
- 3.5.5 The Commission heard about a young person involved with Community Youth Justice whose parents had organised an apprenticeship in a local trade. Although the young person sometimes found it difficult to maintain his enthusiasm for the work, his boss and co-workers provided him with encouragement and 'pulled him into line' when he came to work under the influence of drugs or missed shifts without explanation. His co-workers also invited the young man to play in their sporting team and to socialise with them and their families, thus developing his support network and his sense of belonging. His sporting talents resulted in him being offered coaching work and mentoring a group of children, a task that he thoroughly enjoyed and which brought him positive recognition and personal pride. When the young man reoffended and was placed back in detention, his employer held his job for him and co-workers kept in contact so that positive relationships could be sustained.
- 3.5.6 Such stories, while largely positive, are often ad hoc and uncoordinated, and frequently rely on individuals using personal connections to establish relationships with the corporate sector. The Commission encourages the creation of links between the youth justice system and the corporate sector, broadly, and between individual young people and businesses, in a narrower sense, and hopes that such relationships occur more strategically and systematically so that positive outcomes are achieved for larger numbers of young people.

13 Leeora Black, *Towards understanding corporate social responsibility in Australia (2001)* Proceedings of the International Association of Business and Society 2001

14 Corporate Public Affairs, *Corporate Community Investment in Australia (2007)*, 7

15 Business Council of Australia Submission to the Parliamentary Joint Committee on Corporations and Financial Services (2005)

16 See: www.servingtime.org/

- 3.5.7 We note the ACT Government's recent investment, in partnership with Social Ventures Australia, the community and corporate sectors, in creating a Social Enterprise Hub for marginalised workers.
- 3.5.8 The Commission encourages government and community agencies to create stronger partnerships with the corporate sector, and to develop pathways for young people to engage in positive and sustainable activities.
- 3.5.9 The Commission also encourages the youth justice system to consider its own corporate social responsibility, and how it might support its staff and clients to more actively engage in the life of the broader community. The Western Australian Department of Corrective Services has attempted to do this, asserting that 'Corporate Social Responsibility' is one of its key mechanisms for achieving its vision of providing *'a safe, secure and decent corrective services which contribute[s] to community safety and reduces offenders' involvement in the justice system'*.¹⁷
- 3.5.10 Examples of activities that promote social responsibility in other jurisdictions include:
- The Justice Pups program in NSW,¹⁸ where incarcerated young people train puppies to become assistance dogs for people with disabilities;
 - The 10x14 Bricks project¹⁹, where young people in a South Australian secure care facility developed an interactive DVD for schools to encourage students to make good decisions and to avoid crime; and
 - The community-based work camps in Western Australia where prisoners engage with communities and work on local projects with high reparative value while developing important accredited skills.²⁰
- 3.5.11 Local charities and not-for-profits such as the Society of St Vincent de Paul and the Alternatives to Violence project have expressed an interest in working with the youth justice system to develop opportunities for young people to participate in altruistic activities that give back to the communities around them. The Commission encourages Bimberi and Community Youth Justice to consider how such projects might be supported.
- 3.5.12 The Commission recognises that Community Youth Justice has supported similar initiatives in the past, such as the Community Service Work Team which took young people on CYJ orders out to do gardening, window washing and other community services, and encourages CSD to create similar opportunities in partnership with young people and local communities.

3.6 Working with the ACT youth and community sector

- 3.6.1 It is highly unlikely that any one program or system for youth justice has the scope or the capacity to redress the broad and complex needs of clients alone, and that young people's offending behaviours are often contextual and require community-wide responses so that sustainable outcomes can be achieved. Therefore, it is important to embed the youth justice system in the broader community and to have more positive engagement with all levels of Government. It is vital that the youth justice system sits within the broader child welfare and youth support systems and draws on their resources, skills and expertise.
- 3.6.2 This type of positioning has many positive returns, but requires considerable amounts of community engagement at all levels within the service system:²¹ at the governance level; at the program planning, development and implementation levels; and at the individual case level. It promotes a level of integration that enables a consistency of vision, a congruence of practice approach and a continuity of care that maximises partner buy-in and sustains positive outcomes. It also harnesses the knowledge and experience of community partners, encourages active participation in the life of the Centre and fosters a commitment to ensuring positive outcomes for young people. Working at and with the Centre, enables community stakeholders to develop an understanding of the unique challenges and opportunities emerging within the correctional environment and promotes goodwill: it fosters critical friendships and creates greater opportunities for more innovative and creative responses to problems.

The nature of the sector

- 3.6.3 The ACT youth and community sectors are made up of a diverse range of programs auspiced by Government and non-government agencies and provided by private practitioners, volunteers and youth, community and social workers. In the ACT, the largest provider of services is Government (primarily through CSD, ACT Health and ETD), followed by the non-

17 WA Department of Corrective Services *Annual Report 2009-10* (2010)

18 Run at the Frank Baxter Juvenile Justice Centre, NSW

19 Change Media, '10x14 Bricks: Stories from Youth in Lockup' (2009)

20 Kathy Csaba, 'Adult work camps – Achieving rehabilitation outcomes in partnership with the community' (2000) *Conference Proceedings: Reducing criminality – Partnerships and Best Practice*, AIC

21 Christopher Ansell, 'Community embeddedness and collaborative governance in the San Francisco Bay Area Environmental Movement', *Social Movements and Networks. Relational Approaches to Collective Action* (2003)

government sector through the Youth Services Program (funded by the Office of Children, Youth and Family Support). According to the Youth Coalition of the ACT (YCACT), the ACT's peak youth sector body, the youth sector 'provides a range of services such as art, sport and recreation, education and training, case work and management, personal support, housing and health'.²²

- 3.6.4 Over 60 participants from a variety of youth and community services provided their views on the current system, and ways in which it might be improved. The Commission was impressed by the level of engagement of a number of community based organisations who were achieving significant outcomes with and for young people and their families.

Systems-level limitations

- 3.6.5 In the course of this Review, youth and community organisations voiced an interest in working with Bimberi and Community Youth Justice in supporting young people throughout their engagement with the youth justice system, but highlighted a number of key systems-level issues that restricted their ability to do so. At a general level, they highlighted the following barriers:

- **Inappropriate funding models and service purchasing arrangements:** Participants reported that programs funded by ACT Government were often short-term and did not foster a sense of stability or enable long-term planning or implementation. Pilot programs, in particular, were difficult to implement and many of the outcomes proved to be unsustainable. Block funding attached to at-risk families and communities was identified as one facility that might assist organisations to work more collaboratively, with partnerships being developed to meet the needs of specific clients.
- **Competitive tendering:** Participants reported that competitive tendering arrangements create a culture of distrust and limit organisations' willingness to develop strong partnerships, to share information about effective programs or to service clients in a joined-up way.
- **Limited resourcing of programs:** Community participants reported that community organisations were often not funded to participate in system-wide collaborative activities and voiced a level of frustration that government workers expected them to 'make the first move' in collaborative activities. They believed that there needs to be 'some give and take' and that contracts need to reflect the time and energy required to work in a collaborative way.
- **A lack of clarity regarding who is responsible and best placed to support complex cases:** Some government and community agencies reported that the current Youth Support Framework (YSP) does not actively encourage the provision of services to young people with complex needs or provide incentives for them to do so.
- **A lack of coordination of services** was also highlighted in interviews with both government and community providers. Noetic Solutions also highlighted this in its report on the ACT Diversion Framework, citing one participant who suggested that young people in the ACT were 'over serviced, but under supported'.

Governance

- 3.6.6 There is little evidence to suggest that community organisations were involved in helping to create a vision for the youth justice system or to support its implementation at Bimberi. This is unlike what occurred at the AMC where the peak body (ACTCOSS), key stakeholder groups and services most likely to assist prisoners while incarcerated and on their re-entry were actively consulted and engaged in guiding and advising on the creation of the Centre, in designing its programs and in providing services and offering feedback on their implementation. It appears that this contrasting situation arose because in the case of the AMC these players actively and assertively offered their views and strongly advocated for openness and transparency, and that key players in the ACT Government championed this level of community participation and enabled the development of working partnerships. Neither of these factors seem to have occurred successfully prior to and after Bimberi's opening.
- 3.6.7 As noted above, current engagement of the ACT community in guiding the direction of Bimberi and the broader youth justice system is limited, and during this Review some community agencies sought the need for greater involvement. This view is not dissimilar from that made of the 2004 ACT Legislative Assembly Standing Committee on Community Services and Social Equity, which recommended:
- '...that the Government establish an ongoing reference group, comprising key Quamby staff and community agencies, to develop a Memorandum of Understanding regarding community agency involvement at Quamby and to provide a forum for ongoing communication.'*
- 3.6.8 In Chapter 4 (vision), the Commission recommends the establishment of Youth Justice Advisory Panel.

22 Youth Coalition of the ACT 'Motivation, Money, Making a Difference: A Profile of the ACT Youth Sector Workforce' (2010)

Program development and delivery of support

- 3.6.9 Before noting some of the limitations of community–Centre relationships, it is important to recognise that there are a number of examples of positive collaborations between Bimberi and organisations within the ACT youth sector. The Commission observed, for example, a number of collaborations with the Police Citizens Youth Club's (PCYC) RecLink Program, Bimberi Client Services' staff and staff from the Murrumbidgee Education and Training Centre.

Promising Practice: In 2010 PCYC worked with staff and young people at Bimberi to construct, paint and then launch a number of boats. It was hoped that through their participation, young people would develop their skills, increase their sense of achievement and make positive connections to the PCYC service which could be sustained throughcare. Although stakeholders believed that the program could have been further enhanced if there was greater planning, communication and negotiation, there was agreement that the program achieved positive outcomes.

- 3.6.10 Although there are a small number of community organisations who have enjoyed on-going positive relationships with Bimberi since its opening, most report ongoing challenges in sustaining good working arrangements. Community organisations felt as though they were invited into the Centre to provide programs or services (the nature and purpose of which were pre-determined by the Centre) with limited consultation or negotiation. Some believed that these programs and services did not respond to the needs they perceived young people had, nor the approach (which primarily was relationship-based) that their services adopted. Participants reported feeling disrespected professionally, and frustrated that their experience and views were not accepted.
- 3.6.11 In addition, services often reported that they were not informed of changing operational issues and were turned away from the Centre when young people were locked down, or when staffing shortages meant that young people could not be supervised during sessions. This reportedly led to frustration, and eroded community goodwill.
- 3.6.12 Conversely, Bimberi management reported that its engagement with community organisations was often difficult, and that services were unable to provide strong evidence that their programs were responsive to the needs of young people or congruent with the philosophy and approach that existed within the Centre. With limited time available for programs, CSD reasonably implemented a policy whereby young people must engage in education programs from 9.00am to 3.00pm, only allowing services, visitors and lawyers to enter the Centre between 3.00pm and 5.00pm.
- 3.6.13 As we will discuss in Chapter 9 (programming) it would appear that rehabilitative programs and those oriented towards helping young people increase their level of social connectedness and their living and problem-solving skills, which need to be central in Centre programming, have been few in number since Bimberi opened, although some progress has been made in recent times. Recognising that programs that encourage behavioural change need to be mirrored in the community for them to be effective and sustainable, the Commission suggests that there is a need for more evidence-based programs provided by community organisations who can replicate them for young people post-release.
- 3.6.14 The Commission also recognises that community engagement at the program level needs to be well negotiated, conceived, defined, communicated and implemented. In 2004, the Legislative Assembly Standing Committee on Community Services and Social Equity recommended 'a Memorandum of Understanding (MOU) between all key agencies, including Disability, Housing and Community Services, outlining roles and responsibilities for the provision of services to young people exiting Quamby'. The Commission agrees with the need for an MOU and recommends that the scope of such an arrangement be broadened to include consideration of programs both at Bimberi and outside the Centre.

Recommendation 3.1: The ACT Government develop an MOU between all key agencies which outlines the roles and responsibilities for the provision of services to young people while in Bimberi, and when exiting Bimberi.

At the individual level

- 3.6.15 Before addressing some of the challenges that have affected the way that communities support young people, the Commission would like to acknowledge that there are many examples where services have worked together with Bimberi and Community Youth Justice to achieve positive outcomes for young people. The Commission heard, for example, of one young Aboriginal person who had been incarcerated for a significant period of his life and who had expressed his determination to 'make good' and to create a new future for himself. With the support of a regional community service with strong connections to the Aboriginal community the young man applied for an apprenticeship at a local car dealer who then took him on and helped him maintain his employment. In addition to the young person's determination, this arrangement has been a success because: the regional community organisation has spent considerable time providing the

young man with personal support and encouraging him to continue even when things were difficult; an Aboriginal Liaison Officer with the AFP has provided transport for the young person to the dealership each day; the dealership has recognised the challenges of 'breaking free' from cycles of difficult behaviours and has actively mentored him and encouraged his progress, standing by him even when he faltered in his progress; and his girlfriend has believed in him and actively supported him. This excellent example of collaboration demonstrates the benefits of communities – in this case including the police, corporate organisations, young people and families – working together to sustain positive outcomes. The young person has maintained ongoing employment, despite a number of significant setbacks and has developed a strong sense of self.

- 3.6.16 Although young people at Bimberi are some of the most vulnerable and disadvantaged in the ACT community, the Commission was concerned to note that their engagement with community services and supports were often limited prior to, through and after periods of incarceration. This observation was not dissimilar to the findings of the Institute of Child Protection Studies (ICPS) report *Lost In Transition*, which found that the longer young people stayed in the system the less support they received from involuntary community-based programs.
- 3.6.17 Reflecting on the key barriers that kept community organisations from forming and sustaining positive connections with young people while incarcerated, the ICPS suggested that:
- There was limited identification by Quamby of young people's natural and formal support networks and little engagement of these support people with the Centre;
 - Limited communication processes kept support people unaware that young people had been incarcerated, about how they were being managed, about how support people might best sustain relationships;
 - Only services that young people specifically requested were contacted or invited to have visits or to participate in support plans;
 - Lack of time and resources within the case management team made it difficult to foster and sustain community connections;
 - There was a lack of program scope for community organisations to continue to support young people while incarcerated;
 - There was a lack of opportunities for community-based services to do outreach; and
 - There was an unwillingness of Quamby management to allow group-based programs²³.
- 3.6.18 After conducting interviews, reading case plans and observing current practice, the Commission is of the view that although progress has been made, these issues continue at Bimberi, and restrict the capacity of community-based programs to amply support young people before, during, and after detention.
- 3.6.19 At the same time, the Commission is of the view that the youth and community sectors might more actively work with young people and other services in the youth justice system to achieve better outcomes. The Commission is concerned that although the ACT Government funds a range of services to work with vulnerable young people, many of the young people engaged in the youth justice system continue to receive little or no appropriate support, and continue to cycle through the courts and through detention. This view was shared by a number of participants.
- 3.6.20 Some participants, for example, suggested that the youth sector often worked in 'crisis mode', with their focus being on supporting young people in the 'here and now' rather than on planning for ongoing involvement and support. They suggested that such a view is short-sighted and does not recognise that young people in the youth justice system often need longer periods, and models, of engagement that allow them to move in and out of programs. This requires organisations to be more flexible and less punitive in their responses. Current practices such as closing young people's cases for failing to attend a number of appointments; exiting young people from services for breaking rules; and requiring young people to come to services rather than providing assertive outreach were all considered unproductive – particularly for this group of young people. Community organisations also suggested that current models of service delivery (which were often reinforced or driven by government contracts) placed too much of an emphasis on 'fixing' young people and achieving short-term outcomes which oriented their services to short-term involvement.
- 3.6.21 Community workers also noted that they sometimes felt ill-equipped to provide assistance to young people in the system, recognising that many had high and complex needs and presented with behaviours that made supporting them difficult, particularly in group settings (such as in youth refuges). They also reported that they needed to develop more partnerships across the community sector to better meet the broad needs of these young people rather than perceiving these needs as being too great and outside the current capacity of single workers within single services. In one forum, a group of

23 Tim Moore, Vicky Saunders and Morag McArthur *Lost in Transition: Exploring young people's transition from youth detention in the ACT (2008)*

experienced community workers called for greater partnerships among community organisations to ensure that young people and their families no longer slipped through the gaps, but also pointed to limited resources available to effectively engage in cooperative processes (such as case conference, cross-organisation planning and ongoing communicative processes).

- 3.6.22 There was also a view that young people in the youth justice system are considered an 'add on' group whose special needs separated them from the broad youth population and warranted a differentiated response. Although the Commission recognises the additional vulnerabilities of young people in the youth justice system, it was concerning to hear that some community agencies believe that they were not contracted to provide assistance to young people in the youth justice system and that they would require additional resources to do so. The Commission is of the view that because the youth peak and youth services are funded to support young people broadly, they need to integrate young people from the youth justice system into their core work. It is also of the view that young people in the youth justice system might also fit within the target groups of specialist youth programs (for example, studies have shown that young people in youth detention often have caring responsibilities, mental health issues, alcohol and other drug problems and experience homelessness). A young person's engagement in the youth justice system may, in fact, be indicative of these underlying issues and not preclude them from mainstream or targeted responses.
- 3.6.23 As noted elsewhere, this may require specialist training and sector development. The Commission notes the work of the workforce subcommittee of the Children and Young People's Shared Responsibility Steering Committee in progressing these issues.
- 3.6.24 The Commission also understands that a service for young people leaving detention is to be established under the new Youth and Family Support Program, and encourages government and community agencies to work together to ensure that young people are provided services throughout the system.

3.7 Role of family

*'For most inmates who face a prison term, their families will also begin a sentence: of physical, social, and psychological hardship. They will do so, in most instances, with a minimum of resources to draw upon and with little power to meet the additional demands on their trouble-plagued lives.'*²⁴

Best practice

- 3.7.1 Family plays a vital part in the lives of young people and can profoundly affect their life experiences and outcomes. Families can provide young people with a sense of belonging and stability and with social capital, which can lead to positive outcomes (such as emotional and physical wellbeing and social connectedness) and reduce the likelihood of current and future criminal behaviour.²⁵ However, families can also be risk-filled and lead to a number of negative outcomes, including (but not limited to) poor social, emotional, educational and health outcomes and increase young people's likelihood of homelessness, drug-taking and criminal behaviour.
- 3.7.2 A number of human rights documents highlight the importance of contact with families and of their continued involvement in the life of the young person,²⁶ there is strong evidence to suggest that family-focused early intervention and prevention programs are most effective in reducing young people's criminal behaviours, interactions with youth justice systems and their likelihood of becoming life-course persistent offenders. Investment in programs that target young people early in their lives and early in the life of problems are essential to ensuring that difficulties are resolved.
- 3.7.3 Although evidence of the effectiveness of family-based interventions is still limited in the international arena, evaluation studies within the mental health and youth justice sectors generally argue that family-related issues need to be identified and addressed in the provision of services to young people with problematic behaviours.²⁷ Broad claims cannot be made about family-based interventions generally. However, Lipsey and Wilson²⁸ found that interventions focusing on family functioning were some of the most effective in reducing recidivism.

24 Jorgensen, Hernandez and Warren in Fiona Begg, *Serving Time on the Outside: A survey of Visitors to Correctional Centres in the Wacool Region, Queensland* (2002)

25 Brigid Daniel, Sarah Wassell, & Robbie Gilligan, *Child Development for Child Care and Protection Workers* (1999)

26 See for example r.30 of the POJ, Art 20 of the CROC;

27 Elly Robinson, Lyndal Power & David Allan, *What works with adolescents: Family connections and involvement in interventions for adolescent problems*, Australian Family Relationship Clearinghouse (2010), No.16

28 Mark Lipsey & David Wilson Effective intervention for serious juvenile offenders: a synthesis of research, in Loeber R & Farrington D (eds), *Serious and violent juvenile offenders: risk factors and successful interventions*. 340

Current experience of families in the youth justice system

- 3.7.4 This Review was informed by 24 family members who participated in interviews and focus groups, and by workers and young people who considered issues for families within the ACT youth justice system. In particular, the Commission was informed by a group workshop with Aboriginal and Torres Strait Islander families supported by Northside Community Services, where grandparents, parents and young people talked about the challenges they faced across the youth justice system and the ways that they would like to be supported into the future. We appreciate their involvement and were heartened to hear about their ongoing commitment to their children, and concerned by their stories of hardship and frustration.
- 3.7.5 Participating family members reported that they felt as if they were often seen as problems and, in a large number of cases, as primarily responsible for their children's criminal behaviours and poor outcomes within the system. Many felt belittled by their involvement with statutory and non-statutory systems and services and generally felt excluded from decision-making programs.
- 3.7.6 Although the families who participated in the Review demonstrated a high level of willingness to participate in the system, staff at Bimberi and within Community Youth Justice observed that engaging families was often difficult because either young people were reluctant to have them involved, or families were reluctant to be actively involved. In other cases, families were considered to have a detrimental effect on the young person's life (with many having experienced family violence and conflict and living within families affected by criminal and otherwise antisocial behaviour) and were therefore restricted from having ongoing contact. These issues will be further discussed below.

Prior to engagement with the system

- 3.7.7 Many of the families of young people involved in the youth justice system have been engaged in the broader welfare system for many years. In *Lost in Transition*, the ICPS found that most of the young people in their sample had prior involvement with Care and Protection Services and had often been identified at school as being at-risk:
- 'Over half of the young people [in the project's sample] had lives that were characterised by chaos and instability from an early age. These young people had family members who had their own alcohol or other drug problems, who were engaged in criminal behaviour, who were unable to provide children with safe, stable and positive home environments. By late primary school these young people had begun to drop out of education, drink heavily and commit petty offences. Some of these young people had parents who tried to protect their children from the negative influences in their home environments while others failed to do so. Most had some involvement with Care and Protection Services, with at least four spending some time in Out of Home Care. These young people began to appear before the courts around the age of 12 and they experienced constant recycling through the juvenile justice system – escalating their crimes from petty theft and misdemeanours to car thefts and aggravated assaults. Each time they exited Quamby they failed to develop strong connections with schools, positive peers or support networks and often returned within 12 months of release. One young person had been remanded at Quamby 15 times [already].'*²⁹
- 3.7.8 These issues were also highlighted by a number of community organisations and CSD staff.
- 3.7.9 Relatives who met with the Commission often felt that families experiencing difficulties should be actively supported outside of the statutory system to ensure that issues might be curbed early. As one mother put it, families *'should be bombarded with help and support in the beginning, [the system should be] trying to find out what is happening'*. Further discussion about early intervention and diversion can be found in Chapter 7 (prevention and diversion).

While in the system

At Court

- 3.7.10 A number of families who were involved in this Review reported that their interactions with the Childrens Court were difficult. Often unaware of court proceedings and often unsupported within it, parents reported feeling uninformed and unable to provide input into a process that would influence their child's life for some time to come. As one parent noted:
- 'Many caregivers have little information about what to expect when their child or young person attends court. This is frightening and contributes to the already large bank of stress building within the person. People are embarrassed or too shocked to ask and suffer needlessly.'*

29 Tim Moore, Vicky Saunders and Morag McArthur *Lost In Transition: Exploring young people's experiences of transition from youth detention in the ACT* (2011)

- 3.7.11 Parents reported difficulty accessing their child's legal representative and were unsure as to how they might raise their thoughts and concerns to magistrates presiding over their child's case. They called for better information resources to be made available to parents, particularly those new to the system, and suggested that a court liaison officer might be beneficial in assisting families to understand their rights and to participate more effectively throughout the process.

At Bimberi

- 3.7.12 According to a journal article written by former Youth Directorate Director Paul Wyles:
- 'Bimberi achieves [family engagement] in a number of ways, but most importantly through a purpose-built visits centre. The centre caters for contact and non-contact visits, has an open area with tables arranged in café style, a children's play area, an outdoor area with seating and play equipment, private meeting rooms for consultations with legal representatives or for other private meetings. Importantly, the visits centre has been designed to be a friendly and welcoming place and provides a barbeque that can be used by families to celebrate special occasions with residents.'*³⁰
- 3.7.13 Although the facilities at the Centre do attempt to foster ongoing family connections, participating families reported mixed experiences in continuing contact with their children while detained at Bimberi. However, some families, particularly those whose children had been incarcerated for some time, reported having good relationships with individual workers and feeling comfortable visiting the children at the Centre.
- 3.7.14 Many families reported difficulties in maintaining positive contact with their children. Some of the key concerns raised by young people and their families included:
- **Lack of transport options:** With only a few buses going to Bimberi each day, some families were unable to visit their children during the allocated visiting times;
 - **Long waits to be put on young people's 'approved' lists:** Some families reported difficulty in having members approved for visits at the Centre. They recognised that this was often due to the case management team's short-staffing but reported a level of frustration;
 - **Limited accessible visiting times:** Families reported that visiting times were often at times that weren't manageable (particularly those with young children, those travelling interstate and those with transport needs). They were glad that Saturday visits had been scheduled in 2011 and called for more day-time opportunities to see their children;
 - **Poor communication:** A number of families felt as though they were not informed about their children's progress and that they would like to know more about why decisions (such as those relating to behaviour management, programming and medical treatment) were made; and
 - **Lack of involvement in decision-making:** In addition to wanting to know what was happening with their children, parents wanted to be more actively involved in decision-making. Some talked about not being invited to case conferences, not being consulted about health diagnoses and treatment plans or about longer-term decisions such as where the young person might stay, what education and employment options might be offered and how issues (including those that were family related) might be dealt with. Often knowing the most about their children (their wants, needs and histories), parents believed that their involvement would not only be encouraging for them as parents, but also effective in achieving positive outcomes.
- 3.7.15 A number of families raised their frustration about what they perceived to be the system's lack of respect for them and their situation. Some talked about occasions when they arrived at the Centre and were turned away because visits had been cancelled, and occasions when they believed workers had treated them without the dignity they deserved. Examples were shared of grandparents being told that they would have to sit in the car park because too many family members had arrived for a visit.

Needs of families

- 3.7.16 In consultations related to diversionary frameworks for the ACT, Noetic Solutions found that:
- 'Stakeholders believed that the family environment was one of (if not the) primary factor determining whether a young person would come into contact with the youth justice system and whether they would re-offend. Therefore, they considered services and programs that were specifically targeted at improving the ability of the young person's family or community to support them would be most successful.'*

30 Paul Wyles 'Building a human rights youth justice system' (2009) 28,3 *Youth Studies Australia*, 7

- 3.7.17 The Commission supports these findings and argues that family-focused supports are urgently required throughout the system. The Commission believes that a suite of supports (provided by one or more services) should:
- **Be informed by good assessment processes:** In ascertaining what types of supports might be best provided to individual families and young people, strengths, needs and risks must each be identified and managed in an effective and coordinated way;
 - **Enable family-based protective factors:** Programs need to identify the skills, resources and opportunities inherent in the family system and provide supports that enhance and capitalise on them. Definitions of family need to be negotiated with young people and consider the positive relationships they enjoy with siblings, extended family members and non-related supporters. Realising that a number of young people have children of their own, family-focused interventions should help strengthen these parenting relationships wherever possible;
 - **Respond to family-based risk factors:** Programs need to accurately identify and provide assistance that responds to the specific risks and challenges inherent within the young person's family. In particular, issues related to parental and sibling criminality and alcohol or other drug misuse need to be considered and redressed. In cases where these risk factors are static (ie non-changing: such as early childhood abuse or family violence), compensatory factors (such as creating family-like support networks) should be explored to redress these challenges;
 - **Develop family cohesion and support:** Having a child within the youth justice system can be a difficult and fracturing experience for families, with many parent-child and parent-partner relationships suffering as a result. Family supports need to help, wherever possible, to reconcile and strengthen family functioning to ensure sustainable positive outcomes.
- 3.7.18 In addition, the Commission would encourage the development of policies and practices at Bimberi that maximise family participation. In our view, families need to be more actively engaged in communication and decision-making processes through the life of their child's engagement in the youth justice system. It is not enough that families be informed after key decisions are made. We assert that supports, including those that prepare families for young people's return, are essential. Such supports might include family mediation and restoration, group planning, parenting skills, ongoing family counselling.

Recommendation 3.2: The Community Services Directorate, in consultation with families and family support agencies, develop a Family Engagement Strategy that articulates how families will be supported throughout the youth justice system, and how their participation will be assisted.

Recommendation 3.3: The Community Services Directorate, in consultation with families and family support agencies, develop information resources that assist families to understand their rights, the nature of their child's engagement in the youth justice system, services available to support them, and how they might best work with Bimberi and Community Youth Justice throughcare.

Recommendation 3.4: The Community Services Directorate fund a Family Support Officer to be based at the ACT Childrens Court and to be available to support families, particularly those whose children are appearing in court for the first time.

Recommendation 3.5: The Community Services Directorate appoint a Family Liaison Officer to work within Bimberi to assist families to remain connected to their children and be provided with timely and appropriate information, and to advocate for families in decisions within Bimberi when they are not able to do so in person.

3.8 Youth participation

- 3.8.1 The Commission recognises that young people are key stakeholders in the youth justice system and that there is great value in encouraging them to participate in systems and processes that affect their lives. For the purposes of this section, we will discuss their broad engagement in terms of youth participation.
- 3.8.2 Definitions of youth participation are broad and are often used interchangeably. However, youth participation generally refers to the: active involvement of young people in decision-making processes that affect their lives and in the design, delivery and implementation of supports, services and programs that they consume; and engagement of young people in the life of the community within which they live. The UK's National Youth Agency describes it thus:

*'Participation is the process by which children and young people influence decision making which brings about change in them, others, their service and their communities.'*³¹

- 3.8.3 Effective youth participation requires a commitment by adults, services and systems to enable active participation and obliges them to ensure that young people have the information, resources, skills and assistance to fully understand, engage in and change processes. According to the Nacro CYMRU Youth Offending Unit:
- 'Full and meaningful participation by children and young people helps them to be active citizens and to develop skills, experience and self-confidence as well as to gain access to opportunities. From the perspective of the adult or service it must also mean that the opinion being expressed is taken seriously and into account in order for genuine as opposed to tokenistic participation to occur.'*³²
- 3.8.4 Young people who are involved in the youth justice system have the same rights and participation needs as other young people in the community, although sometimes these are limited by the court-sentenced loss of liberty. Article 12 of the United Nations Convention on the Rights of the Child (the CROC) states that:
- 'Children have a right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.'*
- 3.8.5 In the context of youth justice, the CROC continues and states:
- 'For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'*
- 3.8.6 In 2007, the UN Committee on the Rights of the Child provided in their 'General Comment No 10 Children's Rights in Juvenile Justice' (General Comment Number 10) further information on how this should be interpreted in the administration of juvenile justice.³³ The comment indicates that children and young people should be free to express their views in all matters that affect them at every stage of the criminal justice process.
- 3.8.7 This right to be heard is an important aspect of young people's participation and is fundamental to their best interests and their fair treatment in criminal justice proceedings and within the youth justice system more broadly. This right should underpin all young people's engagement in the justice process starting at the pre-trial stage where there is the right (in accordance with the presumption of innocence) to be silent or to be heard by the police, prosecution and the courts. General Comment Number 10 asserts that to be able to effectively participate in proceedings, children and young people need to be informed about the charges against them, the process that will occur and any potential outcomes and penalties. It recognises that this active engagement can have positive results.
- 3.8.8 For young people who are incarcerated, participation means being provided opportunities to feed into decision-making processes (including the identification of needs and goals, the development of case plans, and determining what and how supports are provided); to provide feedback on programs and raise concerns and complaints where necessary; to maintain links with their communities; and to actively play a part in the life of the Centre.
- 'Whether the youth justice system works for individuals effectively can depend on their involvement in assessment, planning, implementation and review. The more that participation principles are adhered to, the better the chance of success.'*³⁴
- 3.8.9 The Wales Youth Justice Board also notes that participation offers real benefits to children and young people in the youth justice system in that:
- *'It can ensure that children and young people understand the processes and procedures they are involved in whether in the police station, court, while on a court order or in custody;*
 - *It can encourage children and young people to play a part in planning the interventions they are going to be subject to and to share their views on what may or may not work for them and so be relevant in helping to reduce and prevent reoffending;*
 - *It can promote engagement and compliance by involving and consulting children and young people with regard to the decisions and outcomes that will affect them;*
 - *It can help children and young people to achieve their potential and gain confidence and self-esteem; [and]*
 - *It can provide children and young people with the opportunity to give feedback about the interventions and services they have received – what they perceive to be a good quality service and discussion of any difficulties experienced – in order to increase knowledge about what is and is not effective from their perspective.'*³⁵

31 National Youth Agency, *Involving Children and Young People: An introduction* (2009)

32 Sue Thomas, *Youth justice and participation in Wales Nacro Cymru Youth Offending Unit* (2009)

33 National Youth Agency, *Involving Children and Young People: An introduction* (2009)

34 NACRO, *Principles of Participation for Youth Justice (Youth Crime Briefing)* (2008)

35 Sue Thomas, *Youth justice and participation in Wales Nacro Cymru Youth Offending Unit* (2009)

3.8.10 Hart and Thompson³⁶ recognise that participation in youth justice while incarcerated includes some important key elements, such as:

- **Active engagement:** that adults will attempt to build rapport with young people, to create a trustworthy and respectful relationship in which young people can ask questions, to raise fears, worries and concerns and provide feedback without fear of retribution. This engagement should ideally be with a team of adults, at a minimum, at least one trusted adult.
- **Provision of information:** that young people understand their rights, how they will be treated, how to raise concerns when these rights aren't being met, what expectations the Centre has about them and what ramifications will come into play if they don't meet these expectations.
- **Assessment and planning:** that young people will be involved in identifying what they need and want and, alongside adult-driven assessments, be given opportunities to determine priorities and preferred strategies for addressing them.
- **Delivery of service:** that young people's needs and interests, learning styles and preferences be considered when supports and services are being delivered. As Utting and Vennard note: '*Programmes work best when they are carefully structured and the learning styles of individual offenders and the staff working with them are well-matched. The learning styles of offenders tend to require active, participatory methods of working*'.³⁷
- **Restorative justice:** that young people are afforded opportunities to participate in restorative justice programs which allow young people to make meaningful reparation for their actions in an environment characterised by respect and fairness. As Crawford and Newburn note: '*At the heart of the restorative justice philosophy lies a concern with a particular mode of participatory conflict resolution. This is concerned with consensus building ... Restoring a sense of control to the central parties is a key aspect of the restorative process*'.³⁸
- **Evaluations and feedback:** that young people are actively involved in evaluating the effectiveness of programs and providing feedback on the achievements of the Centre and their treatment within it. And, that robust complaints mechanisms are in place to resolve ongoing tensions and concerns.

3.8.11 Although they recognise the value of encouraging participation, Hart and Thompson concede that participatory processes are often inaccessible to some young people in the youth justice system due to a number of barriers:
*'...including political ambivalence about whether young offenders 'deserve' a say; staff culture and commitment; knowledge and skills in effective methods; the duality between the enforcement and enabling functions of the youth justice system which can inhibit young people's willingness to be open.'*³⁹

3.8.12 Thomas from the Welsh Nacro CYMRU Youth Offending Unit reported similar findings from young people in youth detention who felt that their participation was sometimes limited because:

- *"They have experienced difficulties in their lives and may therefore lack the confidence to take part;*
- *They have problems in communicating;*
- *They may be less motivated if their views have not been taken into account in the past;*
- *They may mistrust the intentions of adults;*
- *They have been subject to negative assumptions and stereotypes;*
- *Information is not always provided in a language or way they understand;*
- *Meetings can be held in places where they feel uncomfortable or at times that are inconvenient;*
- *They may not be aware of how they can get involved; and*
- *They have not been provided with feedback when they have been involved'*⁴⁰

3.8.13 There is a view, therefore, that participatory processes need to include strategies for responding to these challenges and the ambivalence that some adults, decision makers and program staff have in relation to the value of effective and respectful youth participation.

36 Di Hart and Chris Thompson, *Young People's Participation in the Youth Justice System* (2009)

37 David Utting & Julie Vennard, *'What works with Young Offenders in the Community?'* (2000)

38 Adam Crawford and Tim Newburn 'Recent developments in Restorative Justice for Young People in England and Wales: Community Participation and Representation' (2002) *The British Journal of Criminology*, 476

39 Di Hart and Chris Thompson, *Young people's participation in the youth justice system* (2009)

40 Sue Thomas, *Youth justice and participation in Wales Nacro CYMRU Youth Offending Unit* (2009)

Youth participation in the youth justice system

System-wide participation

- 3.8.14 Although there are references to youth participation scattered through policy and program documents across ACT government and within the ACT community sector, it would appear that meaningful participation by young people in community-level decision-making, in the design and implementation of systemic planning and in the establishment, provision and evaluation of programs, services and supports is often ad hoc and unsystematic. Although the Commission recognises the important part that the ACT Government's Youth Advisory Council (YAC) plays in promoting a youthful voice and in providing feedback on a number of issues and plans, we are also of the view that this mechanism has its limitations and should not be the only one through which young people are consulted.
- 3.8.15 The ACT Children & Young People Commissioner (CYPC) also has a role in engaging with, and listening to, children and young people, but resource issues and other practicalities significantly limit the CYPC's capacity to consult with young people.
- 3.8.16 The Commission also recognises that the voice of young people who have experienced significant hardship and, who by the nature of their experiences, are most likely to be engaged in the youth justice system are generally not represented within existing consultative forums even though, it may be argued, they have a greater stake in outcomes of government driven policy and program development. We are not of the view that the membership of the YAC needs be extended, but further consideration about how this group and others might more meaningfully engage young people in the youth justice system might be warranted.
- 3.8.17 The Commission encourages further consideration of how legislation and policies will directly affect children and young people in the ACT, and recommends (in Chapter 4: vision) that Child Impact Statements be considered. We also argue that young people need to be actively involved in the development and provision of such tools, providing feedback on how they believe that legislation and programs might affect their lives. Special consideration of the needs of young people in the statutory system and provisions for eliciting their feedback are vital.

Provision of information

- 3.8.18 The Commission was concerned by the general lack of information made available to young people and their families about the youth justice system, the processes that underpinned it and the expectations that it had of them or them of it. Information at the Courts was minimal, and that provided on the CSD website was limited and sometimes incorrect (including information about visiting times, about programs on offer and on how to make contact with young people). As noted elsewhere in this Report, the *Bimberi Resident's Handbook* is generally not provided to young people and does not adequately describe young people's rights or always reflect how and why things are done at the Centre.

Participation in the court system

- 3.8.19 The Commission heard evidence to suggest that young people's participation in the court system is often difficult and limited due to a number of procedural and individual reasons. With large case loads, legal representatives did not always have the opportunity to explain to young people how decisions were being made and what sentences meant to them in practice. Young people reported being confused, but not feeling entitled or confident enough to ask for clarification from the magistrate, judge or their legal representative, and that they found this frustrating and anxiety provoking.

Participation in assessment and case planning

- 3.8.20 As noted in Chapter 8 (case management), there is some evidence to suggest that young people in the youth justice system are becoming more involved in determining their own needs, setting priorities and identifying strategies for dealing with criminogenic need, and are achieving more positive psychosocial outcomes. However, the Commission remains concerned that young people are often held solely responsible for implementing strategies highlighted in their caseplan (both inside detention and in the community) without support or assistance from services. These concerns were also noted in *Lost in Transition*.

Participation in program development and delivery

- 3.8.21 The Commission was encouraged to hear about new initiatives at Bimberi for talking to young people about what types of programs and supports they would like to see made available and for providing feedback on various aspects of their time at the Centre. However, there is limited evidence to suggest that participation at this level is ingrained in the culture of the Centre or that it is supported in Bimberi's policies and procedures.

- 3.8.22 In the Commission's survey of young people in Bimberi, 60% of young people reported that they had little say on the way things were run at Bimberi, with most asking for more input into recreational activities, education programs, mixing practices, rewards systems, searches, phone calls and visits and preparation for return to the community. As noted in Chapter 9 (programming) there is also some evidence to suggest that engaging young people in peer-based programs is beneficial to both the young mentors and the group participants.

Restorative Justice

- 3.8.23 The Restorative Justice Unit (RJU) expressed an interest in working more closely with young people at Bimberi and supporting the development of internal RJU mechanisms that could help young people and staff resolve issues and deal with conflicts in an engaging and reparatory way. They reported that to date their involvement with young people at the Centre has been limited.

Evaluations and feedback

- 3.8.24 As noted in Chapter 6 (evidence based) there are limitations to the current evaluation and feedback systems, which need further consideration and resolution.

A way forward

- 3.8.25 In light of these observations, the Commission recommends that CSD develop a Youth Participation Strategy for implementation across the youth justice system, including Bimberi.
- 3.8.26 We base this recommendation on those made by the UK's National Children's Bureau (NCB) who, after reviewing best practice, suggested that its youth justice system should *'develop a participation strategy covering all aspects of the youth justice service, and that the strategy should set out the legal and policy framework underpinning participation and the links to a cross-departmental approach'*. According to the NCB:
- *The strategy should establish mechanisms that will support the development of a culture of participation throughout youth justice services, in recognition that staff commitment is key. For example, all staff within the youth justice system should receive training in participative approaches.*
 - *The strategy should endorse the further development of effective mechanisms for involving young offenders, and their parents, in policy and service development.*
 - *The formats and approaches to involving young people in their own assessment and case management should be reviewed, in partnership with young people. This should also be informed by the views of parents.*
 - *All aspects of participation work should be evaluated in order to build an evidence base of the extent to which it adds value at both a societal and individual level. Evaluation should include information about the impact of participation on young people's outcomes, including breaches and re-offending.*
 - *A performance framework should be developed so that services collect information and produce reports on their participation work, and this should be subjected to independent scrutiny.*
 - *Youth justice agencies should give consideration to the way young offenders are portrayed, and should take steps to encourage perceptions that they do deserve a voice, stressing the benefits for the young people, the services and wider society.⁴¹*

Recommendation 3.6: The Community Services Directorate develop a Youth Justice Participation Strategy.

Recommendation 3.7: The Community Services Directorate develop a Charter of Rights for Young People in Detention.

41 Di Hart and Chris Thompson, *Young people's participation in the youth justice system* (2009)

3.9 Victims of crime

The human rights of victims of crime

Definition of victims of crime

- 3.9.1 A victim of crime is a person who has suffered harm because of a criminal act or offence. Harm can include physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights. A person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted. The term 'victim' can also include the family or dependents of the direct victim, and it can also include people who have witnessed a crime.⁴²

Rights of victims of crime

*'Victims' rights are a firmly a matter of human rights in international law.*⁴³

- 3.9.2 The United Nations *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* provides a framework for governments to acknowledge and act upon victims' interests, especially within criminal proceedings. It states that victims of crime have rights of access to justice and fair treatment, restitution, assistance, and compensation.
- 3.9.3 The CROC requires governments to promote the physical and psychological recovery and social reintegration of a child victim of any form of abuse, neglect or exploitation.⁴⁴
- 3.9.4 In the ACT there is legislative recognition of victim's rights, in the ACT *Victims of Crime Act 1994* (VOC Act), which establishes a set of 'governing principles' or guidelines for the treatment of victims by public officers in the criminal justice system. It provides that:
- 'In the administration of justice, the following principles are to, as far as practicable and appropriate, govern the treatment of victims:*
- *a victim should be dealt with at all times in a sympathetic, constructive and reassuring way and with appropriate regard to his or her personal situation, rights and dignity;*
 - *a victim should be told at reasonable intervals (generally not more than 1 month) of the progress of police investigations about the relevant offence, except if the disclosure might jeopardise the investigation, and, in that case, the victim should be told accordingly;*
 - *a victim should be told about the charges laid against the accused and of any modification of the charges;*
 - *a victim should be told about any decision concerning the accused to accept a plea of guilty to a lesser charge or a guilty plea in return for a recommendation of leniency in sentencing;*
 - *a victim should be told about any decision not to proceed with a charge against the accused;*
 - *if any victim's property is held by the Territory for the purposes of investigation or evidence—inconvenience to the victim should be minimised and the property returned promptly;*
 - *a victim should be told about the trial process and of the rights and responsibilities of witnesses;*
 - *a victim should be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;*
 - *a victim's home address should be withheld unless the court directs otherwise;*
 - *a victim should not have to appear at preliminary hearings or committal proceedings unless the court directs the victim to appear;*
 - *a victim should be given an explanation of the outcome of criminal proceedings and of any sentence and its implications;*
 - *a victim who is known to have expressed concern about the need for protection from an offender should be told about the offender's impending release from custody.*⁴⁵
- 3.9.5 Breach of these guidelines can render a member of the ACT public sector liable to disciplinary proceedings within his or her own directorate.⁴⁶ The agencies engaged in the administration of justice in this context are ACT Policing, the Director of Public Prosecutions, Courts Administration, ACT Corrective Services and Community Youth Justice.

42 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power Adopted by General Assembly resolution 40/34 of 29 November 1985; ACT Victims of Crime Act 1994, s6

43 Garkawe cited in ACT Victims of Crime Coordinator, 'The Quality of Justice: Operation of the Victims of Crime Act 1994 in the Australian Capital Territory 1996–2007' (2008)

44 Article 39, CROC

45 VOC, s.4

46 VOC, s.5

- 3.9.6 Victims are also specifically mentioned in the ‘youth justice principles’ stated in the *Children and Young People Act 2008* (ACT). In relation to the criminal matters in that Act, in deciding what is in the best interests of a child or young person, a decision-maker must consider (among other things) that:

‘... it is a high priority that intervention with young offenders must promote their rehabilitation, and must be balanced with the rights of any victim of the young offender’s offence and the interests of the community.’⁴⁷

The impact of crime on victims

‘Crime changes people in fundamental ways that do not lend themselves to quick and easy solutions.’⁴⁸

- 3.9.7 The experience of crime affects different people in different ways. The effects of crime may fall into the following categories:

- Physical;
- Material;
- Financial;
- Emotional or psychological; and
- Social.

- 3.9.8 Not all victims will have the same response to the same crime. For example, the impact of ‘less serious’ crimes such as burglary is sometimes underestimated, and not all victims of assault will be affected for a long time.⁴⁹ However, many victims of crime do experience some degree of trauma, and should be provided with support and assistance.

Victims’ position within the legal system

- 3.9.9 Victim Support ACT suggests the participation of victims of crime is vital to the operation of the criminal justice system.⁵⁰ Victims have an important role at several stages of the legal process, including reporting incidents to police, providing information to the police investigation, assisting the prosecution and appearing at court as witnesses. Some researchers and advocates have argued that the criminal justice system would not be able to function effectively without the participation of victims:

‘...the capabilities of the police in controlling crime would be greatly reduced, to say nothing of the difficulties that would arise in the other components of the justice system.’⁵¹

Engagement with victims of crime during the Review

- 3.9.10 Recognising that victims of crime have an important place in the legal system, the Commission took deliberate steps to invite victims and victims’ advocates to participate in the Review. The Review was advertised publicly in *The Canberra Times* and in local community email networks. Posters advertising the Review were displayed at more than 15 public venues, including the court buildings. Staff from the Commission were available to speak with people by phone or meet with them in person, and to respond to email messages. During the Review the Commission met with the current and former Victims of Crime Commissioner, and approached a victims’ local advocacy group by phone and email.

Responses and protections for victims of crime in the ACT

- 3.9.11 The ACT has a legislated framework that acknowledges victims’ rights, and provides services to meet victims’ needs, in the VOC Act. The object of VOC Act is to:
- acknowledge, protect and promote the interests of victims in the administration of justice; and
 - establish appropriate ways for the treatment of victims by agencies involved in the administration of justice; and
 - help victims deal with the effects of criminal offences.⁵²
- 3.9.12 The Act establishes the Victims of Crime Commissioner (Part 3), Victims Services Scheme (Part 4), Victims Advisory Board (Part 4A) and Victims Services Levy (Part 5).

47 CYP Act 2008, s94(1)(i)

48 According to Norris, Kaniasty and Thompson in ACT Victims of Crime Coordinator, ‘The Quality of Justice: Operation of the Victims of Crime Act 1994 in the Australian Capital Territory 1996–2007’ (2008)

49 ACT Victims of Crime Coordinator ‘The Quality of Justice: Operation of the Victims of Crime Act 1994 in the Australian Capital Territory 1996–2007’ (2008)

50 Victim Support ACT – Victim Information Guide 3/2007 Victims of crime and the criminal justice system

51 Steven Brandl and Frank Hovarth ‘Crime-victim evaluation of police investigative performance’ (2002) *Journal of Criminal Justice*, 109-121

52 VOC, s.3B

Victims of Crime Commissioner

- 3.9.13 The Victims of Crime Commissioner (VoCC) is an independent statutory appointment of the ACT Attorney-General, under the VOC Act. The VoCC is situated with and supported by Victim Support ACT, an agency of the Department of Justice & Community Safety. The key objectives of the VoCC are to:
- “improve system-wide communication, quality standards and responses to people victimised by crime in partnership with justice and community agencies;
 - develop and implement projects and programs;
 - encourage and support agencies to implement and sustain operational procedures that observe the spirit and letter of the Governing Principles in the treatment of victims of crime (section 4, *Victims of Crime Act 1994*);
 - promote reforms in the administration of justice and in services for people victimised by crime;
 - ensure that all those engaged in the administration of justice adhere to the Governing Principles in the Treatment of Victims of Crime; and
 - act as an advocate, and information source for people victimised by crime.”⁵³

Victim Support ACT

- 3.9.14 Victim Support ACT was established in July 2007 to provide an integrated service for victims of crime. Victim Support ACT has two main services:
- Providing support, counselling and physical therapies; and
 - Through the Justice Advocacy Unit, providing information, advocacy and assistance in relation to victims’ rights and entitlements and the criminal justice system.⁵⁴

Victims Advisory Board

- 3.9.15 The Victims Advisory Board is established under the VOC Act ‘to advise the Minister on policies, priorities and strategies for the acknowledgment, protection and promotion of the interests of victims in the administration of justice; and ... to help develop and maintain protocols and procedures for the treatment of victims by agencies involved in the administration of justice.’⁵⁵

Victims services levy

- 3.9.16 An adult who is convicted of an offence and ordered by a court to pay a fine in relation to the offence, is liable to pay the ACT Government a victims’ services levy of \$10. The revenue is used to provide services for victims of crime.⁵⁶

Financial assistance

- 3.9.17 Under the *Victims of Crime (Financial Assistance) Act 1983* (ACT), victims may be awarded financial assistance in the Magistrates Court.

Support within the legal system⁵⁷

- 3.9.18 The following agencies provide support to victims within the legal system:
- *ACT Policing* The police officer investigating an incident has responsibility to keep the victim informed and provide them with information. In addition, the Victim Liaison Officers in ACT Policing can assist victims with information about police procedure and services available. A protocol between the AFP and the ACT DPP determines that police keep victims informed until the matter goes to court, after which the DPP provide support.
 - *Director of Public Prosecutions* The Witness Assistance Service in the DPP can explain the legal process, and provide information about court dates and progress. The witness assistant can also: obtain victim’s views about bail conditions or bail variations, and any submissions made to the DPP by the defendant to have charges withdrawn or amended; explain the victim’s rights and responsibilities when being a witness; and help victims and other witnesses prepare for giving evidence.
 - *Court* The victim has opportunities to be heard in the court process, including on concerns about their protection at bail hearings, and making a victim impact statement to the court after a conviction and at the time the sentence is to be decided.

53 Victims of crime support program, *Annual Report 2009-2010*

54 <http://www.victimsupport.act.gov.au/index.php>

55 VOC Act, Part 4A

56 VOC Act, Part 5; Crimes (Sentence Administration) Act 2005, ch 6A.

57 Abridged from ACT Victims of Crime Coordinator, ‘The Quality of Justice: Operation of the Victims of Crime Act 1994 in the Australian Capital Territory 1996–2007’ (2008)

Other services for victims in the ACT

3.9.19 A range of other government and community organisations provide services to victims of crime, including:

- Domestic Violence Crisis Service;
- Canberra Rape Crisis Centre;
- Service Assisting Male Survivors of Sexual Assault (SAMSSA);
- Victims of Crime Assistance League (VOCAL);
- Forensic and Medical Sexual Assault Care (FAMSAC);
- Child at Risk Health Unit (CARHU);
- Emergency accommodation services; and
- Restorative Justice Unit.

Some victims of crime feel disempowered by the legal system

3.9.20 Victims of crime have limited standing in criminal proceedings, other than their role as a witness for the prosecution and their ability to provide a victim impact statement. Some victims feel they receive less than adequate support and information. Victims of crime can contact the VoCC to complain about their experiences within the criminal justice system. The VoCC commonly hears people allege they experienced:

- Lack of information about victims' rights;
- Lack of information about victims' role within the criminal justice process;
- Inadequate follow-up by police;
- Lack of information from police and the DPP about the status of the case;
- Perception that the investigation has been cursory or inadequate;
- Inadequate contact with the DPP, including insufficient information about appeal processes;
- The process of charge negotiation is often determined without consultation with the victim;
- Lack of information about court, and lack of support at court;
- Long periods of time taken to finalise a matter at court;
- Perception that the victim's voice is not heard at court, and their interests are not represented;
- Mixed views about the adequacy or inadequacy of sentences imposed;
- Lack of information about the consequences of the court outcome;
- Discourteous, inappropriate and unprofessional remarks to victims; and
- Lack of notification about escapes from custody or changes to an offender's management.⁵⁸

3.9.21 In relation to the youth justice system in the ACT, when the alleged offender is aged under 18 years, participants raised two areas of concern:

- In the Childrens Court the victim is not allowed to attend court proceedings except as a witness, and receives limited information. This compares unfavourably with the Restorative Justice Unit, where the victim finds out more information about the offender; and
- In some situations of assault, victims are sometimes students at the same school as the alleged perpetrator, and often the victim feels they must move schools when the perpetrator returns to the school.

Recommendation 3.8: Agencies involved in the administration of the youth justice system, including ACT Policing, the Director of Public Prosecutions, Legal Aid ACT, and the Community Services Directorate:

- Establish procedures to ensure they protect the rights of victims of crime, and are responsive to their needs
- Report on the implementation of these procedures (using targets or performance measures)
- Provide regular training for all staff on the needs and experiences of victims of crime
- Periodically evaluate their responses to victims of crime.

58 ACT Victims of Crime Coordinator 'The Quality of Justice: Operation of the Victims of Crime Act 1994 in the Australian Capital Territory 1996–2007' (2008), 2008

Victims and offenders come from largely overlapping populations

- 3.9.22 Some young people in Bimberi are also victims of crimes, including child abuse, domestic violence and assault. *'Children suffer higher rates of exposure to violence and crime than do adults.'*⁵⁹ Young people aged between 15 and 24 years had the highest rates of assault when compared to other age groups.⁶⁰ *'Young males aged 15 to 19 years are more than twice as likely to become a victim of robbery as males aged 25 or older, and all females.'*⁶¹ As one participant told the Commission, *'we look at them through the criminal justice lens... but most of those young people have also been victimised'*.
- 3.9.23 The empirical research in Australia and overseas suggests that, in general terms, victims and offenders come from largely overlapping populations, and it can be difficult to discern between young victims and young offenders in the system. The roles of victim and offender in general are *'neither fixed nor antagonistic but revolving and interchangeable.'*⁶² *'the boundary between juvenile offenders and juvenile victims can easily become blurred. Cohorts of juvenile victims and juvenile offenders are unlikely to be entirely discrete and research consistently shows that these phenomena are interlinked.'*
- 3.9.24 It is important to provide support and assistance to young victims of crime, as it is widely acknowledged that 'victimisation' is a pathway into offending behaviour for some young people.⁶³

Recommendation 3.9: The ACT Government allocate additional resources to Victim Support ACT to allow them to provide specialised services for children and young people who are victims of crime.

- 3.9.25 Victims and offenders' interests do sometimes align, particularly in the context of restorative justice processes. Supported conferencing through the Restorative Justice Unit can benefit the victim, by allowing them to express their feelings to the perpetrator, and also benefit the perpetrator, by providing them an opportunity to reflect on their behaviour, thoughts and feelings.

Recommendation 3.10: ACT Policing, the Department of Public Prosecutions, the ACT Childrens Court and the Community Services Directorate refer all appropriate juvenile matters to the Restorative Justice Unit for conferencing.

59 David Finkelhor Heather Turner, Richard Ormrod & Sherry Hamby, 'Violence, abuse, and crime exposure in a national sample of children and youth' (2009), *Pediatrics* 125(5): 1–13; Kelly Richards, 'What makes juvenile offenders different from adult offenders?', *Trends & Issues in Crime and Criminal Justice* no. 409 (2011)

60 Australian Institute of Criminology (AIC), *Australian crime: Facts & figures 2009*, (2010)

61 Kelly Richards, 'What makes juvenile offenders different from adult offenders?', *Trends & Issues in Crime and Criminal Justice* no. 409 (2011)

62 Fattah, cited in ACT Victims of Crime Coordinator, 'The Quality of Justice: Operation of the Victims of Crime Act 1994 in the Australian Capital Territory 1996–2007' (2008)

63 Kelly Richards, 'What makes juvenile offenders different from adult offenders?', *Trends & Issues in Crime and Criminal Justice* no. 409 (2011)

Chapter 4: Vision

A Quality Youth Justice System Is Aligned Under A Clear And Shared Vision

Relevant Human Rights Standards

- Special Rights of the Child, particularly to act at all times in Best Interests (HRA s.8, s.11, CROC)
- Government should increase awareness that the care of detained juveniles and preparation for their return to society is a social service of great importance (POJ R8)
- Organisation and management should facilitate communications between different categories of staff to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration (POJ R84)

4.1 Introduction

- 4.1.1 This Chapter considers youth justice in the ACT at a systemic level. In it, the Commission focuses on how a whole-of-government and whole-of-community approach can be adopted to determine the vision and purpose of different levels within the youth justice system. The recommendations focus on how the ACT Government can better design its systems and process, and better align its leadership to the achievement of that vision.

4.2 The importance of a clear and shared vision

- 4.2.1 Since Professor Mark Moore¹ published his seminal work, *Creating Public Value: Strategic Management in Government*, in 1995, a body of evidence and practice has developed regarding what constitutes high performance in the delivery of public services.
- 4.2.2 Broadly, Moore identified the conditions necessary for public sector organisations to be high performing, particularly in relation to implementing change. He asserts that, regardless of how much individuals or organisations desire to bring about change, this change only happens if there is:
- Legitimacy and support (authorisation) from those affected;
 - Public value which is recognised by those implementing the change; and
 - The necessary operational capacity to implement the change.²
- 4.2.3 In terms of public value, the literature expanding on Moore's model demonstrates that high performing government organisations:
- Above all, ensure a vision of public value is central to their organisation;
 - Understand that engaging both internal and external stakeholders to define the public value is critical; and
 - Link their strategy to a vision of public value by establishing a clear chain of causality between inputs, processes, outputs and outcomes.³

1 Mark Moore is Professor of Public Policy at the John F Kennedy School of Government, Harvard University.

2 Winkworth, G., and White, M., *Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice* (2011) 49 at Appendix B.

3 Parston, G., and Goodman, J., *High-Performance Government Organisations: Principles for Creating Public Value*. Accenture (2008) 5.

- 4.2.4 Moore asserts that the foundations for public initiatives lie in their 'mandate for action'.⁴ The level of mandate enjoyed by a government organisation is determined by the authorising environment. Strong authorising environments have high levels of legitimacy and support evidenced by such things as: *'a formal mandate through legislation, endorsement through public enquiries, policy documents, memoranda of understanding, and information sharing protocols'*.⁵ Most notably to this Review, authorisation requires the vision to be endorsed by internal and external stakeholders. To this end, Moore's model: *'...focuses on the ways in which leaders of public organisations can engage communities in supporting and legitimising their work.'*⁶
- 4.2.5 Drawing on Moore's model, in this Chapter we assess the ACT Government's vision for the youth justice system in relation to the strength of its perceived public value and level of authorisation. To inform this process, during the Review the Commission contracted two consultants to interview 16 identified executives across the Community Services Directorate (CSD), including the Director-General and Deputy Director-General, a number of former and current executives with responsibility for the Office for Children, Youth and Family Support (OCYFS), and two other people with responsibilities associated with the Bimberi Youth Justice Centre (Bimberi) and the current Review. Participants in this process were provided a draft of the consultants' report for comment prior to it being finalised. The consultants' final report to the Commission is annexed to this Report at Appendix B and is referred to as the Winkworth and White Report.

4.3 The current vision for youth justice in the ACT

- 4.3.1 There is little doubt that the Bimberi facility represents a significant improvement on the Quamby Youth Detention Centre (Quamby), including from a human rights perspective. Interviews with participants from across CSD, including executives and former management, clearly demonstrated that they had a commitment to making Bimberi a best-practice model for human rights compliant youth detention, and a facility where positive outcomes and rehabilitation could be achieved for young people.
- 4.3.2 Additionally, executives interviewed during the Review were found to be personally and professionally aligned to the values of the youth justice system. Most have spent the majority of their professional lives in services concerned with vulnerable children, young people and their families; and most indicated a desire to continue to be directly involved in developing and improving service delivery systems for young people.
- 4.3.3 It is also clear that before, during, and after the opening of Bimberi, a significant amount of effort went into reviewing and developing (updating) the legislation, guidelines, policies and procedures necessary to operate Bimberi. However, it is the Commission's view that insufficient attention was given to 'updating the vision' for Bimberi and the broader youth justice system.
- 4.3.4 In their submission to the Review, the ACT Government articulated four goals for the youth justice system: *'Within a human rights framework and applying the best interests principle, the objectives of the ACT youth justice system are:*
- *To prevent young people from entering the youth justice system and to divert those young people who do come into contact with the youth justice system at all opportunities;*
 - *To support the holistic development and wellbeing of young people in the youth justice system to keep them safe and to maximise their opportunities to achieve positive life outcomes;*
 - *To promote young people's rehabilitation and reduce recidivism; and*
 - *To facilitate effective throughcare and transitioning to assist a young person's reintegration into the community.'*⁷
- 4.3.5 For the purposes of this discussion, the Commission considers these objectives to be the ACT Government's current vision for the youth justice system.

4 Moore, M., & Wakeling, S., 'Juvenile Justice: Shoring up the Foundations', *Crime and Justice: A Review of Research*, 22, (1997) 253-301.

5 Winkworth, G., & White, M., 'Australia's Children Safe and Well: Collaborating with Purpose Across Commonwealth Family Relationship and State Child Protection Systems', *Australian Journal of Public Administration* Volume 70, Issue 1, pages 1-14, March 2011, 70(1), (2011) 1-14.

6 Winkworth, G., and White, M., *Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice* (2011) 50 at Appendix B.

7 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 30.

Public value

- 4.3.6 The primary way an organisation communicates the public value of its vision is in its published documentation. In analysing planning and policy documents and the CSD website, the Commission found that the stated vision which appears in the Government's submission to the Review was not strongly communicated. Of particular note, the vision was not referenced or reflected in the *ACT Children's Plan 2009-2014* or the *ACT Young People's Plan 2010-2014*. In fact, there is minimal reference to young people at risk of offending in the ACT Young People's Plan and almost no reference in the ACT Children's Plan.
- 4.3.7 In interviews conducted with executives, Winkworth and White observed that many participants identified a lack of a shared understanding of the ACT Government's stated vision for the youth justice system and Bimberi as one of the overarching problems that continued to undermine internal and external support for the vision. The authors found that the lack of a clearly stated vision was a common concern among executive participants. For example, they heard:
'There is a need for greater awareness and consensus of objectives. Fundamental changes are needed here.'
- 4.3.8 Further, some executives felt there was a lack of clarity about the role of the youth justice system, and Bimberi's role within it.
'We are not clear on the systemic role of Youth Justice and Bimberi's place in achieving the goals.'
'One of the biggest challenges is determining "what is the purpose of Bimberi and the broader youth justice system?"'
- 4.3.9 Interviews conducted by the Commission with former management were consistent with this view. One participant stated:
'We don't have a vision for youth justice in the ACT, and how Bimberi fits into that vision. We need a more clearly articulated vision for what a human rights youth justice system looks like and what a human rights compliant Bimberi looks like.'
- 4.3.10 Several executives discussed their frustrations when incidents at Bimberi appeared to divert from the rehabilitative purpose of youth justice. They reported being concerned about the reactivity to incidents at Bimberi which they felt were normal in a youth detention environment. They thought such incidents should not have received the public attention they did, and were concerned at the impact this attention had on the rehabilitative narrative contained in the vision.
'We really struggled with the way incidents got into the political realm - the media outcry and intolerance over the roof incident [for example]. Then the pressure to be more secure. We were sent the wrong messages and we sent the wrong messages to the community - that this is not to happen again rather than realising the kids would come down in time.'
'The facility was purpose built for a less custodial culture. We need to be better at developing a story and communicating the story. The Department has not effectively maintained the narrative.'
'Our messages are very reactive. The emphasis is all about security. We have failed to send out strong messages about what Bimberi is about. When the media got involved and it got into the political domain then debate shut down.'
'The act of courage is to hold the line that Youth Justice is not about stopping youth crime it's about helping vulnerable young people. It is by focusing on developmental outcomes for these children that we stop juvenile crime.'
- 4.3.11 While the Commission acknowledges and supports the rehabilitative and re-integrative focus of the ACT Government's current vision for the youth justice system, the Commission concludes that the 'story' of the public value of the vision has not been strongly embedded or communicated across the youth justice system or the broader community.
- 4.3.12 The Commission acknowledges that the political and media reactivity to certain incidents at Bimberi placed significant pressure on CSD and likely weakened the 'story' of the rehabilitative vision of the youth justice system. It is the Commission's view that CSD would be more able to 'hold the line' on the rehabilitative vision if the youth justice system were more embedded in the broader community. In the next section of this Chapter the Commission makes suggestions and recommendations as to how CSD can create a more durable, and widely supported 'story' of the youth justice system's public value.

Authorising environment

- 4.3.13 In assessing the strength of the authorising environment, the Commission primarily looked to the level of endorsement of the vision by others who are critical to the achievement of the vision. In interviews with executives, Winkworth and White found many believed that key external and internal stakeholders were not engaged with the vision of a rehabilitative justice system for young people. A widely held view was that other ACT Government agencies lack clarity about their responsibilities to vulnerable young people before, during and after their contact with the youth justice system. Winkworth and White heard:
- ‘...this group of shared clients who come into contact with many systems are really non clients. They belong to everybody yet they belong to nobody.’*
- 4.3.14 Others spoke of the need for much more support ‘on the outside’.
- ‘People do what they have to but there is no real commitment.’*
- ‘The links are OK but the ‘buy in’ is really poor.’*
- ‘Trying to get [other ACT government agencies] to commit resources was like pulling teeth.’*
- 4.3.15 Executives expressed frustration about the unclear roles of the Education and Training Directorate (ETD) and the Canberra Institute of Technology (CIT). They felt the issue of a shared responsibility for young people involved in the youth justice system was particularly uncertain across the justice and education systems. Examples were given of battles for additional resources to assist young people with major literacy and numeracy problems, where *‘it is never clear who pays or how long they will pay’*. Further discussion on the relationship between the youth justice system and the education system is contained in Chapter 12 (education).
- 4.3.16 In terms of internal endorsement, and despite a program of regular meetings between Bimberi management and CSD, and a range of other stakeholders, some participants described Bimberi as being like an ‘oil rig’; in that the centre was geographically and culturally removed from the rest of CSD, and that some people at the centre felt isolated from the central office and from each other. As one participant commented:
- ‘Anything so out of sight develops its own culture’*
- 4.3.17 Similarly, interviews conducted by the Commission with Bimberi management suggested that the vision for Bimberi, and the broader youth justice system, was not fully understood or supported by all of the staff. We heard that:
- ‘There were significant and varied expectations about what we could provide and achieve.’*
- ‘A small number of staff derailed it also, who took matters outside and weren’t ‘onboard’ with the vision.’*
- ‘It was the [x] of us versus the world.’⁸*
- 4.3.18 As Winkworth and White observed in their report, organisations that do not have a strongly led, embedded and communicated vision face the risk of a ‘cultural drift’, in which *‘component parts of the organisation developed separate cultural identities and operate effectively for divergent and sometimes competing purposes’*.⁹ It is the Commission’s view that this may have happened between CSD and Bimberi in 2010.
- 4.3.19 In summary, the Commission concludes that the authorising environment surrounding the ACT Government’s vision of the youth justice system was fragile due to external and internal stakeholders not sufficiently endorsing the vision.

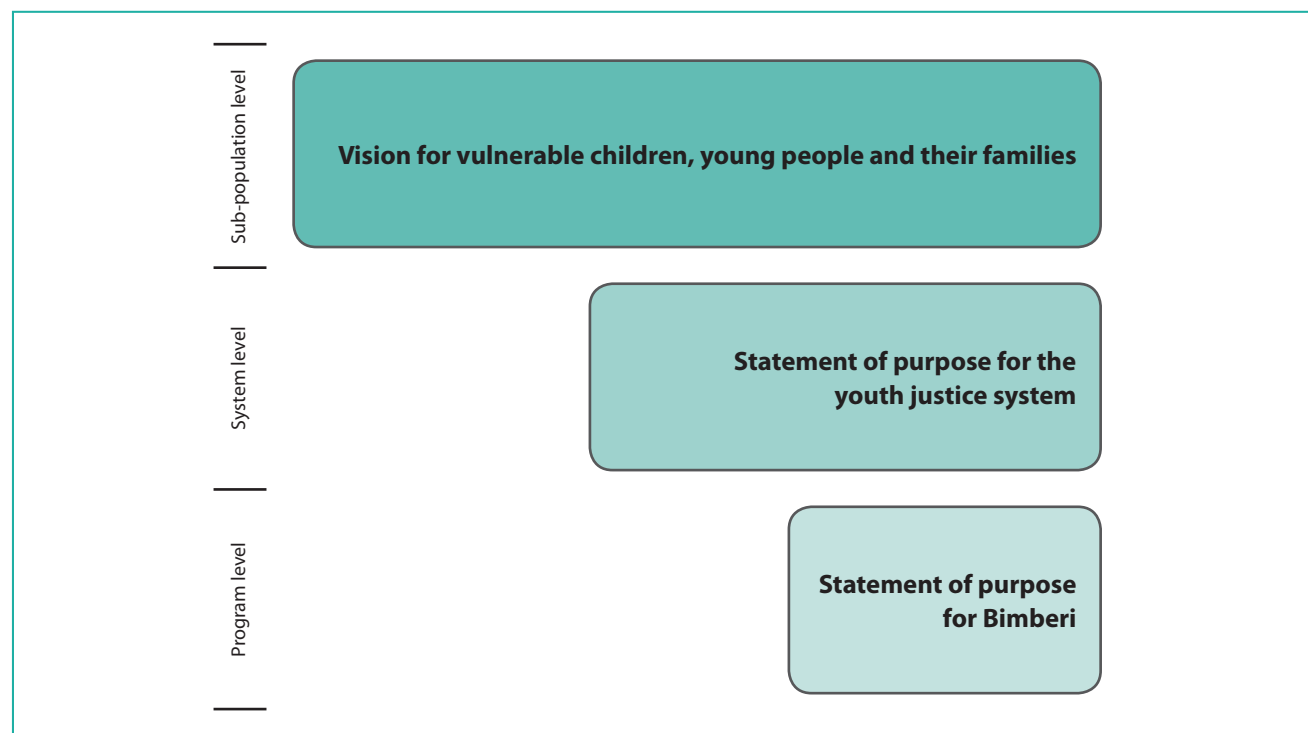
4.4 A way forward – creating a clear and shared vision

- 4.4.1 In charting a way forward, the Commission suggests the ACT Government develop clear and shared visions at three operating levels, being:
- The sub-population level: a vision for vulnerable children, young people and their families;
 - The system level: a statement of purpose for the youth justice system; and
 - The program level: a statement of purpose for Bimberi.
- 4.4.2 In the Commission’s view, the vision for each level should logically ‘cascade’. This means the vision for vulnerable children, young people and their families should inform and be reflected in the statement of purpose of the youth justice system; and similarly, the statement of purpose of the youth justice system should inform and be reflected in the statement of purpose for Bimberi. The cascading nature of these vision statements is depicted in Figure 4.1 below.

⁸ The quote has been altered in the interest of protecting the identity of the participant/s.

⁹ Winkworth, G., and White, M., *Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice* (2011) 52 at Appendix B.

Figure 4.1: Cascading visions for vulnerable young people



4.4.3 In developing the vision for each operating level, the Commission suggests the ACT Government apply a best practice process which:

- Creates a strong authorising environment through effective whole-of-government and whole-of-community measures;
- Sets a clear and shared vision;
- Translates the vision into practice; and
- Builds an accountability framework that leverages the engagement of the whole-of-government and whole-of-community.

4.4.4 In this section, the Commission will make suggestions and recommendations as to how the ACT Government can strengthen the authorising environment at each operating level in order to develop vision statements that have high public value and buy-in across government and the community. Section 4.5 will make suggestions and recommendations about how the vision statements can be translated into practice at each operating level through aligning the organisational performance system, planning system and people system. Section 4.6 will make suggestions and recommendations as to how the ACT Government can create a strong accountability framework to ensure each level of the system for young people is performing well and able to constantly improve.

A vision for vulnerable children, young people and their families

Engaging the Whole of Government

4.4.5 Theorists in public administration have observed that *'governments around the world are moving toward greater collaboration or joint working to meet increasingly complex challenges.'*¹⁰ The United Kingdom has 'joined up government', Canada has 'horizontal government', and federal Australia has the 'whole of government approach'. Recently, the ACT embraced this trend with the release of the Hawke Review of the ACT Public Sector (ACTPS), 'Governing the City State: One ACT Government - One ACT Public Service' (the Hawke Report). The Hawke Report introduced a 'horizontal' or cross-government mechanism in the form of the ACT Public Service Strategic Board (the ACT Strategic Board).

10 Parston, G., and Goodman, J., *High-Performance Government Organisations: Principles for Creating Public Value*. Accenture (2008) 6.

- 4.4.6 The ACT Strategic Board's purpose is to provide whole-of-government leadership and strategic direction to the ACT Public Services, and to promote an integrated, whole-of-government approach to public administration.¹¹ The Hawke Report recommended the ACT Strategic Board establish sub-committees to drive ACTPS performance in delivering Government priorities.
- 4.4.7 The introduction of the ACT Strategic Board presents an opportunity to strengthen the authorising environment for vulnerable young people generally, and, more specifically, those involved in the youth justice system and Bimberi. In the Commission's view, the ACT Strategic Board should establish a sub-committee for vulnerable children, young people and their families.

Recommendation 4.1: The ACT Strategic Board establish a sub-committee on vulnerable children, young people and their families.

- 4.4.8 The Commission was pleased to learn that on 21 June 2011, the ACT Strategic Board created a sub-committee with a focus similar to that suggested by the Commission.

Engaging the Whole of Community

- 4.4.9 While the creation of a sub-committee of the ACT Strategic Board will strengthen the authorising environment across government, Chapter 3 of this Report (community embeddedness) and the previously cited literature highlight the importance of engaging the broad community in defining the ACT's vision for vulnerable children, young people and their families. In the process of setting this vision, it is suggested the ACT Strategic Board sub-committee find ways to meaningfully engage:

- Children and young people;
- Families;
- Victims of crime;
- The ACT youth & community sector;
- Bimberi management and staff;
- The business community; and
- The Legislative Assembly.

Engaging children and young people

- 4.4.10 The Commission acknowledges that the ACT Strategic Board sub-committee would benefit from proven mechanisms to engage children and young people in the vision setting process. A growing body of evidence and practice exists on the various ways governments can engage children and young people. The Commission would welcome the opportunity to work with the Government to establish and implement meaningful youth participation processes. Further, best practice youth participation principles and practices are provided in this Report in Chapter 3 (community embeddedness).
- 4.4.11 From an ongoing perspective, Child Impact Statements are a tool used around the world to give children and young people more prominence in policy formation process. They have been variously described as:
- 'A systematic attempt to analyse and evaluate the consequences of the proposed action [on children and young people]' (Sweden);
 - 'A tool to assess how a proposed [law/policy] will affect the rights and wellbeing of children and young people' (Northern Ireland); and
 - 'A tool for identifying and measuring the effect of [law/policy] on children and young people' (Scotland).
- 4.4.12 The Commission believes Child Impact Statements would be a useful tool for the ACT Government and ACT Strategic Board for ensuring the inclusion of the views of children and young people and for ensuring all decisions are made with their best interest in mind. The benefits of Child Impact Statements include:
- Promoting and raising awareness of children and young people's rights;
 - Ensuring children and young people's rights are considered at an early stage in law/policy development;
 - Embedding children and young people's rights in the minds of decision-makers and policy-makers;
 - Involving children and young people in the development of law/policy that affects them;

11 Hawke, A., *Governing the City State: One ACT Government – One ACT Public Service*, ACT Government (2011) 6.

- Promoting more reasoned decision-making, and avoiding or mitigating any negative impacts that law/policy may have;
- Making more effective law/policy, and delivering more effective programs;
- Saving money and time, by helping to identify problems or improvements at an early stage;
- Statutory human rights obligations; and
- Acting in the best interests of children and young people.

4.4.13 The Commission anticipates that Child Impact Statements would apply to:

- Proposed legislation and regulations, government plans, policies, strategies;
- Program and service design and implementation;
- Budget setting, planning decisions, tendering processes;
- Organisational procedures and practices; and
- Other decisions that apply generally to the ACT community.

4.4.14 The Commission is aware that many policy decisions are referred to the ACT Youth Advisory Council (YAC)¹² for their input, and the YAC's role in providing a voice for children and young people and advice to Government is vital. However, this is not a responsibility that the YAC can fulfil alone, nor should sending a discussion paper to the YAC for response be seen as adequate consideration of the issues for children and young people. Additionally, while the Children & Young People Commissioner has the opportunity to see relevant draft Cabinet Submissions, resource constraints and limited timeframes often make meaningful contribution by children and young people to the policy debate difficult, and the process does not provide an opportunity for children and young people to be directly consulted.

Recommendation 4.2: The ACT Government commit to introducing Child Impact Statements and work with the Commission and other relevant stakeholders to develop a suitable model.

4.4.15 In making this recommendation the Commission notes Child Impact Statements are aligned to the ACT Government's intention to consider '*individuals and groups in the community who may be affected by new policy, legislation and decision making of Government*' in the Triple Bottom Line assessment framework that is being developed under the *Canberra Social Plan 2011*.¹³

Engaging the Legislative assembly:

4.4.16 The Commission believes the Legislative Assembly has a critical role to play in developing a vision for vulnerable children, young people and families in the ACT. The Commission notes the Hawke Report recommended that mechanisms be developed:

*... to bring non-government Members of the Legislative Assembly into the earlier stages of policy and program design.*¹⁴

4.4.17 In citing existing examples of good practice, the Hawke Report noted that the Legislative Assembly Standing Committee with responsibility for the children and young people portfolio has consistently inquired into and reported on issues facing young people, including youth justice issues. The Commission sees merit in the ACT Strategic Board sub-committee involving this Legislative Assembly Standing Committee in the setting of a vision for vulnerable children, young people and their families in the ACT.

Setting a clear and shared vision

4.4.18 With the sub-committee of the ACT Strategic Board in place (whole-of-government) and processes developed to meaningfully engage the broad community (whole-of-community), the ACT Government will be able to develop a vision for vulnerable children, young people and their families that has high public value and authorisation.

12 The Youth Advisory Council comprises 15 young people aged between 12 and 25 years (inclusive) at the time of their appointment. The objectives of the Youth Advisory Council are:

- To give young people opportunities to take a leading role in participation and consultation activities on issues that affect their lives;
- To act as a conduit to the Minister on the views of young people;
- To raise awareness of the aspirations, needs and concerns of young people within government and the community; and
- To facilitate interaction between young people, the ACT Government and the wider community.

13 http://www.cmd.act.gov.au/_data/assets/pdf_file/0010/216559/2011CanberraSocialPlan_Print_Version.pdf accessed 9 July 2011, 46.

14 Hawke, A., *Governing the City State: One ACT Government – One ACT Public Service*, ACT Government (2011) 57.

- 4.4.19 In this Report, the Commission does not seek to propose a vision for vulnerable children, young people and their families. However, we do suggest in relation to the content the ACT Strategic Board sub-committee and its stakeholders might consider in the process of setting this vision, that the vision for vulnerable children, young people and their families should:
- Be centred on vulnerable children and young people, and not the systems that support them;
 - Reflect that every child and young person wants to succeed – and can succeed;
 - Seek to meet the needs and see improvements in the lives of vulnerable children, young people, their families and their communities;
 - Seek to assure and improve the safety, health, development, learning and well being of all of the ACT's vulnerable children and young people; and
 - Mobilise collective capability to inspire and promote a shared sense of optimism, purpose and empowerment across the system.

Recommendation 4.3: The ACT Strategic Board sub-committee adopt a whole-of-government and whole-of-community approach to develop a clear and shared vision for vulnerable children, young people and their families, and that children and young people and the Legislative Assembly Standing Committee on Education, Training and Young Affairs be meaningfully engaged in the vision-setting process.

A statement of purpose for the youth justice system

- 4.4.20 A vision for the youth justice system for the ACT has already been developed by CSD. However, as shown previously in this Chapter, this vision was not developed within a strong authorising environment and, consequently, has little buy-in across government agencies or within the broader community. The Commission suggests this vision be redeveloped by CSD and called a 'statement of purpose'.

Creating a strong authorising environment

- 4.4.21 In order to increase buy-in across government agencies and the community, the Commission suggests the statement of purpose be redeveloped within the context of the ACT Strategic Board's vision for vulnerable children, young people and families.
- 4.4.22 To support the development of the statement of purpose for the youth justice system and its translation into practice, the Commission is of the view that CSD should establish a Youth Justice Advisory Group, with the secretariat function housed in the Youth Directorate, OCYFS. This Group should comprise practitioners and experts in the field of youth justice, detention, rehabilitation and reintegration, as well as youth and family advocacy groups.

Recommendation 4.4: The Community Services Directorate establish a Youth Justice Advisory Panel to guide the development of a statement of purpose for the youth justice system and to monitor the ongoing translation of this purpose into practice.

- 4.4.23 To develop a statement of purpose for the youth justice system, the Commission suggests CSD implement processes that meaningfully engage:
- All government directorates involved in the youth justice system (whole-of-government); and
 - Young people, families, advocacy groups, service providers, practitioners and experts involved in the youth justice system (whole-of-community); and
 - The Youth Justice Advisory Panel [recommendation 4.4] (whole-of-community).
- 4.4.24 Lastly, the Commission suggests the statement of purpose be approved by the ACT Strategic Board sub-committee for vulnerable children, young people and their families. It is envisaged that approval of this kind will enhance the statement's whole-of-government authorisation.

Setting a clear and shared vision

- 4.4.25 As with the vision for vulnerable children, young people and families, the Commission does not seek to put forward in this Report a statement of purpose for the youth justice system. Rather, the Commission suggests that in the process of developing its statement, CSD and its stakeholders consider that the statement of purpose for the youth justice system should:
- Build on the ACT Government's current vision for the youth justice system;
 - Be oriented to achieve rehabilitation and positive reintegration;¹⁵ and
 - Prevent low risk young people from entering the criminal justice system.

Recommendation 4.5: The Community Services Directorate adopt a whole-of-government and whole-of-community approach to develop a clear and shared statement of purpose for youth justice in the ACT.

Recommendation 4.6: The ACT Strategic Board sub-committee monitor and report on achievement of the vision for vulnerable children, young people and their families with specific reference to vulnerable young people in the youth justice system.

A statement of purpose for Bimberi

- 4.4.26 The CSD website describes Bimberi's key objective as being:
*'to assist sentenced young people to understand, address and take responsibility for their offending or risk taking behaviours.'*¹⁶
- 4.4.27 In the Commission's view this statement has a number of limitations, in that it narrowly focuses on young people who have been sentenced by the Court to detention (when most young people in Bimberi are not sentenced, but remanded), and it is not reflective of the wider objectives of rehabilitation and reintegration, which are contained in the current stated objectives of the youth justice system.

Creating a strong authorising environment

- 4.4.28 The previous recommendations made in this section create the foundations for a statement of purpose to be developed for Bimberi that will have high public value and authorisation. The Commission suggests the statement of purpose for Bimberi be developed within the context of the ACT Strategic Board's vision for vulnerable children, young people and families, and CSD's statement of purpose for the youth justice system.
- 4.4.29 To develop a statement of purpose for Bimberi, the Commission suggests OCYFS implement processes that meaningfully engage:
- All government directorates involved in Bimberi (whole-of-government);
 - Young people and families involved in Bimberi (whole-of-community); and
 - The Youth Justice Advisory Panel [recommendation 4.4] (whole-of-community).
- 4.4.30 Lastly, the Commission suggests the Bimberi statement of purpose be approved by the ACT Strategic Board sub-committee for vulnerable children, young people and their families. Again, it is envisaged that approval of this kind will enhance the statement's whole-of-government authorisation.

Setting a clear and shared vision

- 4.4.31 As with the statement of purpose for the youth justice system, the Commission does not seek to propose in this Report a statement of purpose for Bimberi. Rather, the Commission suggests OCYFS and its stakeholders consider that the Bimberi statement of purpose should:
- Emphasise the therapeutic as well as custodial nature of the service;
 - Recognise that most residents of Bimberi are there for short periods and are often connected to other service systems; and
 - View custody as an opportunity to intervene positively in the lives of vulnerable young people.

15 Altschuler, D.M., & Brash, R., Adolescent and Teenage Offenders Confronting the Challenges and Opportunities of Reentry, *Youth Violence and Juvenile Justice*, (2004) 291, 72 – 81.

16 <http://www.CSD.act.gov.au/ocyfs/bimberi> referenced on 17th June 2011.

Recommendation 4.7: The Community Services Directorate adopt a whole-of-government and whole-of-community approach to develop a clear and shared statement of purpose for Bimberi.

Recommendation 4.8: The ACT Strategic Board sub-committee monitor and report on achievement of the vision for vulnerable children, young people and their families with specific reference to vulnerable young people in Bimberi.

4.5 Translating the vision into practice

- 4.5.1 A large body of management literature exists on how high performing organisations implement their vision to create value or results. Much of this literature has focused on the private sector, however, in the last decade or more academics and experts have turned their mind to how this literature applies to the public sector.
- 4.5.2 Uniformly, the literature on high performing government organisations shows that the underlying requirements for successful implementation are:
- Processes that translate the vision into outcomes, and outcomes into measureable performance indicators; and
 - A high performance culture.
- 4.5.3 The literature shows that visions are embedded where there is reinforcing leadership, systems and processes.¹⁷ Further, it is the leadership, systems and processes in an organisation that create the performance culture.¹⁸ The greater the alignment between and across these systems and processes, the more they will support a high performance culture. This section reviews the operation and alignment of three critical CSD systems and processes, namely:
- The organisational performance management system;
 - The planning system; and
 - The people performance management system, with particular reference to leadership.

The organisational performance management system

Best practice

- 4.5.4 A robust performance management system is one of the key means by which high performing government organisations can continually improve themselves. The first component of this system is to determine the intended outcomes. Next, executives and managers, in consultation with staff, are required *‘to elaborate a series of performance measures at operating levels for measuring success.’*¹⁹ The literature stresses that it is important to be able to demonstrate how these operational metrics logically achieve improved outcomes.
- 4.5.5 Historically, governments have not measured their performance in terms of outcomes; rather they have measured performance in terms of activity, outputs or processes. While such measures allow government to assess the effectiveness of their investment and efforts, and can be useful program management devices, their existence can obscure the fundamental purpose of the provision of the service.²⁰
- 4.5.6 In recent years, human services departments in Australia have moved away from performance measurement focused on activity, outputs or processes and worked to develop outcome-based performance measures. In relation to the outcome frameworks for children and young people, those developed in Victoria, Tasmania, and Western Australia are notable. Those frameworks take a broader ecological approach to children and young people’s development and allow governments and organisations working with young people to focus on facilitating the intended outcomes in a young person’s life (eg safe and stable housing), rather than on specific features of their day-to-day activities (eg number of young people referred to refuges). In reflecting best practice, the outcomes frameworks in Victoria, Tasmania, and Western Australia identify outcomes in health, learning, development, safety and well being of young people.
- 4.5.7 Once outcomes have been defined, high performing government organisations formulate plans that *‘provide a clear and integrated path by which to move towards their intended outcomes. To do that they establish a clear understanding between the inputs, outputs, processes and outcomes, so each of these can be planned and orchestrated effectively.’*²¹

17 Peter M. Senge. *The Fifth Discipline: The Art and Practice of the Learning Organisation*. New York: Doubleday Currency. (1990).

18 Parston, G., and Goodman, J. *High-Performance Government Organisations: Principles for Creating Public Value*, Accenture (2008) 5.

19 Ibid.

20 Winkworth, G., and White, M., *Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice* (2011) 58 at Appendix B.

21 Parston, G., and Goodman, J., *High-Performance Government Organisations: Principles for Creating Public Value*. Accenture (2008) 4.

4.5.8 A proven method for governments (and nonprofits) to translate their outcome framework into performance measures is a 'theory of change' or 'program logic'. In her influential work, Weiss²² defined a theory of change, simply, as a theory of how and why any initiative works. A theory of change sets out how an initiative (such as a project, a program, or a policy) is understood or intended to produce particular outcomes.²³ Many theories of change are presented as four components in a linear sequence: inputs, activities, outputs, and outcomes. These represent the logical flow from:

- Inputs (resources such as money, employees and equipment) to
- Work activities, programs or processes, to
- The immediate outputs of the work that are delivered to customers, to
- Outcomes or results that are the long-term consequences of delivering outputs.

4.5.9 In recommending the ACT Government commence outcome-based planning for the youth justice system, the Commission notes that CSD began consulting with the community service sector in 2010 on the development of an 'Outcomes Based Service Funding Agreement - Purchasing Framework'. The aim of the project is to develop a purchasing framework for the procurement and quality improvement of human services funded by the CSD that may be transferable across all ACT Government agencies delivering human services. The project will develop a population based approach and measure the achievement of specific population results over a ten year period, in relation to improving social and economic outcomes for vulnerable Canberrans.²⁴

An outcome framework for vulnerable children, young people and their families

4.5.10 While the Commission acknowledges that moving from activity-based planning to outcome-based planning is not an easy task, the introduction of the ACT Strategic Board sub-committee for vulnerable children, young people and their families presents an opportunity for the ACT Government's organisational performance system to be strengthened at the highest levels through the adoption of outcome-based planning.

Recommendation 4.9: The ACT Strategic Board sub-committee translates the vision for vulnerable children, young people and their families into an outcome framework that includes the health, learning, development, safety and well-being of children and young people.

A youth justice practice framework

4.5.11 Prior to the recent development of the stated objectives, the Commission notes that the ACT Government had very few performance measures for the youth justice system. Nationally, the key outcome measure for youth justice systems is recidivism.²⁵ The limitations of this outcome measure are widely acknowledged by academics and system administrators. Further, in their report to the Commission, the Australian Institute of Criminology explains the ACT's method of collecting recidivism data could be improved. These matters are discussed in detail in Chapter 6 (evidence) of this review.

4.5.12 In addition, the Productivity Commission's *Report on Government Services* (RoGS) reports national data on 11 performance indicators for the youth justice system. All of these indicators are either process or output focused, such as number of young people diverted or proportion of pre-sentence reports completed (process), and number of young people participating in certain programs (output).

4.5.13 Executives interviewed by Winkworth and White agreed that organisational performance management was an area for considerable improvement in the youth justice system. One participant felt there is a need for a performance framework that is:

'More focused on rehabilitation and outcomes of young people. We need a coordinated whole of government data report.'

4.5.14 Due to a lack of outcome and performance measures, it is the Commission's view that the ACT Government does not have an effective system for measuring the organisational performance of the youth justice system. It is worth noting that similar conclusions have previously been made in relation to the NSW and Victorian youth justice systems.²⁶

22 Weiss, C.H., *Evaluation Research. Methods for Assessing Program Effectiveness*. Prentice-Hall, Inc., Englewood Cliffs, New Jersey, (1972).

23 Rogers, P.J., 'Logic models' in Sandra Mathison (ed) *Encyclopedia of Evaluation*, Beverly Hills, CA: Sage Publications. (2005) 232.

24 http://www.CSD.act.gov.au/home/purchasing_framework#latest, accessed 18 June 2011

25 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 50, Appendix A.

26 NSW Auditor-General, *Managing and measuring success: Department of Juvenile Justice*, Sydney: Audit Office of New South Wales (2005); Victorian

- 4.5.15 The adoption of an outcomes framework by the ACT Strategic Board sub-committee presents an opportunity for the work already commenced by CSD to be strengthened into an organisational performance management system for the youth justice system. In the Commission's view, CSD should work with the recommended Youth Justice Advisory Panel (recommendation 4.4) to develop and identify the intended outcomes for the youth justice system and a set of logical performance indicators. These intended outcomes and performance measures should be embedded in a youth justice practice framework that:
- Is headed by the Statement of Purpose of the youth justice system (recommendation 4.5);
 - Links the practice framework to the outcomes framework for vulnerable children, young people and their families (recommendation 4.9) and other relevant policy and program plans;
 - Outlines the values and principles that underlie the desired approach to working with young people in the youth justice system. These core principles will establish a moral authority guiding expected practice;
 - Describes specific approaches and techniques considered fundamental to achieving the desired outcomes. This might include 'evidence based' approaches, promising practices and/or approaches believed to be effective through practice based experience;
 - Describes intended outcomes and performance measures; and
 - Identifies and describes the way that partners will work together to achieve the statement of purpose and to integrate values and principles.

Recommendation 4.10: The Community Services Directorate translate the statement of purpose for the youth justice system into a youth justice practice framework with outcome measures and performance indicators.

Bimberi Practice Framework

- 4.5.16 At present there are no outcome measures or performance indicators in place for Bimberi. As a result, it is the Commission's view that the ACT Government does not have an effective system for measuring the organisational performance of Bimberi. Further, executives interviewed by Winkworth and White felt too much performance attention is focused on safety and security, at the expense of the stated objectives of rehabilitation and reintegration.
- 4.5.17 To strengthen the organisational performance management system for Bimberi, it is the Commission's view that OCYFS should engage with the recommended Youth Justice Advisory Panel to identify the intended outcomes for Bimberi and a set of logical performance indicators. These intended outcomes and performance measures should be embedded into a Bimberi practice framework that:
- Is headed by the Statement of Purpose of Bimberi (recommendation 4.7);
 - Links the practice framework to the Youth Justice practice framework (recommendation 4.10) and other relevant policy and program plans;
 - Outlines the values and principles that underlie the desired approach to working with young people in Bimberi. These core principles will establish a moral authority guiding expected practice;
 - Describes specific approaches and techniques considered fundamental to achieving the desired outcomes. This might include 'evidence based' approaches, promising practices and/or approaches believed to be effective through practice based experience;
 - Describes intended outcomes and performance measures; and
 - Identifies and describes the way that partners will work together to achieve the statement of purpose and to integrate values and principles.

Recommendation 4.11: The Community Services Directorate translates the statement of purpose for Bimberi into a Bimberi practice framework with outcomes measures and performance indicators.

- 4.5.18 More detail on the recommended Bimberi Practice Framework can be found at Chapter 8 (case management).

Data collection and reporting

- 4.5.19 An inherent part of an effective organisational performance management system is a well designed data collection system. Data that is collected and reported well enables service delivery to be adjusted to achieve better outcomes, is a strong

accountability tool, promotes transparency, and motivates people towards continuous improvement. It also allows for early detection and correction of failing or under-performing initiatives.

- 4.5.20 Many participants in this Review expressed concern that the current data systems are not sufficient to meet existing data collection and reporting requirements, including those for CSD, ACT Ministers and the national juvenile justice minimum data set. Chapter 6 (evidence) of this Report makes recommendations to improve data collection systems and processes, and it is the Commission's view that significant investment is needed to develop a robust data collection system that will support CSD's transition to an outcome-based performance management system.
- 4.5.21 The unit within CSD responsible for youth justice data collection and reporting is the Youth Justice Policy Unit. That unit is also responsible for the development of youth justice policy and procedures, maintenance of the youth justice victims register and the development of interagency agreements with key youth justice stakeholders. This Unit will need to play a key role in developing an outcome-based performance management system for the ACT youth justice system and the data systems to support it.
- 4.5.22 The Commission holds concerns regarding the capacity of the currently configured Youth Justice Policy Unit to lead the development of the outcome-based organisational performance measurement system and the associated data collection system. This comment is made not in relation to the professionalism of the current Unit; rather that, in the Commission's view, the scope of work is significant and will require additional resources and specialists skills.
- 4.5.23 Looking ahead, when the organisational performance measurement system and associated data collection system are in place, it will be vital that the insights generated by the performance data be translated into improved practice. Again, the Commission holds concerns regarding the capacity of the currently configured Youth Justice Policy Unit to fulfill this role.

Recommendation 4.12: The Community Services Directorate ensure the necessary capacity and skill are in place to develop an outcome based organisational performance measurement system and associated data collection system and translate the data into improved practice.

- 4.5.24 In making these recommendations, the Commission suggests CSD either expand the Youth Justice Policy Unit or partner with a specialist unit of a university or other jurisdiction.

An aligned planning system

Current practice

- 4.5.25 During the Review, the Commission reviewed a number of Government plans which either broadly or directly relate to vulnerable young people, including those involved in the youth justice system and Bimberi. They were:
- **Canberra Plan and Canberra Social Plan**, which outline the Government's strategic and aspirational vision for the city. The objectives seek to ensure that all Canberrans enjoy the benefits of living in a community that is safe, socially inclusive and respectful of human rights; all Canberrans are able to fully participate in community life; and the most vulnerable in our community are respected and supported.
 - **ACT Young People's Plan 2009-14**, which provides an integrated policy framework with a specific focus on vulnerable young people who are at risk of not realising their potential to achieve positive life outcomes. This Plan is based on the themes of participation, access, transitions and support.
 - **ACT Children's Plan 2010-14**, which articulates the ACT Government's commitment that children and young people reach their potential, make a contribution, and share the benefits of the community.
 - **Aboriginal and Torres Strait Islander Justice Agreement 2010-2013**, which seeks to reduce the over-representation of Aboriginal and Torres Strait Islander people in the ACT justice system as both victims and offenders.
 - **ACT Youth Commitment** which, when developed, will reflect the National Partnership on Youth Attainment and Transitions, and set targets to ensure that no young person is lost from education, training or employment.
 - **Youth and Family Service Delivery Framework**, which will provide effective and efficient operation of the service system for vulnerable and in-need children, young people and their families in the ACT.
 - **ACT Children's and Young People's Justice Health Services Plan 2008-2012**, which is designed to sustain and improve the health of children and young people in detention by providing and coordinating effective, holistic and efficient health services.
 - **Mental Health Services Plan**, which articulates the vision and the strategic direction for the development of the ACT mental health sector, and the steps towards achieving it.

- 4.5.26 Several participants in the Review commented on the number and complexity of plans operating within or across youth justice. In their submission to the Review, Northside Community Services called for:
- 'a serious analysis of the myriad of plans, strategies and frameworks now littering the field, often with overlapping elements but little collective accountability for client outcomes. For instance, any changes to Bimberi - or youth justice more generally - would not only relate to the Bimberi Reviews and the Diversion paper, but also the new Youth and Family Service Delivery Framework, the Young People's Plan, the Aboriginal Justice Agreement, the Mental Health Services Plan, the Alcohol, Tobacco and Other Drugs Strategy, the recent reports on adult corrections and related strategies (Hamburger and Burnett).etc.'*
- 4.5.27 Further, Noetic Solutions, who were contracted by the ACT Government to undertake consultation on the *Towards a Divisionary Framework* in the ACT discussion paper, reported a level of fatigue within the community services sector as a result of the multiple planning and review processes undertaken in the last few years. In that consultation process, stakeholders also called for consolidation.
- 4.5.28 In its independent review of the ACT Public Service, the Hawke Review reported that participants in that process also felt:
- 'the ACTPS has too many layers of overly detailed planning and reporting, and suffers from a lack of alignment of effort that comes from agencies being overwhelmed in overlapping frameworks, plans, and strategies.'*²⁷
- 4.5.29 The Hawke Review went on to observe what it called 'the vacant middle ground', referring to a weak connection between the strategic intent and supporting action plans. The Review went on to say:
- 'Very detailed effort is put into supporting action plans and strategies articulating the "what" but the proliferation of supporting documents is clouding the ACTPS's line of sight to the key ones. Alignment of effort is being lost in a sea of reporting. Unifying themes are being obscured through fragmentation of planning and delivery. The ACTPS is succeeding in the detail, but perhaps missing the mark in its understanding and pursuit of the whole.'*²⁸
- 4.5.30 The Commission's experience in this Review is congruent with the observations made in the Hawke Review, with some additional observations. While the ACT Government has invested considerable time and money into developing a vision for all young people in the ACT (through the ACT Children's Plan and ACT Young People's Plan), these plans do not provide sufficient guidance in relation to vulnerable children and young people. Without this guidance, it is difficult for subsequent planning to be aligned. In relation to the youth justice system, the Commission observes the vision of the youth justice system, articulated by the ACT Government in their submission to the Review, is not reflected in any previous documentation or in any implementation plans relating to young people or the youth justice system. It appears that vision may have been recently developed, meaning the supporting plans were developed without reference to this vision.
- 4.5.31 Further, the Commission heard from participants that existing plans do not 'cascade' down to teams and individuals at the operating level. One participant commented that there was no 'corporate plan' to guide the activities or outcomes Bimberi delivered. The ability to successfully cascade plans is recognised as a key capability for high performing organisations.²⁹
- 4.5.32 In the Commission's view, the ACT Government planning system for young people and the youth justice system could be improved through greater alignment.

A possible way forward

- 4.5.33 The suggestions and recommendations made in this Chapter aim to assist in strengthening the planning systems for young people in the ACT. To demonstrate this point, Figure 4.2 depicts the current planning system and Figure 4.3 depicts the recommended planning system (both figures, below). Looking at the figures side by side, the 'vacant middle ground' noted in the Hawke Report can be readily seen. By way of reference and summary, the Commission recommends the following planning instruments be developed to strengthen the alignment of the planning system:
- A vision for vulnerable children, young people and their families (as discussed in this chapter);
 - An outcomes framework for vulnerable children, young people and their families (as discussed in this chapter);
 - A prevention framework for children and young people comprising:
 - A primary prevention plan (see Chapter 7);
 - A secondary prevention plan, including the Youth and Family Support Program (see Chapter 7); and
 - A tertiary prevention plan including a practice framework and case management model for working with vulnerable young people (see Chapter 8);
 - A statement of purpose for the youth justice system (as discussed in this chapter);
 - A diversionary framework (see Chapter 7); and
 - A statement of purpose for Bimberi (as discussed in this chapter).

27 Hawke, A., *Governing the City State: One ACT Government – One ACT Public Service*, ACT Government (2011) 205.

28 Ibid.

29 Parston, G., and Goodman, J., *High-Performance Government Organisations: Principles for Creating Public Value*, Accenture (2008) 4.

Figure 4.2: Current planning system for young people in the ACT

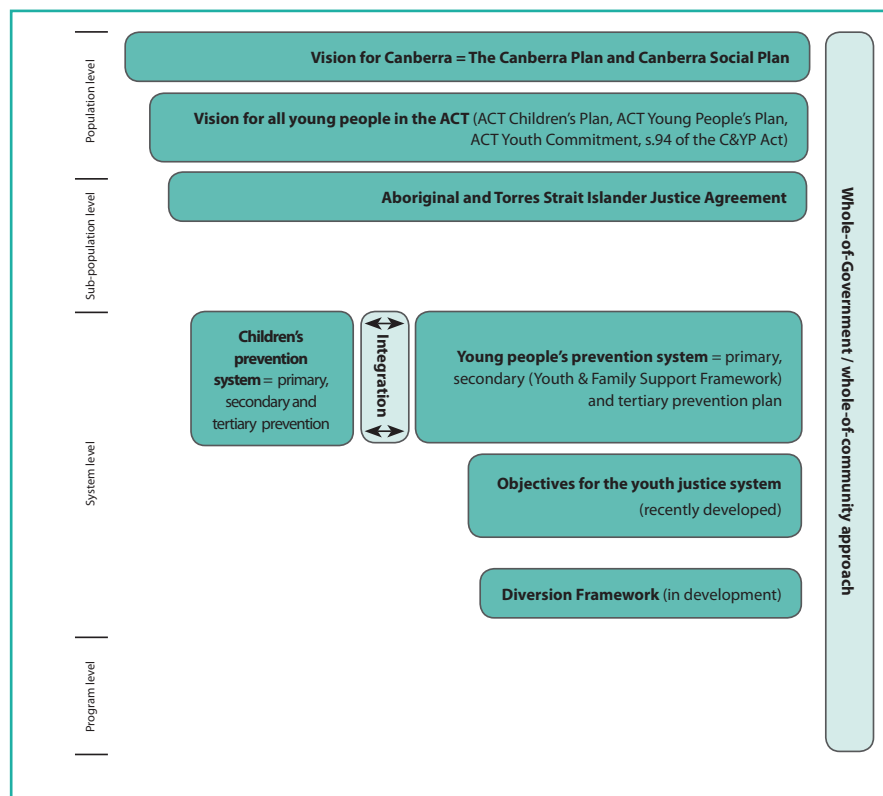
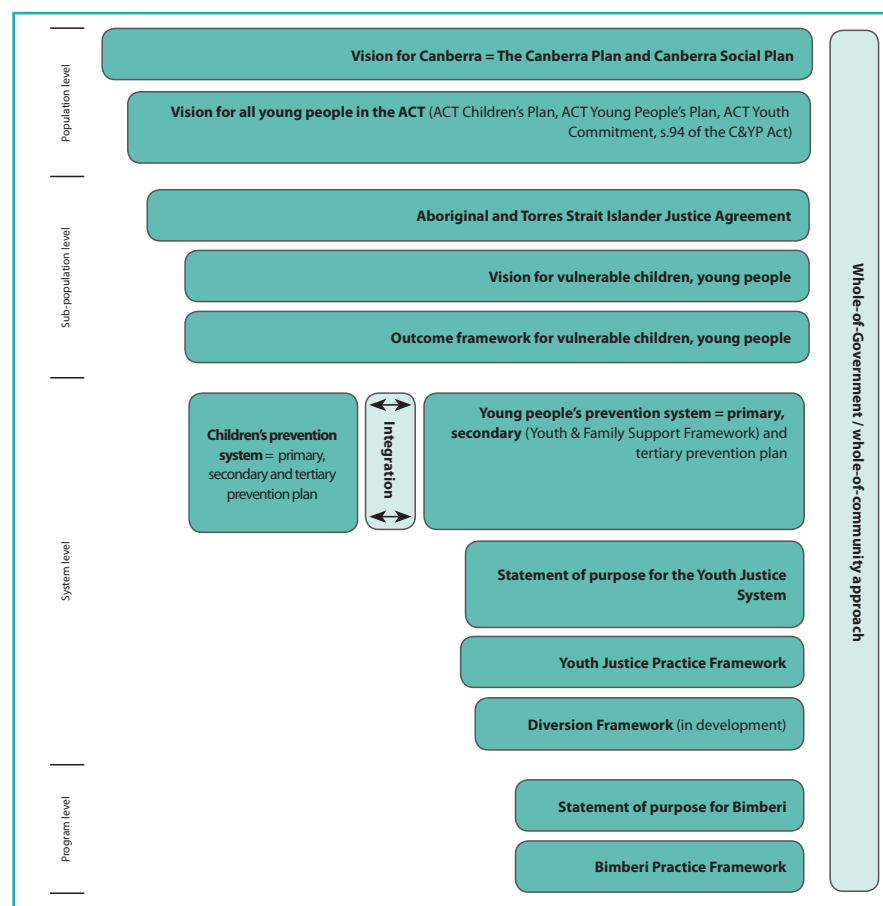


Figure 4.3: Recommended planning system for young people in the ACT



An aligned people system

- 4.5.34 Even with a vision that has high public value and authority, which is translated into practice through an outcomes framework with logical performance indicators, and supported through an aligned planning system, successful implementation largely rests on an organisation's culture of performance. At their foundation, high performance cultures are built on behaviours, attitudes and beliefs that generate a sense of purpose, ambition and enthusiasm towards realising the organisation's vision and strategy.³⁰ One of the most powerful influences on the behaviours, attitudes and beliefs of any organisation is the behaviour and performance of its leaders.

Best practice

- 4.5.35 An established characteristic of high performing government organisations is the cultivation and mobilisation of leaders who:
- **Are strongly aligned on a professional and personal level with the stated values and guiding principles of the organisation.** In their report to the Commission, Winkworth and White note that *'without a rigorous commitment to the maintenance of a coherent set of values throughout the organisation, from the top levels of its leadership to the day-to-day frontline staff delivering services, the organisation faces the risk of a "cultural drift" in which component parts of the organisation develop separate cultural identities and operate effectively for divergent and sometimes competing purposes. At this point the organisation becomes ineffective.'*³¹
 - **Are skilled at communicating the outcome framework to ensure the entire organisation is acting in concert to achieve its vision.** Research shows that effective communication is a primary requirement for effective implementation.
 - **Are skilled at leading and managing change.** To develop a high performing culture, leaders must *'rigorously follow a defined process of change entailing five key steps: visioning improved outcomes, role redesign, planning, implementation and evaluation.'*³²
 - **Are skilled at aligning their workforce to the vision and strategy.** Building or transforming the structure and skill of a workforce to achieve the vision and strategy; and *'identifying and eradicating inappropriate or debilitating behaviour, beliefs and attitudes.'*³³
 - **Work with staff at all levels to embed the systems of a high performance culture,** including those that enable decision making, innovation, and the ability to take calculated risks that are likely to achieve greater outcomes; as well as those that hold individuals accountable for their performance and reward staff with recognition, greater responsibility, and career progression.³⁴

Leadership of Bimberi management

- 4.5.36 The former management team were heavily involved in the design and development of the Bimberi facility and, as discussed above, clearly demonstrated that they had a commitment to making Bimberi a best-practice model for human rights compliant youth detention, and a facility where positive outcomes and rehabilitation could be achieved for young people.
- 4.5.37 As also discussed above, the vision for the youth justice system, and the role of Bimberi within this system, was inadequately developed and articulated by CSD and other stakeholders. This lack of a clear vision made it difficult for Bimberi management to develop and sustain a high performance culture within the centre, particularly in the context of the following factors:
- In 2010, a sharp increase in the number of young people residing at Bimberi;
 - Significant public and media scrutiny;
 - A reactive political environment;
 - A budget for operations and staffing at Bimberi based on the cost of the Quamby facility which did not sufficiently account for the additional costs of the larger new facility (although we note that staffing resources have increased in recent times due to increased Government investment);

30 Parston, G., and Goodman, J., *High-Performance Government Organisations: Principles for Creating Public Value*. Accenture (2008) 5.

31 Winkworth, G., and White, M., *Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice* (2011) p? at Appendix B.

32 Parston, G., and Goodman, J., *High-Performance Government Organisations: Principles for Creating Public Value*. Accenture (2008) 5.

33 Ibid.

34 Ibid.

- Tensions between the expectation and the reality of what systemic change (including rehabilitation) a new facility can deliver; and
- Unanticipated challenges related to some of the features of the new facility, including its size, staffing requirements and security system.

4.5.38 Nevertheless, based on interviews with current and former staff, and a range of other participants and stakeholders, the Commission considers that the leadership style exhibited by former management may not have always been conducive to the creation of a high performance culture.

4.5.39 The Review heard a divergence of views from participants regarding the leadership style of former management, with some speaking positively of former management, including, in particular their commitment to their collective vision and achieving what they could with the limited resources available.

4.5.40 However, the majority of former and current staff participants who discussed the leadership style of former management at Bimberi, both in interview and via-survey, raised concerns about communication between management and staff, and a lack of support and respect for staff.³⁵ Concerns about leadership style at Bimberi were also raised by community and government agencies who reported having difficulty engaging with Bimberi management to provide services or programs to young people at Bimberi. These matters are discussed in more detail in the following chapters.

4.5.41 In reaching these conclusions, the Commission notes that it is the responsibility of CSD executives to set, support, monitor and, if necessary, adjust leadership behaviour within the youth justice system. It is also the responsibility of CSD executives to build, maintain and update the system and processes that support the desired leadership behaviour and high performance culture.

4.5.42 The Commission heard differing views from participants regarding the level of support and feedback from CSD executives to Bimberi management, however it does appear that CSD executives were aware of a deteriorating environment at Bimberi for young people and staff and were making efforts to address these issues.

4.5.43 Specifically, the Commission is aware of a number of steps taken by the Director-General, and other executives, to address issues of individual and systemic concern. These processes were beginning to result in visible improved outcomes for young people and staff by the time this Review commenced in late 2010.

Looking ahead

4.5.44 Positively, the Commission heard that much has changed at Bimberi in the last six to eight months. Generally, many participants report feeling cautiously positive about the leadership behaviour of the current management, and welcoming of the Change Management Strategy that was introduced at Bimberi in November 2010. However, as noted above, further measures may be necessary 'on the ground' at Bimberi to ensure this positive change continues.

4.5.45 In its submission to the Review, the ACT Government describes the purpose of the Change Management Strategy as: *'improving support for young people detained at Bimberi, as well as enhancing the professionalism of staff and the smooth functioning of the centre.'*³⁶ Further, the Change Management Strategy was described as being focused on ensuring:

- Clear internal communication strategies;
- A learning culture through work-based learning opportunities;
- Young people are the focus of all work;
- Case plans and case management processes are client-centred;
- Operational standards balance staff and client safety with providing a therapeutic environment for detainees;
- Strong relationships with agencies and community partners;
- Opportunities for collaboration between management and detainees;
- Increased support to Bimberi staff; and
- New operational standards and processes are formalised, and embedded through policy and procedure.³⁷

³⁵ For more detail see Chapter 5 (staffing).

³⁶ ACT Government. *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 6.

³⁷ Ibid.

- 4.5.46 While some of these focus areas relate to systems and processes, many relate to more visible and supportive leadership.
- 4.5.47 While most participants were hopeful about the changes that had been implemented, some expressed concern about how long those changes could be sustained. To a degree, the Commission shares this concern. In drawing from the literature, the Change Management Strategy can be described as a 'command and control' style of public sector reform.³⁸ Command and control models are often used when reform is crisis driven. The literature cautions that *'once adequate performance is established, however, the benefits of command and control are less clear. Governments find it hard to sustain the focus and drive on which command and control depends.'*³⁹
- 4.5.48 While the leadership behaviour of the former management has been questioned in this Review, the Commission acknowledges that these leaders were not supported by strong and reinforcing systems and processes. In drawing from the literature, the Change Management Strategy must create alignment between leadership behaviour and reinforcing systems and processes in order to achieve sustainable, high performance outcomes. As such, the Commission believes CSD must take further short term and longer terms steps to achieve these outcomes.
- 4.5.49 In the short term, we recommended that CSD implement measures to consult staff on their feelings about how improvements can be made, and make changes to day-to-day practice based on that feedback and other expert advice.

Recommendation 4.13: The Community Services Directorate consult with Bimberi staff about proactive steps to address any staffing culture concerns, and consider engaging a consultant to work with staff and management to develop a more positive culture.

- 4.5.50 In the long term, the Commission believes CSD must invest considerably more time and resources into the development of systems and processes than it has into improving leadership behaviour.

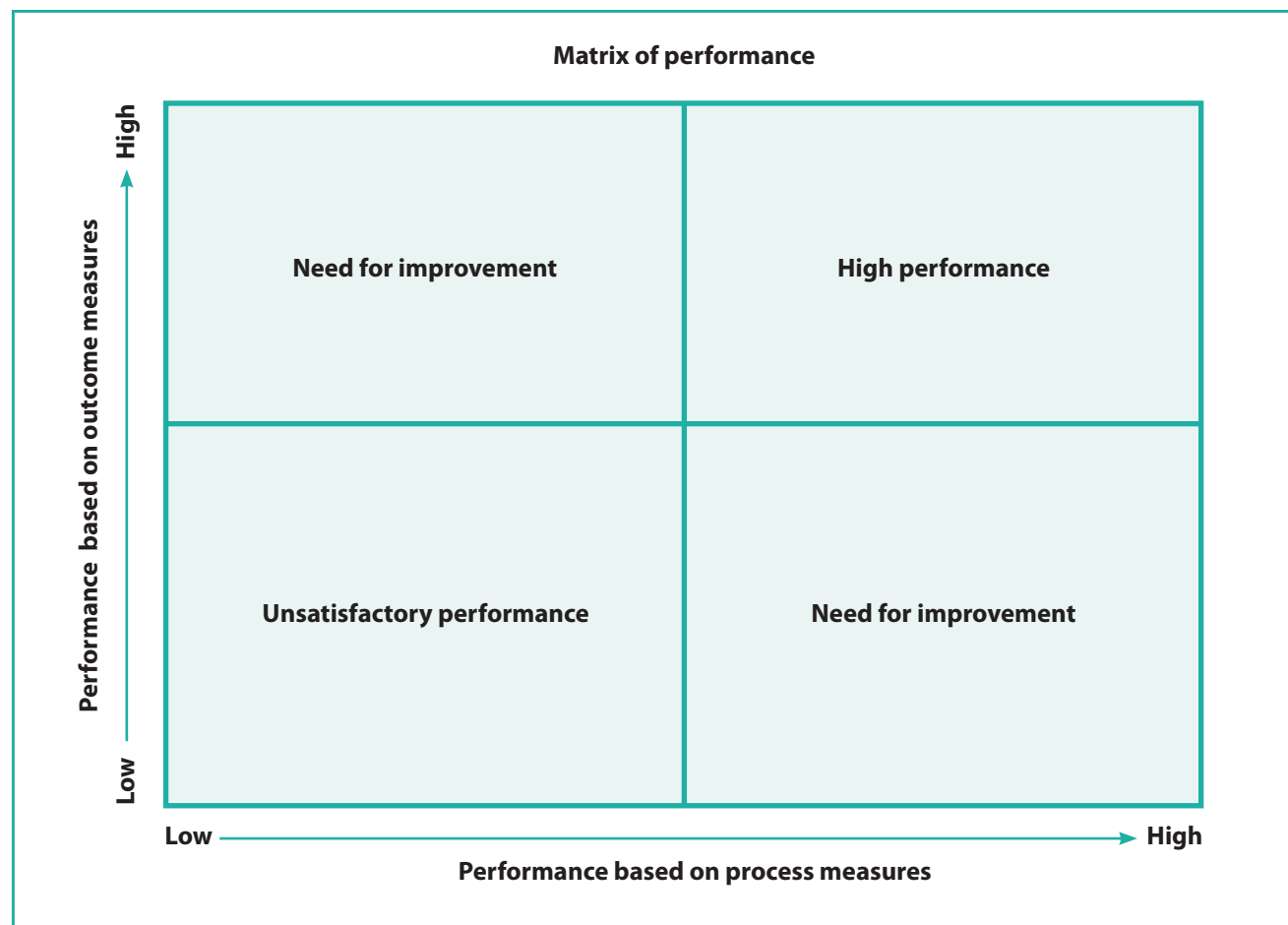
People performance management

- 4.5.51 People performance management systems have the same ability to drive alignment with an organisation's vision as organisational performance measurement systems. They do this by holding managers and staff members to account for their particular areas of responsibility, and providing a support mechanism which assists managers and staff to successfully achieve required objectives.
- 4.5.52 Chapter 5 (staffing) of this Report outlines CSD's current process for staff appraisals, supervision and support and finds that those processes have not been consistently complied with at Bimberi. This is concerning, and Chapter 5 makes recommendations to address this. However, here, the Commission wishes to make further recommendations as to how CSD can improve the people performance management system to ensure it generates and supports aligned leadership behaviour, as well as aligned individual objectives and development. It is the Commission's view that CSD's people performance management system needs to be strengthened to allow for early detection of leadership behaviour that is not aligned with the purpose of the youth justice system.
- 4.5.53 One way of doing this is to adopt a matrix model of people performance management. In a matrix model, managers are judged according to a number of broad dimensions and need to show evidence of achievement in each of these in order to receive a satisfactory rating through the people performance management system. For example, Figure 4.4 below indicates that a manager who performs well on outcome measures (such as that all young people in Bimberi are achieving measurable improvements in their literacy and numeracy), but poorly on process measures (such as effective staff management) is not rated highly. On the other hand a manager who performs well in the processes of staff management yet is unable to achieve effective outcomes is also not rated highly.

38 Barber, M., 'Three paradigms of public sector reform' (2007), *Transforming Government*, McKinsey and Company, 23.

39 Ibid.

Figure 4.4: Matrix model for people performance management



Recommendation 4.14: The Community Services Directorate introduce a matrix model of people performance management to assess measures of leadership behaviour as well as outcome measures.

4.6 An accountability framework

- 4.6.1 The recommendations contained in this Report and the significant structural change to Government represented by the introduction of the ACT Strategic Board, will separately and jointly change the way the ACT government engages with and provides services and support to vulnerable children and young people, particularly those involved in the youth justice system and Bimberi. In these circumstances, it is the Commission's view that the ACT community, Legislative Assembly and bureaucracy would benefit from the accountability framework being strengthened in relation to the way government improves the system for these young people.
- 4.6.2 In seeking to strengthen the accountability framework, the Commission notes the unanimous recommendations of the 2008 *Commonwealth Joint Parliamentary Committee on National Capital and External Territories Report into the National Capital Authority*, which said:
- 'Transparency and accountability to the Parliament will be enhanced through the Chairperson of the board appearing twice a year at public hearings before this committee.'*

- 4.6.3 The Commission sees applicability of this recommendation in relation to the introduction of the range of other vision and accountability drivers discussed in this chapter. Transparency and accountability of the ACT Government would be enhanced if the Government were to appear every two years at public hearings before the Legislative Assembly Standing Committee on Education, Training and Youth Affairs.
- 4.6.4 In holding hearings every two years, the Legislative Assembly Standing Committee on Education, Training and Youth Affairs could inquire into achievements of the vision and outcomes for vulnerable young people in the youth justice system. Of particular importance, the Standing Committee could hear submissions from a whole-systems perspective through:
- Inviting appearances from the **whole-of-government**, such as relevant Ministers, the ACT Strategic Board sub-committee, Director-General of the CSD, and representatives from the police, Department of Public Prosecutions (DPP) and Legal Aid; and
 - Inviting appearances from the **whole-of-community**, such as representatives from the Courts, Aboriginal Legal Services, external oversight bodies, advocacy groups, practitioners, experts, families and young people.
- 4.6.5 Such an accountability mechanism would allow for review of progress, and the making of associated recommendations for continual improvement every two years.

Recommendation 4.15: The Legislative Assembly Standing Committee on Education, Training and Youth Affairs consider holding public hearings every two years on achievements towards the vision and outcomes for vulnerable young people in the youth justice system.

- 4.6.6 Regardless of whether the above recommendation for an accountability framework is adopted, the Commission sees value in the external oversight bodies (the Public Advocate, the Official Visitor, and the Commission) preparing a joint annual report on achievement towards the vision and outcomes for vulnerable young people in the youth justice system, including Bimberi. The Commission recommends this report be tabled with both the ACT Strategic Board sub-committee and the Legislative Assembly Standing Committee on Education, Training and Youth Affairs.

Recommendation 4.16: The external oversight bodies (the Public Advocate, the Official Visitor, and the Human Rights Commission) report jointly and annually to the ACT Strategic Board sub-committee and the Legislative Assembly Standing Committee on Education, Training and Youth Affairs on achievements towards the vision and outcomes for vulnerable young people in the youth justice system.

4.7 Change management

- 4.7.1 This Chapter has made a broad range of suggestions and recommendations to better align the systems for vulnerable children and young people to a clear and shared vision. It has followed a linear progression of recommending improvements to:
- The vision at each operating level;
 - Translation of this vision into practice through:
 - Adopting outcomes measures and performance indicators (the organisational performance management system);
 - Better aligning the planning system; and
 - Strengthening the people performance system; and
 - The strength of the accountability framework.
- 4.7.2 These recommendations, and others in this Report, represent a significant amount of change to plan, manage and achieve. Of particular note, the recommendations require CSD to improve its performance culture by better aligning three large systems (the organisational performance measurement system, the planning system, and the people performance measurement system).

- 4.7.3 The recent Hawke Review called for a *'fundamental shift in workforce approaches and culture'*. In calling for this change, the Review commented on how difficult cultural change can be:

*'Most governments have been less effective at reforming the 'software' of the public sector – the cultural systems that underpin high performance rather than the 'hardware' of structures, systems and processes.'*⁴⁰

- 4.7.4 To support the required change, the Hawke Review suggested that the Chief Executive and Head of the ACTPS engage an individual with the necessary skills and experience in change management to partner the implementation team. The Commission sees value in this and makes a similar recommendation.

Recommendation 4.17: The Community Services Directorate consider engaging a change management expert to assist with the significant cultural change required to instill a high performance culture across the youth justice system.

40 Hawke, A., *Governing the City State: One ACT Government – One ACT Public Service*, ACT Government (2011) 260.



Chapter 5: Staffing

A Quality Youth Justice System Employs Skilled Staff And Provides Them With Ongoing Training, Support And Supervision

Relevant Terms of Reference

- Staff levels, training and retention.

Relevant Human Rights Standards

- Right to Life (HR Act s.9)
- Right to Equality (HR Act s.8)
- Freedom from Inhumane Treatment (HR Act s.10)
- Protection of the Family and Child (HR Act s.11)
- Staff have appropriate remuneration, qualifications and ongoing training including on Aboriginal culture (SMR r.46, 47; POJ r.81, 82, 83, 85; RCIADC r.177)
- Staffing profile should reflect background of residents particularly Aboriginal staff (BR r.22, RCIADC r.178)
- Female staff should manage female areas and should reflect female population (SMR r.53, BR r.22)
- Staff should model behaviour (SMR r.48)

5.1 Introduction

- 5.1.1 A quality youth justice system is critically dependent upon the strengths and capacities of the staff across the system who deliver services to young people. Human rights standards recognise, with respect to staff, that *‘the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.’*¹
- 5.1.2 Recruitment of skilled and committed workers who share the values and vision of youth justice is vital, but the ability of staff to deliver quality services requires a system that supports and develops them through effective training, supervision and management.

5.2 Staff within the youth justice system

- 5.2.1 In interviewing and observing staff providing frontline services to young people both in community youth justice and in Bimberi, the Commission has been encouraged by the level of commitment of the majority of staff to making a difference to the lives of young people, and the skills and dedication they display in providing services in a challenging environment.
- 5.2.2 However, it is apparent that youth justice staff across the system are not being adequately trained, supported or resourced to work effectively with young people, and that they are often frustrated at the constraints imposed by high caseloads and low staffing levels, which limits the progress they can achieve with young people and their families.
- 5.2.3 The decision to commence operations at Bimberi with the same staffing budget as the Quamby facility, and the inadequate supervision and support provided to staff at the new Centre in its critical first two years, has had serious repercussions for both staff and young people at the Centre, and has prevented it from meeting the expectations of a human rights compliant youth justice facility.

¹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), rule 82.

- 5.2.4 In the Commission's view, improvement of staffing levels, training, conditions and support for youth justice staff is essential, as it is not possible to have a quality youth justice system that respects the human rights of young people unless the human rights of workers are also respected and their contributions properly valued.
- 5.2.5 This Chapter reviews best practice in recruitment, training, support and supervision of staff in youth justice, and assesses the current practice in Bimberi and, briefly, in the Community Youth Justice (CYJ) area of the Community Services Directorate (CSD).

Human rights standards

- 5.2.6 There are a range of human rights standards relevant to staffing in a youth justice system. Staff are bearers of human rights that are protected under the ACT *Human Rights Act 2004* (the HR Act), which include the rights to liberty and security of person, life, and equality.²
- 5.2.7 There are also specific international human rights standards for staffing in youth justice. The Beijing Rules require that staff in youth justice reflect the diversity of young people who come into contact with the system, and that efforts be made to ensure the fair representation of women and minority groups in youth justice agencies.³ In the ACT context this requires that particular consideration be given to the recruitment of Aboriginal and Torres Strait Islander workers, given the significant over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system.⁴ Based on 2008-2009 data, Aboriginal and Torres Strait Islander young people in the ACT were 35 times more likely to be detained than non-Indigenous young people.⁵
- 5.2.8 The Rules for the Protection of Juveniles Deprived of their Liberty include standards for recruitment, remuneration, qualifications, management and training of youth justice personnel. These standards are discussed in more detail below.

Importance of skilled youth justice staff

- 5.2.9 The expectations we have of workers in the youth justice system are high. As Camino and Zeldin observe '*we as a society hold extraordinary expectations of youth workers. We expect them to carry out an astonishingly diverse range of functions and to be equipped with an array of skill sets*' yet often do not provide them with the training, resources or structures to best assume these responsibilities.⁶
- 5.2.10 Workers in the youth justice system play a vital role in supporting many aspects of the lives of the young people they work with, including their rehabilitation. While evidence-based rehabilitation programs are essential, workers who have positive relationships with young people can effectively reinforce and maintain progress. As Birgden suggests, workers can model pro-social behaviour and maintain optimism about change, and can find opportunities to motivate young people in everyday interactions.⁷
- 5.2.11 Working within the youth justice system, youth workers have to manage what are often considered competing priorities: they are required to meet expectations related to community safety and those related to achieving positive outcomes for young people; expectations related to compliance and security, and those related to responding to young people's personal and growth needs; expectations related to the best interests of the Centre and those related to the best interests of the individual. High levels of media and political scrutiny regarding both security and welfare issues in the youth justice system may also send mixed messages to youth workers about the expectations placed on them.
- 5.2.12 Although these expectations are often characterised as being oppositional to each other (for example, that you can't have a focus on control and on rehabilitation at the same time), youth justice experts such as Chris Trotter argue that these expectations can be reconciled and, in fact, more positive outcomes can be achieved where care and control functions are integrated.⁸ To have the best and most sustainable outcomes, he argues, workers must require good behaviour, but also provide young people with guidance, encouragement and confidence, so that they can achieve. Programs must attempt to meet young people's needs and to curb their behaviours so that community safety can be maintained. Creating false dichotomies has been shown to be unhelpful conceptually and programmatically, and to lead to crises of confidence and limited capacity to achieve positive outcomes.

2 *Human Rights Act 2004* (ACT), s.18 (right to liberty and security of person), s.9 (right to life), s.8 (right to equality).

3 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ('Beijing Rules'), rule 22.

4 Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 3, 329, rec.178.

5 Australian Institute of Health and Welfare, *Juvenile justice in Australia 2008–09*, (2011), 99.

6 Linda Camino and Shepherd Zeldin, 'Making the Transition to Community Youth Development: Emerging Roles and Competencies for Youth-serving Organisations and Youth Workers' (2002) Spring/Summer edition, *CYD Journal* 70-78, 77.

7 Astrid Birdgen, 'Therapeutic Jurisprudence and Responsivity: Finding the Will and the Way in Offender Rehabilitation', (2004) *Psychology, Crime and Law*, Vol10(3) 283-295, 288.

8 Chris Trotter, *Working with Involuntary Clients: A guide to practice* (1999); Chris Trotter, 'The impact of different supervision practices on in community corrections', (1996) *Australian and New Zealand Journal of Criminology*, Vol. 28, No. 2, 29-46.

5.2.13 In his work on involuntary clients (including young people in the youth justice system in Victoria), Trotter points to the value of relationship-based practice models that integrate both compliance (social control) and growth (helping). Juvenile justice expert Dr Larry Brendtro and others stress the importance of:⁹

- *Fostering trustworthy relationships that demonstrate the skills and behaviours to be developed:* There is some evidence to suggest that the most effective interventions with young people are provided by skilled staff with an ability to engage young people, to foster trust and to mentor the types of behaviours and skills that young people are expected to develop. These relationships are not only ones that can be most effectively used to facilitate the achievement of positive outcomes, but are often those that young people most often value and seek.¹⁰
- *Adopting strengths-based approaches:* In particular, Trotter suggests that demonstrating and reinforcing pro-social behaviour is essential in changing young people's thinking and actions. He argues '*that the more effective probation officers (those with clients who had low recidivism rates) focused pretty much exclusively on the positive things that their clients said and did and made little if any use of confrontation.*' Trotter quantitatively demonstrates that the worker's ability to identify, reinforce and use client strengths was essential in achieving positive results and reducing rates of recidivism and anti-social behaviour.
- *Ensuring clarity of role and approach:* Trotter argues that the nature of the relationship must be made clear to the client, and the client must have faith in the worker's capacity to support change in order for the relationship to benefit the client and reduce recidivism. The relationship must have a purpose, and clients must understand and have confidence in the worker, their relationship and the approach that the worker is adopting for things to improve. Workers who could provide young people with boundaries and develop their insight proved to be most effective, while those who focused primarily on punishment or scare tactics and those who focused primarily on relationship building proved to be ineffective. Workers who were empathetic were not necessarily more effective than those who were not if, alongside this empathy, they could not demonstrate pro-social behaviours and clearly articulate and reinforce their expectations. This approach is also articulated in the Response Ability Pathways,¹¹ and Therapeutic Crisis Intervention,¹² frameworks which, until recently, were provided to all staff at Bimberi as part of their induction training.
- *Meeting expectations:* Trotter and others suggest that to best forge these change-driving relationships, workers must not only be clear about what young people can expect from them, but also deliver on these expectations. Being accessible to young people, completing tasks within the agreed timeframes and providing clear boundaries are characteristics and behaviours that are valued by young people and demonstrate the worker's commitment to the relationship and the work being completed. An inability to meet these expectations or to explain to young people why these expectations have not been met can have a destructive impact on relationships.

5.2.14 These desirable characteristics and behaviours of youth workers are congruent with those raised by young people who participated in the Review and in previous studies.¹³ In summary, young people most often wanted workers who:

- Spent time building trustworthy relationships and who treated them with respect;
- Had expectations of them, but also faith and belief that positive outcomes could be achieved;
- Were available to them when they needed them (i.e. during periods of stress, when problems were emerging, when they needed someone to advocate for them);
- Fulfilled their commitments or explained why they were unable to do so;
- Responded to them as unique individuals with their own needs and desires; and
- Spent time finding out what they want help with and how they might best be supported.

5.3 Staffing and recruitment at Bimberi

5.3.1 Youth workers at Bimberi are key supports for young people, supervising small groups of young people over shifts of 12 hours. Bimberi operates on a unit management model, with an admissions unit and three residential units. Each unit is divided into wings, with up to six young people allocated to each wing, in individual cabins. Youth workers report to a team leader, who then reports to a unit manager. Youth workers also staff the control room, provide escorts for young people within and outside the Centre, and supervise young people when participating in programs provided by external agencies.

⁹ See eg. Maria Borzycki, *Interventions for prisoners returning to the community* (2005).

¹⁰ Larry Brendtro, Martin Brokenleg, and Steve Van Bockern, *Reclaiming youth at risk : Our hope for the future* (1990).

¹¹ Ibid.

¹² Family Life Development Center, 'Therapeutic Crisis Intervention System' (2010) *Information Bulletin* 6.

¹³ Tim Moore, Vicky Saunders and Morag McArthur, 'Lost in Transition' *Draft Report to the Department of Disability, Housing and Community Services*, (2008); Mark Halsey 'Negotiating conditional release: Juvenile narratives of repeat incarceration' (2006) *Punishment & Society* 8(2), 147-181.

Until late 2010, youth workers attended class with young people during the school day to provide supervision, but this no longer occurs for every class.

- 5.3.2 The ACT Government submission to the Review (the Government Submission) states that:
*'Youth detention staff have an integral role in providing the safe care and custody of children and young people at Bimberi, assisting them to successfully complete their orders and to engage in social, therapeutic, criminogenic, educational and recreational programs to support rehabilitation and reintegration into the community on release.'*¹⁴
*'Daily operations at Bimberi are heavily reliant on staffing. On any given day the range of activities for children and young people and the centre can include visits from family and legal advisors, appointments (for example, health appointments and case management/ case conferences); programs including educational and vocational training, cultural programs, recreation, personal development, drug and alcohol programs and escorts (both internal movements to and from visits, programs and appointments, and external movements such as court appearances and health appointments in the community).'*¹⁵
- 5.3.3 The staffing profile at Bimberi, set out in the table from the Government Submission reprinted below, currently provides for 26 youth workers, 10 team leaders and four unit managers, each of whom work on a shift basis.
- 5.3.4 CSD-employed staff at Bimberi also include a centre manager, operations manager, programs and services manager, business manager, sport and recreation officer, three case managers, an administrative team, chefs and grounds and facilities staff. The Aboriginal and Torres Strait Islander case manager position is currently vacant.
- 5.3.5 In addition to CSD staff, Bimberi is also the workplace of staff employed by the Education and Training Directorate (ETD) in the Murrumbidgee Education and Training Centre (METC) and a small team of health professionals in the health centre. These services are discussed in more detail in Chapters 12 (education) and 13 (health).

Table 5.1: Bimberi staffing profile: December 2008-2010¹⁶

Position	Classification	2008	2010
Centre Manager	SOG A	1	1
Operational Staff			
Operations Manager	SOG C	1	1
Unit Managers	ASO6	3	4
Team Leaders	ASO5	7	10
Youth Detention Officers	ASO3/4	28	26
Program and Case Management Staff			
Program and Services Manager	SPOC	1	1
Case Managers	ASO6	2	2
Aboriginal and Torres Strait Islander Case Manager/ Liaison Officer	ASO5	1	1
Sport and Recreation Officer	ASO5	1	1
Business Manager	ASO6	1	1
Admin Support	ASO4	1	1
Admin Support	ASO3	1	1
Facilities and Services Manager	ASO5	1	1
Grounds/Maintenance Officer	ASO4	1	1
Grounds/Maintenance Officer	GSO8	1	1
Grounds/Maintenance Officer	GSO5	1	1
Cook	GSO7	1	1
Cook	GSO6	1	1
Total		54	56

Source: CSD data.

14 ACT Government, *Submission to the Human Rights Commission Bimberi Review* (2011) 76.

15 Ibid 69.

16 Ibid 77.

Staffing shortages

- 5.3.6 The United Nations Convention on the Rights of the Child, Article 3.3 provides that:
'States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.'
- 5.3.7 In the Independent Report of Lord Carlile on secure establishments for children in England, he noted the correlation between staffing levels and the number of incidents and the use of restraints, and the role of staffing levels in allowing socialisation of young people and positive work with them to be carried out in safety. Lord Carlile also reported that there was a relationship between retention of staff and quality of care, and that children sensed an atmosphere of instability when staffing turnover was high: *'It became apparent during the visits that institutions that had good staff retention records were places where the child-staff relationship was better.'*¹⁷
- 5.3.8 Although Bimberi is a much larger facility – approximately four times the size of the Quamby site,¹⁸ with additional amenities such as an indoor sports centre, indoor heated swimming pool and full sized oval – and has a greater number of independent residential wings, the operational and staffing budget for Bimberi was transferred across from Quamby without enhancement. The Government Submission notes that the operational budget of approximately \$5.8m was transferred from Quamby to Bimberi on opening.¹⁹ There was, however, a one-off provision of transitional funding of \$710,000.
- 5.3.9 In responding to this issue CSD informed the Commission that the rationale for the transfer of the existing budget from Quamby was that *'[w]ithin the principles of prudent financial management, analysis of actual expenditure incurred over an initial operating period would provide an accurate evidence base to put to Government on the costs of operating Bimberi.'*
- 5.3.10 Nevertheless, the practical effect was that operations commenced at Bimberi with the same budget for permanent operational staff as had been in place at Quamby. At Quamby, larger units of young people were supervised by two or three youth workers working together. To manage Bimberi staffing on a Quamby budget meant moving away from this model to a staffing model where individual youth workers would work alone with a group of young people in a residential unit or wing, supported by a team leader and unit manager, who would move between wings and other duties within the Centre.
- 5.3.11 Further, staff were not recruited for all four residential units. The Government Submission notes that:
*'The budget did not provide an amount to fully fund the fourth residential unit as the number of young people in the centre to date had not demonstrated an ongoing requirement for the regular use of all residential buildings. The funded staffing levels at Bimberi would be adequate until the population approached or exceeded 20 young people.'*²⁰
- 5.3.12 In August 2009, CSD commissioned an audit of Bimberi operations and financial performance to develop a business case for further funding for the facility. A report was provided by Oakton consultants in December 2009 (Oakton Report), which predicted that the level of staffing presented a high risk of exposure if the number of residents increased. The Oakton Report noted that:
'DHCS does not have sufficient funds allocated for the ongoing operations of Bimberi, particularly if there is a significant increase in resident numbers. Currently Bimberi does not have sufficient permanent and casual staff to deal with a sudden surge in resident numbers that would require Bimberi to operate at full capacity.'
- 5.3.13 Oakton recommended that Bimberi should aim to recruit sufficient permanent staff to operate the residential units then occupied, without relying on casuals to cover training time and scheduled leave. It noted that:
'The use of casuals should be restricted to unexpected absences or sudden increases in resident numbers. This would be more cost effective and provide a better capacity to respond to demand.'
- 5.3.14 In response to that recommendation, CSD developed a submission to seek a staffing budget increase to support the staffing requirements to cover operations in the short to medium term; the budget was to cover both permanent and casual staffing needs. Additional funds for staffing of \$1.7M were allocated from July 2010.

17 The Lord Carlile of Berriew QC, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes* (2006), 31.

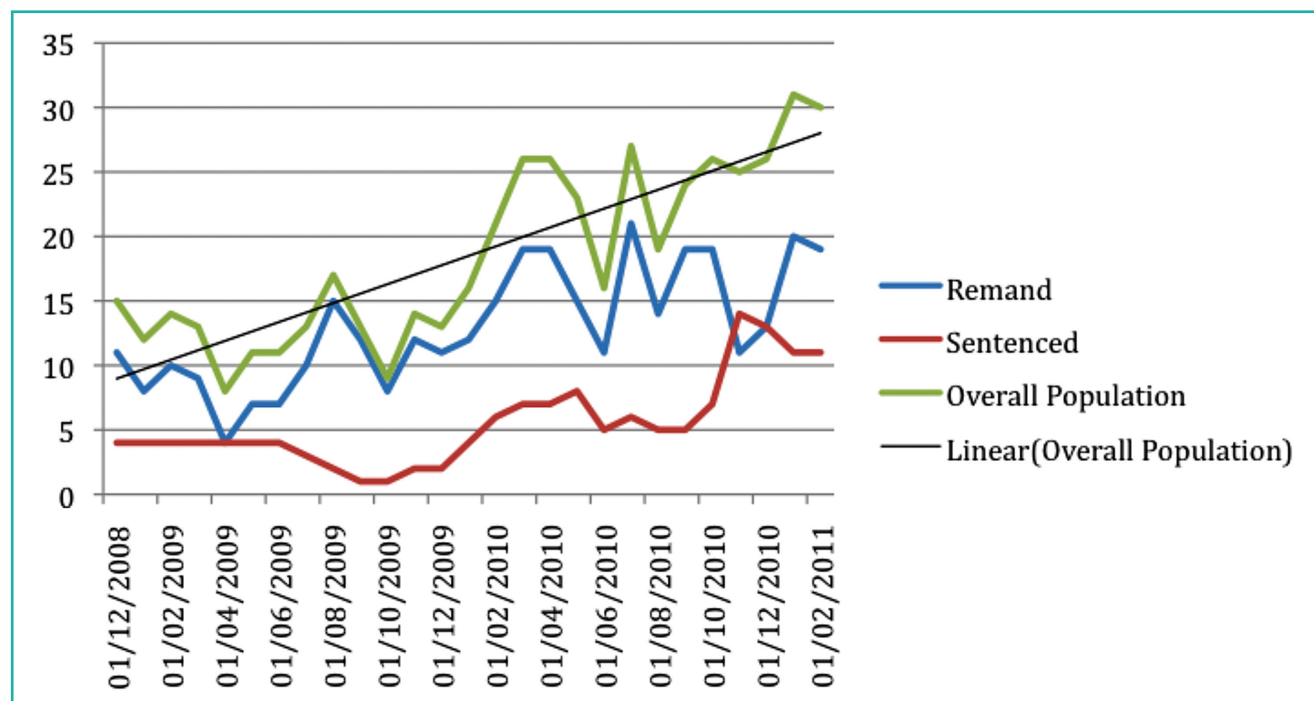
18 Oakton consultants, *Bimberi Operations and Financial Performance Audit*, December 2009, 15.

19 ACT Government, *Submission to the Human Rights Commission Bimberi Review* (2011), 74.

20 Ibid.

- 5.3.15 From early 2010 the sudden surge in resident numbers forewarned in the Oakton report became a reality, with numbers of remands and committals climbing steadily and peaking at a total of 31 residents in January 2011. Figure 5.1, below, is reproduced from the Government Submission and illustrates this increase.

Figure 5.1: Population and mix of sentenced and remand at Bimberi: December 2008–February 2011²¹



(Note: this figure comes from the Government Submission, and has not been verified by the Commission)

- 5.3.16 However, the number of operational staff was not increased to meet the greater number of residents over 2010. Records reviewed by the Commission show that permanent staff numbers fluctuated during 2010, but were generally maintained around commencement level. These staff levels were inadequate to properly supervise the influx of young people admitted to the Centre.
- 5.3.17 Staff payroll records indicate that there was a considerable turnover rate in both permanent and non-permanent staff during 2010. Information provided in the Government Submission shows a separation rate for permanent operational staff of 4% in 2008-09, 10% in 2009-10 and 9% in 2010-11. However, we have since confirmed with CSD that 11 out of a total of 56 permanent staff, and 8 out of 41 permanent operational staff separated from Bimberi in the period from 1 July 2010–30 April 2011, which is a separation rate of over 19.6% in each case, for those 10 months alone.
- 5.3.18 While the number of staff employed at Bimberi remained relatively constant, despite the turnover, the numbers of staff present on the floor were sometimes dramatically reduced through sick leave and other unplanned leave, which left remaining staff and management to cope as best they could with large groups of young people. One review of an incident in 2010 found that during the relevant shift there were eight less operational staff than required under the staffing model, and that the shortfall was the result of sick leave, vacant positions and staff taking accrued days off. This left a total of seven operational staff on duty (four youth workers, one team leader and two unit managers). One youth worker was required to operate the control room, leaving only six staff on the floor to supervise 26 young people.
- 5.3.19 The sick leave statistics show that in the final year of operation of Quamby, 2008-09, there were a total of 4450 personal leave hours. In 2009-10, the first full financial year of Bimberi's operation, this increased to 5710 hours. This financial year, to the end of April 2011, there had already been 4435 hours of personal leave. If this trend continues, this financial year Bimberi will record 5322 hours of personal leave. While this is a reduction from last financial year, it remains a 20% increase on the final year of Quamby's operation. It appears that, at times, leave taking became a vicious cycle, with increased stress on remaining staff and pressures to work additional shifts culminating in those staff becoming exhausted and taking leave. The increase in workplace injuries and critical incidents discussed below also contributed to staff leave.

21 Ibid 68.

5.3.20 The Government Submission states that:

*'As the population of children and young people at the centre increases, the reliance on staff to cover the various demands is acute. The pressure is exacerbated when dealing with both planned and unplanned leave. Although there were occasions of staff turnover at Bimberi in 2010, the primary experience was not one of chronic staff shortage; rather that the available staff could not meet the high population of young people. Further exacerbating the situation was the inability to rapidly respond to increasing population numbers as it takes a number of months to recruit and train additional staff.'*²²

5.3.21 From July 2010, the budget for staffing was enhanced to include an additional unit manager, the upgrade of two team leader positions and funding to cover casual staffing to allow the opening of the fourth residential unit. However, as noted in the Government Submission, there is a delay of approximately three months between any successful recruitment action and commencement of duties as new staff undergo mandatory checks and training. The lag time in recruiting, and the loss of existing staff, led to a situation where there were serious staffing shortages in 2010. The Government Submission acknowledges that:

*'There were staff shortages experienced at Bimberi during 2010 that created a range of operational challenges. This included periods of operational lockdowns and also necessitated the engagement of additional staff through MSS Security to assist with night shifts.'*²³

5.3.22 From interviews with a range of participants, it is clear that the staffing shortages placed significant pressures on staff. Many staff interviewed perceived that their concerns about shortages were not adequately addressed by management. One staff participant explained that:

'Once I had a whole number of young people to manage in the unit with no staff, one kid was going off ... There were days like that all the time. [Young person] would be on the fence and the other [young people] would get up there. We had no way to manage them, no time for case plans and no training on what to do. Some days we had only 5 staff trying to run the whole show ... It was terrible for the kids too, when one played up we couldn't get the others to school so they were missing education, they couldn't see the nurse because she wasn't here all the time and they couldn't get to appointments. Everything just fell apart.'

5.3.23 We understand that management was in ongoing dialogue with CSD executives regarding the need for additional staffing resources and that the staffing budget placed constraints on recruitment in early 2010. CSD has informed the Commission that on 19 March 2010 the then-Deputy Chief Executive directed Bimberi management to recruit to need, notwithstanding the staffing budget. Nevertheless staff levels were not increased over 2010 despite four recruiting rounds, in which every applicant assessed as being suitable was apparently hired.

5.3.24 It has been suggested to the Commission that the inability to resolve staff shortages that arose was a function of a shallow talent pool, in which few of the candidates were assessed as being suitable to work at Bimberi in the positions to which they had applied. However, as discussed below, we note that staffing levels were subsequently increased in 2011 using a concerted strategy of over-recruitment.

5.3.25 Although the Government Submission attributes staffing shortages primarily to the sudden increases in resident numbers and unplanned leave taken by staff, in the Commission's view, action could have been taken more quickly to remedy this problem as it emerged. The approach taken by CSD of beginning with a 'zero base' budget to gather evidence about the cost of operating the new facility might be appropriate in relation to some operational costs (such as utilities), but is harder to justify in relation to staffing. In the Commission's view it should have been apparent from the outset that the design of Bimberi, with its larger number of individual residential wings, required a new staffing model to provide proper support and safety for staff and to meet the needs of residents. Even when the risk posed by low permanent staffing levels was highlighted by Oakton consultants in December 2009 staffing levels were not substantively increased at Bimberi until early 2011.

5.3.26 In the Commission's view, the failure to ensure adequate staffing levels at Bimberi from its opening is the key factor that prevented the Centre from achieving its intended outcomes over the early years. It is a contributing factor in many of the problems identified in this Report, and was also instrumental in the Legislative Assembly calling for this Review.

5.3.27 The effects of staffing shortages on morale and the physical and psychological safety of workers are discussed further below. Overall, the Commission considers that although staffing levels have improved, the current staffing model does not provide sufficient support and protection for workers, as it still relies on single workers supervising groups of young people in isolation.

²² Ibid, 70.

²³ Ibid, 76.

Use of MSS Security Guards

- 5.3.28 From April 2010, CSD attempted to redress staffing shortages through the introduction of private security contractors MSS to take on night shifts in place of youth workers, and to work on reception. Use of MSS guards freed up some youth workers to increase staff on the floor during daytime shifts. However, MSS guards were not adequately skilled or trained to stand in for youth workers, and the use of MSS led to other difficulties. Additionally, the employment of security guards to perform the duties of youth workers reflects poorly on how the role of a Bimberi youth worker is perceived.
- 5.3.29 It appears that there was very little consultation with staff around the introduction of MSS. One participant noted that *'We just arrived one day and there they were.'* Incident reports show that young people often reacted badly and were verbally abusive to MSS guards, who did not have ongoing relationships with young people nor the skills to engage with them. Staff told us that they were instructed that MSS did not need to have any breaks on their 12-hour shift, and it appears that some staff did not feel the same level of responsibility for MSS staff as they did for their youth worker colleagues.
- 5.3.30 The Commission was provided with a Local Operating Procedure (LOP) for the use of MSS security guards. However, we note with concern that the version submitted to the Commission was undated (unlike several other LOPs). A number of staff participants reported to the Commission that they had not been provided with any policies and procedures regarding the responsibilities of MSS and of CSD staff supervising night shifts, until after an incident on 5 February 2011 where a recently employed MSS guard was seriously assaulted by two young people who were able to break out of their cabins during night shift.
- 5.3.31 The Commission notes that several independent reviews were commissioned in relation to the incident of 5 February 2011. The Commission was provided with the reports of an operational review and a technical review of this incident. Given the extensive investigations conducted by those reviews the Commission does not propose to comment in detail on this matter, but supports the recommendations of those two reviews.
- 5.3.32 The Commission has not seen the report of the review regarding the actions of staff involved, which we understand is still being finalised. The Commission notes strong concerns expressed by many staff participants regarding blame for this incident being placed on staff on the floor who were operating without sufficient guidance about their responsibilities.
- 5.3.33 The use of MSS guards on night shift finished on 14 April 2011, following induction of new youth workers.

Recruitment

- 5.3.34 Best practice in recruitment of youth justice staff requires a timely, fair and transparent process to select staff on merit, using methods and criteria that are clear and relevant to the roles. The capacity to develop therapeutic relationships with young people, and to support their rehabilitation should underpin selection for all staff working with young people in the youth justice system.
- 5.3.35 The 2005 Human Rights Audit of Quamby, undertaken by the ACT Human Rights & Discrimination Commissioner, recommended that the ACT Government recruit high quality and skilled staff, ensuring gender parity, consistent with the *ACT Discrimination Act 1991* (the Discrimination Act). It noted that the presence of both male and female staff can have a beneficial effect both in terms of the custodial ethos and in fostering a degree of normality in a place of detention.
- 5.3.36 Standards for recruitment and employment in the ACT public sector are also contained in the *ACT Public Sector Management Act 1994* (the PSMA) and *Public Sector Management Standards 2006*, which provide general principles including assessment on merit, equal opportunities, training and development, safe and healthy working conditions and participation in decision-making processes.²⁴ Section 65 of the PSMA requires the Chief Executive to ensure that all people who are eligible have, as far as practicable, a reasonable opportunity to apply for any appointment, engagement, transfer or promotion; and the decision is made on the basis of an assessment of the relative merit of the applicants. Positions must generally be advertised in the Government Gazette, unless the position is for less than six months or it is a transfer or promotion through an identical merit-based process.²⁵
- 5.3.37 Generally, positions in the ACT Public Service should be filled on a permanent basis. The Department of Disability, Housing and Community Services (now CSD) Enterprise Agreement states that:
- 'In order to promote permanent employment and job security for employees in the ACTPS, the Agency will endeavour to minimise the use of temporary and casual employment. The Agency agrees to the use of temporary employees only where there is no*

²⁴ *Public Sector Management Act 1994* (ACT), s 8.

²⁵ *Public Sector Management Standards 2006* (ACT), ss 32 and 37.

officer available in the Agency with the expertise, skills or qualifications required for the duties to be performed or the assistance of a temporary nature is required by the Agency for the performance of urgent or specialised work within the Agency and it is not practical in the circumstances to use the services of an existing officer.

*In respect of casual employment, where regular and systematic patterns of work exist and where persons have a reasonable expectation that such arrangements will continue, consideration should be given to engaging the person on a different basis, including on a permanent or temporary basis.*²⁶

- 5.3.38 Part 5 of the PSMA also allows for decisions concerning appointments and promotions to be appealed. Further details of appeal rights are provided in Section J of the Enterprise Agreement.²⁷

Current recruitment practice at Bimberi

- 5.3.39 CSD has informed the Commission that, from 2006, significant reform was undertaken in the process for recruiting youth workers for the Quamby Youth Justice Centre, which was carried over to Bimberi. The Government Submission states that: *'In selecting youth detention staff, DHCS seeks to find men and women who have experience working with young people. The focus is on people who have relevant or transferable experiences such as backgrounds in trade industries, sports, education, recreation or health areas.*

The focus is also on attracting people who have a real interest in working in the best interests of young people, providing safe and secure care and towards the common goal of rehabilitation and transition of young people back to the community.

The ability to relate to people from different ethnic and cultural backgrounds and to treat young people fairly, consistently and in a non-judgmental way is also extremely important. The qualities and characteristics that are looked for in prospective staff are those of:

- *Modeling positive behaviour*
- *Being attentive and observant*
- *Working effectively under pressure*
- *Thinking calmly and clearly*
- *Having strong communication (including writing) skills*
- *Using initiative*
- *Being dependable and reliable*
- *Being able to accept responsibility and follow directions*
- *Working as part of a team.*²⁸

- 5.3.40 The criteria described by CSD are essential, but it is notable that CSD emphasises skills and backgrounds other than youth work. As discussed above, Bimberi youth workers can play an essential role in reinforcing and maintaining progress in rehabilitation through pro-social modelling and motivational dialogue during everyday interactions with young people. The most effective workers are likely to be those who seek to influence behaviour through relationships, rather than coercion, but who are capable of setting clear and consistent expectations of young people.²⁹ Hodas suggests that therapeutically based values and beliefs, appropriate competencies in relationship building and de-escalation of conflict, and the capacity for self-awareness and self-control are critical factors for successful workers.³⁰

- 5.3.41 While recruiting workers from a range of backgrounds has benefits in bringing a mix of skills and life experience to the Centre, the Commission considers that qualified and experienced youth workers would be well placed to actively support rehabilitation, and should be specifically encouraged to apply for youth worker positions at Bimberi.

Recommendation 5.1: The Community Services Directorate include qualifications and experience in youth work as highly desirable criteria for youth worker positions at Bimberi.

26 Department of Disability, Housing and Community Services, *Enterprise Agreement 2010-2011*, A2.2, 7.

27 Ibid, 87-89.

28 ACT Government, *Submission to the Human Rights Commission Bimberi Review* (2011), 78.

29 Chris Trotter, *Working with Involuntary Clients: A guide to practice* (1999).

30 Gordon Hodas, 'Empowering direct care workers who work with children and youth in institutional care' (2005), Harrisburg, PA: Office of Mental Health and Substance Abuse Services <http://www.parecovery.org/documents/Hodas_Direct_Care_Worker.pdf>.

Psychometric testing

- 5.3.42 As part of the reform to recruitment practice, psychometric testing or 'profiling' of applicants was introduced by CSD in 2006. The psychometric profiling service is provided by Australian Institute of Forensic Psychology (AIFP), which provides psychometric testing for correctional and youth justice organisations in a number of jurisdictions in Australia. The psychometric testing is credited as resulting in substantially improved quality of staff in detention facilities including Bimberi.³¹
- 5.3.43 The profiling process includes a battery of written tests completed by applicants, and processed by AIFP. This test battery, which takes approximately four hours to complete, includes a test of cognitive ability (IQ) and a range of proprietary tests that assess social attitudes (including racial bias and gender bias), attitudes to work and supervision, and psychological function or disturbance. The tests are scored based on norms derived from other applicants for youth justice roles across Australia. AIFP provides CSD with a report with recommendations as to which candidates should proceed to interview, and a psychological profile for those candidates, which can be used as the basis of a structured interview. AIFP provides training on the interpretation and application of the profile reports and their use in interviews. We understand that while former management had received this training, training has not yet been provided to current management who conducted recent recruitment rounds.
- 5.3.44 In conducting interviews with current and former staff across youth justice, a number of participants raised concerns about the operation of the psychometric testing, including several applicants who had been rejected in their application to work at Bimberi, but had gone on to work successfully in non-custodial areas of youth justice. Some of these participants had not proceeded to interview after completing the psychometric testing, while others had participated in a structured interview where issues from the test were 'flagged.' One participant stated that:
- 'The recruitment process at Bimberi is quite strange. The psychological test they get you to do is really confronting, they ask you a lot of personal questions and then don't give you the chance to explain why you chose one answer not the other, when neither was quite right. I found it really hard to answer questions about my family history and social life. They tell you at the beginning that they can tell if you are lying, so that made it even more difficult to answer questions like whether you've ever used cannabis.'*
- 5.3.45 Another participant noted that the psychometric testing appears to eliminate a large number of otherwise eligible applicants, which makes it difficult to recruit enough staff in a jurisdiction like the ACT where there is low unemployment. The same profiling process by AIFP for recruitment of corrections officers at the Alexander Maconochie Centre (AMC) is said to reject around 50% of applicants.³² However, information provided by AIFP states that until 2011, the percentage of applicants at Bimberi rated 'high risk' by AIFP, and recommended not to proceed to interview, was 27%. In 2011, however, the rate has been higher, at 48%, which may suggest that recent recruiting rounds have attracted a different range of applicants.
- 5.3.46 There is clearly a tension between recruiting staff quickly and ensuring the quality of staff selection. In its submission to the Review, the ACT Government acknowledges that:
- '...maintaining a high quality and skilled work force for a youth detention facility in a small jurisdiction is a particular challenge... The nature of the employment, particularly working within a custodial environment, challenging client group and a requirement to work shift arrangements, further reduced the number of potential candidates for youth detention work.'*³³
- 5.3.47 Without the results and reasons for recruitment decisions in individual cases, it is not possible to determine the basis for exclusion, or whether recruiters followed the recommendations of AIFP in each case. The Commission is informed by AIFP that recommendations not to interview applicants would normally only be indicated if an applicant's results raised serious concerns across a range of areas (for example applicants would not be excluded simply because they admit to experimenting with cannabis at some stage). In other cases a structured interview would be recommended to give the applicant an opportunity to explain unusual answers. Applicants scoring low on cognitive tests might not be recommended to proceed to interview, but an exception is made where an applicant's scores might be affected by language or cultural background.
- 5.3.48 There are detailed validation studies available for the AIFP tests, and peer reviewed studies have found evidence of the effectiveness of this proprietary test battery in reducing sick leave and staff turnover in Australian correctional personnel and police.³⁴ The Commission notes, however, that the validation studies do not specifically consider the effectiveness of the test in predicting the suitability of an applicant to perform the duties of a youth worker in a therapeutic environment.

31 Paul Wyles, 'Building a human rights youth justice system' (2009) 28,3 *Youth Studies Australia*, 4-12.

32 Knowledge Consulting, 'Independent Review of Operations at the Alexander Maconochie Centre' (2011) 313.

33 ACT Government, *Submission to the Human Rights Commission Bimberi Review* (2011) 69.

34 See eg. Jonathon Lough and Michael Ryan, 'Psychological Profiling of Australian Police Officers: A Longitudinal Examination of Post-Selection Performance' (2006) 8,2 *International Journal of Police Science & Management* 143-152; Jonathan Lough, Elise, Wald, Kenneth Byrne and Gordon Walker, 'The Impact of Psychological Profiling of Australian Correctional Officers' (2007) Jul/Aug, *Corrections Compendium*; 'The AIFP Test Battery: A Validation Study Based on Australian Data' (1994) unpublished, available from the Australian Institute of Forensic Psychology.

- 5.3.49 On balance, the Commission considers that the psychometric testing remains an important tool for recruitment of quality youth workers at Bimberi, as it provides more detailed information about applicants than might be gathered in a standard interview process. In particular, the test battery allows applicants to be screened for racial and gender bias, and for punitive or authoritarian attitudes, which might not be detected on interview, but which would undermine a rights-respecting culture at Bimberi. Nevertheless, the testing is only one of the tools available and may need to be applied with greater flexibility in some cases where there is a limited pool of applicants. AIFP have informed the Commission that it can provide additional advice, where necessary, as to which candidates within the category normally recommended not to proceed to interview might nevertheless be appropriate to consider further.
- 5.3.50 The Commission is concerned that current recruitment panels using the psychometric profiling results do not have training in the use and interpretation of this tool. We have also been informed that recent recruitment rounds have been conducted very quickly, and that insufficient time has been allocated for psychometric testing results to be properly considered or incorporated into structured interviews.

Recommendation 5.2: The Community Services Directorate introduce training for Bimberi management on the AIFP psychometric profiling system to assist in the interpretation of test results and conducting structured interviews.

- 5.3.51 In the Commission's view, given the important roles that supervisors play in supporting workers and influencing staff retention it is important that applicants for these roles, including team leaders, assistant managers and the management team are also subject to psychological testing. It is not clear that this has happened for all supervisory positions.

Recommendation 5.3: The Community Services Directorate ensure that applicants for supervisory staff and management at Bimberi are assessed using appropriate psychometric profiling.

Allegations of unfair promotions/appointments

- 5.3.52 During the course of the Review, the Commission heard a range of concerns from participants about promotions and the allocation of temporary and permanent positions at Bimberi. Concerns were raised about certain staff in a clique being favoured, while other staff were overlooked for opportunities.
- 5.3.53 CSD rejects these allegations, and informed the Commission that all recruitment went through a merit-based selection process consistent with the ACT Government obligations, and in some cases staff alleged to have been favoured failed to win positions or promotions at the first attempt. The Commission notes that recruitment processes at Bimberi are undertaken within the framework of ACT Government guidelines for merit-based recruiting, which provide opportunities for applicants to appeal if dissatisfied with the process. The Commission is not aware of any use of this appeal mechanism.
- 5.3.54 The Commission has no evidence to suggest that relevant protected attributes, such as gender, race or disability, were factors in staffing decisions, although one survey participant did allege that 'skin colour' played a role in promotion of staff. We note that CSD has taken steps to have a better mix of staff at Bimberi, one that is more diverse and has improved gender parity.³⁵ It is not possible for the Commission to second-guess individual promotion and recruitment decisions raised by participants. We note that one promotion that a number of participants in the Review alleged to be inappropriate was independently reviewed and found to be appropriate. However, concerns raised by staff in interviews appear to be a symptom of a wider culture in which communication and transparency has been poor, and of tensions between management and certain staff members. Staff concerns regarding promotion also seem driven by a perceived lack of consistency in performance management or staff discipline. In the Commission's view, it is likely that a greater emphasis on staff support and communication from Bimberi management will alleviate staff mistrust of recruitment processes.
- 5.3.55 The submission of the Community and Public Sector Union (CPSU) to the Review indicates that many newly recruited staff were not made permanent after the completion of a three-month probation period. Given the issues relating to the staffing culture at Bimberi, the Commission believes it would be counter-productive to put qualified and trained staff on rolling temporary contracts. This is likely to lead to further distrust of management, and feed perceptions of favoured cliques. In the

35 Paul Wyles, 'Building a human rights youth justice system' (2009) 28,3 *Youth Studies Australia* 4-12.

Commission's view staff who satisfy three-month probationary requirements should be made permanent unless there are performance issues to justify the extension of probation.

Diversity of staffing group

- 5.3.56 As detailed above, human rights standards place an emphasis on staff at youth detention centres reflecting broadly the demographic make-up of the population of young people.³⁶ We are informed that 29 (38%) of the total of 77 permanent and casual staff at Bimberi are female, which is an improvement on the level of female workers noted in the 2005 Human Rights Audit of the Quamby Youth Detention Centre.³⁷
- 5.3.57 Ten staff at Bimberi identify as being from a culturally and linguistically diverse background. However, we are informed that only one employee at Bimberi identifies as Aboriginal or Torres Strait Islander. Given that, on an average day, half of the Bimberi resident population may identify as Aboriginal or Torres Strait Islander, this is of concern.³⁸
- 5.3.58 The Royal Commission into Aboriginal Deaths in Custody recommended:
*'That Corrective Services make efforts to recruit Aboriginal staff not only as correctional officers but to all employment classifications within Corrective Services.'*³⁹
- 5.3.59 The Government Submission states that:
'In recognition of the over-representation and high proportion of Aboriginal and Torres Strait Islander young people in detention, the Aboriginal and Torres Strait Islander Youth Liaison Officer position was upgraded to an ASO5 and, later, to an ASO6 position that now forms part of the Centre's Case Management Team.'
- 5.3.60 The Commission understands that the occupant of this position left in August 2010, and several participants, and in particular many Aboriginal and Torres Strait Islander participants, reported to the Commission their concern at the delay in recruiting a replacement. This position has traditionally been a point of contact for Aboriginal and Torres Strait Islander non-government organisations working with young people at Bimberi. As at June 2011, this position remains unfilled, although the Government Submission suggests an appointment is imminent. This delay has put an unreasonable burden on the remaining two case managers.
- 5.3.61 Some Government participants noted that it would be preferable to ensure that all staff at Bimberi and in the wider youth justice system operated in a culturally appropriate manner, so that Aboriginal and Torres Strait Islander clients, families and non-government organisations would be treated appropriately by every part of the system. The Commission acknowledges the importance of improving cultural awareness across the system, but this should not be at the expense of specialised services. A significant number of Aboriginal and Torres Strait Islander participants believed it was necessary and appropriate to have an Aboriginal and Torres Strait Islander case manager/liaison point in Bimberi. Several services confirmed that this was their preferred interface with Bimberi and, given that the position is funded, it should be filled without delay.

Recommendation 5.4: The Community Services Directorate fill the Aboriginal and Torres Strait Islander Youth Liaison Officer position within Bimberi as a priority, and seek to better reflect the characteristics of the young people at Bimberi by recruiting more Aboriginal and Torres Strait Islander staff generally.

Current policy of over-recruitment

- 5.3.62 The Government Submission states that the ACT Government is now committed to 'over-recruiting' for youth worker positions at Bimberi.
'CSD has an active recruitment strategy to secure appropriately skilled staff at Bimberi. Recruitment rounds have been recently undertaken for YDOs in January, February and March 2011.'
'As of early April 2011, all YDO positions at Bimberi are filled by permanent staff with an additional seven permanent YDOs available for rostering as part of the 'over-recruit' pool. An 'over-recruit' strategy will continue to be implemented because at any

36 Beijing Rules, rule 22.

37 ACT Human Rights and Discrimination Commissioner, *Human rights audit of Quamby Youth Detention Centre* (2005) 25. The Audit recommended that 'High quality and skilled staff, ensuring gender parity, need to be recruited, paid commensurately and retained. Appropriate induction and ongoing training and development must be provided.'

38 Australian Institute of Health and Welfare, *Juvenile justice in Australia 2008–09*, (2011) 98. On an average day 7 of 15 or 46.6% of young people in detention in the ACT are Aboriginal or Torres Strait Islander.

39 Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 3, 329, rec.178.

one time not all staff may be available for rostered duties for reasons such as training and all forms of paid leave (annual leave, sick leave, worker's compensation).⁴⁰

- 5.3.63 This is welcome and, in the Commission's view, long overdue. Increased funding in the 2011-2012 ACT Budget for 'Enhanced Youth Justice Services' includes increasing funding for Bimberi staff, and funding for a new pool of casual workers. The Government Submission suggests that this will be managed by Drake International. Such a pool will enhance the ability of management to deal with fluctuating numbers of young people and should further reduce the potential for future staff shortages. Nonetheless, the Commission considers it important that staff regularly drawn from the casual pool should not become default full-time youth workers, without the protection of permanent employment. As per the relevant ACT Government legislation and policies, full-time positions should be staffed on a permanent basis.
- 5.3.64 The Commission notes that the funding for 'Enhanced Youth Justice Services' in the Budget Papers includes funding for \$1.4 million in 2011-12 and 2012-13, but this will reduce to \$0.5 million in the out years. The Commission is concerned that this may mean some of these initiatives may be wound down from 2013-14 onwards. We are hopeful this does not mean the casual pool or increased permanent workforce will be reduced over time.

Recommendation 5.5: The Community Services Directorate continue to over-recruit youth workers for Bimberi, and to operate a casual staff pool at Bimberi. Casual youth worker staff who work full-time on an ongoing basis should be offered permanent employment where possible.

5.4 Staffing levels and recruitment in Community Youth Justice

- 5.4.1 Community Youth Justice (CYJ) is responsible for the supervision and case management of young people on court orders (bail and final orders) by the ACT Children's Court or the ACT Supreme Court as well as the preparation of court reports about young people as required. A designated court officer attends all court matters relating to a child or young person to provide reports on current youth justice clients and advice on the custodial and community-based services available to children and young people.
- 5.4.2 The CYJ unit is based in an office in Civic, and is funded for 11 FTE case managers, two team leaders and two assistant managers. We understand that only nine of the 11 case manager positions are currently filled. Case managers are classified as Health Professional 2 (HP2), which is roughly equivalent to ASO5 level. Team leaders are HP3, while assistant managers are classified as SOG C.
- 5.4.3 Current and former staff across CYJ have raised concerns with the Commission about inadequate staffing levels and resourcing at CYJ, which impacts on the ability to provide quality case management services for young people. One participant commented that:
- 'There is absolutely no money to do anything. There is a high turnover of case managers. We don't know from month to month what the case load will be like, can't predict what the court will do, or whose cases you have to take on.'*
- 5.4.4 Several interview participants commented on the difficulty maintaining enthusiasm and commitment when the case load meant they had to prioritise statutory functions of court reports rather than evidence based practice with young people. One participant stated:
- 'I am concerned that I can see myself slipping into a minimalist role, too much work to do with writing reports, which is just getting reports from all sources and writing up rather than directly working with and observing the client. I can see why people leave Youth Justice because you come in passionate about young people and the culture sucks it out of you. You end up doing what you have to do because that is all it allows, and then you become part of the problem.'*
- 5.4.5 Caseloads carried by case managers have gone up to 20 clients in recent months and are never less than 12 clients. By contrast, caseloads of the Turnaround Program and Youth Connection are capped at lower levels, and these services do not have to undertake statutory functions such as pre-sentence reports.⁴¹ Participants consistently nominated a caseload of

⁴⁰ ACT Government, *Submission to the Human Rights Commission Bimberi Review* (2011), 8.

⁴¹ The Turnaround program sits within the Youth Directorate of CSD, and provides case co-ordination for young people aged 12 to 18 presenting with high and complex needs. Turnaround workers coordinate the service delivery of the many different services involved with each client (on average seven different services are involved with each client on entry into the program). Youth Connection is an outreach based service, which endeavours to re-engage marginalised young people into educational pathways and support their families in this process.

eight to 10 clients as a workable number that would allow case managers to conduct outreach and work more productively with young people and their families:

'[A caseload of] Eight would be a reasonable number that would allow us to do more outreach and evidence based practice. Youth Connections are able to do really good things by working directly with families, which we just aren't resourced to do.'

- 5.4.6 Capping case loads at this level would require a significant increase in staff numbers, at case manager, team leader and assistant manager levels. The Commission supports the need for reduced case loads to enable CYJ case workers to do more than court ordered reports and supervision. The importance of case management is discussed further in Chapter 8.

Recommendation 5.6: The Government increase resourcing for Community Youth Justice to allow for caseloads to be capped at eight to ten clients for each case manager.

Recruitment practice in community youth justice

- 5.4.7 From interviews with many current and former staff, the Commission considers that there is room for improvement in the recruitment practices in CYJ. Review participants raised a number of concerns regarding prerequisites for qualifications, transparency and fairness of recruiting, and delays in permanent recruiting.
- 5.4.8 Some participants questioned the requirement for CYJ caseworkers to have a degree qualification, and the apparent inconsistency in requirements for qualifications across different areas of youth justice. Some participants were concerned that although existing staff without degrees had been 'grandfathered', and allowed to retain their positions when this requirement was introduced, they did not have opportunities for career progression within CYJ.
- 'It made me question the system because when roles became vacant they were filled by a person with a degree..., not necessarily the person who was most skilled.'*
- 5.4.9 The Commission understands that CSD does encourage and support staff without degree qualifications to obtain these, including through distance education, but notes the concerns raised by some participants about the relevance of a United Kingdom based degree course promoted to staff.
- 5.4.10 The Commission supports the requirement for a high level of qualifications for case managers and more senior managers in the youth justice system. However, it is not clear why this requirement is not applied consistently across youth justice, including, in particular, at Bimberi. We consider that CSD should allow some flexibility and recognition of equivalent skills, and other factors, such as the need to encourage the recruitment of Aboriginal and Torres Strait Islander case managers to work with Aboriginal and Torres Strait Islander young people. Where staff are employed without degree qualifications, they should continue to be supported by CSD to study relevant and appropriate university courses that meet the needs of youth justice.
- 5.4.11 Given the difficulties in filling currently vacant case manager positions, and the need to increase staffing levels, CSD should explore opportunities for a more pro-active approach in working in partnership with local universities to offer practical placements and work experience to students of appropriate university courses, with a view to recruitment as graduates.

Recommendation 5.7: The Community Services Directorate explore opportunities to work in partnership with local universities to offer practical placements and work experience in youth justice services to students of appropriate degree courses, with a view to recruitment as Community Youth Justice case managers on graduation.

- 5.4.12 A concern shared by many participants was the perceived lack of transparency in recruitment and the allocation of opportunities for acting roles at more senior levels:
- 'There is no consistency with how people are given opportunities to act up or permanent promotions. Positions are not advertised transparently. There is no process, no expression of interest and strange choices are made about who gets promoted.'*
- 'I have always been upset about the recruitment process in youth justice, the way that some people are given opportunities that others don't get. It is always done in crisis mode, putting people in positions rather than going through an open process.'*
- 'There is very little transparency with more senior jobs that come up. Certain people are always put in positions or get to work on projects. It is rare that an expression of interest will go out, people are just slotted in.'*

- 5.4.13 Although it is likely that the decisions referred to by participants fell within exceptions to the requirement to advertise positions under the Public Sector Management Standards⁴² – for example, being acting roles for less than a six month duration, or transfers at level– it does appear that there is a perception of a lack of transparency, which is a source of frustration to staff in CYJ. CSD notes, in response, that since May 2010, expressions of interest have been sought for all acting roles over four weeks in duration.

Recommendation 5.8: The Community Services Directorate continue the practice of seeking internal expressions of interest for all temporary acting roles over four weeks in duration within Community Youth Justice to ensure transparency of decision making.

- 5.4.14 While some participants reported concerns about the time taken to go through the recruitment process for new case workers when positions were formally advertised, CSD have advised that over the last 12 months only one process was delayed, with that process taking four months.

Classification and pay

- 5.4.15 Consistent with international standards, and the right to equality under s.8 of the HR Act, staff across the youth justice system should be paid commensurate to their duties. The 2005 HR Audit of Quamby recommended the ACT Government ensure that youth detention workers are paid commensurately and retained. It noted evidence that staff at Quamby were often paid at lower levels than their counterparts in other areas of juvenile justice and were required to do shift work. The Government Submission notes that:

*'In consultation with staff and employee organisations, the duty statements and selection criteria for youth detention officer positions have been redefined and broad-banded. A number of positions including the Centre Manager, Unit Manager, and Team Leader positions have been upgraded.'*⁴³

- 5.4.16 Nonetheless, the Commission believes a benchmarking of Bimberi classifications and rates of pay would ensure that all Bimberi staff are being paid appropriately. Some staff raised concerns about the calculation or rate of salary compared with correctional officers:

'Look at how hard we work, what we do and the dangers we are exposed to. Increase the pay, we are the lowest paid detention officers in Australia. We should get similar pay and conditions as correctional officers in AMC.'

- 5.4.17 There may also be some anomalies in the classification of management positions at Bimberi. Although not raised as a concern, the Commission was surprised to learn that the operations manager position, which carries significant responsibility, is classified as SOG C.
- 5.4.18 We understand that some initial discussions about classification and pay rates in CYJ had begun some time ago, but that these were never finalised or endorsed by senior management.
- 5.4.19 For the purpose of this Review, the Commission scoped the benefit of engaging a consultant to undertake a classification review of rates of pay across CSD employees involved in the youth justice system, particularly staff at Bimberi and in CYJ. However, in discussions with potential consultants and with the Chief Minister's Directorate (CMD), it emerged that the ACT Government has already engaged consultants for a Whole-of-Government assessment of most ACTPS classifications. It is understood that this will be done in conjunction with relevant stakeholders, including unions. We were informed that this review will be comprehensive and will examine, among other things, the appropriateness and market rate value of existing classifications, the development of associated position classification standards and the possible adoption of a new single salary spine for the ACTPS.
- 5.4.20 The Commission did not see value in replicating this work, so, in May 2011, the Commission wrote to CMD requesting the ACT Government to prioritise the assessment of Bimberi and CYJ staff. Although the ACT Government could not give guarantees regarding priorities, it provided the Commission with preliminary findings of the consultants in relation to the pay and classification of Bimberi youth workers. This preliminary work indicates that while the pay rates of Bimberi workers are generally comparable with youth justice workers in other States and Territories, the salary structure and conditions for ACT correctional officers are in some aspects more favourable than those for Bimberi youth workers. In particular, there

⁴² Section 32.

⁴³ ACT Government, *Submission to the Human Rights Commission Bimberi Review* (2011)78.

is greater recognition of the attainment of qualifications through automatic advancement to higher salary points, and correctional officers can progress through levels to higher salaries more quickly than Bimberi youth workers.

- 5.4.21 In the Commission's view the role of a youth worker at Bimberi is arguably more complex than the role of a correctional officer in an adult facility, as it requires a greater focus on relationship building and rehabilitation, in addition to traditional custodial duties. This should be taken into account in the classification review. The Commission understands that detailed work will be undertaken over the next three to four months to examine the classification, competency requirements and comparative pay rates of all ACTPS grades within the scope of the review.

Recommendation 5.9: The ACT Government review the pay structure for youth workers at Bimberi as part of the broader classification review to ensure that it is equitable and comparable to the pay structure for correctional officers in the ACT.

5.5 Training for youth justice staff

The importance of a skilled and trained workforce

- 5.5.1 There is strong evidence to suggest that positive outcomes in youth justice systems require skilled and trained workers with the ability to create safe and stable environments and to meet young people's needs. The provision of quality education and training to youth justice staff is pivotal for a number of inter-related reasons. Firstly, there is evidence that more young people are entering the youth justice system than ever before, that the issues that they are presenting with are becoming more complex, and that staff need the skills and knowledge to manage these increasing demands.⁴⁴
- 5.5.2 At the same time, governments and communities have increasingly demanded that interventions with young people in the youth justice system be evidence based and provided by skilled workers with clear roles and responsibilities within teams supported by effective managers. This requires that the workforce either attract highly skilled workers, or provide workers with appropriate training to positively implement programs and achieve sustainable outcomes for young people.
- 5.5.3 Internationally, research has shown that workers who are provided with ongoing training opportunities feel more valued than those who are not, feel more capable and therefore more comfortable in difficult situations, and are more reflective. They are more likely to achieve more positive outcomes and stay in positions for longer and are less likely to take extended periods of sick leave.⁴⁵
- 5.5.4 In reviewing previous studies, Christy identifies a number of essential characteristics of an effective training curriculum for those working within a detention centre:
- It is comprehensive, touching on each significant aspect of the organisation and job performance;
 - It is relevant and directly tied to organisational purpose and to the job responsibilities of the trainees;
 - It results in observable and measurable behaviours (it is accomplished when learning occurs and new behaviours are verified); and
 - It is both theoretically sound and practical.⁴⁶
- 5.5.5 The Commission considered these characteristics when speaking with stakeholders, in reviewing training documents and in making comment about the provision of training and learning opportunities to staff in the youth justice system.

The management of learning opportunities

- 5.5.6 Induction training at Bimberi is primarily provided by or through CSD's Learning and Community Education (LACE) Team, which 'provides learning and development opportunities for government and non-government organisations to assist and support in the provision of services that promote the safety and wellbeing of children, young people and families'. This team is responsible for identifying training issues and developing practical programs for workers at the Centre, and also provides training for Disability ACT, Housing ACT, and Care and Protection Services, as well as for community groups working with vulnerable children and families.

44 See eg, David Roush, *Juvenile detention training needs assessment* (1996) National Juvenile Detention Association: Richmond, NY.

45 Craig Dowden and Claude Tellier 'Predicting work-related stress in correctional officers: A meta-analysis' (2004) 32,1 *Journal of Criminal Justice*, 31-47.

46 Joseph Christy 'A curriculum for training juvenile detention staff.' (1989) Winter, 4 *Journal of Juvenile Detention Services*, 23-29.

- 5.5.7 Currently one full-time staff member in the LACE Team is allocated to supporting staff at Bimberi and has been involved in:
- Managing and providing a six week induction training course for youth workers; and
 - Negotiating the provision of a Certificate IV in Youth Work and an Advanced Diploma in Community Services for experienced staff and managing workers' participation in these.
- 5.5.8 Although the LACE Team has significant experience and skill in identifying and providing responsive training opportunities, the Commission heard evidence to suggest that training priorities are primarily determined by Bimberi management with varying degrees of input from the LACE Team, and with minimal feedback from staff and other key stakeholders. This is problematic because it does not capitalise on the expertise of a broad set of stakeholders.
- 5.5.9 The Commission considers that staff from the Forensic Mental Health Team, the METC, and from Client Support Services could assist Bimberi management and the LACE Team to identify issues that reflect the needs of the group of young people accessing the Centre and provide guidance on what training opportunities might best prepare workers for responding to these needs.

Recommendation 5.10: The Community Services Directorate engage their Learning and Community Education Team to conduct regular training needs assessments with all staff at Bimberi, and to develop a professional development framework to meet emerging needs.

Minimum qualifications

- 5.5.10 Currently, many of the positions held by staff at Bimberi do not require any prior training or qualifications. This is not unusual within the broad ACT youth sector, but does not mirror a trend in other jurisdictions (nationally and internationally) where youth justice workers are encouraged to have at least a certificate, if not a diploma or bachelor's degree, in youth work, youth justice or another human services related qualification.
- 5.5.11 Although the Commission is reluctant to make definitive statements about whether youth workers should be required to have some kind of training qualification before being employed at the Centre, we do recognise that, to be effective, youth workers must have an in-depth understanding of the needs and issues affecting young people and how to best manage and support young people in a custodial environment. Induction training alone cannot provide workers with the requisite skills and knowledge.
- 5.5.12 Furthermore, the Commission believes that workers moving into management positions at Bimberi (including team leaders, unit managers, operation managers and senior managers) should have relevant tertiary qualifications or be required to attain them after being promoted into these positions. This requirement should reflect the value that CSD puts on its workforce and on achieving positive, evidence-based outcomes for the young people at Bimberi, and for ensuring that less senior staff are well supported and supervised.

Recommendation 5.11: The Community Services Directorate conduct an assessment of qualification requirements, and the comparability of classifications and minimum qualifications, among all client-related positions in Care and Protection Services and Community Youth Justice.

Induction training for operational staff

- 5.5.13 According to the Government Submission, '[a]ll new staff at Bimberi undertake a 6 week induction training course that covers a broad range of skills and knowledge required to perform the function of a [youth worker] in a youth justice centre. The induction training articulates recognition of prior learning towards a Certificate IV in Youth Work (Juvenile Justice)'.⁴⁷
- 5.5.14 In the past, the induction training for youth workers was conducted over an eight week period and included more practice-based sessions, which further clarified worker roles and gave inductees more opportunities to trial their skills with supernumary shifts on the floor. Participants in this Review reported that this framework was more effective in enabling workers to better relate the theory to practice.

⁴⁷ ACT Government, *Submission to the Human Rights Commission Bimberi Review* (2011) 80.

- 5.5.15 The Commission notes that the core training program offered to staff at the AMC is 12 weeks in duration and includes on the job training.⁴⁸

Issues related to induction training

- 5.5.16 Although staff that participated in the Review could identify strengths within the current training program, some did not believe that they received enough training to do their job well. A number of content and process related issues were identified and are summarised below.

Lack of training focused on the Centre's vision and goals

- 5.5.17 The induction training includes workshops that focus on the scope of the ACT youth justice system and Bimberi's place within it, and provides participants with what appears to be a broad overview of policies and procedures. There is, however, limited discussion about Bimberi's broader vision and what it is attempting to achieve, and the role that staff play in meeting these goals. While these elements are missing from training, incongruent or inappropriate philosophies and approaches may develop and persist.

Incongruence of philosophy and approach

- 5.5.18 Participants reported that the care-custody dichotomy of youth detention is not clearly analysed and explored in the training, with many feeling conflicted about whether Bimberi's key role is to maintain control or to help young people rehabilitate. Participants suggested that workshops such as Response Ability Pathway (RAP) and Therapeutic Crisis Intervention (TCI) were beneficial in providing a strengths-based model for supporting young people, but felt that what was taught in these modules was incongruent with the content of other modules and what happened on the floor. It is not clear that these modules have been appropriately integrated into behaviour management policies and procedures, as further discussed in Chapter 14 (conditions of detention). A number of participants reported feeling frustrated that they had been given a vision about what was possible but not the opportunities to put this into practice. The Commission recognises that these inconsistencies may have been exacerbated due to staff shortages (and a lack of time to be able to positively engage and build relationships with young people) and hopes that these might be resolved when optimal staffing and training levels are achieved.
- 5.5.19 Ongoing conversations about how these approaches might be integrated into day-to-day operations should be ingrained in supervision sessions, planning days and strategic workshops.

Lack of training on issues that affect young people's behaviours and on how to best respond

- 5.5.20 Young people who are involved in the youth justice system often come with a range of underlying emotional and psychological issues that will influence their behaviours. These issues need to be understood and taken into account by staff when interacting with young people. In the Commission's view there is insufficient coverage of these issues in induction training, including, in particular, early experiences of abuse, trauma, alcohol and other drug issues and family violence. The Commission acknowledges that the LACE Team has included sessions related to supporting young people's mental health. However, this training needs to be integrated with other training modules, to explore how young people with mental health needs may require different approaches in behaviour management, for example.
- 5.5.21 In addition, the needs of young people incarcerated at Bimberi will vary depending on their age, development and criminogenic needs. After reviewing the training materials provided, the Commission is concerned that workers are not provided with a theoretical framework for understanding the differing needs of young people in the Centre, or the practical skills for identifying and responding to these needs. The needs of children under the age of 14 and those of young people aged 18 to 21 years seem not to receive much attention, nor do those of young women. Issues related to young people with intellectual and learning disabilities, those with autism and Asperger's syndrome and those with cognitive impairments also require greater attention. These issues are discussed further in Chapter 10 (individual needs).

48 Knowledge Consulting, *Independent Review of the Alexander Maconochie Centre* (2011), 314.

Limited training related to positive behaviour management and use of force

- 5.5.22 Although a majority of staff reported in the online survey conducted as part of the Review that they had received some training on behaviour management and the use of force, most reported that the training was inadequate and did not provide them with enough skills and knowledge on how to best manage difficult situations. The abridged TCI workshop that is currently provided to youth workers provides an overview of how to best manage and avoid critical situations, but it may be that the complete, unabridged, TCI program would better meet their needs. However, the Commission is aware that Cornell University (which owns the copyright to TCI) has not given Bimberi permission to use the copyrighted TCI material in an abridged way, nor for a trainer who is not fully accredited to train aspects of the course.

Lack of training related to Human Rights

- 5.5.23 The Commission understands that human rights is covered to some extent in the induction training program. When asked about the HR Act and the way that this Act is operationalised in Bimberi, most workers (including youth workers, support staff and management) saw the Act as constraining practice and believed that it placed young people's rights above those of workers. This reflects a narrow understanding of the Act and how it affects practice. More training and opportunities for workers to further understand the concept of human rights and their provision in youth justice is required.

Lack of training related to diversity and discrimination

- 5.5.24 Although there is a module in the training program that focuses on work with Aboriginal and Torres Strait Islander young people, it is not clear that this module includes discussions about how racism exists within closed environments and how it might best be handled.
- 5.5.25 Cultural awareness training that reflects the diversity of the youth population and the staffing mix at Bimberi is also not currently provided. Developing an understanding of the different cultural backgrounds of other staff members and young people, including cultural values and beliefs, would diminish the potential for conflict and foster an environment built on respect and acceptance.
- 5.5.26 Issues for women, for staff and young people with disabilities and for those who identify as being gay, lesbian, bisexual, trans or intersex are also not considered in the training.

Recommendation 5.12: The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Bimberi management, to extend the current induction training program for new Bimberi youth workers to include more detailed and practical modules on:

- The vision of the ACT youth justice system and the role of Bimberi within that system
- The role of a youth worker and strategies for managing competing responsibilities
- Issues that influence young people's behaviours (such as trauma and abuse, mental health issues, intellectual disability, autism and Asperger's syndrome, cognitive incapacity)
- Relationship-based behaviour-management techniques (including de-escalation and life space crisis intervention)
- Human rights and how they might be integrated in day-to-day operations
- Diversity and discrimination (including strategies to address racism, homophobia and transphobia), and cultural awareness.

Ongoing training

- 5.5.27 The Commission heard from participants and from CSD staff that ongoing training opportunities have been inadequate. This is concerning because workers felt that the initial training package was 'intense' and provided them with a significant amount of information that they believed needed to be reconsidered after periods of time working on the floor. In particular, staff believed that opportunities to refresh their learning on behaviour management and on dealing with crises would be of benefit.
- 5.5.28 The Commission notes that induction training at the AMC is complemented by 40 hours of refresher training throughout the year and recommends that a similar regime be implemented for staff at Bimberi.

- 5.5.29 Learning opportunities do not need to be restricted to formal training programs, but may be integrated in other existing and planned Centre activities, including staff meetings, supervision sessions and performance appraisal processes. The Commission strongly encourages Bimberi management to work with team leaders and unit managers to look at strategies for enabling more learning opportunities for staff.
- 5.5.30 The Commission also notes that a number of CSD and community-based training opportunities (such as those auspiced by the Youth Coalition) might be made available to Bimberi workers to minimise costs and to help develop connections between the Centre and the broader youth sector.
- 5.5.31 The Commission received advice from CSD in May 2011 that issues related to ongoing training have been significantly redressed. The Commission was informed that staff are provided opportunities to engage in Certificate IV Youth Work and Advanced Diploma in Management classes and mandatory training on first aid, breathing apparatus, fire safety, mandatory reporting of child abuse and neglect, and use of force. The Commission was also advised that Therapeutic Crisis Intervention, Applied Suicide Intervention Skills Training, fire warden training, and workplace safety training have also become compulsory.

Recommendation 5.13: The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Bimberi management, to develop and implement an annual training plan to provide staff with ongoing professional development opportunities both within the Directorate and the broader youth sector, and that the Directorate allocate a budget for the ongoing provision of training to meet staff needs.

Training for non-operational staff

- 5.5.32 A small number of non-operational staff in Bimberi reported a lack of induction training, and suggested that they were often unaware of how the Centre operated, who other staff were and how day-to-day operations were conducted. In addition to feeling isolated and confused, participants were concerned that they had not been briefed on how to deal with emergencies; a number of individuals said that they did not even know what to do if there was a fire or a riot in the Centre.

Recommendation 5.14: The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Bimberi management, to develop and implement an induction training program for all non-operational staff working at Bimberi which includes sessions on:

- Vision of the ACT youth justice system and the role of Bimberi
- Role and nature of services provided at Bimberi
- Fostering a collaborative, rehabilitative and human rights compliant culture
- Responding to young people with difficult behaviours
- Responding to disclosures of abuse or neglect (including but not limited to mandatory reporting requirements)
- First Aid
- Work safety
- Emergency procedures
- Complaints procedures and the functions of oversight agencies.

Core training for team leaders and unit managers

- 5.5.33 Team leaders and unit managers are required to oversee a variety of day-to-day operations within the Centre, to supervise staff, to manage young people's behaviours and help develop plans for best responding to their immediate and rehabilitative needs, while also filling in for staff during meal breaks and when staffing shortages occur. These roles require a certain level of skill and knowledge, which needs to be developed and fostered through training and other support mechanisms.

- 5.5.34 Ultimately, the Commission believes that minimum qualification standards are required for these positions and encourages CSD to classify them to reflect these standards. In line with other jurisdictions, the Commission recommends that staff assuming team leader and unit manager positions have a minimum of a Diploma, and that current staff be provided opportunities to attain this qualification.

Recommendation 5.15: The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Bimberi management, to develop and implement a training package for Bimberi team leaders and unit managers which includes sessions on:

- Supporting rehabilitation throughcare
- Group work and advanced communication skills for working with young people
- Youth participation (including receiving feedback, group decision-making and planning and peer support)
- Managing staff (including those with difficult behaviours)
- Supervision and performance management
- Critical incident debriefing
- Instilling Human Rights in practice
- Respecting diversity and addressing discrimination, bullying and harassment
- Managing complaints and grievances and the functions of oversight agencies.

Further training opportunities

- 5.5.35 According to the Government Submission, *'following induction, all staff are encouraged and supported to undertake further studies. A number of study options are sponsored by the CSD including at Certificate IV, diploma, undergraduate and post graduate levels. Ongoing staff development has included studies in social work, psychology, social welfare and leadership.'*
- 5.5.36 The Commission is aware that CSD has provided staff with opportunities to enrol in the Certificate IV in Youth Work and the Advanced Diploma in Community Services. We understand that workers can apply for study leave and other assistance under CSD studybank policies for other courses. The Commission recognises the merit of youth workers engaging in generic youth-work and management courses, but considers that more specialised training options that reflect the specific skills and knowledge required for developing and implementing appropriate and responsive youth justice programs and policies would be more beneficial. This reflects agreements made within the Australian youth justice sector that youth (or juvenile) justice certificates, diplomas and bachelors degrees be set as minimum requirements within youth justice facilities and programs.

Recommendation 5.16: The Community Services Directorate work with local training providers and universities to scope opportunities for developing and providing youth justice specific qualifications at the Certificate, Diploma and Degree levels.

- 5.5.37 Although the Commission welcomes the fact that CSD has purchased places in the Certificate IV and Diploma courses, some workers reported not being able to take up or continue their involvement in these training programs. In the staff survey, for example, half of the respondents reported that they had received no internal or external training opportunities since being inducted to the Centre. Some of the issues that limited their participation included:
- **A lack of commitment from management:** Participants reported that training opportunities were often compromised, particularly when they were called in to cover shifts or held back to complete administrative tasks.
 - **A lack of planning:** Participants reported that training opportunities were often offered in an untimely fashion, making it difficult for those with childcare and family responsibilities to be able to manage competing priorities.
 - **Timing issues:** Participants reported that most training activities were offered after a 12-hour shift, which seriously limited their ability to attend and to fully participate in these learning opportunities. The Commission heard examples where staff had fallen asleep in class, were so exhausted that they cried in class or experienced significant fatigue on the way home after class.

- 5.5.38 Training providers reported similar difficulties, noting that they sometimes arrived at Bimberi to discover that no students were available and that the class would therefore need to be postponed. Trainers called for a clearer statement of commitment from Bimberi management, and strategies to ensure that students could fully participate in all learning activities.

Opportunities for experienced staff to deliver training

- 5.5.39 Although participants valued the expertise of the LACE Team and trainers who were brought in from outside of the Centre, many suggested that providing existing experienced staff with opportunities to be further involved in the delivery of training would be beneficial for both those being trained and those conducting the training. New staff would benefit from the opportunity to hear how the theories and policies being discussed might be translated into practice, and experienced workers would benefit from having their knowledge and expertise recognised and validated.
- 5.5.40 The Commission recognises the strengths of such a model, but cautions that it would be most effective only if experienced staff were given the training and support to lead workshops and were comfortable with the content being discussed. A team-teaching arrangement might be helpful, as would 'train-the-trainer' models.

Recommendation 5.17: The Community Services Directorate engage their Learning and Community Education Team to explore in-house training options that provide experienced workers with opportunities to more actively participate in the delivery of training at Bimberi. Where possible, this involvement would be recognised through accredited 'train-the-trainer' qualifications.

5.6 Training for Community Youth Justice workers

- 5.6.41 According to documentation received from the LACE Team, only three CYJ staff had enrolled in training between December 2008 and January 2011. The team was unable to confirm whether these staff had participated in the training or what outcomes had been achieved.
- 5.6.42 Participants corroborated this finding, with most CYJ workers reporting that they had received no induction and that ongoing training was limited, if offered at all. Training for team leaders also seemed limited, with no opportunities for staff to develop their supervision and management skills when assuming these additional duties.

Recommendation 5.18: The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Community Youth Justice (CYJ) management, to develop and implement an induction training program for CYJ case managers which includes sessions on:

- Vision of the ACT youth justice system and the role of CYJ
- Case management and client supervision skills (including relationship based practice, provision of CHART and YLS/CMI)
- Supporting rehabilitation throughcare
- Introduction to the ACT legislation, and to the role of the courts and CYJ's responsibilities to them
- Role and nature of services available to young people in the youth justice system
- Responding to young people with difficult behaviours
- Responding to disclosures of abuse or neglect (including but not limited to mandatory reporting requirements)
- Complaints procedures and the functions of oversight agencies.

- 5.6.43 Like their Bimberi counterparts, team leaders in CYJ reported that only ad hoc induction processes existed, which they believed did not adequately prepare them for managing their new roles. The Commission recommends that these induction processes be formalised so that consistency can be assured.

Recommendation 5.19: The Community Services Directorate engage their Learning and Community Education Team, in conjunction with Community Youth Justice (CYJ) management, to develop and implement a training package for CYJ team leaders which includes sessions on:

- Advanced case management and client supervision skills
- Advanced communication skills for working with young people
- Youth participation (including receiving feedback, group decision-making and planning and peer support)
- Managing staff (including those with difficult behaviours)
- Supervision and performance management
- Critical incident debriefing
- Instilling Human Rights in practice
- Managing complaints and grievances and the functions of oversight agencies.

5.7 Supervision of staff

- 5.7.1 Working in correctional facilities can be both demanding and stressful for workers, who are required to manage often competing roles and responsibilities with varying levels of support and guidance. In a youth justice facility like Bimberi, workers are required to work with young people whose behaviours might be confronting and challenge their sense of competence and authority. Sometimes young people share with them painful stories of traumatic life events, and workers see evidence that the limits of their job and the failures within the system often lead to poor outcomes for young people they may feel responsible for protecting or otherwise supporting. This can often lead to unresolved feelings of guilt and disappointment or frustration and anger. When unmanaged, workers can experience varying levels of burnout, which can exist alongside compassion fatigue and, when left unresolved, vicarious trauma.
- 5.7.2 Maslach et al define burnout as *'a syndrome of emotional exhaustion and cynicism that occurs frequently among individuals who do people work of some kind.'*⁴⁹ In addition to causing high turnover, staff burnout may also lead to poor quality of care, absenteeism, use of alcohol and drugs, insomnia, and family problems. High workloads, ambiguity of role, and excessive amounts of direct contact with clients have all been identified as leading to burnout.
- 5.7.3 Workers at Bimberi are also required to take on a host of responsibilities that demand high levels of skill and expertise which, if mishandled, can have detrimental impacts on themselves, fellow workers, the young people and the Centre as a whole. In addition to quality training, workers therefore require opportunities to reflect on their practice and, with a trusted mentor, develop strategies for attaining missing skills and redressing knowledge gaps.
- 5.7.4 One mechanism that can assist workers in both of these circumstances is professional supervision. Most definitions of professional supervision include reference to administration (where supervisees are guided on issues related to their performance of administrative tasks), education (where supervisees are provided opportunities to reflect upon and develop skills and knowledge related to their practice) and support (where supervisees are given the opportunity to reflect on their practice, to talk through critical issues and to be reassured about their practice). Generally, supervision is provided by more experienced and more senior members of staff in both formal and informal contexts and are underpinned by reflective practice principles.
- 5.7.5 In his reflections about supervision in care and protection, the former Director of the Youth Directorate Paul Wyles argues that supervision can lead to better outcomes for clients, workers, and organisations. Citing the Forde Inquiry into Abuse of Children in Queensland Institutions, Wyles notes that:
*'In circumstances of poor supervision, no inspections and little accountability or external advocacy for children, caregivers wielded almost unlimited power over the children.'*⁵⁰
- 5.7.6 Supervision can preserve workers' positive feelings about themselves and the value of their work, which can enable them to adequately help the children and families they are serving. Supervision provides an opportunity to nurture the workers, to contain and understand their reactions and to recognise and process angry, competitive and uncomfortable feelings. Workers who are unsupported, attacked or criticised by their colleagues are unable to work effectively.

49 Christina Maslach, Susan Jackson, Michael Leiter, Wilmar Schaufeli, Richard Schwab, *The Maslach Burnout Inventory: Manual* (1996), Palo Alto: Consulting Psychologists Press, 1996.

50 Paul Wyles 'When the Bough Breaks the Cradle Will Fall : Child Protection and Supervision: Lessons from Three Recent Reviews into the State of Child Protection in Australia' (2007) 2, 1 *Communities, Children and Families Australia*, 49-58.

- 5.7.7 Wyles also points to the benefits of supervision for agencies managing staff, drawing on Guransky's work: *'Employers bear major industrial and moral responsibilities for supervising, evaluating, challenging, supporting and developing workers in the interests of good practice. Without good management of workers, good management of service delivery by workers can neither be expected nor ensured.'*⁵¹
- 5.7.8 He argues that supervision needs to be embedded in human service systems to ensure that workers are provided with the support, guidance and emotional capacity to assist clients in challenging and often chaotic environments.

Current provision of supervision

- 5.7.9 According to the Supervision Framework and Supervision Policy for the Office of Children, Youth and Family Support (OCYFS), supervision is *'a process in which one worker is given responsibility to work with another worker(s) in order to meet certain organisational, professional and personal objectives which together promote the best outcomes for service users'*. The policy suggests that supervision is embedded in all practice within its statutory services and has four key functions: *'Firstly, it is a central component of the internal governance and performance management framework by which staff clarify their role, responsibility and accountability. Secondly, supervision provides staff with the structured support, guidance, and reflection required to remain child-centred and family-focused in the midst of complexity, uncertainty, anxiety and risk. Thirdly, effective supervision models good practice through its collaborative process of problem identification, analysis, action planning and review. Finally, supervision supports staff in working effectively with partner agencies without whose cooperation, good outcomes for children cannot be fully achieved. In summary, supervision provides the practice leadership that is fundamental to the quality of services and interventions with vulnerable children and their families.'*
- 5.7.10 According to the policy, OCYFS staff, including Bimberi and CYJ staff, are required to have supervision every fortnight, with more junior and less experienced staff being provided with it weekly (see Table [5.2], below, for further details). In addition, the OCYFS encourages an 'open-door policy' where staff can engage in ongoing dialogue about practice issues with their superiors and participate in peer- and team-level development activities.

Table 5.2: OCYFS minimum supervision requirements

Position	Minimum supervision
New staff members	At least 2 hours once per week - renegotiated to 2-3 hours per fortnight
All frontline practitioners, caseworkers, case managers	1.5-2 hours per fortnight
Residential workers	2 hours per month
Residential Team Leader/ Unit Managers	2 hours per month
Team Leaders (non residential)	1.5 hours per fortnight
Managers/Senior Managers	1.5-2 hours per fortnight
Administrative staff	1.5 hours per month
Policy Officers	1.5 hours per fortnight
All staff - Performance Review/Appraisal	6 monthly

- 5.7.11 Community youth justice case managers reported receiving supervision each fortnight, and spoke highly of these sessions and the support they received. Supervision sessions were seen as a useful mechanism for ensuring consistency of practice in case management.
- 5.7.12 However, although this policy was endorsed in 2009, there is little evidence to suggest that supervision has been provided to Bimberi youth workers in a planned or effective way. Some experienced workers reported that in the first two years of operation at Bimberi that they were often left second-guessing their roles, responsibilities and how to best manage and support young people. One worker reported having had only one supervision session in many years of service, and another having had only one session at Bimberi, which was with a new team leader the worker had never met before. Some reported negative interactions with their supervisors: that after raising any issues or concerns, supervisors would admonish them for poor performance (without giving them frameworks to reflect upon or develop alternative strategies to improve their practice) and dismiss their grievances without explanation.

- 5.7.13 In relation to the 'open-door policy' described in the OCYFS policy, many workers reported that it was difficult for them to meet with Centre managers because the door to the administration block could not be opened by youth workers, and management were not always on-site. Some workers reported that responses to emails and phone calls by management were not timely. The informal 'corridor conversations' noted as important in the OCYFS policy were thus unlikely to occur.

Recommendation 5.20: The Community Services Directorate comply with the Office for Children, Youth and Family Support's *Supervision Framework* and *Supervision Policy* and report on compliance in its annual report.

5.8 Work safety

- 5.8.1 Workers have the right to a safe workplace where risks are managed appropriately. Workplace safety is a key concern for staff at Bimberi, who at times faced an unacceptable level of risk of physical injury, due to staff shortages. Workplace safety across the youth justice system also encompasses psychological safety and the provision of a workplace that is supportive and free from bullying and harassment.
- 5.8.2 Under the *ACT Work Safety Act 2008* (the Work Safety Act) those in control of the workplace, including employers, have a legal duty to take all reasonably practicable steps to eliminate or minimise harm from risks to the health and safety of their workers. In a new development, compared to the previous *Occupational Health and Safety Act 1989*, these risks under the Work Safety Act explicitly include all psychosocial hazards, such as workplace bullying.
- 5.8.3 The Work Safety Act sets out a risk management framework that seeks to remove or, if removal is not possible, mitigate risk. One of the key requirements of preventing risks to work safety is workplace consultation - between workers, their representatives and management - to identify risks and agree on solutions to prevent and address them and to evaluate the effectiveness of the solutions.
- 5.8.4 Under the *ACT Discrimination Act 1991* (the Discrimination Act) it is unlawful to treat someone unfavourably in employment because of a protected attribute. Protected attributes include race, sex, age, sexuality and disability. Unfavourable treatment can include bullying or harassing someone because of a protected attribute. Generally, the primary liability is on employers to prevent such behaviour occurring. It is also unlawful under that Act to sexually harass someone in the workplace, or vilify another person through a public act because of their race, sexuality, gender identity or HIV/AIDS status. Employers and individuals can be held liable for sexual harassment and vilification, and complaints regarding a breach of the Discrimination Act may be made to the Commission. Similar protection is offered under Commonwealth discrimination law, although Commonwealth law covers fewer attributes.
- 5.8.5 Sections 39 to 41 of the PSMA requires the ACT Government to establish an access and equity program for the service' Accordingly, the ACT Government recently launched a new Respect, Equity and Diversity (RED) Framework. One of the stated objectives of the framework is to 'retain employees'. The framework:
- 'Outlines the legislative provisions supporting a respectful, equitable and diverse workplace culture;
 - Provides guidance to all ACTPS staff in meeting their obligations under the PSMA and other relevant legislation, policies and guidelines;
 - Defines respect, equity and diversity;
 - Supports the creation of a work environment that is respectful, courteous, inclusive, collaborative, equitable and productive;
 - Aims to ensure the ACTPS workforce is reflective of the broader ACT community demographics;
 - Aims to develop a culture where ACTPS employees feel supported and confident disclosing their diversity status so that we have an accurate picture of the workforce;
 - Identifies the respect, equity and diversity challenges facing the ACTPS; and
 - Determines actions to be undertaken to meet the identified challenges.'⁵²

52 ACT Public Service Respect Equity and Diversity Framework (2010) 8.

- 5.8.6 The RED Framework defines respect as *'to value and consider others at work'*. Workplace diversity is defined as being about recognising the value of individual differences and integrating these into the workplace. Equity is defined as ensuring that everyone is treated in a fair manner, according to their individual needs and circumstances in the workplace, and includes the concept of equal employment opportunity (EEO). The Framework suggests that a positive work environment is characterised by:
- *'A high degree of trust and respect between all levels of staff;*
 - *A warm and friendly climate in which colleagues feel valued, and have a strong sense of loyalty to the organisation;*
 - *High quality leadership and management;*
 - *Open and honest communication;*
 - *A measure of self-determination over how work is undertaken;*
 - *A culture where diversity is respected and valued;*
 - *A lack of exclusive 'clubs' and cliques;*
 - *Opportunities for personal development and career progression; and*
 - *A high level of creativity and job satisfaction, arising from teamwork and cooperation.'*⁵³
- 5.8.7 The Framework places obligations on all ACTPS staff, but particularly obliges management to actively prevent work bullying and harassment by addressing conduct that is inappropriate and taking necessary corrective and preventative action. Executives have the added responsibility of supporting the role of the agency's Respect, Equity and Diversity contact officers and network co-ordinator. The Commission supports the adoption of contact officers, and has for many years provided contact officer training to government employees and the wider community. Contact officers are a confidential source of information for peers on respect, equity and diversity, including options for resolving issues of discrimination, bullying and harassment in the workplace via internal or external means. The Commission recommends that these officers not be in management positions, as supervisors may feel obliged to action information that is provided confidentially. Contact officers should empower staff to choose how they would like to resolve these issues. Appendix A of the RED Framework suggests a range of actions that should be undertaken to retain staff. A key action is to develop a contact officer network.
- 5.8.8 Complementing the RED Framework, the ACT Government also has Guidelines on Preventing Workplace Bullying. The Guidelines suggest that bullying is *'likely to occur when people are working in a negative environment'*, and *'the culture and tone of an organisation will either encourage a positive work environment or inhibit it.'* The Guidelines also refer to the Code of Practice on Preventing and Responding to Workplace Bullying (the Code), declared under the Work Safety Act, which provides practical guidance as to how to meet obligations under the Act. The Code sets out risk factors that can contribute to a work culture where work bullying is likely to occur, including poor workplace relationships and lack of appropriate work systems. The latter includes lack of resources, poor rostering or lack of support systems.

Work safety at Bimberi

- 5.8.9 The Commission received 18 completed surveys from current and former staff at Bimberi and conducted 34 interviews with staff. The Commission was also provided with one record of an exit interview, which we understand to be the only one conducted since Bimberi opened. In the staff survey, over 90% of staff who answered a question on safety reported that Bimberi was a 'somewhat unsafe' or 'very unsafe' place to work (n=14). Further, nearly 60% stated it was 'somewhat unsafe' or 'very unsafe' for young people (n=9). When asked about what factors determined safety and security the majority identified shortage of staff or shortage of experienced staff (n=12). Other common concerns were poor communication and faulty equipment, such as radios, CCTV and duress alarms. A number of survey respondents and interview participants reported experiences of racism, bullying and harassment, from other staff and supervisors, and some noted their feelings of being excluded and treated less favourably than others perceived to be in a clique. Other participants, however, did not report these experiences.

5.8.10 The Commission requested relevant workers' compensation data, comparing the last year of Quamby's operation to claims submitted during Bimber's operation. Table 5.3, below, and accompanying information was provided by CSD:

Table 5.3: Injuries reported by Quamby and Bimber employees since 1 July 2006

		Quamby Reported Injuries	Bimber Reported Injuries	Accepted workers' compensation claim	Classified as a <i>serious event</i>
2006/07	Physical	10		5	2
	Psychological				
2007/08	Physical	4			
	Psychological				
2008/09	Physical	2	9	4	1
	Psychological		1	1	1
2009/10	Physical		17	5	2
	Psychological		1	1	1
2010/11	Physical		15	2	3
	Psychological		2	1	1

'The data shows that the number of accepted workers' compensation claims has remained steady over time and there is no notable difference between Quamby and Bimber youth detention centres. The data also shows an increase in reported injuries over time however DHCS believes this probably reflects improved staff awareness of their responsibilities to report workplace incidents and is consistent across other areas of the department. Improved education and electronic accident/incident forms are likely contributing factors. The trend towards increased reporting is highlighted by the table below which illustrates a steady decline over time of reported injuries translating into workers' compensation claims. (Note: these figures come from CSD, and have not been verified by the Commission)'

Table 5.4: Percentage of reports leading to an accepted workers compensation claim

	2006/07	2007/08	2008/09	2009/10	2010/11
% of Reports leading to an accepted Workers' Compensation Claim	50%	0%	42%	33%	18%

(Note: these figures come from CSD, and have not been verified by the Commission)

5.8.11 Although CSD claims that the falling percentage of accepted workers' compensation claims is indicative of improvement, the Commission is concerned at the reports of several serious assaults on staff during 2009-2010 and 2010-2011, including a worker being attacked by several young people while alone on the oval, a worker being assaulted with a fire extinguisher, an MSS guard being attacked by two young people with a metal bar, and a worker being assaulted with a mop and bucket

5.8.12 The Commission also notes the number of claims of psychological injury at Bimber, with four claims submitted for psychological injury since Bimber's opening. Three of these have been accepted and all were classified as serious events. While this is something to monitor, the Commission is aware that the number of reported psychological injuries over the last ten years has fluctuated significantly, with five reported in 2004-2005 but zero in 2006-2007 and 2007-2008.

Effect of staff shortages and isolation

5.8.13 One of the driving factors leading to low staff morale and lack of safety was the poor support given to workers during staff shortages. Staff participants reported feeling isolated due to being left alone with large groups of young people. This was partly the result of the staffing model, which generally only allowed one youth worker per wing (which houses up to six young people), but staff shortages exacerbated these issues and increased staff feelings of being unsafe. As one former staff member commented:

'I always worked on my own. There were only 3 shifts [from opening to May 2010] where I worked with someone. I was responsible for 3-6 young men on my own. These kids towered over me.'

5.8.14 Another survey participant responded:

'...staffing levels have been dangerously low and have contributed to dangerous incidents and staff feeling unsafe. Lunchtimes have been cut down to half an hour which is inadequate during a 12 hour shift. Overtime is offered constantly... There should be

enough staff on the floor so that it does not matter if 1 or 2 are away sick from time to time. There should be enough staff for youth workers to work in pairs. I think it is unsafe to have detainees in the gym or on the oval or somewhere on your own.'

- 5.8.15 Another wrote in a submission that was provided to the Review:
- 'The recruitment is too slow and numbers of new staff are nowhere near enough to fill the gaps that are being left by exiting staff. This has led to staff working in isolation and the almost inevitable situation of staff left in potentially dangerous situations both physically and mentally. Over the last few weeks staff have been punched, kicked, hair pulled, various items thrown at them, working for 24 hour periods and having the contents of a fire extinguisher released all over them. Due to staff shortages it can take several minutes to arrive at the Unit to assist a staff member in distress.'*
- 5.8.16 Staff are also left alone in the control room, and can spend long periods of their 12-hour shift not interacting directly with other staff. CPSU report that this isolation can be compounded by staff sitting by themselves in the staff room during lunchbreaks due to the rostering structure. Staff participants and the CPSU reported staff being unable to take toilet breaks when staffing levels were low, and being humiliated by having to repeatedly ask to be able to do so over the radio in front of young people.
- 5.8.17 Staff also reported long delays in having leave approved. This largely related to recreational leave, even where such leave was requested months in advance. Staff reported that during 2010 they would often not even receive an answer to leave requests. More recently staff are receiving feedback, but some report that leave cannot be approved until a week or two before it is due to be taken.
- 5.8.18 The nature of the staffing roster, exacerbated by staff shortages, also meant that staff rarely had an opportunity to meet altogether. There are opportunities for briefings of staff at the morning change of shifts, but meetings involving all staff at Bimberi, including health and education staff, are rare. The CPSU reported that they were rarely given opportunities to meet with staff. Compounding this, the CPSU reported a lack of peer support mechanisms for staff.

Recommendation 5.21: The Community Services Directorate revise the staffing model for Bimberi to ensure that workers are not required to work in isolation with groups of young people, and that sufficient staff are rostered to allow workers to take breaks at reasonable intervals throughout their shift. The Directorate consult with staff regarding the revised staffing model, but the Commission's preferred model is that two youth workers be allocated to each residential wing on each shift.

Bullying and harassment

- 5.8.19 The Code provides that information that can assist in identifying bullying work environment risk factors include issues raised by health and safety representatives, sick leave, transfer requests; results from worker opinion surveys, issues raised by workers and workers' compensation claims.⁵⁴
- 5.8.20 The Commission heard a number of allegations by current and former staff in interviews about bullying behaviour from other staff, team leaders, unit managers, and by management. Bullying was also mentioned by many survey participants with comments including complaints about *'being chastised in front of other staff and young people, bullying'* and that *'the leadership style within the Centre would be based on bullying, belittling of workers and instilling fear such as a loss of positions.'* A small number of interview participants also reported experiences of inappropriate sexual comments and harassing behaviour by staff at Bimberi.
- 5.8.21 As staff involved did not wish to have their identities disclosed, the Commission was not able to investigate or verify the accuracy of these allegations, but it is apparent that a number of current and former staff have the perception that they have been bullied, and that they were not aware of appropriate channels to address these concerns. In response, CSD advised the Commission that the reported views of current and former staff does not correlate with the number of staff complaints received by CSD.

Racial tensions

- 5.8.22 As discussed in relation to training needs, the Commission is concerned about racially based tensions among the staff group. Some staff members reported specific incidents of racial abuse and comments made by more senior staff against Pacific Islander workers, and workers from other cultural backgrounds. Other staff reported a perception of reverse discrimination against 'white' workers. While we have encouraged staff to make individual complaints to the Commission

⁵⁴ Work Safety (ACT Code of Practice for Preventing and Responding to Bullying at Work) Code of Practice 2010, 8.

in relation to specific incidents, the prevalence of these reports suggests that more needs to be done to create a positive culture of non-discrimination within the Centre. Discrimination and cultural-awareness training, as recommended above, would assist this process.

Pregnancy

- 5.8.23 A potential issue raised by staff participants is the safety and treatment of youth workers who become pregnant. The Commission understands that the current practice is to roster such youth workers in the control room for the duration of their pregnancy. However, this shift is only available for two staff. If a third were to become pregnant, staff participants speculated that they would have to either do administration work (which they might not be skilled to do) or be sent to the CSD main office for an office-based position, and therefore risk losing penalty rates (which can be up to 1/3 of their pay).
- 5.8.24 This raises several issues for the Commission. Firstly, changing a person's work duties due to their pregnancy may raise issues of unfavourable treatment under the Discrimination Act. Such action may be reasonable in some circumstances, but the Commission believes this should be based on an appropriate risk assessment and done in consultation with the individual staff member. Secondly, a move to CSD for a pregnant youth worker could result in a loss of earnings, not just for the duration of that person's pregnancy, but also during subsequent maternity leave. This may also raise issues of direct discrimination under the Act.
- 5.8.25 Bimberi management must consider their obligations under the Discrimination Act before altering the duties or pay of a youth worker because of pregnancy. A practical solution suggested by staff participants was that the position of the reception officer (currently staffed by MSS security guards) could be filled by pregnant youth workers or those staff returning to work from injury. These staff could answer phones and help take some of the responsibility from Control Room during peak times.
- 5.8.26 In response, CSD advised that they currently manage, and will continue to manage, their responsibilities to their staff in accordance with the Maternity Leave Provisions of the Enterprise Agreement.

Other safety issues

- 5.8.27 Participants also raised concerns with physical health and safety issues for staff and young people, particularly in relation to fire safety, the facilities in some of the classrooms, physical facilities such as bins, and storage and handling of dangerous substances, including pool chemicals.
- 5.8.28 The Commission requested details of relevant risk assessment tools required to ensure compliance with obligations under the Work Safety Act. The Commission is concerned that CSD was not able to provide the Review with a copy of a Fire Safety Plan for Bimberi, including details of fire wardens, as requested. Instead, we were informed that:
'On 3 May 2011, Fire Direct attended Bimberi to provide a quotation for the implementation of an Emergency Evacuation Plan including and incorporating electrical/gas isolation valves and designated assembly areas; associated signage and fire warden training including the emergency warning system.'
- 5.8.29 The Commission was subsequently provided with a copy of a Management-In-Use Plan incorporating an emergency response procedure manual produced by First Five Minutes Pty Ltd for Bimberi in May 2008, prior to the Centre opening, and a Local Operating Procedure entitled 'Emergency Action Principals (sic)'.
- 5.8.30 It is not clear that the procedure manual attached to the Management-In-Use Plan has been distributed to staff, or that the Plan has been followed and updated regularly. The Plan states that *'An annual revision of this document including all attachments is to be carried out by a nominated "competent person." All details of the revision are to be annotated in this schedule.'* However, no revisions are annotated after June 2008.
- 5.8.31 The procedure manual further states that *'Evacuation exercises should be held annually to practise the Centre's emergency procedures. A debriefing of staff members to identify any deficiencies in the procedures should follow each exercise.'* CSD has informed the Commission that no evacuation exercises or emergency drills have been conducted at Bimberi.

- 5.8.32 The Local Operating Procedure is unhelpful as it states that in the event of a 'fire' code, youth workers are to 'secure local' or 'secure as directed', which is defined to mean securing residents in the unit in the location of the incident, or securing residents in an identified location. Clearly young people should not be secured in their cabins in the event of a fire, and the procedure should instead clearly direct youth workers to evacuate young people to the designated evacuation points within the Centre when a fire code is called.
- 5.8.33 We understand that youth workers are given training and refresher courses in using fire safety equipment and breathing apparatus, however, several non-operational staff reported that they had not received any instruction regarding fire safety or evacuation procedures.
- 5.8.34 Taken as a whole, the relevant data and concerns raised by staff participants and the CPSU clearly indicate that Bimberi was not meeting its obligations under relevant OHS and discrimination laws and Government policy. In particular, it does not appear that all reasonably practicable steps were taken to eliminate or minimise harm from risks to the health and safety of their workers.

Interim response

- 5.8.35 In discussions with participants in the Review, and as outlined on the consent form signed by all verbal interview participants, the default position for all submissions to the Review is that they would remain anonymous unless a participant particularly wished to have comments attributed to them. However, the Commission also stated that from time to time issues of significant concern may be raised that warranted immediate attention. This included issues that required mandatory reporting under the CYP Act, and those raising staff and young people's physical safety.
- 5.8.36 In the Commission's view, some of the matters we heard from participants raised such serious safety concerns that we believed that waiting until the release of the Report may have put staff and young people at risk. Given these risks, the Commission raised some issues directly with CSD without disclosing the identity of participants who informed us of OHS concerns. The Commission understands that this resulted in WorkSafe ACT undertaking an assessment of some of the physical features at Bimberi and some urgent safety issues being rectified.
- 5.8.37 Further recommendations regarding work safety are made below.

Promising Practice: CSD has engaged a risk management expert from Your Enterprise Solutions Pty Ltd to undertake a Risk and Compliance Framework Gap Analysis at Bimberi.

Critical incident debriefing and ongoing support

- 5.8.38 According to its policy and procedure manual, Bimberi requires that staff who are involved in critical incidents are debriefed by a senior member of staff as soon as possible after the experience. In addition to completing incident report forms, and participating in operational debriefing, staff also need to be effectively supported by management to deal with the emotional aftermath of a traumatic event.
- 5.8.39 As noted above, a number of critical incidents occurred at Bimberi during a period when staff were already dealing with stresses of staffing shortages and isolation. A number of staff were confronted by violent and challenging behaviours, being assaulted by young people or witnessing traumatic events. In interviews, several staff participants who had been involved in or witnessed these incidents reported that although management were clear in directing them to fulfil administrative tasks after these incidents, they did not feel that they received the emotional support they needed. These workers considered that management were often more concerned about 'dealing with the fallout' of these situations and focused most of their interactions on operational debriefing. Some participants reported that such operational debriefing involved challenging workers on their behaviour or ascribing blame in a way that was considered unwarranted.
- 5.8.40 A number of workers reported that they were not given opportunities to emotionally debrief, and that they often came away from operational debriefing sessions feeling more anxious, angry, upset or unsafe than they had been beforehand. Similar comments were made in the staff survey, for example one respondent noted that: *'staff were not valued and taken care of particularly when there was a major incident and/or a serious assault on staff.'* Another stated that : *'When difficult situations arise during our work, such as use of force, assaults and fights amongst detainees, we youth workers are often criticised for our intervention during these situations when the camera footage is reviewed. It is difficult to act on the spur of the moment, and we should not be criticised for our actions unless they are wrong (such as over reactions). There is no debriefing of a beneficial nature after incidents, senior staff are way too casual about this. Youth workers do not feel supported by management or senior staff.'*

5.8.41 Management reject these assertions, stating that:

'Invariably steps were taken to ensure that the affected staff member was okay, to listen to what the staff member had to say about the incident and to refer the staff member to the Employee Assistance Program if required. Debriefings regarding opportunities for improvement in dealing with similar incidents in the future were conducted only after the staff member had recovered from the incident and was usually days or weeks after the incident. Such discussions never took place in the immediate aftermath of an incident.'

5.8.42 Critical incident debriefing is the subject of some contention, with a body of research questioning the efficacy of group debriefing and other studies suggesting that poorly managed debriefing can in fact heighten or reinforce trauma.⁵⁵ In this context it is perhaps understandable that management, without training in counselling, may have hesitated to provide emotional support to workers, and instead sought to refer staff to the professionals trained in that area within the Employee Assistance Program. Unfortunately, this approach of management was perceived as unsupportive by a number of workers.

5.8.43 Given the contested views on the efficacy of critical incident debriefing, the Commission considers that it is important that CSD seek expert advice to develop an evidence-based policy to best support staff following critical incidents. Staff should be involved and consulted in this process to ensure that it will meet their needs.

Recommendation 5.22: The Community Services Directorate, in collaboration with professional experts and Directorate staff, develop and implement a critical incident debriefing or support model.

Counselling

5.8.44 In addition to stress and anxiety that staff experienced after individual events, participants often reported that the ongoing stresses inherent within the Centre had a toll on their emotional and mental health. Coupled with poor communication practices and spending hours without support or, in some cases, any interaction with fellow staff team members, youth workers often reported feeling isolated and unsafe for extended periods of time. One staff member shared that he would vomit in the shower each morning before coming to work because the pressure was so significant.

5.8.45 In conducting interviews and focus groups, the Commission encountered staff who were displaying signs of trauma, with many harbouring what appeared to be feelings of resentment, anger and distress even months after incidents had occurred. The Commission is of the view that a number of the staff have been traumatised by their experiences at the Centre and require counselling as a matter of urgency. In April 2011, the Commission communicated this view to CSD and encouraged CSD to actively offer counselling to all staff who had worked at Bimberi in 2009-10. The Commission understands that as at July 2011 this counselling has still not been provided.

Recommendation 5.23: The Community Services Directorate assertively offer all Bimberi staff counselling and assistance to manage any ongoing emotional or mental health concerns connected with their work. This assistance be offered in paid hours and at a location preferred by staff (at the Centre or another location), and be in addition to entitlements under the Employee Assistance Program.

Shifts (8hr vs. 12hr)

5.8.46 One issue raised as a concern by many staff was the move to 12-hour staff shifts. This change was made after Bimberi was already operational. While some staff reported that they had not been adequately consulted, the Commission understands that CSD undertook at least two rounds of consultation with staff. Staff participant views on the move to a 12-hour shift were mixed. Some found it an unreasonable impact on their work-life balance, while others appreciated the potential increase in pay and having longer periods away from work. Some staff also reported that it has an impact on their relationship with the young people:

'A little mistake becomes big if you're alone in the unit for 12 hours.'

55 See eg Marielle Aulagnier, Pierre Verger and Frederic Rouillon. 'Efficiency of psychological debriefing in preventing post-traumatic stress disorders' (2004) 52 (1) *Rev Epidemiol Sante Publique*, 67-79.

- 5.8.47 Related to this, some participants suggested that young people could sense a worker becoming tired towards the end of their shift and this was often when serious incidents occurred. Staff also commented that at Quamby with 8-hour shifts there were more opportunities for staff to socialise.
- 5.8.48 Finally, the move to the 12-hour shift appears to have been motivated partly for financial reasons and partly as an attempt to give staff more breaks. Some participants recalled that at Quamby on an 8-hour shift staff had a single one-hour lunch break, but the 12-hour shift was intended to enable more frequent breaks. Unfortunately, due to staff shortages, these breaks appear to have become smaller and less frequent, and in some cases non-existent. In the Commission's view this is unacceptable on any shift duration, but particularly when staff are being asked to work 12 hours.

Communication between management and workers

- 5.8.49 In addition to supervision and debriefing, day to day communication between frontline staff and management is vital to allow workers to feel informed and supported, and to ensure that management have a good understanding of practice and issues emerging on the floor.
- 5.8.50 In the AMC context, the 2011 Independent Review of Operations by Knowledge Consulting noted that it is essential, particularly in the early years of a new facility, that the Superintendent:
- '...be free to manage down and manage locally. This person's full attention should be the management of their local staff and detainees. Past failings in other jurisdictions can be in part attributed to a person in the Superintendent's role who was too tied up in external inquiries and extraneous management issues, not attending to the centre and as a result failings occurred.'*⁵⁶
- 5.8.51 Although former management described having a cordial and professional relationship with all staff members, the overall impression of the Commission from interviews with former management was that there were some members of the management team who felt embattled and frustrated in dealing with a group of staff they perceived as trouble-makers undermining their vision for Bimberi. Perhaps because of this perceived threat, and pressures of staffing shortages and critical incidents, it appears that the former management team were not able to take as active a role in supporting staff on the floor as they would have liked.
- 5.8.52 Management have suggested to the Commission that *'members of the former management team regularly walked the floor and engaged with staff members in a friendly and informal way as they performed their duties on the ground.'* However, participants in interviews and surveys consistently reported feeling removed from management, and have said of former management that *'we only saw them when things went wrong.'*
- 5.8.53 Many interview participants noted the psychological as well as physical barrier represented by the locked door to the management building. One participant explained that he felt unwelcome, *'like a door to door salesman'* knocking to try to get in to see management. Management have informed the Commission that there were genuine reasons for the locked door arrangement, including that the building contains private and confidential records and that there was a history of theft and inappropriate tampering with management offices occurring before the introduction of the locked door. Nevertheless, the Commission notes that youth workers have now been given swipe card access to the management building at Bimberi.
- 5.8.54 In the Commission's staff survey, out of 18 current and former staff, 16 reported that communication between staff and management was either 'bad' or 'very bad'. Fifteen out of 18 reported that they did not feel valued or respected by management. Of 12 participants who provided written comments about leadership style, all raised concerns about an authoritarian approach with little room for input, for example:
- 'Authoritative. Many good ideas and suggestions to improve the operations of the centre contributed by youthworkers and teamleaders were discarded. I felt that centre management wanted complete control of the centre and that they were out to get rid of staff creating a rift and sense of distrust.'*
- 'Orders from leadership are occasionally received by email, but other than that there is very little contact between leaders and youth workers. This is disappointing.'*
- 5.8.55 The Commission acknowledges that the survey may involve a level of 'selection bias' in that staff and former staff unhappy with management may be more motivated to complete the survey. However these comments are consistent with the views of many current and former staff interviewed by the Commission. Some current staff we interviewed were more generous in their comments, noting their personal liking for members of the former management team, but still expressing frustration with the decision making process and the lack of support for staff.

56 Knowledge Consulting, *Independent Review of Operations of the Alexander Maconochie Centre* (2011), 105.

Promising Practice: Bimberi management has now introduced daily briefing opportunities for staff, and this has been supported by a weekly staff newsletter and weekly staff meetings.

- 5.8.56 Although there are still issues regarding communication and support, current management have taken steps to improve communication with staff. As noted above, staff now have swipe card access to the administration building where management are located. One staff member stated that 'At least now you know they are trying things, and if it fails we all at least know they tried. Now managers trust staff, and use the workers' skills'. There are now daily briefing opportunities for staff, and this has been supported by a weekly staff newsletter and weekly staff meetings. The Commission recommends that these continue. While staff were supportive of these arrangements, due to the nature of the current roster some reported they were unable to attend meetings due to conflicting obligations.

Performance appraisals

- 5.8.57 According to the OCYFS policy, a performance appraisal is a process undertaken at at least bi-yearly meetings between supervisor and supervisee. The aims of a Performance Appraisal for the individual and their supervisor are to:
- Identify achievements during the previous six months and identify areas for improvement (support function);
 - Set measurable objectives and/or targets in line with their team objectives and/or targets for the coming six months (accountability function); and
 - Identify professional development objectives (development function).
- 5.8.58 It is a requirement in the policy that Performance Appraisals be conducted every six months, with supervisors and supervisees identifying their achievements and areas in need of improvement, setting measurable targets for the coming six months and identifying development objectives.
- 5.8.59 The Commission received evidence to suggest that compliance with this policy is not widespread, with many staff reporting that performance appraisals were not offered at all, or only when management was unhappy with performance issues. In such situations, staff reported that they were given minimal information about issues that had arisen and felt attacked rather than supported to collegially identify strategies for redressing issues.

Recommendation 5.24: The Community Services Directorate, in consultation with Bimberi management and staff, develop and implement a Centre-wide performance appraisal scheme which clearly articulates when appraisals will be conducted, by whom, and how this process will be evaluated.

Suggested Ways Forward to improve staff safety and support at Bimberi

Meeting obligations to support staff

- 5.8.60 Many of the goals and recommended practices of the various ACT Government frameworks outlined above are positive and consistent with relevant human rights and industrial standards. However, based on the reports and the workplace culture witnessed by the Commission, these goals are not being met in Bimberi. In fact, the descriptions of positive workplaces described in the ACT Government's RED Framework and Guidelines on Preventing Workplace Bullying appear to be the antithesis of the work culture at Bimberi. This is not, in the Commission's view, due to a lack of effort or desire from staff and management to create a positive work culture, but rather largely driven by the historic staff shortages at Bimberi, lack of specific skills and training in management and related failure to prioritise staff supports.
- 5.8.61 The strategies outlined in the ACT Government's own policies are sound and provide good options for improving the workplace culture at Bimberi. They provide a resource tailored to ACT Government, which is readily accessible to management at Bimberi. For example, a range of measures are underway on a whole of Government basis to implement the RED Framework and associated guides. Bimberi should be a priority area for these sorts of staff supports, as a closed environment, long shifts and high-risk clients make the work of youth workers particularly challenging.
- 5.8.62 The Bullying Code of Practice also provides practical advice on eliminating and controlling work-bullying risk factors by using measures to address the risk factors described above. These measures may include:
- Planning organisational changes and consulting workers in the process;
 - Making management accountable for positive leadership;

- Clearly defining job roles;
 - Training on difficult behaviours;
 - Training workers in diversity; and
 - Supporting vulnerable staff.
- 5.8.63 One of the major tools the Guidelines on Preventing Workplace Bullying recommends to address workplace bullying is engaging with staff, by:
- Utilising the whole-of-government Respect at Work Policy and Guidelines;
 - Raising awareness and training;
 - Undertaking ongoing risk management;
 - Using existing work safety committees and representatives;
 - Directly consulting with workers through discussions and surveys;
 - Specific focus groups;
 - Seeking feedback on proposed policies and procedures; and
 - Incorporating consultation into ongoing risk management.
- 5.8.64 Consistent with this, the Government's RED Framework appointment of contact officers should be urgently implemented at Bimberi. These would provide peer support for workers, and ensure staff are aware of their rights and avenues of complaint. The Commission found generally that youth workers struggled to find a person to discuss their concerns or safety issues with. As one youth worker commented:
- 'If staff have nowhere to turn they take stress leave.'*
- 5.8.65 As the Guidelines on Preventing Workplace Bullying suggest, sick leave and workers' compensation data can indicate when staff culture is suffering. These should be monitored for trends.
- 5.8.66 In addition, during the course of the Review, the Commission was made aware of the additional layer of peer support operating at the AMC. The Commission understands that AMC staff choose peer-support officers, who undertake comprehensive training and provide an additional level of support in times of crisis. These peer-support officers are not intended to replace the critical incident debrief procedures, but rather to be a point of contact and support for staff who are feeling under stress, either due to issues at work or in their personal life. The Commission sees value in contact officers also fulfilling this role.
- 5.8.67 Related to this, Bimberi should ensure all staff are aware of relevant Employee Assistance Program details. As the Commission has already communicated to the Chief Executive of CSD, following the recent traumatic period at Bimberi, specialist counselling should be offered to staff above the usual EAP offering. As outlined above, all staff working at Bimberi should go through a thorough induction process and must be provided key information such as details of work safety representatives and fire wardens.
- 5.8.68 Steps must also be taken to prevent a negative culture returning to Bimberi. The Commission believes exit interviews should be offered to all staff leaving the Centre. A comprehensive staff complaints database should be created and regularly reviewed for concerning trends or systematic issues.
- 5.8.69 The Commission also believes that many of the issues between staff are due to the lack of opportunities to meet together. The Commission recommends that opportunities be given to have whole-of-centre staff meetings, involving as many youth workers as the roster will allow, along with all available non-operational staff. This might also be followed by a union meeting. In addition, Bimberi management should consider facilitating opportunities for staff to mix more informally, for example through a social club and sporting teams.
- 5.8.70 In the time available, the Commission has only been able to identify the most obvious of workplace OHS issues. The Commission considers that these issues need to be addressed through a systematic action plan, as recommended below, and that WorkSafe ACT should undertake a comprehensive audit of Bimberi's response to physical and psychological hazards as soon as possible.

Recommendation 5.25: The Community Services Directorate, in consultation with Bimberi management, develop and implement a work safety action plan to urgently address identified issues at Bimberi incorporating the following actions:

- Implement the ACT Government's RED Framework and Guidelines on Preventing Workplace Bullying, and the ACT Code of Practice on Workplace Bullying in full at Bimberi as soon as possible
- Contact Officers be selected by staff and trained
- Consultation arrangements with staff be improved to meet obligations under the Work Safety Act
- Review record keeping obligations under the Work Safety Act and related legislation and ensure that Bimberi has all necessary risk-management documentation, including a risk-management register and emergency management plan
- Request WorkSafe ACT to undertake a comprehensive inspection of Bimberi
- Exit interviews be offered to all staff leaving Bimberi
- Ensure that rostering allows staff to attend a reasonable number of daily briefings and weekly staff meetings
- Consider having whole-of-centre staff meetings, involving as many youth workers as the roster will allow, along with all available non-operational staff. This might also be followed by a union meeting
- Examine the peer-support model for staff operating at AMC to consider whether it should be adopted at Bimberi.

Recommendation 5.26: The Community Services Directorate review whether 12-hour shifts for youth workers at Bimberi best serve the interests of the residents and staff of the Centre.

5.9 Staff retention and support in community youth justice

- 5.9.1 Supporting staff in community youth justice to provide quality services to young people is no less important than supporting staff in Bimberi. Staff in CYJ have reported frustration that Bimberi is the more visible side of youth justice and publicity given to Bimberi tends to overshadow the good work happening in CYJ.
- 5.9.2 The Commission has been informed that there has been significant turnover in case managers in CYJ and that, at times, the number of case managers has dropped as low as four permanent staff, putting considerable case loads on remaining staff. This turnover points to a need for greater support for staff, as well as increases in resources to allow case managers to do more satisfying work that makes a difference for young people.
- 5.9.3 While case managers are a relatively cohesive team, and gain much support from team leaders and assistant managers, there is certainly work to be done in building staff morale and a sense of efficacy in CYJ. In the Commission's view the RED Framework and Bullying Code of Practice would provide a strong model for improving staff culture and dealing with issues that might undermine team cohesion in CYJ.
- 5.9.4 Recommendations regarding case management and practice support are considered in Chapter 8.

Opportunities to provide input and feedback to management

- 5.9.5 While interview participants reported favourably on professional supervision provided to CYJ case workers, and relationships with immediate managers, participants at all levels of CYJ raised concerns about more systemic issues of communication between senior management and case workers, and the lack of opportunities for case workers to contribute to important matters affecting policy and practice:
- 'Management need to break down the barriers of hierarchy and give staff at coalface an opportunity to have input, they should talk to case managers not just assistant managers.'*
- 'The senior managers communicate with the assistant managers but not directly with the case managers, and there is no communication between the director and case managers, everything has to be filtered down, but there are no formal channels for this communication, no regular staff meetings, only supervision with individual workers, so it is not so easy for them to pass all that information on, it tends to be ad hoc, when an issue arises. There is very little opportunity for case managers to have input into management decision making which is frustrating for them... As a case manager you are left in the dark. It would have been useful to have case managers involved in the policies and procedures.'*

- 5.9.6 A number of participants commented that it would be useful for case managers to have direct involvement in the regular meetings with CSD executives and other agencies to discuss the co-ordination of services for their clients, rather than having to feed this information through assistant managers.
- 5.9.7 Current and former CYJ staff who spoke to the Commission provided a range of helpful insights and suggestions for improving case management practice, which are discussed in Chapter 8. A number remarked positively about being included in the consultation, as they did not often have a chance to contribute to issues of policy.
- 5.9.8 In the Commission's view, there is a clear need for more structured opportunities for case management staff to be kept informed of developments and to contribute to decision making within CYJ.

Recommendation 5.27: The Community Services Directorate enhance communication channels between management and case managers in Community Youth Justice to provide greater opportunities for case managers to receive information and contribute to decisions and policy issues relating to their practice.

Chapter 6: Evidence Based Practice

A Quality Youth Justice System Is Based On Evidence And Strives To Continuously Improve

Relevant Human Rights Standards

- Youth justice services should be systematically developed and coordinated with a view to improving, based on necessary research (BR rs.1, 30)

6.1 Introduction

- 6.1.1 The history of youth justice systems in Australia shows that policies and programs are often designed or reformed on the basis of ideology and assumptions, not facts and evidence. As Seymour stated:
- 'In general, decisions affecting the treatment of young offenders in Australia have been based on personal and political ideologies and untested assumptions, rather than on information about how the various systems actually work.'*¹
- 6.1.2 The Commission hopes that this Review will assist the ACT Government and the other stakeholders in the youth justice system to develop evidence based practice.
- 6.1.3 This chapter is in three parts. It begins by outlining the literature relating to evidence based practice, and then discusses data collection and record keeping, two processes that directly inform the capacity of the system to capture and analyse evidence.
- 6.1.4 With commitment to evidence based practice, and appropriate reporting frameworks, the youth justice system will have greater success in preventing young people's involvement in the youth justice system, and assisting young people in the system to change their behaviour and improve their life outcomes. Without such commitment, Cohen's observation of the state of youth justice systems will continue to be relevant:
- 'The intellectual poverty and total lack of imagination in our society's response to its adolescent trouble makers during the last twenty years, is manifest in the way this response compulsively repeats itself and fails each time to come to terms with the real 'problem' that confronts it.'*²

6.2 Evidence based practice within the youth justice system

Best practice

- 6.2.1 Rule 30 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) emphasises the need for jurisdictions to regularly evaluate their youth justice systems based on research. Rule 30.1 obliges jurisdictions to organise and promote research as a basis for effective planning and policy formulation. Rule 30 further requires efforts be made to review and appraise periodically the trends, problems and causes of youth delinquency and crime as well as the varying particular needs of young people in custody. Further, Rule 1 requires that services be systematically developed and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes.

What is an evidence base?

- 6.2.2 In 1974, Robert Martison wrote one of the most influential papers on the effectiveness of offender rehabilitation programs, in which he found that *'with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no*

1 John Seymour, *Dealing with Young Offenders* (1988), 430.

2 Stanley Cohen, *Folk Devils and Moral Panics* (1980).

appreciable effect on recidivism.³ Ever since Martison's 'nothing works' claims were disproven, researchers, evaluators and criminal justice administrators have attempted to better understand what works in the treatment and rehabilitation of offenders. The imperative for doing so has ultimately been economic as administrators and policy makers recognise the significant financial and human costs of detaining offenders and supervising them in the community. With a growing recognition that interactions with the youth justice system can have long term costly and detrimental effects on young people, their families and the community, calls for evidence based practice in youth justice have increased in intensity.

- 6.2.3 At its most basic, evidence based policy and practice attempts to help:

'people make well informed decisions about policies, programmes and projects by putting the best available evidence from research at the heart of policy development and implementation'.⁴

- 6.2.4 It requires a systematic approach to sourcing evidence and to appraising its validity and its transferability to local contexts. A commitment to evidence based practice also implies a commitment to the routine development of programs that reflect the outcome research or evaluation results.

- 6.2.5 According to Mark Lipsey, a world expert on effective youth justice, and his colleagues, evidence based practice is developed in a number of key ways:

*'Three main approaches can be used to translate research evidence on effective programs into practice for everyday use by practitioners and policymakers. The first approach is direct evaluation of each individual program used in practice to confirm its effectiveness and, if it is found ineffective, to use that evidence to improve or terminate it. A second is to implement with fidelity a program from a list of model programs certified by an authoritative source as having acceptable evidence of effectiveness. A third approach is to implement a type of program that has been shown to be effective on average by a meta-analysis of many studies of that program type, but to do so in the manner that the research indicates will yield that average effect or better.'*⁵

The use and evaluation of individual programs that are not drawn from pre-existing models or certified by a credible source

- 6.2.6 In the ACT youth justice system, most programs appear to be developed by local practitioners to meet perceived local need. There is value in this approach in that such programs can be developed to match the key skills of workers in the system and reflect the perceived needs of young people. However, developing programs in such a way can also have limitations: they often rely on untested professional wisdom, their goals and intended outcomes are often unstated or unclear, and their impacts are generally tested unsystematically, if at all. Against a backdrop where it is now understood that programs can have unintended negative outcomes (that the practice wisdom that 'any intervention is better than no intervention' has been disproved) the development of programs in such a way has been seriously challenged.

- 6.2.7 To ensure that programs are effectively meeting the needs of young people and that these unintended negative outcomes are minimised, Lipsey argues that programs must be constantly evaluated and the findings of the evaluation used to modify the program or to shape an alternative approach. Lipsey et al observe:

*'A fully developed impact evaluation, therefore, not only assesses the program effects on the intended outcome but provides the basis for diagnosing shortfalls in those effects as well as guidance for program improvement.'*⁶

The need for clear program goals, outcomes and indicators

- 6.2.8 Inherent in a robust evaluative process of these types of programs is the need for: a clear vision for the program under review; clearly stated short, medium and long term outcomes and indicators; and a set of indicators that might be used to assess the impact that the program has for those it targets.

- 6.2.9 Currently, there is limited evidence that programs developed within the ACT youth justice system have a clear intent or articulated outcomes or indicators.

- 6.2.10 One way to develop an evaluation framework that encapsulates these dimensions is to use program logic. At its most basic program logic is:

'a picture of how a program is expected to work. It is a systematic, visual way to present a planned program with its underlying assumptions and theoretical framework. The 'program map' as it is sometimes called, describes the assumptions and operational theories which underpin the program and acts as a reference point for the evaluation.'

3 Robert Martinson, 'What works? Questions and answers about prison reform' (1974) 35 *The Public Interest*, 22–54.

4 Philip Davies, 'What is evidence based education?' (1999) 47 *British Journal of Educational Studies* 2.

5 Peter H. Rossi, Mark W. Lipsey, and Howard E. Freeman, *Evaluation: A Systematic Approach* (2004).

6 Ibid.

- 6.2.11 The Commission recommends that as a first step such a tool might be used by stakeholders in the youth justice system to develop clear goals, outcomes and indicators that might be used in evaluative processes.
- 6.2.12 In their 2010 Strategic Review of the NSW Juvenile Justice System, Noetic Solutions (Noetic) recommended that the NSW adopt a US *Model Programs Guide*, which they believed might be used to assist in the implementation of evidence based programs across the youth justice system. The proposed model provides a tool and a database is used to evaluate programs in relation to:
- The conceptual framework of the program;
 - The program fidelity;
 - The evaluation design; and
 - The empirical evidence demonstrating the prevention or reduction of problem behaviour; the reduction of risk factors related to problem behaviour; or the enhancement of protective factors related to problem behaviour.
- 6.2.13 Noetic observes that:
- ‘...the NSW Government would benefit from a similar model that provides a common method of evaluating programs. It would enable decision makers to compare the range of children and young people focused programs and pilots and make decisions based on common criteria. The research and development associated with developing such a framework could have applicability across a range of government service delivery areas.’*
- 6.2.14 The Commission is of the view that this type of program would also be of benefit in this jurisdiction but contends that other programs may exist that better meet local needs. The Community Services Directorate (CSD) informed the Commission that they are ‘developing an Evaluation Plan in accordance with the ACT Government Evaluation Policy and Guidelines’ which were released in December 2010. The Commission encourages CSD to ensure the aspect of the Evaluation Plan relating to youth justice services is tailored to this context.

Recommendation 6.1: The Community Services Directorate develop an evaluation framework, informed by the literature and by local experts, to assess the effectiveness of youth justice programs in meeting their goals, outcomes and key performance indicators.

The use and evaluation of existing evidence based programs

- 6.2.15 The second way that programs can be evidence based is where they are sourced from other jurisdictions and are implemented in the way that they were originally intended. Internationally, there is a series of programs that have demonstrated positive outcomes for young people, have reduced their further engagement with the youth justice system and supported young people’s desistance from crime.
- 6.2.16 According to Lipsey et al, the research ‘that supports the effectiveness of model programs is specific to the individual programs in the form in which they were delivered in that research’ and to ‘implement such a program... means following the same protocol that defined the program in those research studies’.⁷
- 6.2.17 One example of an evidence based program is the Changing Habits and Reaching Targets (CHART) Program, which has been purchased for use in Bimberi (and within Community Youth Justice and Turnaround). The program is discussed further in Chapter 9 (programming).

Systematic evaluations

- 6.2.18 To provide assurance that programs implemented locally are, in fact, effective as delivered in that context, the best strategy is to adopt them first on a pilot basis and evaluate their effects before expanding them. Such evaluations should closely examine fidelity to the program protocol as well as outcomes. This was the approach taken by the Washington State Institute for Public Policy when several research-based programs were implemented in Washington State. The results showed that these programs did produce positive effects when implemented locally under real-world circumstances, but only when the programs were competently delivered in accordance with the developers’ specifications.⁸

⁷ Lipsey et al, above n 5.

⁸ R Barnoski, ‘Outcome evaluation of Washington State’s research based programs for juvenile offenders’ (2004) Washington State Institute for Public Policy.

Strategies for further developing Evidence based Capacity: The systematic collection of data

- 6.2.19 A commitment to evidence based practice implies a commitment to the routine development of programs that reflect the outcome research or evaluation results. Layton-McKenzie suggests that this rarely occurs in youth justice facilities, where little outcome data is routinely collected. As Layton-McKenzie notes, *'fewer than ten percent of 47 juvenile correctional facilities knew the answers to simple questions such as what happened to youth when they left their institutions'*, or how many returned to their neighbourhood school, found employment or were arrested.⁹
- 6.2.20 In seeking data for this Review it became evident that the data collecting activities at Bimberi and throughout the youth justice system are limited and that detailed analysis of this data as part of a robust evaluative frameworks is nonexistent. Basic information such as the numbers of young people with dual engagement in youth justice and care and protection, the number of young people with disabilities and mental health issues, and the numbers of life-persistent offenders in this jurisdiction are not currently captured. CSD was unable to draw together these statistics when requested.

Developing a critical friend relationship

- 6.2.21 In 2005 the ACT Government established the Institute of Child Protection Studies in response to the Territory as Parent Review (commonly called the Vardon Review). One of the objectives of the Institute is to promote good practice in care and protection policy and programs, and to create professional development opportunities and increase the skills of practitioners working with children, young people and families. In addition to these objectives, the Institute has provided the ACT Government and the community service sector with critical advice and has conducted extensive research and evaluations to better inform the provision of programs to some of the most vulnerable families in the ACT community. The Commission sees value in a similar commitment to local independent research in the field of youth justice.
- 6.2.22 There are several research centres and institutes in the ACT with expertise in youth justice issues, including the Australian National University, the University of Canberra, the Australian Catholic University, the Australian Institute of Criminology, and the Thomas Wright Institute. The Commission recommends that CSD establish an expert advisory group to support the development of evidence based practice and guide the development of robust evaluation processes. The panel could include expert practitioners from local services providing assistance to young people and their families.

Recommendation 6.2: The Community Services Directorate establish an expert advisory group with clear terms of reference to assist and guide the development of evidence based policy and practice. This advisory group should be made up of researchers, academics and youth justice experts as well as practitioners with expertise in the delivery of services to young people with offending behaviour and their families.

The communication of findings

- 6.2.23 There was a view among government and community stakeholders that to have optimal impact, findings from research and evaluation projects conducted by CSD and other agencies need to be communicated widely and be used to influence the development of policy and practice not only inside the department but also in other parts of government and community. These sentiments reflect those of a former Director-General of the NSW Department of Juvenile Justice who in a 1997 address argued that what is known about young people and offending should help shape community attitudes. He noted that: *'...there must be an obligation from the Government, Government agencies and criminologists to effectively disseminate accurate information about the true extent and nature of juvenile crime to counterbalance media and political hype concerning youth lawlessness. The community has a role, too, in disregarding the hype. Only then, without scare mongering and political expediency driving government decisions, can level headed and rational juvenile justice policies be developed.'*¹⁰
- 6.2.24 Some government and community participants in the Review reported that CSD had, at times, been slow to release reports commissioned by the Directorate, even though these projects had sometimes required significant investment from government and community agencies, families, and/or children and young people, and the results of this research could help improve the quality of supports available to the broad ACT community.
- 6.2.25 The Commission understands that, in some cases, such research and evaluation projects might include sensitive material and that releasing them in their entirety might be inappropriate, compromise the privacy of individuals, or be detrimental to particular government areas or programs. However, the Commission supports greater transparency, and the wider distribution of research findings so that they may be used to guide service improvement across the sector.

9 Doris Layton-McKenzie, 'Evidence Based Corrections: Identifying What Works' (2000) *Crime & Delinquency* 46(4), 457-471.

10 Ken Buttram, 'Juvenile Justice: What works and what doesn't!' (1997) *Juvenile Crime and Juvenile Justice: Towards 2000 and Beyond* conference proceedings: Australian Institute of Criminology.

6.3 Data collection across the ACT youth justice system

Why data collection is important

- 6.3.1 Evidence based decision making must be supported by effective data collection. Data collection systems are important because they assist us to understand what is happening in the youth justice system, and identify areas for future improvement. Far from being peripheral, data collection is extremely powerful, because it determines what we know, which in turn determines what we do.
- 6.3.2 Well developed youth justice data has the potential to contribute to:
- A picture of the extent and nature of criminal behaviour by young people in the ACT;
 - A picture of young people who come into contact with the youth justice system in the ACT;
 - A picture of the youth justice system in the ACT;
 - A picture of young people's pathways through the youth justice system;
 - Measurement of performance against agreed indicators;
 - Examination of trends over time;
 - Comparison with other jurisdictions;
 - Monitoring and evaluation of youth justice policies and programs;
 - Identification of possible 'best practice'; and
 - The exploration of possible linkages with other related health, welfare, housing, employment, education and criminal data to obtain a more detailed view of young people in the youth justice system, their backgrounds, environment, outcomes and pathways.¹¹
- 6.3.3 Governments, policy makers, researchers and community groups could be more effective in their work if they knew more about young people involved in the youth justice system, including the extent of their involvement, the reasons for their involvement, and their experiences within it.¹² If the aim is to create an evidence base that can '*facilitate policy analysis, planning and decision making*', then organisations need to work together to establish efficient and integrated data collection systems. We need to have a clear understanding of what information is collected, why it is collected, the limitations of the data, and gaps in the data.¹³
- 6.3.4 In the ACT, data collection is governed by the privacy requirements of the *Privacy Act 1988* (Cth) and the *Health Records (Privacy and Access) Act 1997* (ACT).

Current data collection practices

Reporting by ACT organisations

- 6.3.5 A range of agencies including ACT Policing, the Director of Public Prosecutions, the Childrens Court, the Supreme Court, the Restorative Justice Unit and CSD collect information about young people who are involved with the youth justice system in the ACT. While each agency has different legislation, policies and data collection strategies, they report some information publicly each year. Such reporting presents some information to help us understand the operation of the local youth justice system. Table 6.1, below, outlines the data made publicly available each year.

11 A Broadbent, *Report on the development of a Juvenile Justice National Minimum Data Set* (2001) Australian Institute of Health and Welfare, Canberra.

12 Australian Institute of Health and Welfare, *Juvenile Justice: A new national collection* (2004) AIHW Bulletin issue 19; Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (1997).

13 Anna Stewart et al, 'Juvenile Justice Simulation Model' (2004) Justice Modelling @ Griffith, Griffith University, 79.

Table 6.1: Public reporting by agencies in the ACT youth justice system

Source	Data reported
ACT Policing <i>Annual Report 2009-2010</i>	<ul style="list-style-type: none"> Number of juveniles referred to diversionary programs Number of juveniles taken into custody under arrest (Indigenous and non-Indigenous, male and female) Number of juveniles taken into custody under protective custody (Indigenous and non-Indigenous, male and female)
Director of Public Prosecutions <i>Annual Report 2009-2010</i>	<ul style="list-style-type: none"> Number of charges in the Childrens Court Number of charges proven
Childrens Court (ACT Government Dept of Justice and Community Safety <i>Annual Report 2009-2010</i>)	<ul style="list-style-type: none"> Number of criminal cases over 6 months, and 12 months Judicial officers, full time equivalent (number and rate per 100,000 population) Clearance indicator – all criminal matters
Restorative Justice Unit (ACT Government Dept of Justice and Community Safety <i>Annual Report 2009-2010</i>)	<ul style="list-style-type: none"> Referrals from ACT Policing, Childrens Court, DPP, OCYFS Age and gender of young people referred to RJU Number of conferences Reasons victims did not participate in RJ Reasons young offender did not participate in RJ Offence type Agreement outcome Agreement compliance rate
CSD reporting through the ACT Government Budget process (ACT Dept of Treasury, Australian Capital Territory Budget 2011-2012)	<ul style="list-style-type: none"> Recidivism rates Number of custody days used annually Number of Community Youth Justice clients Average cost per Youth Services client (The average cost of managing and/or supporting a child or young person through one or more of the following services: Community Youth Justice; Turnaround; Adolescent Day Unit; Youth Connection; and the Bimberi Youth Justice Centre).

Nationally comparable data

- 6.3.6 In the past, there was more detailed and comprehensive data collection in the adult justice system than the youth justice system, however this situation has changed in the last ten years. State and Territory Governments and research institutions have made efforts to increase the scope and quality of data about youth justice services, and to develop nationally comparable data sets. There are now three main national data projects – implemented by the Australian Institute of Criminology (AIC), Australasian Juvenile Justice Administrators (AJJA) and Australian Bureau of Statistics (ABS), respectively – with a fourth under development by the Productivity Commission and AJJA.

AIC annual report on juveniles in detention

- 6.3.7 The AIC has produced snapshot data on the numbers of young people in detention centres around Australia since 1981. Data for this monitoring project is provided to the AIC by the youth justice authority in each State and Territory. A census count is taken in each youth justice facility on the last day of each quarter of the year (31 March, 30 June, 30 September and 31 December). The AIC reports on young people's age, sex, Indigenous status, legal status (remand or sentenced) and jurisdiction.¹⁴
- 6.3.8 The AIC data collection is particularly useful for examining some of the long-term trends in youth detention, as it has been collected on a reasonably comparable basis from all Australian jurisdictions for nearly three decades. However, the information collected is limited in scope and coverage and there are some problems with consistency across jurisdictions.¹⁵ In particular, this dataset focuses on young people in detention, not young people involved in the youth justice system in the community, and it does not help us understand young people's movement through the system, or the characteristics of young people in the broader youth justice system.

AIHW Youth Justice National Minimum Dataset

- 6.3.9 In 1999 the AJJA began plans for a national dataset to measure community based orders, the characteristics of young people in the youth justice system, and young people's pathways through the youth justice system. The resulting Juvenile Justice National Minimum Dataset (JJ NMDS) is managed by the Australian Institute of Health and Welfare (AIHW) on behalf of the youth justice authorities in each State and Territory.¹⁶

14 Kelly Richards, 'Trends in juvenile detention in Australia' (2011) Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice no. 416.

15 Broadbent, above n 5.

16 E Kennedy and IJ Johnston, 'Juvenile Justice: A new national collection' (2004) Australian Institute of Health and Welfare Bulletin Issue 19.

- 6.3.10 The JJ NMDS provides nationally consistent data on young people's experience of youth justice supervision, both in the community and in detention. It was tested and refined during 2002 and 2003 and was implemented in 2004. The JJ NMDS was redeveloped in 2009 to include more detail on the supervision of young people. The first report containing data from the JJ NMDS was released in February 2006 and covered the periods 2000-01 to 2003-04. Annual reports have subsequently been published.¹⁷
- 6.3.11 The JJ NMDS contains information on all legal arrangements and orders supervised by youth justice agencies and all periods of detention in youth justice detention centres. For each period of supervision, data are collected on:
- Order or detention type;
 - Start date of the order or detention period;
 - End date of the order or detention period;
 - Reason the order or detention period ended, including whether the order was successfully completed or breached and whether the young person was released from detention on bail or parole; and
 - Suburb and postcode of the young person's last known home address.¹⁸
- 6.3.12 The JJNMDS also collects demographic information on young people under youth justice supervision.¹⁹

ABS report on criminal courts

- 6.3.13 The Australian Bureau of Statistics collects data from the criminal law jurisdiction in higher, magistrates and children's courts for all States and Territories in Australia. Children's court data has been included in the publication since 2006-07. Statistics are published on a national and State/Territory basis that allows for comparison of defendant characteristics across jurisdictions, and within jurisdictions over time.
- 6.3.14 The following information about children's courts is analysed:
- Defendants finalised;
 - Sentence outcomes;
 - Duration of cases adjudicated;
 - Federal defendants; and
 - Aboriginal and Torres Strait Islander defendants.

Productivity Commission report on Government Services

- 6.3.15 The Productivity Commission (PC) produces a Report on Government Services (ROGS) each year. For some years it has reported on court administration, thereby presenting data from the ACT Childrens Court, in a format that expands on the figures published in the JACS Annual Report, and allows the data to be compared with other jurisdictions.
- 6.3.16 Until recently ROGS did not include any data about youth justice services, and only reported on adult corrections services. However in 2009-10 the PC collaborated with the AJJA to design nationally comparable performance indicators for statutory youth justice authorities. The performance indicator framework is being developed in stages and is not yet fully implemented. Once operational it may expand our knowledge of the operation of youth justice services, and of young people's experiences in the system.²⁰

17 Australian Institute of Health and Welfare, 'Background to Juvenile Justice National Minimum Data Set' (www.aihw.gov.au/juvenile-justice-background)

18 Australian Institute of Health and Welfare, 'Juvenile Justice in Australia 2008-2009' (2011) *Juvenile justice Series No.7*.

19 Australian Institute of Health and Welfare, 'Metadata Online Registry' (<http://meteor.aihw.gov.au/content/index.phtml/itemId/378088>).

20 Productivity Commission, Steering Committee for the Review of Government Service Provision, *Report on Government Services* (2010).

Table 6.2: Report on Government Services coverage of youth justice systems in Australia²¹

Domain of reporting in ROGS	Data reported
Children's court reporting in ROGS	<ul style="list-style-type: none"> • Court expenditure • Court lodgement – criminal • Court finalisations – criminal • Backlog indicator – all criminal matters • Judicial officers, full time equivalent (number and rate per 100,000 population) • Attendance indicator – criminal • Clearance indicator – all criminal matters • Net expenditure per finalisation for children's courts
CSD reporting in ROGS	<ul style="list-style-type: none"> • Presentence reports completed • Group conferencing outcomes • Offending specific programs completed • Education and training attendance • Deaths in custody • Escapes • Absconds from unescorted leave • Assaults in custody • Self harm and attempted suicide in custody • Completion of orders • Case plans prepared • Cost per offender • Offender-to-staff ratio • Centre utilisation

A way forward

- 6.3.17 As mentioned above, the aim of data collection is to provide an evidence base from which to make informed decisions. There are a number of ways the ACT Government and independent agencies involved in the youth justice system can improve data collection, and they are discussed in this section.
- 6.3.18 During the Review the Commission engaged the AIC to provide specialist advice about current data collection processes in the ACT youth justice system, and areas for potential improvement. The full report from the AIC is attached at Appendix A. Extracts from this report are presented in italics below.

Police data

'In the ACT, like most jurisdictions, data are not published on both alleged juvenile offenders and distinct alleged juvenile offenders. Data on both of these variables would provide an insight into the proportion of alleged offenders who commit one offence and/or offences on one occasion only, compared with those who commit multiple offences and/or offences on multiple occasions. It has been well-documented that a small 'core' of juvenile offenders is responsible for a disproportionate amount of crime [reference omitted]. Data on distinct alleged juvenile offenders would indicate the proportion of juvenile crime that is committed by chronic repeat offenders. Furthermore, disaggregating these data may show variations in offending patterns by age, sex, Indigenous status and/or other demographic characteristics [reference omitted].

'While police data on alleged juvenile offenders in the ACT captures a range of key characteristics including juveniles' sex, age and Indigenous status, other characteristics, such as country of birth and ethnic background, are not reported. This is the case in most jurisdictions; only Victoria Police publishes such data.

'Police in the ACT categorise alleged juvenile offenders as either Indigenous or non-Indigenous. As is the case in other jurisdictions, however, it is unknown how police determine Indigenous status. Future research might explore how police determine Indigenous status in jurisdictions in which this is not based on appearance.

'Qualitative research could also provide an important and complementary insight into juveniles' contact with police in the ACT. For example, police decisions on the processing of juveniles who are diverted from the formal criminal justice system could be explored in more detail. There has been little published on how police make decisions about whether a particular juvenile should be warned, cautioned or referred to a restorative justice conference; qualitative research could provide an insight into this important area.'²²

²¹ Ibid.

²² Kelly Richards, Lisa Rosevear and Mathew Lyneham, 'Juvenile's contact with the criminal justice system in the ACT' (2011) Australian Institute of Criminology, printed in full at Appendix A.

Childrens Court data

'Data on juveniles' contact with the ACT Childrens Court are not disaggregated by Indigenous status (as is the case in other jurisdictions). It is therefore unclear what proportion of juveniles adjudicated in the Childrens Court is Indigenous. In addition, the lack of court data on juveniles' Indigenous status has resulted in limited knowledge on the following issues:

- The offence types for which Indigenous juveniles are adjudicated in court, in comparison with non-Indigenous juveniles;
- Sentencing outcomes for Indigenous juveniles compared with non-Indigenous juveniles;
- The age at which Indigenous juveniles first appear before the Childrens Court, in comparison with non-Indigenous juveniles;
- Rates of acquittal and conviction by Indigenous status; and
- The combined influence of age, sex, Indigenous status and offence type on juveniles' court outcomes [reference omitted].

'More detailed analysis of the Indigenous status of juveniles appearing in the childrens courts is important given the over-representation of Indigenous juveniles in detention. A closer examination of court data would provide an insight into the stage of the criminal justice system at which the over-representation of Indigenous juveniles becomes entrenched.

'A high proportion of adjudications in the ACT Childrens court are withdrawn, in comparison with the national average. As highlighted in this report, nearly one-third of adjudications in the ACT Childrens court are withdrawn, in comparison with the national figure of 10 percent. Further consideration could be given to why this is the case, and any implications of this apparent anomaly.

'The ACT is unique in publishing data on how juveniles plead in the Childrens [C]ourt. The impacts of juveniles' pleading behaviours on sentencing outcomes is an important area that could be explored in more detail.'²³

Corrections data

'Like all jurisdictions except the Northern Territory, data on juvenile corrections in the ACT lacks a focus on offence type [reference omitted]. That is, the offence types for which juveniles are placed under either community- or detention-based supervision are largely unknown. These data, disaggregated by demographic characteristics such as age, sex and Indigenous status, would provide a more detailed picture of juvenile corrections in the ACT. It is important to note, however, that the very small numbers of juveniles in detention in Australia as a whole, and in the ACT in particular, is likely to make the collection of such data difficult, due to the need to maintain juveniles' privacy.

'Considering the relationship between offence type and sentencing outcomes is particularly important in relation to understanding rates of over-representation of Indigenous juveniles under community-based and custodial supervision.'²⁴

Recidivism data

'The AIC recently undertook a research project that focused on best practice in measuring juvenile recidivism in Australia [reference omitted]. A number of 'best practice' principles on measuring juvenile recidivism emerged from this research [reference omitted], including that:

- Individual juveniles (rather than offences, convictions, or sentences) should be the primary counting unit;
- Juvenile recidivism should be measured prospectively rather than retrospectively;
- Juveniles should be tracked into the adult justice system (ie to assess whether juveniles recidivate after they have attained majority status);
- Minor offences should be excluded from measures of juvenile recidivism;
- Technical breaches of supervised orders should be excluded from measures of juvenile recidivism;
- Restorations of suspended sentences should be excluded from measures of juvenile recidivism;
- Data from specialty courts (eg youth drug and alcohol courts) should be included in measures of juvenile recidivism;
- Pseudo-recidivism should be excluded from measures of juvenile recidivism; [Pseudo-reconvictions are 'convictions which occur during the follow-up period, but which result from offences committed prior to the sentence of interest'.]²⁵
- The offence date (rather than the conviction or sentencing date) should be used in measures of juvenile recidivism;
- Offences committed while a juvenile is serving a community-based order (but not a detention-based order) should be counted as recidivism; and
- The frequency and/or severity of offending should be considered in measures of juvenile recidivism.

'It is important to note that these principles represent an ideal. They comprise a best practice framework that jurisdictions across Australia are currently unlikely to be able to adhere to in practice. Jurisdictions may, however, adopt these principles to the extent

²³ Ibid.

²⁴ Ibid.

²⁵ Kelly Richards, 'Measuring Juvenile Recidivism in Australia' (2011) Australian Institute of Criminology Technical and Background Paper No.44.

possible and/or strive to become aligned with them in the future. Like all other jurisdictions, the ACT does not currently measure juvenile recidivism in accordance with these principles, but has endorsed the principles as best practice.

The purpose of the following sections, therefore, is not to compare the ACT's current practice unfavourably with the 'best practice' framework, but to provide an insight into how juvenile recidivism is currently measured in the ACT and how current methods could potentially be improved in the future.

The ACT's current approach to measuring juvenile recidivism meets many of the 'best practice' principles [reference omitted]. Others, however, are not currently feasible.

Areas in which ACT does not meet best practice principles for measuring juvenile recidivism:

- Juvenile recidivism is currently measured retrospectively (ie what proportion of juveniles currently serving an order has previously served an order?) rather than prospectively (ie what proportion of juveniles currently serving an order returns to serve another order?)
- Juveniles are not currently tracked into the adult criminal justice system for the purposes of measuring recidivism.
- Technical breaches of supervised orders are not excluded from measures of juvenile recidivism; In the ACT, failure to appear on bail is considered an offence.
- Restorations of suspended sentences should be excluded from measures of juvenile recidivism.
- The conviction or sentencing date is used in measures of juvenile recidivism rather than the offence date. The ACT does not capture data on offence date or use these data in calculations of juvenile recidivism.

Perhaps the key limitation of the approach taken in the ACT, however, is the current lack of capacity to measure juvenile recidivism across community-based and custodial orders. That is, the current approach only captures juveniles serving a custodial sentence who have previously served a custodial sentence, and juveniles currently serving a community-based sentence who have previously served a community-based sentence. It has been well-documented, however, that juveniles often move between community-based and custodial orders. A key factor in improving data collection on juvenile recidivism in the ACT would therefore be to address this limitation.²⁶

Recommendation 6.3: ACT Policing:

- Publish data on both alleged young offenders and distinct alleged young offenders
- Disaggregate data about alleged young offenders according to age, sex, Aboriginal or Torres Strait Islander status and other demographic characteristics
- Report the country of birth and ethnic background of alleged young offenders
- Report how they determine Aboriginal or Torres Strait Islander status
- Publish data on diversion rates by status, gender and Aboriginal or Torres Strait Islander status.

Recommendation 6.4: The ACT Childrens Court disaggregate data by Aboriginal or Torres Strait Islander status, including offence types, sentencing outcomes, age of first appearance before the court, and rates of acquittal and conviction.

Recommendation 6.5: The Community Services Directorate:

- Record offence types for which young people are placed under community based or detention based supervision
- Disaggregate data on offence types by demographic characteristics such as age, sex and Aboriginal or Torres Strait Islander status
- Consider ways to improve the current measure of recidivism to meet best practice standards.

Recommendation 6.6: The ACT Government:

- Conduct qualitative research into the operation of police discretion to warn, caution, charge or refer a young person to diversionary programs
- Examine why nearly one third of adjudications in the ACT Childrens Court are withdrawn, in comparison with a national figure of 10 per cent.

6.3.19 The Commission suggests the ACT Government improve local data collection and evidence based decision making by focusing on the following nine strategies:

- National collaboration in data collection;
- Local collaboration in data collection;
- Designing effective performance measures;
- Investment in technology;
- Measuring longitudinal pathways;
- Connecting data between sectors;
- Research capability;
- Making data collection easy and efficient; and
- Privacy protection for young people and families.

National collaboration in data collection

6.3.20 It is widely accepted that governments and researchers would benefit from improved comparability of data across youth justice jurisdictions.²⁷ The recent efforts to develop comparable national data and performance measures in youth justice is likely to continue, and the Commission expects that CSD will continue to play a part in this dialogue through AJJA.

6.3.21 The Commission encourages the ACT Government to support CSD in engaging with AJJA, and to provide adequate resources to allow CSD to improve data collection systems in line with national best practice.

6.3.22 The following have been identified as areas of key national interest in youth justice research:

- A measure of recidivism (such as repeat contacts with the youth justice department and repeat periods of detention);
- Alternatives to detention (including cautioning, conferencing);
- Youth justice clients and their characteristics;
- Offences - trends in the types and number of offences committed by young people;
- Sentences - trends and variations in the types of sentences served;
- Outcomes for young people in the system; and
- Youth detention centres - size, location, programs offered, escapes, etc.²⁸

6.3.23 Although the ACT is a small jurisdiction with limited resources, any future policy and program development in the ACT youth justice system should be implemented in a way that deliberately contributes to and draws from national knowledge about these issues.

Local collaboration in data collection

6.3.24 While the ACT Government continues to collaborate in data collection at a national level through AJJA, it should also direct efforts towards local collaboration in data collection.

6.3.25 It would be useful if agencies could communicate about their data collection measures, and identify ways to integrate datasets between organisations. In reviewing data collection methods in the ACT, the AIC concluded:

*'A key limitation of data on youth justice in the ACT (as in other jurisdictions) is that data are not linked across the domains of policing, courts and corrections. It is therefore not possible to gain an insight into the pathways of individual young people through the youth justice system.'*²⁹

6.3.26 It would also be helpful if agencies in the youth justice system could monitor the pathways into and away from their organisation. The Commission suggests agencies endeavour to record and report the characteristics of the young people who are engaged with their agency, and the circumstances under which they enter and leave. Such monitoring and evaluation needs to be in compliance with privacy legislation, and take place in collaboration with the other agencies in the youth justice system:

*'There is an increasing recognition of the need for a more coordinated criminal justice system. Each section of the criminal justice system has its own policies, data collection strategies, and legislation. However, the complex inter-dependent nature of the criminal justice system means that any change in one section of the system could have substantial flow on effects to other parts of the system.'*³⁰

27 Australian Bureau of Statistics, 'Information Paper: Improving Statistics on Children and Youth: An Information Development Plan' (2006).

28 Broadbent, above n 5.

29 Richards et al, above n 22.

30 Stewart et al, above n 7.

- 6.3.27 More detailed and integrated data could provide the ACT Government and individual agencies with better information on which to base decisions about legislation, policy, and program design.

Designing effective performance measures

- 6.3.28 A fundamental component of evidence based practice is to measure outcomes of policies and programs, and report on performance.

*'Performance measurement (the use of empirical indicators to measure outcomes that government services are supposed to achieve) has emerged in recent years as a strategy to assist governments assess the impact of their operations, improve service provision and effectively target resources.'*³¹

- 6.3.29 Performance measures can assist agencies in the youth justice system, particularly CSD, to:

- Identify problems as they arise and take action to address problems;
- Identify whether particular policies or actions are effective;
- Evaluate programs;
- Track progress towards achieving goals, and
- Target resources.³²

- 6.3.30 Currently the primary performance measure for CSD youth justice services (Bimberi and Community Youth Justice; CYJ) is recidivism. In the ACT budget process CSD reports against the strategic indicator 'Provision of services that address the needs of young people involved with Youth Justice Services':

*'... the OCYFS measures recidivism by calculating the proportion of all juveniles currently in custody (on sentence) that had served part or all of a different episode of custody following sentence within the previous two years or during the current year, and the proportion of all juveniles currently serving a community-based order that had been subject to a different community-based order within the previous year or during the current year.'*³³

- 6.3.31 However, as explained by AIC in Appendix A, many measures of recidivism are problematic, and the measure used in the ACT has significant limitations. As stated above, the Commission recommends that CSD consider ways to improve the current measure of recidivism to move towards best practice standards.

- 6.3.32 In the meantime the Commission suggests that CSD also explore other measures to assess the performance of Bimberi and CYJ. Performance management is discussed further in Chapter 4 (vision), and the Commission makes several recommendations to improve the performance management system within youth justice services. In the context of this discussion of data collection, the Commission notes the comment by Cunneen and Luke, that:

*'measuring re-offending is important and it needs to be done as effectively as possible. However...it should not stand as a substitute for all other outcome measures.'*³⁴

- 6.3.33 Youth justice agencies in other jurisdictions measure success in a range of ways. Some report on reoffending as their key measure, others look at intermediate factors that may contribute to rehabilitation, such as education, employment and health (see Table 6.3, below).

31 Richards, above n 25.

32 Ibid.

33 Richards et al, above n 22.

34 Cunneen and Luke cited in Richards, above n 25.

Table 6.3: Measures used by other youth justice agencies to assess performance³⁵

Category	Measure
Reoffending	<ul style="list-style-type: none">• Reoffending rates for specified groups of offenders after release from custodial or community sentences• Follow-up periods were 12 months, 18 months, 2 or 3 years• Offender groups included offence, gender, ethnicity, sentence or penalty, age at first commitment, county or region• Law abiding behaviour (rather than reoffending)
Education and employment	<ul style="list-style-type: none">• Rate of young offenders in full-time education, training or employment at the end of a sentence• Rate of young offenders in an appropriate school placement• Rate of young offenders who dropped out of school following release from a residential program
Numeracy and literacy	<ul style="list-style-type: none">• Rate of young people improving by one skill level in literacy and numeracy tests• Rates of youths in custody over six months whose reading and maths scores increased between admission and discharge
Housing	<ul style="list-style-type: none">• Young people subject to community interventions or being released from custody have satisfactory accommodation
Health	<ul style="list-style-type: none">• Rate of positive drugs screening tests• Resistance to drug and alcohol use• Rate of youths in custody whose physical fitness assessments increased between admission and discharge
Risk assessment	<ul style="list-style-type: none">• Rate of youths in custody who receive a higher score on their social skills assessment on release
Client satisfaction	<ul style="list-style-type: none">• Rate of victim and parental satisfaction

- 6.3.34 When the NSW Auditor General examined NSW Juvenile Justice in 2005, they found it difficult to assess the efficiency and effectiveness of services supporting rehabilitation of young people in the youth justice system, because of limitations in outcome and performance measures. A similar conclusion was made following an audit of the youth justice system in Victoria in 2008.³⁶
- 6.3.35 Following the audit assessment, NSW Juvenile Justice changed its performance measures, and since 2006 it has recorded outcomes in three areas of post release support: living in safe and appropriate accommodation, participating in education and training or participating in employment, and participating in community activities.³⁷
- 6.3.36 It is possible to assess outcomes for young people in the areas of life skills, housing, education, health and wellbeing, employment skills, risk taking behaviours, or social interactions. These indicators are likely to impact on young people's offending in the longer term and may therefore provide a better assessment of the performance of youth justice services.³⁸
- 6.3.37 CSD could identify similar intermediate measures suitable for the ACT context, to assess the performance of youth justice services in supporting young people in areas such as housing, education or employment, and health. This issue is discussed further in Chapter 4 (vision). Given the small size of this jurisdiction it should be feasible, for example, to measure the number of young people who transition successfully from Bimberi to suitable housing and education or employment. However, this information is not currently recorded.

Investment in technology

- 6.3.38 The Youth Justice Information System (YJIS) is the database used to record and maintain information about CYJ and Bimberi clients. However, YJIS does not provide CSD staff with capacity for data collection and analysis. For example, the Commission requested non-identifiable demographic information about the group of young people that have lived in Bimberi since September 2008. However, CSD were unable to produce even basic aggregated reports of demographic data from YJIS. It is concerning that the Review could not examine demographic data about young people in detention, but it is more concerning that CSD cannot examine such information when designing policies and programs to meet the needs of these young people. To improve the capacity for research and analysis, CSD urgently needs to purchase or develop a more suitable database. NSW Juvenile Justice is developing a new database, which will provide greater capacity for analysis and reporting of information, and will also connect with the court database, and child protection database.³⁹

35 NSW Auditor-General, *Managing and measuring success: Department of Juvenile Justice* (2005).

36 Ibid; Victorian Auditor-General, *Services to young offenders* (2008).

37 Noetic Solutions, *A Strategic Review of the NSW Juvenile Justice System* (2010).

38 Australian Bureau of Statistics, above n 27; Richards, above n 25.

39 Ibid, 133.

Measuring longitudinal pathways

- 6.3.39 Longitudinal data on children and young people in the youth justice system would provide very useful information. *'Such data not only allow causal pathways and outcomes to be identified, but also enable the identification of at-risk populations.'*⁴⁰
- 6.3.40 The recent developments in nationally comparable data collection in youth justice are likely to result in improved longitudinal data in future years. The Commission encourages CSD to continue engagement with youth justice authorities in other jurisdictions through AJJA, and to bring CSD data collection in line with best practice wherever possible.

Connecting data between sectors

- 6.3.41 Research institutions are interested in exploring the possibility of linking data sets from related sectors, including child protection, crisis accommodation, mental health services, drug and alcohol services, disability, housing, community legal services, education and health services. This would allow researchers to identify causal pathways and outcomes for young people, which would inform policy development work.⁴¹
- 6.3.42 For example, the youth justice, child protection and Supported Assistance and Accommodation Program (SAAP) data collections are all maintained by the AIHW. The AIHW suggests that linking them would enable the analysis of the movements between these sectors and the characteristics of young people who are involved in more than one sector. Further, it would:
- '...provide valuable information for the improvement of services for young people and the implementation, monitoring and evaluation of targeted intervention strategies across sectors. In particular, a data set that contained information for a number of years would enable the analysis of the movements of young people over time between these three sectors.'*⁴²
- 6.3.43 Such discussions will take place at a national level, however, the Commission encourages the ACT Government to consider ways to promote information sharing between ACT Government agencies in the best interests of young people in the youth justice system. This issue is discussed further in this chapter, in the section on record keeping.

Research capability

- 6.3.44 The ACT is a small jurisdiction, which poses challenges when analysing statistical trends over time, as *'small changes in the number of juveniles in detention may produce large fluctuations in proportions and rates'*.⁴³ However, a benefit of this situation lies in the potential for qualitative research projects to inform our knowledge of the youth justice system and the young people involved in it.
- 6.3.45 For example, NSW Juvenile Justice (NSW JJ) has a Research and Information Unit consisting of four people. They developed a research agenda to identify priority areas for establishing a research base for evidence based decision making, which currently includes:
- Prevention and early intervention with specific focus on secondary/selected intervention for young people in early contact with the Criminal Justice System;
 - Bail and remand;
 - Comparative cost-benefit analysis of interventions;
 - Effective engagement and practice for working with young people with specific focus on Aboriginal and Torres Strait Islander young people; and
 - Building evidence base about what works with young offenders in NSW.
- 6.3.46 The research agenda is overseen by a committee comprising NSW JJ, Bureau of Crime Statistics and Research, Justice Health and Corrective Services.⁴⁴
- 6.3.47 While resources in the ACT may not extend to a specialist research unit, there is potential for CSD to develop partnerships with other research professionals and institutions, as discussed earlier in this Chapter, in the section on evidence based research.

Data collection needs to be easy and efficient

- 6.3.48 One of the most challenging aspects of data collection is the process by which it is sourced and gathered. To be confident in the quality and accuracy of data, agencies must ensure that data entry systems are robust and efficient.

40 Australian Bureau of Statistics, above n 27.

41 Australian Bureau of Statistics, above n 27; Broadbent, above n 5.

42 Australian Institute of Health and Welfare, 'Linking SAAP, child protection and juvenile justice data collections: a feasibility study' (2008).

43 Richards et al, above n 22.

44 NSW Juvenile Justice, 'Research Agenda' (<http://www.djj.nsw.gov.au/research.htm>).

- 6.3.49 The Commission is aware that, in recommending that CSD develop improved performance indicators for youth justice services, this will require people to record information. It may be possible to build on current record keeping processes, or it may be necessary to conduct additional record keeping.
- 6.3.50 The Commission is conscious of the time required to complete 'paperwork' in Bimberi and CYJ. To minimise resource impacts on the staff who record data, data collection needs to be streamlined and integrated with daily practice; it should be an easy and natural part of people's work, and they need to be provided time and resources to complete it. Data should be entered directly on an electronic database, to ensure data is not lost and to minimise double handling. The people at the beginning of the process should be informed and engaged with the end result of the process, so they understand the meaning and relevance of the data, and can identify problems or improvements in the process. Similarly the people analysing the data at the end of the process need to understand the process from the beginning (with appropriate privacy protections) to ensure information is not lost or misinterpreted.
- 6.3.51 If data collection is difficult or complex it will not happen properly. These issues are discussed further in the following section on record keeping.

Protection for young people and families

- 6.3.52 At all times when discussing data collection the Commission is conscious of the need to protect the privacy of individual young people and their families. The systemic interest in sharing information to support evidence based practice must be balanced with individuals' right to privacy.

6.4 Record keeping in Bimberi

Importance of good record keeping systems

- 6.4.1 Many youth workers told the Review that they chose to work at Bimberi to make a difference in the lives of a group of vulnerable young people. Indeed staff at Bimberi have an extremely important role communicating with young people, and supporting them. For some staff the 'paperwork' at Bimberi is frustrating and burdensome, and a distraction from their primary purpose.
- 6.4.2 The paperwork or record keeping at Bimberi is an essential part of the work conducted at the Centre. If the right information is recorded, if it is recorded clearly and accurately, if it is stored appropriately, and if it is accessible to the right people at the right time, then Bimberi will operate safely and successfully. Some of the problems at Bimberi that have been highlighted in this report came about because information was not recorded properly, or was not accessible to people who needed to know about it.
- 6.4.3 There is already a large amount of record keeping at Bimberi. Record keeping in Bimberi is governed by the *Territory Records Act 2002* and the *Children & Young People Act 2008* (the CYP Act). Historically youth workers have not had time on shift to read emails and write reports, and report staying back after their 12 hour shifts to complete their paperwork. The Commission is not suggesting that staff be asked to spend more time on paperwork. Rather, the record keeping system needs to be easier, more streamlined and, above all, digitalised. The aim is to set up efficient systems so that essential information is recorded and accessible to those who need it.

Current record keeping systems at Bimberi

Concerns raised about record keeping at the former Quamby Youth Detention Centre

- 6.4.4 One of the problems with the former Quamby Youth Detention Centre (Quamby) was inadequate record keeping. During an inquest into the death of a young person in detention in 1996, the Coroner called for a review of record keeping systems:
- 'The evidence is clear that there is a substantial [sic] overload in relation to pieces of paper which are created at Quamby. The control room log, the handover sheets, incident reports and manager's reports are amongst those that are very significant in the day to day running of Quamby. It is clear from the evidence that many of these documents are inaccurate or inadequate. It may be that serious consideration needs to be given to the compulsory use of an appropriate data base so that all of the information relevant to an individual detainee or resident can be kept in the one place. This would involve a greater access for all staff members to computer equipment and additional expense in training. However, it would appear on balance that these expenditures would ultimately achieve a more useful purpose than the ongoing system continuing...'*

...There needs, in my view, to be a reassessment of the procedures followed at Quamby to ensure that there is a process of

*adequate record keeping and also a process whereby the records are easily accessible to all those members of staff who need to know about individual detainee's requirements.*⁴⁵

- 6.4.5 The human rights audit of Quamby in 2005 (the 2005 Quamby Audit) raised concerns about the lack of an electronic database for record keeping, and recommended that:
- '...the file management process and procedures should be reviewed to ensure that information is comprehensive and up-to-date for all detainees and can be accessed easily and quickly when required. An electronic database should be established for this purpose.'*⁴⁶

Overview of record keeping systems at Bimberi

- 6.4.6 Record keeping practices have improved since Quamby. There is now a policy on 'Records and Reporting', which aims to:
- '...address requirements for the recording of information related to operations at a detention place, including statutory requirements to record information in registers and to report certain incidents affecting safety and security to higher administrative authorities and oversight persons and agencies.'*⁴⁷
- 6.4.7 Since the 2005 Quamby Audit, the Youth Justice Information System (YJIS) database has been put in place, however, this system does not address the need for an electronic database for use in the detention centre. It is an information system used across Bimberi and CYJ to assist with case management, court reporting and community supervision. Youth workers at Bimberi do not have ability to record information on the system.
- 6.4.8 Currently each young person at Bimberi has four separate hardcopy files: an administration file, case management file, education file and health records file. Each of these files are maintained by different people, and are kept in different buildings on the Bimberi site. The administration file is maintained by operational staff and includes records about admission, classification, risk assessments, approved phone and mail contact, incentive points and purchases, and behaviour management records. The case management file is maintained by the Bimberi case managers, and is shared with CYJ when the young person leaves Bimberi. The health file is maintained by Corrections Health, and there is a further electronic file maintained by Forensic Mental Health Services.
- 6.4.9 There are several other record keeping processes that occur daily at Bimberi. In the administration building there are hardcopy files relating to incidents and segregation. In each of the units there are hardcopy files documenting use of force, and searches. Also in the units are paper diaries in which staff write handover notes and observations about young people at the end of their shift. Staff circulate operational 'case notes' about young people by email. They inform other workers of incidents or observations of behaviour or issues to be aware of. Bimberi management also issue instructions and briefings to staff via email. A daily information sheet is circulated each morning to the youth workers and teachers, summarising information such as unit/room allocation, security status, and observation classification.

Limitations of the record keeping systems at Bimberi

- 6.4.10 Despite the improvements to record keeping that have been made since the closure of Quamby, the Commission has concerns about the way information is managed at Bimberi.
- 6.4.11 In late 2010 an independent investigation into a serious self harm incident at Bimberi expressed concern about the management of records, and information sharing. This investigation recommended changes to record management and information sharing at Bimberi.⁴⁸ For further discussion of information sharing, see Chapter 13 (health).
- 6.4.12 Another independent investigation following a critical incident in Bimberi in early 2011 recommended a review of the management of all documentation relating to young people to ensure an integrated reporting system. The investigator could not locate information to assess a particular young person's history, and observed inconsistency in staff record keeping practices and skills.⁴⁹
- 6.4.13 The ongoing absence of an effective electronic database at Bimberi is a significant problem. As one worker said, *'there are lots of bits of paper floating around'*. According to reports from staff, significant information is stored on managers' and youth workers' local electronic drives or email accounts. Currently there is no accountability system to ensure case notes, incident reports or complaints are formally recorded in a centralised database, so there is a risk that corporate information will be lost when workers leave Bimberi.

45 The Coroners Court in the ACT, Inquest into the Manner and Cause of Death of Mark Robert Watson (1996).

46 ACT Human Rights and Discrimination Commissioner, *Human Rights Audit of Quamby Youth Detention Centre* (2005).

47 Bimberi Youth Justice Centre, 'Records and Reporting Policy'.

48 Ibid.

49 Ibid.

- 6.4.14 Further, Bimberi management circulate instructions, briefings or 'special management directions' to staff by email. While email is an appropriate form of communication in the workplace, the Commission saw no documentation to indicate a process for archiving instructions or new operational procedures. If procedures are not recorded centrally, they cannot be reviewed, and it is difficult to train new staff in current procedures. Accordingly, poor record keeping practices have contributed to the current situation where the staff report that official policy documents do not reflect the practice on the ground.
- 6.4.15 The fact that each young person may have multiple separate files in Bimberi means it is difficult to integrate information to ensure Bimberi meets young people's needs.
- 6.4.16 Incident reports and records of use of force are stored in hardcopy folders meaning that every time the Legislative Assembly requires an answer to a question (eg. about the response to a particular incident, or the number of self harm incidents, or the number of times a young person climbed the roof) the information is not to hand, and staff must spend time manually searching records in order to retrieve information. The inability to pull up automated electronic reports, and the requirement for manual counting is clearly wasteful and inefficient, and creates risks of inaccurate reporting.
- 6.4.17 Finally it is difficult to guarantee accuracy or security of information when there is no centralised database. When information is stored at different locations with no accountability in filing processes, there is a risk information will be inadvertently lost, or deliberately destroyed. A centralised database with time stamping and restrictions on deleting information would ensure accuracy and security of information. In summary, in the words of one worker, record keeping at Bimberi 'is a nightmare'.

Particular problems areas

Report writing practices and skills

- 6.4.18 Most staff at Bimberi have reasonable report writing skills. However, some staff display poor report writing skills, and need further training. After reviewing incident reports and client files, the Commission made the following conclusions about report writing practices at Bimberi:
- A small number of staff refer to young people as 'detainee' or by his/her room number (eg. 'Detainee 1210'). This is not acceptable, and staff should always refer to a young person using his/her name.
 - A small number of staff need assistance or training to be able to describe a sequence of events in a clear way.
 - Some youth workers and managers do not constrain themselves to factual statements in reports, but express personal or unqualified opinions about young people and the reasons for their behaviour.
 - Some staff fail to describe the actions they have taken. Workers state that they 'used force as a last resort', or 'used approved restraint techniques', or 'followed procedure' without insight into the fact that they are required to describe their actions, and allow management to assess whether their actions were appropriate.
 - Some staff adopt a militaristic tone in their reports. This type of language is not necessary; plain language is adequate, and dot points are adequate.
 - On several occasions witness statements have been directly copied from the statement of the staff member writing the main incident report. On one occasion two staff wrote a statement together and signed it jointly. It seems that youth workers and team leaders have access to each other's statements before writing their own. This is not appropriate, and staff should be writing their accounts independently, to ensure accuracy and to avoid accusations of collusion.
 - Some witness statements are unsigned.
 - Some statements are signed, but the name of the officer is not printed clearly, so their identity is unclear. This includes the senior manager, operations manager and director; the people in these positions do not routinely identify themselves.
 - The Commission was told some staff 'don't tick the right boxes on the forms', which makes it difficult to complete quarterly reports accurately.
 - During 2010, when completing incident reports, youth workers often ticked the box on the report form marked 'significant disturbance to the good order of the centre'. A manager then routinely deleted this notation using his signature. The CSD informed the Commission that this was done to ensure accurate record keeping. However, the continuation of this practice over an extended period of time could indicate several problems, including that staff feel significantly impacted by incidents; that staff are unclear of procedure and need further training on what constitutes a significant disturbance; or that Bimberi management feel under pressure to minimise the number of 'significant disturbances'.

Promising Practice: Most staff at Bimberi display reasonable report writing skills, and appear to take seriously their responsibility to complete records of incidents, searches and use of force.

Young people register

- 6.4.19 The CYP Act requires Bimberi to maintain a register of young detainees.⁵⁰ There is an admission form titled 'register of young detainees' which is completed when a young person arrives at Bimberi. However, these documents are stored on each young person's administration file, not a centralised register. Under the CYP Act external oversight agencies have access to this register, but in practice to inspect it they would have to search each individual file. There should be a central register in addition to placing information on an individual young person's file.

Incident reports

- 6.4.20 There are two types of reportable incidents at Bimberi, as detailed in Table 4, below.

Table 6.4: Category of incidents under the Bimberi Records and Reporting Policy ⁵¹

Category 1 reportable incidents	Category 2 reportable incidents
Death or attempted suicide	Assaults
Serious injury or health complaint	Threats
Escape or attempted escape	Use of force
Serious assault	Contagious diseases
Major breach to detention place security	Minor breach of security
Direction for a body search	Significant disturbance to the good order of a detention place
	Incidents involving contraband
	Motor vehicle accident
	Possession of a prohibited thing at a detention place by a staff member

- 6.4.21 Following an incident a staff member must complete an incident report using a template form. Other staff members who were present during the event must provide a witness statement. The relevant unit manager conducts a review of the incident, and provides a brief report summarising their conclusions. The operations manager, senior manager and director review the material and provide comment. In principle this is a suitable process to ensure transparency and accountability. However, in practice full evidence is not being recorded following serious incidents, for example CCTV footage and young people's version of events, and therefore the director is forming a view of incidents based on limited information.
- 6.4.22 Under the current system, impartial and thorough investigation by the unit manager is vital to the credibility of the incident reports. Some unit managers display excellent investigation into incidents, and clearly play an important advisory role for the operations manager, senior manager and director. However other unit managers demonstrate very poor practice. Poor practice includes:
- Routinely failing to examine CCTV footage, and therefore relying only on the accounts of staff members to make judgements about staff practice;
 - Failing to invite young people who were present at the time of an incident to provide a witness statement or describe their version of events;
 - Failing to follow up with staff to ensure all staff witness statements are provided;
 - Routinely stating that staff actions were 'appropriate' without providing reasons for their assessment;
 - Making personal or unqualified judgements about young people and the motivations for their behaviour (eg. stating that a young person is 'manipulative', or 'sneaky', or 'derives a sense of satisfaction from his actions'); and
 - Failing to list the actions they have taken (eg. whether they informed a young person's family of an incident, or whether a young person was offered medical assistance).

⁵⁰ Children and Young People Act 2008.

⁵¹ Bimberi Youth Justice Centre, 'Records and Reporting Policy'.

Promising Practice: Some unit managers display excellent investigation skills following incidents, and clearly play an important advisory role for Bimberi management and the Director of OCYFS.

Use of CCTV footage

- 6.4.23 Although significant areas of Bimberi are covered by CCTV cameras, the footage is only available for a finite period. Unless footage is downloaded and saved onto the hard drive, it will be automatically deleted after one month.
- 6.4.24 The policy in relation to downloading CCTV is:
*'On receiving a report (Schedule 1, Reportable Incident) the Manager is to consider the need to download the relevant audio and video records of the incident.'*⁵²
- 6.4.25 However, in practice the task of downloading CCTV footage falls to the unit manager while they are reviewing an incident. Some unit managers appear to regularly download CCTV and review it as part of their investigation process. However, according to statements in incident reports, other unit managers are less consistent, and one particular unit manager has never downloaded CCTV footage following an incident.

Recording young people's version of events

- 6.4.26 When reporting incidents the Records and Reporting Policy requires Bimberi staff to record the young person's views:
*'A report must be made of all Schedule 1, Reportable Incidents, accurately documenting and recording the incident, where relevant including the young detainee's views and any medical opinions, the parties involved and all actions and decisions undertaken.'*⁵³
- 6.4.27 However, the Commission has identified only a few occasions when a youth worker or unit manager spoke with a young person following an incident, and reported their version of events in the incident report.

Use of force register

- 6.4.28 Before April 2010 Bimberi staff were not reporting use of force when young people were placed in mechanical restraints to be escorted between buildings. Following advice by the Human Rights & Discrimination Commissioner this was rectified and, according to the ACT Government submission to the Review, proper record keeping now occurs in these situations.
- 6.4.29 Due to shortcomings with the design and use of the forms, and the record keeping practices of Bimberi staff, any descriptive background information about an occasion of use of force is contained in the 'incident report', but not the 'use of force register' that relates to the same incident.
- 6.4.30 In particular, the use of force register does not give adequate explanation of:
- The reason for the search or use of force;
 - The circumstances leading to the search or use of force;
 - The justification for the decision to undertake a search or use of force; and
 - The manner in which the search or use of force was carried out, and the actions taken by staff to fulfill their statutory obligations during a search or use of force (such as whether they offered a young person the opportunity to have a support person present, and what steps they took to avoid the use of force).
- 6.4.31 This may occur because staff complete the incident report and use of force register at the same time, and are probably unaware that the documents are later separated. However, the outcome is that the use of force register cannot be properly audited without reference to the incident reports. The Commission has concerns about oversight and monitoring processes at Bimberi, and further discussion and recommendations on this topic are contained in Chapter 15 (management & oversight).

⁵² Ibid.

⁵³ Ibid.

Search register

- 6.4.32 The Commission has concerns about the documentation of strip searches and room searches. When completing the search register, staff rarely explain the reasons for the search, or the circumstances leading to the search.
- 6.4.33 In the section on the report form which asks the reason for the search, most staff record 'suspicion of contraband' or something similar, without explaining the grounds for their suspicion. Therefore the reports cannot be properly audited. Staff rarely follow the instruction on the search register form to describe the conversation between the resident and the searching officer. This section is nearly always left empty, or people write 'as per protocol'. Staff may provide background information if there is an incident form relating to the search, but the forms are not stored together, so cannot easily be compared. There are problems with the design of the 'search register' form, and it appears to have changed over time. For example, for a particular time period there was no box to nominate 'strip search' so staff were using the 'cabin search' box incorrectly. The design of the form needs to be reviewed to ensure it addresses all relevant information, and it is efficient and useable for staff.

Segregation register

- 6.4.34 Segregation is an extremely serious action, but unfortunately the state of the segregation register does not reflect the gravity of the decision. The register does not appear to be thorough or comprehensive. The time periods of segregation directions do not appear to match with young people's reports of their time in segregation. Reasons for segregation decisions are not always stated in detail, limiting the ability of oversight agencies to scrutinise the decision. For further discussion of these issues see Chapter 14 (conditions of detention).
- 6.4.35 Further, the Commission is concerned that the segregation register does not accurately reflect the amount of time that young people are required to be detained in their rooms. The widespread use of 'time out' as a behaviour management technique is not included in the ACT Government's definition of 'lockdown' and is therefore not reported in those figures. In the ROGS, adult detention centres report to the Productivity Commission on a measure called 'time out of cells', defined as the average number of hours in a 24 hour period that prisoners are not confined to their cells or units. The use of 'time out' is discussed further in Chapter 14 (conditions of detention). The Commission makes recommendations including improving the recording of the use of 'time out'.

Complaints from young people, staff and families

- 6.4.36 The record keeping system for complaints is inadequate. There is no documentation to indicate that Bimberi routinely collates all verbal and written complaints in a register or centralised database. For further discussion of these issues see Chapter 15 (complaints).

Behaviour management and risk assessments

- 6.4.37 Bimberi management occasionally restricts young people's access to education and other programs following incidents in which young people were alleged to display aggressive behaviour. Bimberi management say such decisions are not a punishment for behaviour, but a risk management strategy. These issues are discussed further in Chapter 14 (behaviour management).
- 6.4.38 The Commission is concerned that these significant decisions are made without full documentation of the process of the risk assessment, and the reasons for the decision. Lack of documentation makes it difficult to review such decisions, and it means young people are unclear of where they stand, and what they need to do to regain access to programs. If a decision is really based on a risk assessment, rather than punishment, it should be documented, not only for accountability and transparency, but also to provide evidence that the decision was legitimate.

Health, education and recreation programs

- 6.4.39 The Commission asked for a list of all programs that had been provided in Bimberi by external government or community services. To provide this information, Bimberi staff had to manually check the log books in which people had signed in at Bimberi reception, and extrapolate from this list. Manually counting the entrance register is an inefficient and inaccurate process by which to obtain this information. Programs should be planned and scheduled in advance, and fully documented on an electronic register which is able to generate reports as required.

Communication between staff

- 6.4.40 Staff in each residential unit write handover notes or shift reports in A4 diary books. In these 'handover diaries', staff record information about the events of the day and each young person's behaviour. Such a process is an easy and accessible way to transfer information to the next shift. However, it is not clear whether someone monitors these records over time to identify young people's needs and other significant information.
- 6.4.41 Staff circulate 'case notes' to their colleagues via email, informing the group of young people's behaviour, or disseminating information they want other staff to be aware of. Again, while some of these case notes are recorded on the young person's administration file, it is not clear whether this information feeds into processes for identifying young people's needs and planning for service provision.

Respect towards young people

- 6.4.42 The Review has seen examples of youth workers' record keeping practices in case notes, daily handover diaries, and incident reports. Some workers are factual, balanced and respectful. However, a small number of staff seem to be tired, judgemental and disrespectful towards young people. As mentioned above, in several incident reports workers referred to young people by their room number (eg. 'Detainee 1210') instead of their name, which is unacceptable. The Commission has seen documents in which several workers describe young people using other inappropriate language such as '*a challenge as always*', '*a difficult young person*', or '*terrible until medication kicked in*'.

A way forward

- 6.4.43 In this section the Commission outlines a range of actions that Bimberi and CSD could take to improve record keeping at Bimberi:
- Review and overhaul record keeping systems;
 - Invest in an electronic database;
 - Standardise use of a shared electronic drive;
 - Provide staff with training on report writing skills;
 - Make record keeping easy;
 - Clarify procedures for investigating incidents;
 - Provide unit managers with training on investigation skills;
 - Invite young people to record their version of events;
 - Facilitate young people's access to their files;
 - Download and save CCTV footage after every incident;
 - Upgrade CCTV system to allow for audio recording; and
 - Improve information sharing between ACT Government agencies.

Review and overhaul record keeping systems

- 6.4.44 The Commission recommends a comprehensive review of record keeping systems at Bimberi. It is unlikely that Bimberi management can conduct such a review with the current staffing resources available, and CSD should commit additional resources for this purpose. The audit should examine what information is recorded, storage of information, access to information, information sharing, protection of privacy, and design of forms and registers, and design improvements. As one worker told the Review, '*we need fresh eyes to look at the whole thing*'.
- 6.4.45 CSD could establish an advisory group to assist the audit, bringing together workers from all levels and across all staff groups at Bimberi, including health professionals, case managers, teachers, corporate staff, youth workers, team leaders, unit managers, and senior managers. This would ensure the audit is useful for all staff, and that each staff group is engaged and participates in the changes following the audit.
- 6.4.46 The review of record keeping systems may need to be integrated with the wider review of procedures that the Commission has recommended in Chapter 15 (management & oversight). Some workers have suggested that it would be helpful for a policy officer to be based at Bimberi full time, to ensure the filing system is in order, and assist with preparing the necessary range of briefs, reports and statistics that are produced for the Government.

Recommendation 6.7: The Community Services Directorate undertake a comprehensive review of all record keeping systems at Bimberi and establish a plan for implementing improvements.

Invest in an electronic database

- 6.4.47 Bimberi clearly and urgently needs an electronic database to help manage information. An electronic database is more efficient than hardcopy files, it allows aggregated reporting, avoids constant manual counting, ensures information is not lost, and facilitates quality assurance. At a minimum the system must be capable of recording, monitoring and analysing incidents, use of force, segregation, searches, risk assessments, behaviour management plans, disciplinary actions, and complaints.
- 6.4.48 In relation to incidents, searches and use of force, the system should incorporate the following features:
- Simple data entry;
 - The ability to aggregate data according to various fields, such as date, young people involved, staff involved, location, type of incident, injuries, factors contributing to the incident;
 - The ability to produce reports, to prompt the agency to monitor trends;
 - Date stamped entry with no ability to delete information; and
 - No ability for staff to read each other's witness statements before writing their own.

Recommendation 6.8: The Community Services Directorate provide Bimberi with an electronic database to help manage information.

Standardise use of a shared electronic drive

- 6.4.49 Like any other ACT Government agency, Bimberi has a shared electronic drive (commonly called the G:\ drive) which stores information centrally so staff can archive or access documents when appropriate. Under the *Territory Records Act 2002*, staff should be trained in record keeping procedures, to ensure they store official records appropriately. The Commission heard reports that documents from Bimberi were lost or unavailable because information was stored on employees' local drives or email accounts but not on the shared drive. While it is not possible for us to confirm these reports, we encourage CSD to provide staff training and ensure proper practice in this area.

Training on report writing skills

- 6.4.50 Report writing skills should be a component of the induction training for staff at Bimberi, and it should be a component of annual refresher training for operational staff. When staff are promoted to team leader or unit manager positions, they should receive training on the record keeping requirements of their new position.
- 6.4.51 Youth workers at Bimberi told the Commission they find it difficult to complete paperwork because they are busy during their shift, and are tired after 12 hours on the floor. Other workers indicated that they felt they did not have the necessary background or training to be good at report writing.
- 6.4.52 Staff should be provided with clear expectations and standards for report writing, to which they can be held accountable. They should not feel they are being asked to do something complex or difficult; they are expected to write simple factual statements in plain language, and to be detailed, balanced and non-judgemental in their description of events. The Commission recommends in Chapter 5 (staffing) that staff at Bimberi receive training on report writing skills.
- 6.4.53 Bimberi management has acknowledged that some youth workers are not fully trained in policies and procedures, and how to write reports. The Commission understands that team leaders are now receiving training on report writing so they can help youth workers. Bimberi management say they are telling staff when reports are not good enough, and there are indications that this has been occurring recently.

Make record keeping easy

- 6.4.54 As mentioned above, the primary role of youth workers at Bimberi is to engage with and support young people. Record keeping is a fundamental part of this work, and it needs to be made as easy and convenient as possible. Record keeping needs to be simple and integrated into daily shift work. Youth workers report working overtime after their 12-hour shift to do their paperwork because they have no time during the shift. Working conditions at Bimberi should be flexible enough to allow staff to complete paperwork within the 12-hour shift. Adequate staffing levels and increased access to computers would enable youth workers to complete their reporting requirements during their shift. Forms may need to be redesigned based on feedback from youth workers; as they are the people regularly completing the forms, they may have suggestions for making them simpler or easier to use.

Clarify procedures for investigating incidents

- 6.4.55 Unit managers should be provided with detailed procedures for investigating reportable incidents. It should be clear to them that their role is not to justify their team's actions, but to provide an impartial assessment to the senior managers and director. It should also be understood that statements by staff do not automatically hold any more weight than statements by young people.
- 6.4.56 The Records and Reporting Policy should specify the requirements on the unit manager to investigate and report incidents, including:
- Download CCTV (there should be no element of discretion; CCTV footage for any reportable incident must be downloaded and saved securely for future access);
 - Ensure young people who were involved in or witnessed the incident have the opportunity to provide a statement if they wish;
 - Ensure the incident report is properly completed by the staff member involved;
 - Confirm in writing that they have completed appropriate tasks (eg. informing parents/carers, ACTIA reporting, mandatory reporting, staff debriefing, debriefing of young people, medical assistance provided to all involved, etc); and
 - Present evidence to support any conclusions they make.

Recommendation 6.9: The Community Services Directorate develop operational procedures to provide guidance to unit managers in Bimberi when investigating reportable incidents.

Training on investigation skills

- 6.4.57 As discussed above, impartial and thorough investigation by the unit manager is vital to the credibility of the current system of incident reports. Some unit managers display excellent investigation into incidents, and clearly play an important advisory role for the operations manager, senior manager and director. However, other unit managers display poor practice and require training, support and guidance in independent investigation skills. In Chapter 5 (staffing) the Commission recommends that CSD provide training for unit managers on investigation and reporting skills.

Invite young people to record their version of events

- 6.4.58 As mentioned above, the Records and Reporting Policy requires that young people have the opportunity to provide a witness statement, or outline their version of events, following an incident.
- 6.4.59 The Commission has seen evidence of one occasion when a staff member provided a report of a conversation with a young person following an incident. The staff member apparently discussed the young person's version of events, how the young person was feeling, and the reasons for the young person's behaviour, and presented this information as a quasi-witness statement. However, unfortunately this is an isolated occurrence.
- 6.4.60 Bimberi is not complying with the Records and Reporting Policy, in failing to provide young people with the opportunity to express their version of events following incidents.
- 6.4.61 In England and Wales the external inspector of prisons applies the following benchmark under international and UK human rights standards:

*'Children and young people are always given the opportunity to talk about their experience with a trusted and impartial member of staff when they have calmed down and as soon as possible after the use of force. This is fully documented and retained in their personal file. Young people are offered the opportunity to make a complaint if they feel that it is justified... The use of force policy or the behaviour management policy should include a requirement to debrief children and young people. There is a pro forma or agreed procedure for such debriefs which includes the opportunity for them to make a written contribution to the incident report. Records of discussions after the use of force are present in individual wing files.'*⁵⁴

- 6.4.62 The Commission suggests Bimberi adopt this approach. Debriefing following use of force is discussed further in Chapter 14 (conditions of detention).

Recommendation 6.10: The Community Services Directorate comply with the Bimberi Records and Reporting Policy, and provide young people with the opportunity to record their version of events following reportable incidents.

Facilitate young people's access to their files

- 6.4.63 Under international human rights standards young people in Bimberi have the right to contest any fact or opinion on his/her file; and there should be procedures in place to enable this to occur.⁵⁵
- 6.4.64 Having viewed the range of documents created about young people in Bimberi, the Commission is conscious that they almost universally present the views and opinions of staff members, and it is likely that in many cases young people would have a different point of view.
- 6.4.65 Young people should be informed of the records that are kept about them while living in Bimberi, and they should be informed of the process they can follow if they wish to see these documents. If a young person disagrees with a staff member about an incident or behaviour breach they should be provided the opportunity to have the record changed, or at least have their own comments added to the record.

Download and save CCTV footage after every incident

- 6.4.66 In their submission to the Review, the ACT Government stated that:
- '...security technology is used to strengthen and support operations through ensuring suitable monitoring, effective deterrence and detection, and, if necessary delay to breaches of security. Electronic security records also ensure accountability of operations.'*⁵⁶
- 6.4.67 As mentioned above, the current procedures around use of CCTV at Bimberi are inadequate; CCTV footage is not downloaded as a matter of routine following every reportable incident.

Recommendation 6.11: The Community Services Directorate amend the Bimberi Record and Reporting Policy to require that all relevant CCTV footage be downloaded and saved following any reportable incident.

- 6.4.68 The Commission also suggests the Director of Youth Directorate should view CCTV more frequently when he/she reviews incident reports, to ensure he/she can make an independent assessment of incidents.
- 6.4.69 In the recent independent report into the first year of operation of the Alexander Maconochie Centre (AMC), Knowledge Consulting found there was a similar problem with CCTV footage being automatically deleted if it is not downloaded and saved within one month. They recommended 12 months' storage of CCTV footage to ensure any future complaints could be properly investigated. It was estimated the cost of such an upgrade would be \$600,000, and in their view this was a reasonable expense to achieve that outcome in the adult justice system.⁵⁷

54 Her Majesty's Inspectorate of Prisons, Criteria for assessing the treatment and conditions for children and young people held in prison custody (2009), 195.

55 Rules 19-20 Protection of Juveniles; Rule 21 Beijing Rules.

56 ACT Government submission

57 Knowledge Consulting, Independent Review of Operations at the Alexander Maconochie Centre, ACT Corrective Services (2011).



Upgrade CCTV system to allow for audio recording

- 6.4.70 CCTV footage has been used to investigate several past incidents at Bimberi. Some of them involved assaults by staff on young people, and some involved assaults by young people on staff or other young people. While in many situations the visual footage provides clear indication of events, on several occasions the lack of audio on the footage makes it difficult to interpret the circumstances leading to the incident.

Recommendation 6.12: The Community Services Directorate upgrade the CCTV system at Bimberi to allow all footage to be kept for a period of 12 months, and to enable the system to include audio coverage.

Improve information sharing between ACT Government agencies

- 6.4.71 Many young people living in Bimberi have had previous contact with other ACT Government agencies, including Care and Protection Services, Child at Risk Health Service, Child and Adolescent Mental Health Service, Forensic Mental Health Service, Disability ACT, and Housing ACT.
- 6.4.72 If carefully regulated, and in compliance with privacy legislation, authorised information sharing between ACT Government agencies could assist in identifying young people's needs while in Bimberi, maintaining young people's connections with existing service providers, and preparing young people for release. In other words, it could help ensure staff at Bimberi have adequate information to make decisions.
- 6.4.73 Such a model of information sharing is being developed in Victoria. The Victorian Department of Human Services provides disability, health, housing, child protection and youth justice services in that state. It is piloting a new data system to improve staff access to information across the various divisions of the Department. The new system incorporates data on youth justice, disability, mental health, child protection. Front-end data from these areas will be available to all staff, including staff working with young people in detention centres.⁵⁸ In Chapters 8 (case management) and 11 (housing) the Commission further discusses the need for improved communication between Bimberi, CYJ, Care and Protection Services, and ACT Health.

⁵⁸ NSW Auditor-General, above n 36.



Chapter 7: Prevention And Diversion

A Quality Youth Justice System Is Embedded In A Human Service System That Seeks To Prevent Young People's Criminal Behaviour And Divert Young People From Unnecessary Engagement

Relevant Terms of Reference

- Early intervention services
- The effectiveness of diversionary strategies.

Relevant Human Rights Standards

- Protection of Family and Children (HR Act s.11, CROC Art 3, 19)
- Consideration should be given to dealing with juvenile offenders without resorting to formal trial (BR r.11)
- Diverting young people from judicial proceedings
- (CROC 40(3)).
- Appropriate scope of discretion should be allowed at all stages of proceedings (BR r.6)

7.1 Introduction

- 7.1.1 This Chapter focuses on the systems, services and supports available to young people in the ACT that aim to prevent them from having contact with the youth justice system; and, if they do, to divert them away from unnecessary contact with that system. It broadly assesses the effectiveness of the ACT's current prevention and diversion systems and makes recommendations for improvement based on the literature.
- 7.1.2 Effective prevention and diversion are widely accepted as providing the most positive outcomes with regard to the justice system for young people, and being highly cost effective for the community over the long term. Despite this, many jurisdictions continue to invest in tertiary prevention (like child protection and community youth justice) and the building of youth justice centres at the expense of investment in primary and secondary prevention and diversion. In this regard, the Commission proposes the ACT Government implement improved prevention and diversion systems through justice reinvestment.

7.2 Prevention

The importance of prevention

- 7.2.1 The inclusion of prevention policies in human service and youth justice systems is asserted and accepted as best practice. The European Commission for Human Rights has highlighted:
- '...preventing juvenile delinquency is an essential part of crime prevention. A juvenile justice policy that does not include measures aimed at preventing offending is considered deficient.'*¹
- 7.2.2 Section 11 of the ACT *Human Rights Act 2004* (the HR Act) enshrines the right to protection of the family and children. Specifically, s.11(2) notes that 'every child has the right to protection needed by the child or young person because of being a child or young person, without distinction or discrimination of any kind'. The United Nations Convention on the Rights of the Child

¹ Commissioner for Human Rights, Council of Europe, *Children and Juvenile Justice: Proposals for improvements*, Issue Paper (2009) 12.

(the CROC) further elaborates on this, and in particular requires that '*all decisions about a child or young person are made in his or her best interests*'. Article 19 of the CROC further requires that '*governments take all legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation*'.

- 7.2.3 Preventing young people having contact with the youth justice system is a critical area of public policy. The aim of prevention is to guide young people away from life paths that are likely to lead them towards future adjustment difficulties like chronic unemployment, entry into the adult criminal justice system, mental and physical disease.² In addition to these significant benefits for young people, the community benefits by being safeguarded against undesirable future consequences³ and avoiding the cost implications of lost productivity, higher crime rates, larger detention and prison populations, and increased health costs. Despite these individual and societal benefits, prevention is often considered the weakest link in the chain of actions intended to promote progressive approaches to juvenile justice.⁴
- 7.2.4 Many, if not all, young people involved in the youth justice system have been known to the prevention system for a considerable length of time. While there is little Australian evidence, Winkworth and White draw on international evidence, which recognises that young people detained in custody are:
- 'more likely to have encountered many human service systems but tend not to engage with them in a sustained way or in a way that positively contributes to their future wellbeing. These systems include education and special education, mental health and drug and alcohol agencies, child welfare agencies, out of home care and housing. a picture emerges of children and young people who do not access services, drift away from key institutions that are critical to their future, or in many instances are actively excluded from them.'*⁵
- 7.2.5 The international literature evidences many circumstances that demonstrate that young people in custody have not been well served by the prevention system, such as:
- The established link between children who have suffered trauma through child abuse and neglect with later episodes of youth crime.⁶ A more detailed discussion of this is contained in Chapter 10 (individual needs);
 - The lack of prior consistent community health care provided to young people who enter custody.⁷ A detailed discussion of the health status of young people detained in the ACT is contained in Chapter 13 (health);
 - The known association between offending, substance use and mental health. Studies in America found substance use was frequently cited as a contributing factor at the time of a young person's arrest,⁸ and a high proportion of detained young people reported an average time of substance dependence of 4.5 years, including 2.5 years of substance use prior to their first contact with the youth justice system;⁹
 - The high proportion of young people in detention with diagnosable mental health conditions, including major depressive disorders, mania, conduct disorders, and substance dependence, the latter two being the most common co-occurring conditions.¹⁰ A discussion of the provision of mental health and drug and alcohol services to young people in the ACT youth justice system and the Bimberi Youth Justice Centre (Bimberi) is contained in Chapter 13 (health); and
 - The high levels of school disruption, disengagement and drop-out by young people in the youth justice system.¹¹ Chapter 12 (education) provides further discussion on the provision of education services to young people in the ACT youth justice system and Bimberi.

2 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 6.

3 Ibid 2.

4 Commissioner for Human Rights, Council of Europe, *Children and Juvenile Justice: Proposals for improvements*, Issue Paper (2009) 12.

5 Winkworth, G., and White, M., *Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice* (2011) 26 at Appendix B.

6 Mersky, J., & Reynolds, A., 'Child Maltreatment and Violent Delinquency: Disentangling Main Effects and Subgroup Effects', *Journal of Interpersonal Violence*, 26, (2011) 88-110 cited in ibid 24.

7 Pumariaga, A.J., Atkins, D.L., Rogers, K.L., Montgomery, L., Nybro, C., & Caesar, R., 'Mental health and incarcerated youth II: Service utilization', *Journal of Child and Family Studies*, 8(2), (1999) 205-215; Rogers, K., Pumariaga, A.J., Atkins, L., & Cuffe, S., 'Conditions associated with identification of mentally ill youths in juvenile detention', *Community Mental Health Journal*, (2006) 42(1) cited ibid 26.

8 National Institute of Justice, 'Needs of juvenile offenders: A comparison of detention, incarceration, and treatment settings', *Children's Services: Social Policy, Research, and Practice*, 4(2), (1999) 69-85 cited in ibid 26.

9 Abrantes, A., Hoffman, R., & Anton, R., 'Prevalence of co-occurring disorders among juveniles committed to detention centers', *International Journal of Offender Therapy and Comparative Criminology*, 49(2), (2005) 179-193 cited in ibid 26.

10 Ibid.

11 Burns, B., Schoenwald, S., Burchard, J., Faw, L., & Santos, A., 'Comprehensive community-based interventions for youth with severe emotional disorders: multisystemic therapy and the wraparound process', *Journal of Child and Family Studies*, 9(3), (2000) 283-314; Maschi, T., Smith Hatcher, S., Schwalbe, C., & Scotto Rosato, N., 'Mapping the social service pathways of youth to and through the juvenile justice system: A comprehensive review', *Children and Youth Services Review*, 30(12), (2008) 1376-1385 cited in ibid 27.

Defining prevention

Risk-protective factors and resilience

- 7.2.6 A large body of evidence has been developed to understand the risks that can threaten the development of children and young people. Risk factors can be defined as those events, characteristics or conditions that make a negative outcome more likely.¹² Risk factors can be found within (individual attributes) and outside of (environment contexts) the individual. The specific risks that can endanger the development of children and young people may take a variety of forms including family dysfunction and disempowerment, school and community disorganisation, and exposure to pervasive violence and substance abuse within family, school and community contexts.¹³ There is also evidence that the number of risk factors that a person has been exposed to is a predictor of behaviour, whether that be drug use or criminal behaviour, regardless of what the particular risk factors are. The more risk factors there are, the greater the likelihood of a child or young person experiencing negative outcomes,¹⁴ most notably escalated involvement in problem behaviours and experiencing adjustment difficulties in adulthood.¹⁵
- 7.2.7 The factors that protect children and young people from being influenced by risks are called protective factors. It has been recognised that these are not merely an absence of risks, but factors that actively influence the effects of risks.¹⁶ Protective factors may work in one or more of the following four ways: directly decreasing dysfunction; interacting with risk factors to buffer their effects; disrupting the chain by which risk leads to disorder; or preventing the initial occurrence of risk factors.¹⁷
- 7.2.8 The concept of resilience is also important and related to the influence of risk. Resilience is often described as the ability to cope with stress or adversity. For example, a resilient young person is one who is able to maintain a normal or high level of functioning when confronted with developmental challenges or time-limited stressor. A hallmark of resilience is when a young person achieves high quality developmental outcomes in the presence of ongoing risk.

Primary, secondary and tertiary prevention

- 7.2.9 There is some definitional confusion in the literature regarding prevention,¹⁸ however, in recent years the literature has begun to more uniformly adopt a public health approach to prevention. This approach classifies levels of prevention by the amount of protection or risk experienced by a given person or population.¹⁹ There are three levels of prevention in the public health approach:
- **Primary prevention** – which aims to ‘prevent or lower the incidence or prevalence of specific problems or issues in a population or sub-population’²⁰ by building ‘resources through the provision of support and education to prevent harm from occurring’;²¹
 - **Secondary prevention** – which aims to ‘reverse or reduce the impact of known risk factors’²² by providing individuals or groups whose complex needs cannot be met through their own networks or primary services with tailored services to prevent escalation of problems and address any related consequences;²³ and
 - **Tertiary prevention** – which aims to reduce the consequences of harm and prevent any further harm from occurring.²⁴

12 Carbonell et al., (2002) cited in Saunders, V., Moore, T., Bulter, K., Orr, B., & McArthur, M., *ACT Youth Services Program Future Directions*, Australian Catholic University, (2009) 50.

13 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 7.

14 Chang, Dixon, & Hancock, (2001); Dillon et al., (2007) in Carbonell et al., (2002) Saunders, V., Moore, T., Bulter, K., Orr, B., & McArthur, M., *ACT Youth Services Program Future Directions*, Australian Catholic University, (2009) 50.

15 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 7.

16 Hoge, (2002); Hoge, Andrews, & Leschfield, (1996) cited in Carbonell et al., (2002) Saunders, V., Moore, T., Bulter, K., Orr, B., & McArthur, M., *ACT Youth Services Program Future Directions*, Australian Catholic University, (2009) 51.

17 Coe et al (1993) 5 cited in Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 8.

18 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 8.

19 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 4.

20 Shonkoff, J., and Phillips, D., *From Neurons to Neighbourhoods: The Science of Early Childhood Development*, (2000).

21 ACT Government, *Youth and Family Support Service Delivery Framework 2011-2014* (2011) 7.

22 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 12.

23 ACT Government, *Youth and Family Support Service Delivery Framework 2011-2014* (2011) 8.

24 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 12; ACT Government, *Youth and Family Support Service Delivery Framework 2011-2014* (2011) 8.

7.2.10 The ACT Government has adopted a public health approach to prevention. Table 7.1, below, combines the ACT Government approach to prevention with definitions in the literature.

Table 7.1: Defining prevention

ACT Government language	Primary Prevention	Secondary Prevention		Tertiary Prevention
Other language	Universal	Selective/Targeted/ Early Intervention		Indicated/Treatment/ Intervention
Goal	To keep problems from emerging	To reverse or reduce the impact of known risk factors		To reduce harm
Objective	To reduce the incidence of an identified problem/condition	To build individual capacity/protective factors		To provide the most effective treatment to achieve fullest possible recovery
Timing	Before the problems arise or early in the life of the problem	Early in the life of the problem	Significant harm to a child or young person has occurred or is at imminent risk of occurring	
Target audience	All children and young people	Children and young people experiencing additional risk requiring early intervention	Highly vulnerable young people requiring comprehensive and coordinated services	High risk children and young people
Specific target groups identified in the literature		<ul style="list-style-type: none"> Children and young people with behavioural problems Children and young people with physical or learning disability Young men aged 8 – 12 years Aboriginal and Torres Strait Islander young people 	<ul style="list-style-type: none"> Family conflict and/or violence Alcohol or other drug use by parent or young person Parent or young person with a mental health problem Parent/s with a significant learning disability and/or intellectual disability Parenting skills, knowledge and/or practice does not meet the development and/or situational needs of the child or young person Disengagement with family, social and primary service system Young person with a parent or sibling in custody 	

Effective prevention

7.2.11 When implementing prevention programs the literature suggests the following considerations be taken into account:

- **Developmental considerations.** Understanding the developmental changes in risk-protective factors and the normative onset of problem behaviours was found to be critical for the timing of effective prevention programs.²⁵
- **The context of the intervention.** The setting in which prevention programs are implemented impacts upon effectiveness. While some settings, such as family or school, present unique opportunities for intervention, the literature suggests prevention programs should look at the totality of the environment and the person.²⁶ In many cases, the most effective prevention programs use a combination of these settings to achieve successful outcomes.²⁷
- **Key risk and protective factors that have a causal relationship with the problem behaviour being addressed.** Prevention programs were found to be effective only if they were able to influence key risk and protective factors that have a causal relationship with the problems being addressed. That is, they need to have a strong conceptual framework built on a solid empirical base which describes the relationship between risk and protective factors, and relevant problems.²⁸
- **Active engagement of those most likely to benefit.** An identified challenge for effective prevention programs is the ability of service providers to ensure that vulnerable children and young people who are exposed to risk factors are engaged in services. It is likely that those children, young people and families who potentially have the most to

25 Ferrer-Wreder, L., Stattin, H., Cass Lorente, C., Tubman, J.G., and Adamson, L., *Successful prevention and youth development programs: across borders*, Springer (2004) 9.

26 Ibid.

27 Carbonell et al., (2002) cited in Saunders, V., Moore, T., Bulter, K., Orr, B., & McArthur, M., *ACT Youth Services Program Future Directions*, Australian Catholic University, (2009) 50.

28 Ibid 58.

gain from prevention programs are the least likely to access them.²⁹ The evidence base on successful strategies for engaging families in secondary prevention programs is weak,³⁰ but does suggest assertive outreach and the active reduction of barriers to engagement (such as physical and practical barriers, cultural factors, stigma and help seeking behaviour of families).³¹

7.2.12 In terms of best practice in prevention, the literature suggests the following guiding principles be applied to the planning and implementation of prevention programs:

- **Base responses in the community.** Programs that both engage local communities in identifying and responding to its member's risks and needs, and redress community-level problems such as domestic violence, poor school attendance, alcoholism and problem attitudes to crime, can be particularly effective;³²
- **Intervene as early as possible** (in the life of the child and in the life of the problem). Best practice prevention programs recognise early signs of difficulty and provide assistance to children, young people and families to minimise risks and increase protective factors;
- **Be child centred.** Placing the child or young person at the centre of the intervention and considering their best interests has shown to be helpful for practitioners and clients;
- **Cover multiple settings.** Prevention programs that are planned and implemented across multiple settings (individual, family, school, peers and community) are more likely to be effective as they reinforce intended outcomes;
- **Recognise strengths and resources.** Programs that draw on individual young people's, family and community strengths and resources are more likely to effectively prevent youth offending, while achieving broad and sustainable positive outcomes;
- **Collaborate and integrate.** Prevention services should work together in a way that creates a seamless and integrated service experience for children, young people and their families. Time and resources should be invested into the mechanisms of integration, such as collective principles of practice, memoranda of understanding, common assessment tools, established referral pathways and methods of referral (warm or supported);
- **No wrong door.** Effective systems ensure that young people and families who seek support from any service in any part of the system are channeled to the most responsive and appropriate programs;
- **Assertive holding.** Effective systems ensure that when a vulnerable child, young person or family presents to any service they are sustained within the service system, even when the appropriate service is currently not available;
- **No eject/no reject.** (sometimes described as 'unconditional care'). Ensure that at-risk children, young people and families are supported within the system regardless of their behaviours and that they will receive support even after periods of absence;
- **Continuity.** Programs are sustained for as long as supports and services are required by the child, young person and their family; and
- **Make existing programs more effective for prevention.** Programs should be assessed against criteria including: the numbers and types of risk and protective factors targeted; the number of life course transition points that come within the ambit of the program; the degree of fit with the needs of specific communities or groups; and the capacity to facilitate partnerships with other agencies.³³

7.3 The ACT's prevention framework for vulnerable children, young people and their families

7.3.1 During this Review, the Commission originally intended to assess the effectiveness of the ACT's prevention system in relation to its engagement and support of vulnerable children, young people and their families.³⁴ However, the Commission was unable to undertake this assessment in the timeframe provided, largely due to the ACT prevention system being diverse, poorly mapped, and having limited evaluations.

29 Ghate & Hazel, (2002) cited in Katz et al, (2007) in Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 26.

30 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 26.

31 Watson, (2005); Katz et al, (2007) cited in Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 27.

32 Kelly Richards, Lisa Rosevear & Robyn Gilbert, *Promising interventions for reducing Indigenous juvenile offending* (2011).

33 National Crime Prevention *Pathways to Prevention, Developmental and early intervention approaches to crime in Australia*, Attorney General Department, Canberra (1999) 26.

34 In reviewing the ACT Government's current practice in relation to prevention, the Commission read Government plans, documents and submissions, including: the Canberra Social Plan, the ACT Children's Plan 2010–2014, the ACT Young People's Plan 2009–2014, the Department of Housing and Community Services (DHCS) Service Delivery Platform, DHCS Annual Reports, the ACT Government Submission to the Review, the Youth and Family Support Framework, the Towards a Diversionary Framework for the ACT Discussion Paper, and the Consultation Report in response to the Towards a Diversionary Framework for the ACT Discussion Paper. The Commission also reviewed a number of academic papers written on the ACT human service system, and the submissions provided to the Review by a variety of stakeholders.

- 7.3.2 The last mapping exercise of ACT Government funded programs for young people at risk took place in 2003. That mapping exercise concluded that there was ‘a diverse range of programs for young people at risk that provide a significant body of support’.³⁵ However, the report also concluded that:
- Information on program effectiveness could be strengthened;
 - Few programs incorporate centralised assessment and ongoing, individual support;
 - Many services offer support targeted at a particular risk, rather than more general assistance. The report suggested follow-up with young people could be enhanced as could mechanisms for determining if the assistance was effective in addressing the particular risk; and
 - Some mechanisms for tracking young people may be necessary given the need to ensure young people at risk receive the support they need.
- 7.3.3 The Commission notes that some of these concerns may be addressed by the introduction of the recently released *Youth and Family Support Framework* (YFSP Framework). However, in the course of attempting to map and assess the effectiveness of the ACT’s prevention system, the Commission found that some of these concerns remained unaddressed. In addition, the Commission found other areas within the prevention system that could be strengthened. Each of these areas is described below with accompanying recommendations.

Engagement of vulnerable children, young people and their families

- 7.3.4 The early years in a child’s life are considered to be the most important developmental phase. Optimal development in terms of physical, social and emotional, and cognitive domains is vital for children’s immediate and long-term health and wellbeing.³⁶ What happens to children in their early years strongly influences a range of physical health issues such as obesity or stunting, and heart disease, as well as their mental health, learning capabilities (particularly relating to literacy and numeracy), involvement in criminal activities and participation in the workforce.³⁷
- 7.3.5 Looking specifically at crime prevention, effective parenting has been shown to be the most powerful way to reduce adolescent problem behaviour.³⁸ Studies show that the strongest predictors of adolescent antisocial behaviour are those which measure disruptions in parenting processes, poor school performance and early childhood aggression.³⁹ Programs that aim to enhance parenting practices, including improving communication, and supervision and monitoring of children are important in reducing adolescent antisocial behaviour. Attendance at preschool has also been found to be a strong correlate with lower rates of arrest in young people.⁴⁰
- 7.3.6 In the ACT programs such as the regional Child and Family Centres, Schools as Communities, and Communities for Children have been recognised as good practice. Broadly, these programs provide universal or primary prevention services like early childhood health screening, parenting programs, playgroups and school transition support to vulnerable children and families. They apply evidence based practices and have been the subject of evaluations which show improved outcomes for engaged families and children. The Commission’s concern in relation to these types of prevention services is their ability to engage ‘hard to reach’ families – the families who would benefit most from their support.
- 7.3.7 Similarly, this concern is also held by the Commission and others in respect of the implementation of the YFSP Framework. A number of submissions to this Review noted the difficulties of engaging hard-to-reach families. One participant spoke of the difficulty in accessing families who do not self refer or accept services when a referral is provided. While the YFSP Framework has recognised this through funding a Youth Engagement Service within each Network Hub, and through requiring funded organisations to have the capacity to provide services outside standard business hours using an assertive outreach/home visiting model,⁴¹ the Commission believes successful implementation will require the capacity of the community service sector to be lifted. In their submission to the Review, the Youth Coalition of the ACT (YCACT) noted that implementation of the YFSP Framework will require a workforce development strategy for the community services sector, listing assertive outreach as an example. The Commission agrees with this and suggests training also be offered to funded organisations on how to engage with hard-to-reach children, young people and their families.

35 ACT Government, *Mapping ACT Government Funded Programs for Young People at Risk: reducing young people’s involvement in crime project* (2003) 7.

36 Butler, K., McArthur, M. & Weston, G., *Early Intervention in the Australian Capital Territory*, Institute of Child Protection Studies (2009) 5.

37 Ibid 8.

38 Kumpfer, K. L., and Rose, A., ‘Family-strengthening approaches for the prevention of youth problem behaviours’, *American Psychologist*, Vol 58, June-July (2003).

39 McGee, T.R., Wickes, R., Corcoran, J., Bor, W., and Najman, J., *Antisocial behaviour: An examination of individual, family, and neighbourhood factors. Trends & Issues In Crime and Criminal Justice* no. 410, Australian Institute of Criminology, (2010)

40 Reynolds, A. J., Temple J. A. Robertson, D. L., & Mann, E. A., ‘Long-term Effects of an Early Childhood Intervention on Educational Achievement and Juvenile Arrest: A 15-Year Follow-up of Low-Income Children in Public Schools’, *The Journal of the American Medical Association*, (2001) 285.

41 ACT Government, *Youth and Family Support Service Delivery Framework 2011-2014* (2011) 23.

Recommendation 7.1: The Community Services Directorate offer training on assertive outreach and methods of engaging with hard-to-reach children, young people and families to all organisations funded under the *Youth and Family Support Service Delivery Framework*.

Recommendation 7.2: The Community Services Directorate require funded prevention programs to report on their level of effective engagement with Aboriginal and Torres Strait Islander children, young people and their families and communities.

A greater focus on boys aged 8 to 12 years

- 7.3.8 A number of participants in the Review noted the lack of secondary prevention programs which focus on middle childhood. Of particular concern was the need for better early detection of children aged eight to 12 years who were starting to disengage with school, particularly Aboriginal and Torres Strait Islander boys. Boys aged eight to 12 years are noted in the literature as being a priority target group for prevention. Further, the ACT Government submission acknowledged that more could be done for this group of children.

Promising practice: The Steer Program is a collaboration between Northside Community Services, Schools as Communities, Ainslie Primary School and local Aboriginal and Torres Strait Islander parents. Steer provides transitional support for boys (aged 10 to 12 years) in their final term of primary education.

Recommendation 7.3: The Community Services Directorate include boys aged eight to 12 years, particularly Aboriginal and Torres Strait Islander boys, as a target group in the *Youth and Family Support Service Delivery Framework*.

Greater coordination and integration of prevention services

- 7.3.9 As part of this Review, the Commission held a community forum to explore opportunities for youth justice in the ACT (see Appendix E). Participants at that forum felt prevention programs were not serving young people well enough. Participants felt that:

‘...many of the families of young people currently engaged in the youth justice system have been known by agencies and services for many years. It was considered a poor indictment upon the ACT’s service system that these young people had not been assertively assisted in the past, and that many ended up at Bimberi because the system itself failed to adequately identify and respond to their needs.’⁴²

- 7.3.10 Similar feedback was provided to Noetic Solutions (Noetic), the organisation contracted by the Community Services Directorate (CSD) to collate feedback from consultations on the *Towards a Diversionary Framework for the ACT Discussion Paper*. Participants in that process called for mechanisms that would deliver better outcomes from existing resources, such as:
- Better prioritising of secondary prevention;
 - Better coordination;
 - Building the capacity of the community services sector to more effectively engage with young people in primary and secondary interventions; and
 - More tailored services that better target at-risk young people and their families and communities.⁴³
- 7.3.11 Participants also thought secondary prevention programs required long-term planning with more investment and longer-term funding contracts.⁴⁴
- 7.3.12 The YFSP Framework released in January 2011 outlines a new way for community organisations to be funded to provide services and supports to vulnerable and in need children, young people and their families. The intent of the Framework is to support the effective and efficient operation of secondary prevention programs by the non-government sector.

⁴² *Forging New Pathways* (2011) At Appendix E.

⁴³ Ibid.

⁴⁴ Murphy, P., Victorsen, D., & Richards, S., *Consultations: Towards a Diversionary Framework for the ACT Discussion Paper*, Noetic Solutions, April 2011 (2011) 14.

- 7.3.13 In the Commission's view, the YFSP Framework has the potential to address many of the concerns held about the effectiveness of current secondary prevention programs. The YFSP Framework aims to provide better information sharing and coordination, improve localised and networked collaboration, and improve common assessment tools to aid in determining the level and type of service provision required. In addition, the YFSP Framework seeks to better utilise existing case management, youth engagement, specialist and complementary services.
- 7.3.14 From a design perspective, it is evident that the YFSP Framework has drawn on the literature in determining the risk factors to be addressed through secondary prevention. The Commission suggests the addition of a further risk factor being a parent or sibling in custody. Further, the Commission believes that the multiple risk factors present in the lives of young people at risk of offending warrants these young people being prioritised within the YFSP Framework.

Recommendation 7.4: The Community Services Directorate include children and young people with a parent or sibling in custody as a target group in the *Youth and Family Support Service Delivery Framework*.

Recommendation 7.5: The Community Services Directorate require organisations funded under the *Youth and Family Support Service Delivery Framework* to prioritise young people at risk of offending.

- 7.3.15 While the introduction of the YFSP Framework has been largely positively received, there are some concerns regarding its design and implementation. From a design perspective, concerns have been voiced that the YFSP Framework is skewed towards children and young people aged 0 to 17 years, meaning young people aged 18 to 25 years may receive fewer services. This is of particular concern for young people leaving institutional care, such as out-of-home care or Bimberi. There is also concern that service delivery may be skewed towards young people with statutory involvement with care and protection and youth justice services, meaning young people who present voluntarily may receive fewer services.
- 7.3.16 The Commission believes the relationship brokered between the YFSP Framework's Information, Engagement and Coordination Service, Network Based Services and Youth Engagement Services, and the ACT Police's Youth Liaison Officers (YLOs) and local schools, will be critical to the successful implementation of the YFSP Framework. Both YLOs and schools are key to the early detection of vulnerable children and young people. In its submission to the Review, Northside Community Services noted that ACT Policing have only two trained YLOs who cover the entire ACT. While their role in diverting young people away from the youth justice system was acknowledged, Northside Community Services noted that the YLOs are limited in their knowledge of mental health or drug support services to which they can refer. In relation to schools, the Commission is of the view that concerning absence from school by a child or young person should trigger an automatic referral to the Information, Engagement and Coordination Service.

Recommendation 7.6: The Community Services Directorate coordinate the development and implementation of strong relationships and referral pathways between ACT Police and schools, and the Information Engagement and Coordination Service, Network Based Services and Youth Engagement Services created under the *Youth and Family Support Service Delivery Framework*.

Appropriate risk assessment

- 7.3.17 Given the significant change the YFSP Framework represents to the provision of secondary prevention programs to children and young people, the Commission will closely monitor its implementation. One area the Commission will pay particular attention to will be the way YFSP funded programs are delivered to young people involved with the youth justice system or assessed as being at risk of offending. The Commission is keen to ensure a balance is struck between addressing risk factors and enhancing protective factors and pro-social development of these young people. The basis of the Commission's concern is a tension between the language in the various ACT Government documents and frameworks. The YFSP Framework describes level of risk in relation to a young person's stage of development, protective factors, complexity and timing. However, the ACT Government's submission to the Review and the *Towards a Diversionary Framework for the ACT* Discussion Paper describe primary, secondary and tertiary prevention in relation to a young person's level of involvement with the youth justice system.⁴⁵ While these differences in language may be semantic and driven by the definitional confusion in the literature, the Commission is keen to ensure that the overly risk-focused culture within CSD observed in this Review is not permeated in the implementation of the YFSP Framework.

45 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 14.

- 7.3.18 However, the Commission does recognise the need for young people who have risk indicators for offending to be identified early and engaged in prevention programs.⁴⁶ The Commission is aware that risk and protective tools such as Looking After Children (LAC) and HEADSS (Home Education/Employment, peer group Activities, Drugs, Sexuality and Suicide/Depression) are used by some ACT services in their work with young people prior to their involvement in tertiary services (youth justice or care and protection). In the Commission's view, these assessment tools could be applied more uniformly by services working with vulnerable and at-risk young people and their families.

Recommendation 7.7: The Community Services Directorate work with the Youth Justice Advisory Panel to develop and implement a range of risk and protective assessment tools for vulnerable children, young people and their families.

7.4 An integrated prevention system for children and young people

- 7.4.1 The Commission is concerned about the effectiveness of the ACT's prevention system, particularly in relation to its engagement and support of young people at risk of contact with the youth justice system. In the Commission's view there is room for improvement in the levels of planning, investment, evidence-based practice, and evaluation. The Commission believes that, while the ACT Government has sought to strengthen the prevention system for children and young people with the introduction of YFSP Framework, this Framework alone is not sufficient to prevent children and young people from escalating in their levels of risk and need towards the tertiary and statutory system, including and in particular Bimberi.
- 7.4.2 The Commission acknowledges that it has not had sufficient time to undertake an assessment of the current and intended system of prevention in the ACT. However, through this Review the Commission believes it has read and heard sufficient information to recommend that the ACT Government strengthen the prevention system in relation to young people, including vulnerable young people, by developing a comprehensive prevention plan. In the Commission's view the prevention plan for young people should clearly state:
- How the prevention plan furthers the statement of purpose for the ACT youth justice system;
 - A vision for prevention in the ACT;
 - The values and principles that underlie an approach to working with vulnerable children and young people;
 - A definition of prevention ;
 - A set of objectives drawn from an evidenced based theory of change;
 - The role and core capabilities of Government in achieving these objectives (whole-of- Government);
 - The role and core capabilities of the community sector in achieving these objectives (whole-of-community);
 - The role and core capabilities of children, young people and their families in achieving these objectives (whole-of-community);
 - The outcome measures and performance indicators Government agencies and community providers will pursue in order to collectively contribute to the objectives;
 - Specific approaches and techniques considered fundamental to achieving the desired outcomes. This might include evidence based approaches, promising practices and/or approaches believed to be effective through practice based experience;
 - The way that partners will work together to achieve the vision and to integrate values and principles;
 - The governance arrangements for the plan which reflect a whole-of-Government and whole-of-community approach, and allow for meaningful participation of Aboriginal and Torres Strait Islander people;
 - A commitment to continuous improvement through evaluation, action learning and innovation; and
 - The relationship between this strategy and the Canberra Social Plan, the CSD service delivery platform, the ACT Children's Plan 2010–2014, the ACT Young People's Plan 2009–2014, the ACT Diversionary Plan (recommended below), and the YFSP Framework.

⁴⁶ Ibid 18.

Recommendation 7.8: The Community Services Directorate work with key stakeholders to develop an ACT Prevention Plan which, among other things, clearly draws together the large number of existing plans and frameworks that focus either fully or in part on prevention.

Recommendation 7.9: The Community Services Directorate, in consultation with other Directorates, develop an effective executive oversight mechanism that minimises the critical 'grey area' between the secondary and tertiary prevention systems by identifying those children and young people whose level of need and/or risk is increasing, and by referring them to appropriate tertiary prevention services.

- 7.4.3 In making these recommendation, the Commission suggests the CSD draw on the documented policy framework *Pathways to Prevention*.⁴⁷

7.5 Diversion

Defining diversion

- 7.5.1 The definition of diversion is not clear in the literature, as is the case with prevention. The *Towards a Diversionary Framework for the ACT* Discussion Paper provided at least three definitions for diversion.⁴⁸ The definition favoured by the Commission is 'any process that prevents young people from entering or continuing in the formal criminal justice system'.⁴⁹ In this section of the Review, the Commission examines the effectiveness of the ACT's diversionary system in terms of its ability to:
- Divert young people from the youth justice system; and
 - Divert young people from custody.

7.6 Diverting from the youth justice system

The importance of diverting young people from the youth justice system

- 7.6.1 Diverting young people from involvement with the criminal justice system is a critical policy issue and is now well established in policy, legislation, research and practice. Article 40(3) of the United Nations Convention on the Rights of the Child (CROC) requires signatories to, whenever appropriate and desirable, promote measures for dealing with children alleged to have infringed, accused of infringing or recognised as having infringed penal law without resort to judicial proceedings. Rule 11 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) states that attempts should be made to divert young people away from formal trial whenever possible. It requires that police, prosecution and other agencies dealing with young people be empowered to dispose of cases, at their discretion, without formal trial. Under Article 11.3 of the Beijing Rules, any diversion involving referral to an appropriate service should be done with the consent of the young person. Efforts should be made to provide for community programs, such as temporary supervision and guidance, restitution and compensation of victims.
- 7.6.2 The commentary on the Beijing Rules emphasises that diversionary practices aim to prevent the negative effects of subsequent criminal proceedings for a young person, including the stigma of conviction and sentence. They also recognise the particular vulnerabilities of young people and reflect the fact that most of their offending is episodic and transitory, with the majority of young people maturing out of criminal behaviour.⁵⁰
- 7.6.3 Research consistently shows that most young people who come into contact with the criminal justice system do so only once. In the ACT in 2009-2010, only about 20% of young offenders were proceeded against by police on more than one occasion.⁵¹ In response to these circumstances, and in line with other Australian jurisdictions, the ACT's *Children and Young People Act 2008* (the CYP Act) established mechanisms to divert young people from the youth justice system.

47 National Crime Prevention, *Pathways to Prevention, Developmental and early intervention approaches to crime in Australia*, Attorney General Department, Canberra (1999).

48 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 31.

49 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010).

50 Australian Human Rights Commission, 'Best practice principle for the diversion of juvenile offenders', *Human Right Brief No. 5* (2001); Richards, K., 'What makes juvenile offenders different from adult offenders?' *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology (2011).

51 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 12.

Current practice

- 7.6.4 The ACT's performance in relation to diverting young people from the youth justice system is difficult to ascertain.⁵² Data collection is poor and guidelines regarding the use of police discretion are contained in local operating procedures which are not publicly available.⁵³ Because of these factors, the Commission notes the ACT Government was unable to present a holistic picture of the current state of diversion in its *Towards a Diversionary Framework for the ACT* Discussion Paper.⁵⁴ In providing an overall commentary, the Discussion Paper acknowledges that recent statistics show that fewer young people who have come into contact with police have been kept out of the formal youth justice system, and this cannot be fully explained by trends in juvenile crime.
- 7.6.5 In seeking to assess the current performance of the diversion system in the ACT the Commission contracted the Australia Institute of Criminology (AIC) to collect and analyse data on young people's contact with the criminal justice system in the ACT, including diversion. Their report is annexed to this Report at Appendix A.
- 7.6.6 In 2008-2009, 605 young people in the ACT were taken into custody by police. Of these, most (91%, n=550) were arrested, with the remainder taken into protective custody for intoxication. Approximately four times as many young men were taken into custody as young women. Approximately four times as many non-Indigenous young people were taken into custody as Aboriginal and Torres Strait Islander young people.⁵⁵
- 7.6.7 In comparison, in 2009-2010, 607 young people were taken into custody by police. Of these, the majority (92%, n=558) were arrested, with the remainder taken into protective custody for intoxication. Approximately four times as many young men were taken into custody as young women. Over three times as many non-Indigenous young people were taken into custody as Aboriginal and Torres Strait Islander young people.⁵⁶
- 7.6.8 Aboriginal and Torres Strait Islander young people were heavily over-represented among those taken into police custody in both data periods. Despite Aboriginal and Torres Strait Islander young people comprising only 2.9% of young people in the ACT, during 2008-2009, 18% (n=118) of young people taken into custody were Aboriginal and Torres Strait Islander, and during 2009-2010, 23% (n=141) were.⁵⁷
- 7.6.9 Not all young people who come into contact with police for an offence need to be taken into custody. Police in the ACT are able to divert young people away from the youth justice system by taking no action (with their actions recorded) or issuing verbal warnings. The Commission does not have data on the number and demographics of young people who were diverted from the youth justice system in this way. Not taking action and giving verbal warnings are subject to police discretion and are not part of required national or Territory data sets.
- 7.6.10 Police in the ACT are also able to divert young people from the youth justice system through:
- Informal and formal caution;
 - Issue of penalty or infringement notice;
 - Referral to a drug or alcohol program; or
 - Referral to restorative justice conferencing.
- 7.6.11 Through all these means, in 2008-2009, 10.4% (n=67) of the 550 young people arrested by police were diverted from the youth justice system. The following year, 13.6% (n=76) of the young people arrested by police were diverted.⁵⁸
- 7.6.12 In relation to police cautions, research conducted in Queensland indicates that young people who are diverted through cautioning are less likely to have re-contact with the criminal justice system than are young people who have a court appearance.⁵⁹ However, research also shows that, while Aboriginal and Torres Strait Islander young people were 4.5 times more likely to have contact with the criminal justice system than non-Indigenous young people, they were 2.9 times less likely to be cautioned than they were to appear in court, and 1.5 times less likely to be cautioned than attend a conference for their first contact with the system.⁶⁰

52 Ibid 46.

53 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 25.

54 Ibid 8 & 19.

55 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 10 at Appendix A.

56 Ibid 11.

57 Ibid.

58 Ibid.

59 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010) 2.

60 Ibid.

- 7.6.13 In 2008-2009, 29.7% (n=846) of all charges were dealt with by way of caution. Of those, 5.4% (n=44) were for charges brought against Aboriginal and Torres Strait Islander young people.⁶¹
- 7.6.14 In relation to police diverting young people by issuing fines, ACT Health note in their submission to the Review that police issue an average of 84 Simple Cannabis Offence Notices (SCON)⁶² each year. Of these, 9.5% (n=8) were young people. Of all charges laid against young people only 0.3% (n=8) were dealt with by way of a SCON. Of those charges diverted in this way, none were against Aboriginal and Torres Strait Islander young people.⁶³
- 7.6.15 In relation to police referral to a drug or alcohol program, ACT Police have a number of avenues available to them, including the ACT Early Intervention Pilot Project⁶⁴ and Police Early Intervention and Diversion Program (PED).⁶⁵ In 2008-2009, 0.7% (n=20) of all charges laid against young people were dealt with by way of referral to a drug or alcohol program. Of those charges diverted in this way, 5% (n=1) were against Aboriginal and Torres Strait Islander young people.⁶⁶
- 7.6.16 In relation to police referral to restorative justice conferences, research indicates that young people who are diverted through conferencing are less likely to have re-contact with the criminal justice system than are young people who have a court appearance.⁶⁷ Research also shows that, while Aboriginal and Torres Strait Islander young people were 4.5 times more likely to have contact with the criminal justice system than non-Indigenous young people, they were 2 times less likely to be referred to a conference than they were to appear in court.⁶⁸
- 7.6.17 In 2008-2009, 2.4% (n=67) of all charges were dealt by way of referral to restorative conferencing. Of those charges diverted in this way, 7.5% (n=5) were against Aboriginal and Torres Strait Islander young people.⁶⁹ The ACT Government submission to the review suggests 45 young people were referred by police to restorative justice conferencing in 2008-2009, equating to 8.1% of all young people arrested. In 2009-2010, the police referred 57 young people, equating to 10.2% of all young people arrested.⁷⁰
- 7.6.18 As the ACT Government notes in their submission to the Review, an important measure of restorative justice is whether young people comply with the agreement arising out of the conference. 86% of the agreements due for completion in 2009-10 were complied with. The level of compliance with agreements at 31 March 2011 is 91%, and the satisfaction rate across victims and offenders (combined result based on survey after conference) is 95%. The nature of tasks completed under these agreements include compensation paid to victims, donations to charities, hours worked to benefit victims or the community, and hours completed at counselling or programs.⁷¹
- 7.6.19 Participants in this Review consistently called for more young people to be referred to restorative justice conferences. Some believed the low referral rates were partly due to Phase 1 of the *Crimes (Restorative Justice) Act 2004* limiting access to restorative justice conferences to young people who had committed only minor offences. Noetic, in its consultation report on the diversionary framework, noted the ACT Government could take immediate action and implement Phase 2 of the *Crimes (Restorative Justice) Act 2004* to include more serious crimes. The Commission supports this suggestion and notes the European Human Rights Commissioner's Paper relating to improvements in juvenile justice states that diversion should not be limited to first time offenders or those who have committed minor offences.⁷² The submission to the Review from Northside Community Services was particularly persuasive:

The admission of an offence by a young person presents a turning point for those involved in the care and support of the individual. Young people who have admitted an offence must have the opportunity to own the event and to participate in

61 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: an overview*, Australian Institute of Criminology (2011) 13.

62 The SCON Scheme enables offenders who have been apprehended with a small amount of cannabis for personal use, or not more than two cannabis plants (excluding all artificially cultivated plants) to be issued with fine of \$100 for each charge which must be paid within 60 days to exiate the notice.

63 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: an overview*, Australian Institute of Criminology (2011) 13.

64 The ACT Early Intervention Pilot Project is for young people under the age of 18 years who have been detected by the police to be in possession of alcohol, and/or intoxicated from alcohol. The young person may be referred by police to the ACT Health's Alcohol and Drug Program for an information and education session.

65 The Police Early Intervention and Diversion Program (PED) enables minor drug offenders who have been apprehended for possession of a small amount of illicit drugs or illicit possession of a pharmaceutical drug (including cannabis) for personal use to be referred to drug education counselling and treatment services as an alternative to the criminal justice system.

66 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: an overview*, Australian Institute of Criminology (2011) 13.

67 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010) 2.

68 Ibid.

69 Ibid.

70 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 47.

71 Ibid.

72 Commissioner for Human Rights, Council of Europe, *Children and Juvenile Justice: Proposals for improvements*, Issue Paper, (2009)16.

reparation in regards to the event. If the young person is not referred to Restorative Justice or refuses to take part in a conference, then at no other point in the youth justice process is it routinely offered. Upon admission of guilt for an offence, the opportunity to participate in active reparation for an offence should be made available to young people during first contact with police, negotiated in bail conditions, taken into account during sentencing, and certainly be made available whilst serving a period of detention.'

Recommendation 7.10: The ACT Government implement Phase 2 of the *Crimes (Restorative Justice) Act 2004* to allow young people to be referred to restorative conferencing for more serious crimes.

- 7.6.20 In its submission to the Review, the ACT Government also noted that police can refer young people to prevention services. The Commission does not have data on the number and demographics of referrals made by police to secondary prevention services. In Recommendation 7.6 of this Report the Commission has noted the importance of police being well linked to the Information, Engagement and Coordination Service, Network Based Services and Youth Engagement Services created under the YFSP Framework. In addition, the Commission suggests that, given the prevalence of family breakdown and dysfunction among vulnerable young people, there is value in the police being able to refer young people to Family Group Conferencing within CSD.

Recommendation 7.11: The Community Services Directorate liaise with ACT Police to determine the feasibility of young people and their families being referred by the police to Family Group Conferencing options within the Directorate.

- 7.6.21 If police elect to prosecute a young person by way of summons or charge, the Childrens Court can also divert young people from the criminal justice system. The only mechanism for the Court to divert young people is to refer them to a restorative justice conference. In their submission to the Review, the ACT Government reported that in 2009-2010, 63.9% (n=117, an increase from 53 in 2008-2009) of all referrals to restorative justice conferencing were made by the Court; 4.4% (n=8) were made the Director of Public Prosecution (representing a significant decrease from 100 in 2008-2009)⁷³; and 0.5% (n=1, a decrease from 3 in 2008-2009) by CSD.⁷⁴ Given data on young people at the ACT Childrens Court is not disaggregated by Aboriginal and Torres Strait Islander status, the number of Aboriginal and Torres Strait Islander young people referred to restorative justice conferencing by the Court, and those associated with the Court, is not known. Recommendations relating to continuing education for the ACT Childrens Court, ACT Police, Director of Public Prosecutions and Legal Aid are made at recommendation 7.30 below.
- 7.6.22 The Childrens Court has a number of avenues through which it can divert young people from custody. These options and their utilisation are discussed in the section below on sentencing.
- 7.6.23 Based on the material reviewed, the Commission finds that diversion strategies are effective for young people, in that completion rates are high, and research suggests diversion reduces re-contact with the criminal justice system. However, the Commission further finds that the legislated opportunities for diversion of young people are not being fully realised due to the low referral rates by both the police and Courts. It is the Commission's view that current diversionary strategies in the ACT are not fully effective. In its submission to the Review, the ACT Government acknowledged that the current system '*is not sufficiently providing effective diversion for those young people who are at the periphery in terms of their risk taking behaviours.*'⁷⁵
- 7.6.24 The data clearly shows that diversionary strategies in the ACT are even less effective for Aboriginal and Torres Strait Islander young people. Table 7.2, below, shows that Aboriginal and Torres Strait Islander young people are over-represented in those young people who are taken into police custody, and then extremely under-represented in those young people who are diverted from the youth justice system. Of the 330 charges laid against Aboriginal and Torres Strait Islander young people, 13.6% (n=45) were diverted from the criminal justice system.

⁷³ Justice and Community Safety, *Annual Report 2009 - 2010*.

⁷⁴ ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 47.

⁷⁵ Ibid 3.

Table 7.2: Aboriginal and Torres Strait Islander, and non-Indigenous, young people who were arrested and referred to diversion

Type of Police action	Aboriginal and Torres Strait Islander	Non-Indigenous
Young people arrested	19% (n=104)	81% (n=446)
Charges referred to caution	5.4% (n=44)	94.6% (n=802)
Charges referred to SCON	Nil	100% (n=8)
Charges referred to drug diversion	5% (n=1)	95% (n=19)
Charges referred to restorative justice	7.5% (n=5)	92.5% (n=62)

- 7.6.25 The lower level of police referral to diversion for Aboriginal and Torres Strait Islander young people is a pressing issue for most youth justice systems across Australia. Lower diversion rates have a cumulatively negative effect that results in Aboriginal and Torres Strait Islander young people progressing through the stages within the youth justice system faster than non-Indigenous young people. A recent study found that the over-representation of Aboriginal and Torres Strait Islander young people increased with each successive discretionary stage in the youth justice system, resulting in high levels of over-representation in the more serious processes and outcomes.⁷⁶ The literature concludes that low levels of police diversion are a contributing factor in the over-representation of Aboriginal and Torres Strait Islander young people in detention.
- 7.6.26 Researchers have examined why Aboriginal and Torres Strait Islander young people are diverted by police at a significantly lower rate. Studies variously explain the disparity through: differences in the proportion of young people pleading guilty and therefore being ineligible for diversion,⁷⁷ Aboriginal and Torres Strait Islander young people having more informal contact with the police than non-Indigenous young people, differences in attitudes and demeanors of young people, and the particular circumstances as well as the seriousness of offences.⁷⁸ Studies in other jurisdictions have also alleged racial bias of policing plays a part in the disparity.⁷⁹ Some of these explanations are a result of behaviours from Aboriginal and Torres Strait Islander young people – not admitting guilt, attitudes and demeanors, and seriousness of offending; however, others are more systemic – more contact with police and racially biased policing.
- 7.6.27 All young people's behaviours and attitudes, and relationship to offending is shaped by the environment in which they are raised. In Australia, an unacceptably high proportion of Aboriginal and Torres Strait Islander young people grow up in complex environments of socio-economic disadvantage, cultural dispossession and marginalisation, and structurally lower level of access to resources and opportunities. For some Aboriginal and Torres Strait Islander young people these environments foster hostility and behaviours of retaliation against society, which includes offending. For others, these environments create offending patterns driven by a sense of economic necessity and survival. The literature identifies these socio-economic and cultural reasons as the root cause of offending and the over-representation of Aboriginal and Torres Strait Islander young people in the youth justice system.⁸⁰ To affect the behaviours, attitudes and offending patterns of Aboriginal and Torres Strait Islander young people, targeted and effective primary, secondary and tertiary prevention programs are needed (see Recommendation 7.2 above). Planning needs to meaningfully involve Aboriginal people and communities, and programming needs to be across the life course and operate on the individual, family, community and society level. The Commission believes addressing these socio-economic and cultural factors must be a policy priority for the ACT Government.
- 7.6.28 Another priority must be influencing change in the assumptions and practices of policing. The level and type of surveillance police exercise over Aboriginal and Torres Strait Islander young people and their community shapes the relationship these young people have with police. Historical distrust in police has been found to be a major factor in young people not admitting offending to police, therefore negating the opportunity for diversion. The Commission believes police practices should recognise this by seeking to build more positive relationships with Aboriginal and Torres Strait Islander young people, and by ensuring they have culturally trusted support at the time an admission is required. In this regard, the Commission welcomes the recent budget measure which makes three year provision for an Aboriginal and Torres Strait Islander Guidance Partner to provide assistance to young Aboriginal and Torres Strait Islander people who are referred to or involved in restorative justice.

76 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010) 4.

77 Snowball (2008) cited in ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 50.

78 Allard, T., Stewart, A., Chrzanowski, A., Ogilvie, J., Birks, D., and Little, S., 'Police Diversion of young offenders and Aboriginal and Torres Strait Islander over-representation', *Trends and Issues in Crime and Justice*, Australian Institute of Criminology, Canberra (2010) 4.

79 Cunneen, C., 'Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues', *Current Issues in Criminal Justice*, vol. 17, no. 3, (2006) 329-346.

80 Ibid.

- 7.6.29 In 2010, the ACT Government released the *ACT Aboriginal Justice Agreement 2010-2013*. This plan seeks to reduce the over representation of Aboriginal and Torres Strait Islander people in the ACT justice system as both victims and offenders. The Agreement contains an action item to increase the referral rates of Aboriginal and Torres Strait Islander young people to restorative justice conferencing.⁸¹ The Commission believes this action should be expanded to increasing police referral rates to all diversionary options.

Recommendation 7.12: ACT Police develop and implement guidelines regarding the use of discretion in diverting young people from the youth justice system, with these guidelines being as transparent and open as the effective operations of ACT Police allows.

Recommendation 7.13: ACT Police set targets for police referral to all diversionary options, particularly in relation to Aboriginal and Torres Strait Islander young people. Performance against these targets to be reported in the ACT Police annual report.

Recommendation 7.14: ACT Police collect and publish in their annual report data on diversion rates by age, gender and Aboriginal or Torres Strait Islander status.

Recommendation 7.15: The ACT Government amend the *ACT Aboriginal Justice Agreement 2010-2013* to include increased referral rates of Aboriginal and Torres Strait Islander young people to all forms of diversion.

7.7 Diverting young people from custody

The importance of diverting young people from custody

- 7.7.1 According to Article 37 of the CROC, *'the arrest, detention or imprisonment of a child must be in conformity with the law and used only as a measure of last resort and the shortest appropriate period of time'*.
- 7.7.2 Spending time in custody has a proven negative effect on young people. Research has shown incarceration leads to social isolation and disconnection, institutionalism and increases the likelihood of reoffending. More specifically, recidivism is correlated highly with future juvenile offending,⁸² and adult offending.⁸³ The most significant reasons for this were found to be: stigmatization of young people, formation of criminal associations and networks, placing vulnerable young people at risk, and reduction of opportunities for positive rehabilitation.⁸⁴ Remand has been shown to have negative impacts on a young person's family, relationships, education and work.⁸⁵ Remanding a young person in custody also comes at significant economic costs to the community. A longer discussion on the negative effects of incarceration is contained in this Report in Chapter 8 (case management).

Diverting young people from police custody

Arrest

- 7.7.3 Within any youth justice system, the first opportunity for a young person to be exposed to custody is police custody. Being in police custody is largely understood to be when a police officer takes physical custody of a person, or when a person is held in the cells at a police station. This section is primarily concerned with the latter. In observance of the principle of custody being used as a last resort, it is important to examine what mechanisms are available and utilised to divert young people from police custody. Section 94 of the CYP Act states *'a child or young person may only be detained in custody for an offence (whether on arrest, on remand or under sentence) as a last resort and for the minimum time necessary'*.

81 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 51.

82 Holman & Ziedenberg, *The Dangers of Detention: The impact of Incarcerating Youth in Detention and Other Secure Facilities*, Justice Policy Institute, USA (2006) 4.

83 Gatti, Tremblay & Vitaro, (2009) cited in Richards, K (2011) 'What makes juvenile offenders different from adult offenders?', *Trends and Issues in Crime and Criminal Justice*, Australian Institute of Criminology, February 2011, 409 (2011) 7.

84 Victorian Department of Human Services, *Youth Justice Group Conferencing: Information for the young person* (2007).

85 Stubbs, (2009) cited in Vignaendra, S., Moffatt, Weatherburn, D and Heller, E., 'Recent trends in legal proceedings for breach of bail, juvenile crime and remand', *Crime and Justice Bulletin* Number 128, NSW Bureau of Crime Statistics and Research, (2009).

- 7.7.4 When a young person (without a warrant) comes to the attention of police, the first option available is to divert the young person from the youth justice system, as described in detail in Section 7.6 of this Chapter. Some of these mechanisms can be used without requiring the young person to enter police custody, for example, a verbal warning. However, most other diversionary options require the young person to be transported to the police station for the administration of the referral. It is unclear whether these young people are placed in police cells or not. In the Commission's view, young people being referred to a diversionary option should not be placed in police cells.

Recommendation 7.16: The ACT Police guidelines be updated to include a direction that young people being diverted from the youth justice system only be placed in police cells as a last resort. The level of compliance with this direction be reported in the ACT Police annual report.

- 7.7.5 If police elect not to exercise their discretion to divert in this way, their next option is to decide whether they prosecute the matter by way of summons or charge. Sections 212(1)(b) and 252J of the *Crimes Act 1900 (ACT)* stipulate that police are obliged to commence proceedings against young people by way of summons unless to do so would be ineffective in terms of ensuring attendance at court, prevention of further offending, ensuring the integrity of evidence and the safety of witnesses, and to ensure the safety and welfare of the young person. The issuing of a summons can be done by mail or by a young person accompanying police (technically in their custody) to the police station for administrative processing. Again, in the Commission's view, young people being dealt with by way of summons should not be placed in police cells.

Recommendation 7.17: The ACT Police guidelines be updated to include a direction that young people dealt with by way of summons only be placed in police cells as a last resort. The level of compliance with this direction be reported in the ACT Police annual report.

- 7.7.6 In 2008-2009, 20.6% (n=588) of all charges in the ACT were dealt with by way of summons. While national data sets on this issuing of summonses are not yet consistent or robust, it appears that other jurisdictions use summonses at a much higher rate, with NSW and Queensland using summonses for 33% of matters brought before the Court⁸⁶, and West Australia, 27%.⁸⁷ Of particular concern in the ACT is that only 7.5% (n=44) of summonses issued were for charges brought against Aboriginal and Torres Strait Islander young people.⁸⁸

Recommendation 7.18: The ACT Government introduce a mechanism that allows police to issue a summons to a young person without requiring their attendance at a police station.

Bail

- 7.7.7 The ACT *Bail Act 1992* (the Bail Act) governs the decision making process police must adhere to when considering whether or not to release a young person from police custody. The options available at this juncture are to:
- Release the young person from police custody on unconditional bail, with an undertaking to appear at Court;
 - Release the young person from police custody on bail with conditions; or
 - Detain the young person in police custody by refusing bail. Exercising this option requires the police to then transport the young person to the ACT Childrens Court for the bail decision to be reviewed by a Magistrate.
- 7.7.8 Section 26 of the Bail Act requires the court or authorised person to have regard to the principles contained in s. 94 of the CYP Act, and to consider, as a primary consideration, the best interests of the child. While the Commission does not have data on the number, demographic and trends in relation to police decision-making regarding the granting or refusing of bail, the ACT Government's *Towards a Diversionary Framework* Discussion Paper indicates that more young people are being refused bail by the police.⁸⁹

86 Luke, G., & Cunneen, C., *Aboriginal over-representation and discretionary decisions in the NSW Juvenile Justice System*, Criminal Justice Commission (1995) 82.

87 Bartholomew, P., *Preventative and Diversionary programs in Western Australia*, National Conference on Juvenile Justice.

88 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 13 at Appendix A.

89 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 8.

- 7.7.9 In 2009-2010, 558 young people were taken into police custody through arrest and 76 diverted from the youth justice system. This leaves 482 young people who were prosecuted by way of summons or charge.⁹⁰ Of those 482 young people, 182 were granted conditional bail requiring they respond to supervision by the Chief Executive of CSD.⁹¹

Breach of bail and remand

- 7.7.10 It is clear from the data that young people subject to bail in the ACT are breached at a high rate. In 2009-2010, 83 young people were remanded in Bimberi for breach of bail. The data also indicates that many young people are subject to multiple periods of remand. In 2009-2010, there were 384 remand episodes for 170 young people. Of those 170 young people whose bail was breached, 80 had only one episode of remand; meaning 53% of young people granted bail had multiple episodes of remand. Almost half of the remand episodes following an alleged breach of bail were one to two days in length (49%), with a further 20% being three to seven days. The majority of these remand admissions to Bimberi occurred outside of business hours.⁹²
- 7.7.11 In 2008-2009, offences against justice procedures, of which breach of bail is one, were the second most frequent offence young people were charged with, at 40.9% (n= 338) of all charges laid. This is reflected by the fact that breach of bail is the primary reason for the admission of young people into Bimberi.⁹³
- 7.7.12 National data sets designed to compare each jurisdiction's performance show that the ACT is performing poorly in relation to the number of young people on remand. In 2008-2009, of the 163 young people who were admitted into Bimberi in that year, 161 (98.8%) were admitted on remand. Of the 14 young people in detention on an average day, 11 (73%) were on remand, up from 55% in 2005-2006. Comparatively, in June 2008, 59.6% of all young people detained nationally were on remand.⁹⁴
- 7.7.13 In 2008-2009, the average length of time spent on remand detention was 25 days.⁹⁵ Of those young people held on remand in 2008-2009, 64% were Aboriginal and Torres Strait Islander young people, with their average length of time spent on remand being 54 days. The average length of time for non-Indigenous young people was 18 days.⁹⁶
- 7.7.14 Nationally, more than half (53%) of remand periods served by young people in 2008-09 ended in the young people being granted bail.⁹⁷ This is particularly concerning in light of the body of evidence which demonstrates the negative impact incarceration, including remand, has on young people.
- 7.7.15 Nationally about one-fifth (21%) of remand periods were followed by a period of sentenced detention for the young person.⁹⁸ However, during this Review the Commission heard that only 7% of ACT young people on remand go on to receive a custodial sentence.⁹⁹ Even taking into account, as the ACT Government submission to the Review did, that time spent on remand may be a factor in the decision not to impose a custodial sentence, an unacceptably high number of young people are spending time unnecessarily in Bimberi.
- 7.7.16 Nationally, two primary explanations are put forward for the increase in remand: (a) more restrictive bail legislation; and (b) lack of appropriate accommodation options for young people experiencing homelessness.¹⁰⁰ Each is examined in turn below.
- 7.7.17 In terms of legislation, the Commission is concerned about the potentially unintended impacts of section 9F of the *Bail Act 1992 (ACT)* on young people's exposure to remand. Section 9F creates a presumption against bail for a person accused of a domestic violence offence unless the police officer is satisfied on the balance of probabilities that the person poses no danger to the alleged victim of the offence. In 2009-2010, 170 young people experienced an episode of remand,¹⁰¹

90 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 13 at Appendix A.

91 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 7.

92 Ibid.

93 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 50.

94 Ibid.

95 Ibid 15.

96 Ibid.

97 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 48 at Appendix A.

98 Ibid.

99 Presentation from Dr Debbie Rickwood at the HRC Commission-organised Community Forum, see Appendix C.

100 UnitingCare Burnside, *Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales*, Sydney: UnitingCare Burnside (2009).

101 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 7.

30 of whom were remanded for either family violence matters or alleged breaches of personal protection orders.¹⁰² This means that 17.6% of all young people who experienced remand were either refused bail or unable to meet bail conditions associated with family violence offences. The average amount of time these young people spent on remand was two to three days.¹⁰³

Recommendation 7.19: The ACT Government amend the *Bail Act 1992 (ACT)* to remove the presumption against bail for young people accused of domestic or family violence matters.

- 7.7.18 The Commission notes this recommendation was also made by the Australian Law Reform Commission and the former Human Rights and Equal Opportunities Commission in their 1997 report *Seen and Heard*.
- 7.7.19 In relation to the lack of appropriate accommodation options for young people experiencing homelessness, the Commission heard repeatedly that this was one of the major reasons young people were being held in Bimberi on remand. Most young people remanded were either waiting for accommodation to be found, or had their bail breached for leaving or being discharged from the accommodation they had been directed to reside at. One participant commented that Bimberi was:
'largely being used as crisis accommodation.'
- 7.7.20 Chapter 11 (housing) assesses the provision of housing for vulnerable young people and makes recommendations for increased investment and support.
- 7.7.21 In regard to the application of the Bail Act, the Commission heard from many participants that bail conditions imposed on young people by police and Courts were variously too onerous, too welfare oriented or too unrealistic. Bail conditions that were considered too onerous were those that did not reflect the young person's level of risk of re-offending. Participants were concerned that low risk offenders were being drawn further into the youth justice system through supervision and other conditions. It was alleged that onerous bail conditions increased young people's chances of an episode of remand in Bimberi.
- 7.7.22 Bail conditions that were considered to be too welfare oriented included conditions to attend school or not drink alcohol. These were seen by participants as attempts by the police or Courts to case manage young people, rather than ensure their attendance at court. Questions were raised about the necessity of these conditions, particularly when young people were often required to follow directions of their CYJ case manager, which would reasonably include such things as attending school and not drinking alcohol.
- 7.7.23 Examples of bail conditions that were considered too unrealistic included: a young person prohibited from going to a particular bus interchange when going through that interchange was the only way the young person could get to services and supervision; and a young people not being able to leave home unless in the company of his/her parents, which resulted in that young person being unable to attend appointments. The Australian Law Reform Commission and former Human Rights and Equal Opportunity Commission recommended in their report *Seen and Heard* that:
*'children should not be subject to inappropriate bail conditions, such as 24 hour curfews, that disrupt their education and have the effect of forcing constant contact with their families or that impose policing roles on carers.'*¹⁰⁴
- 7.7.24 Overall, participants were concerned that onerous, welfare oriented and/or unrealistic bail conditions may result in a young people's non-offending behaviour being criminalised. Examples provided included young people's bail being breached for not attending school, or being out of the family home without a parent. Many participants advocated for fewer bail conditions, suggesting that the only conditions of bail imposed by police or Courts should be reporting/supervision, residing as directed, and staying away from the victim/s, where relevant.
- 7.7.25 Recent research suggests that overly strict bail laws and conditions are generally ineffective in reducing crime. In NSW, changes to the NSW Bail Act and stricter enforcement of bail laws by police contributed to a 32% increase in the remand population with no decrease in juvenile property crime.¹⁰⁵
- 7.7.26 A number of participants in the Review made suggestions as to how more information can be provided to police and Courts to ensure bail conditions better reflect young people's needs and risks, being (1) risk assessments, and (2) increased engagement with the community, particularly community workers.

¹⁰² Ibid 28.

¹⁰³ Ibid.

¹⁰⁴ Recommendation 228.

¹⁰⁵ Virginia, S., Moffatt, S., Weatherburn, D., & Heller, E., 'Recent trends in legal proceedings for breach of bail, juvenile remand and crime', *Contemporary Issue in Crime and Justice*, No 128. NSW Bureau of Crime Statistics and Research, (2009).

7.7.27 In relation to risk assessment, the Commission notes that CSD has purchased the Youth Level of Service/Case Management Inventory (YLS/CMI) assessment tool. While this tool is yet to be broadly implemented, participants believed that the intended application of YLS/CMI to all young people subject to CYJ bail supervision would allow more informed drafting of bail conditions.

7.7.28 Participants also felt that CYJ needed to consult more with a young person's existing community support workers when suggesting bail conditions, particularly with Aboriginal or Torres Strait Islander young people. As one participant commented:

'Community workers often have information and details regarding the family or household which render certain [bail] conditions pointless and unrealistic. Many community service workers are available and willing to provide support to young people on bail, however are currently only involved at the end of the process when information which would have prevented a breach of bail cannot be submitted.'

7.7.29 In terms of providing information regarding risk assessments and community supports to the police, CYJ only operates during business hours and the majority of remand admissions to Bimberi for breach of bail occurred outside of business hours.¹⁰⁶ Research shows that one of the most significant obstacles facing young people in being granted bail and meeting bail conditions is access to afterhours support services, which take into account the times when young people are most likely to breach their bail.¹⁰⁷

7.7.30 The ACT Government's *Towards a Diversionary Framework for the ACT* Discussion Paper explored the possibility of a Diversion from Custody Support Service, similar to that operating in Victoria.¹⁰⁸ Such a service would be established for young people in police custody after hours. The Commission supports the introduction of such a service. Similar to the Victorian model, the Commission suggests that consideration be given to requiring Diversion from Custody Support Service staff to attend police stations for the purposes of conducting assessments (risk and housing), advocating for young people, liaising with the young person's family or other supports, providing or arranging transport, and making decisions as to the use of brokerage funds.

Recommendation 7.20: The Community Services Directorate establish a Diversion from Custody Support Service for young people in police custody after hours.

7.7.31 Regarding the provision of information to the Court on risk assessments, in the Commission's view, the pro-forma pre-sentence report is overly deficit and compliance based. The implementation of the YLS/CMI assessment tool will go some way to providing a more balanced view of the young person, including their strengths and the resources and opportunities available to them. Participants believed that the intended application of YLS/CMI to all young people subject to CYJ bail supervision would allow for more informed drafting of bail conditions.

Recommendation 7.21: The Community Services Directorate use Youth Level of Service/Case Management Inventory (YLS/CMI) risk assessments to assist ACT Police and the ACT Childrens Court draft bail conditions for young people.

Recommendation 7.22: The Community Services Directorate redraft the pro-forma pre-sentence report used by Community Youth Justice to better reflect the strengths of young people and the opportunities and resources available to them.

7.7.32 Once a young person has been granted bail, participants suggested improvement to the way compliance can be supported and monitored by CYJ staff. Northside Community Services' submission stated:

'In 2009-2010, the Aboriginal and Torres Strait Islander Unit of [adult] Corrective Services saw a 58% decrease in breaches of bail stemming from reporting requirements. This decrease was largely due to an increase in outreach visits by corrective services workers. This approach enabled individuals to meet reporting requirements without travelling into the city or to court'

106 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 50.

107 McCord, C., Spatz Widom, Crowell eds, *Juvenile crime, Juvenile Justice*, Panel on Juvenile Crime: Prevention, Treatment and Control, Committee on Law and Justice and Board on Board, Youth and Families, National Academy Press Washington DC, (2001) 223.

108 ACT Government, *Towards a Diversionary Framework for the ACT* Discussion Paper (2011) 16.

by encouraging joint meetings at community centres or at the individual's home. Current Youth Justice processes do not allow for joint outreach visits by CYJ and existing support workers, or for community organisations to facilitate reporting visits at their premises. This innovation would not only reduce the number of missed appointments and subsequent breaches in bail, but would also introduce community programs /workers which may support the young person in the future.'

- 7.7.33 The Commission supports this innovation, and builds on it by suggesting that the supervision of young people assessed as low risk of re-offending could be 'outsourced' to community services providers, especially Turnaround, Youth Connections, and those funded under the YFSP Framework. These secondary and tertiary prevention services could assume many of the supervision and support roles currently provided by CYJ to this group. Low risk offenders would still be monitored by CYJ workers but only in relation to compliance. Such a model would:
- Reduce contact with the youth justice system by young people assessed as low-risk of offending;
 - Allow CYJ to focus more attention and resources on the case management, rehabilitation and supervision of young people assessed as higher risk of offending; and
 - Build stronger relationships between CYJ and the community service sector.

Recommendation 7.23: Community Services Directorate develop and implement a model of supervision that allows Community Youth Justice workers to undertake outreach visits to young people in the community to, among other things, satisfy the reporting condition of a young person's bail.

Recommendation 7.24: Community Services Directorate 'outsource' the supervision and support of low risk offenders to community service providers, particularly those funded under the Youth and Family Support Program Framework.

- 7.7.34 In the ACT, police have the power to arrest (without warrant) if they believe a young person has breached or will breach a condition of their bail. The exercise of this discretion, along with other police discretionary decisions mentioned in this section, are not subject to legislative guidance, but rather police guidelines and local operating procedures which are not publically available. The Commission is concerned that these police guidelines are only now being updated to reflect the legislative changes introduced by the HR Act and the CYP Act.

Recommendation 7.25: ACT Police finalise updating the police guidelines in relation to the legislative changes introduced by the *Human Rights Act 2004* and *Children and Young People Act 2008*, and ensure all police officers receive training on the new guidelines.

- 7.7.35 For young people supervised by the Chief Executive of CSD, their bail can be breached when their CYJ worker becomes aware of a possible or actual non-compliance with bail. The Bail Act is silent on the powers of the Chief Executive regarding action to be taken in relation to an alleged breach of bail. The Commission was told that CSD was drafting policy guidelines. However, participants stated that these Guidelines had been in draft for an extended period of time, were not the subject of communication or training, and were not embedded into practice. As a result an inconsistency in approach between CYJ workers was reported by participants.

Recommendation 7.26: The Community Services Directorate finalise guidelines on what Community Youth Justice case managers need to consider when exercising discretion to breach a young person's bail, and ensure all case managers receive training on the new guidelines.

Diverting young people from detention: the importance of sentencing

- 7.7.36 Rule 17 of the Beijing Rules requires the following principles to govern the sentencing of young people:
- The reaction shall always be in proportion not only to the circumstances and gravity of the offence, but also to the circumstances and needs of the juvenile as well as to the needs of the society;
 - Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;

- Deprivation of personal liberty shall be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response; and
- The wellbeing of the juvenile shall be a guiding factor in the consideration of his or her case.

7.7.37 Article 40 of the CROC requires that children found to have infringed the law must be treated in the same manner that is consistent with the promotion of the child's sense of dignity and worth. Together with Article 37, which requires that detention be used only as a last resort, this provision clearly requires priority to be given to the use of non-custodial or community-based measures as an alternative to detention. In addition, Article 40(4) of the CROC provides that:

'A variety of dispositions, such as care, guidance and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their wellbeing and proportionate both to their circumstances and the offence.'

Current practice

- 7.7.38 In 2008-2009, 485 defendants were finalised in the ACT Childrens Court. Of those young people, 8.7% (n=42) were acquitted, 57.7% (n=280) were proven guilty (by plea or hearing), 1.2% (n=6) were transferred to other courts, and 0.8% (n=4) were 'other'.¹⁰⁹ This section of the Report examines the utilisation of sentencing options for those who were proven guilty.
- 7.7.39 During the most recent data period (the quarter ending September 2008) there were 216 pleas in the ACT Childrens Court, 150 of which were pleas of guilty. 50% of the guilty pleas had convictions recorded (n=74), with no conviction recorded for the other half (n=76).¹¹⁰
- 7.7.40 In comparison to the national average, a high proportion of matters before the ACT Childrens Court were withdrawn. Nearly 33% of adjudications were withdrawn in 2008-2009 in the ACT, compared with the national figure of 10%.¹¹¹

Recommendation 7.27: The Director of Public Prosecution determine the reasons why so many adjudications are being withdrawn in the ACT Childrens Court and take any corrective action that may be warranted.

- 7.7.41 After a guilty plea has been entered or adjudicated, the Court has a choice to divert the young person from the youth justice system by way of referral to restorative justice conferencing. This is discussed in detail at paragraph 7.6.21 of this chapter.
- 7.7.42 If the Court elects not to divert a young person in this way, there are a number of sentencing options available to the court to divert the young person from custody. These options are laid out in the *Crimes (Sentencing) Act 2005 (ACT)*. Chapter 8A of the Act sets out the provisions that apply to the sentencing of young people.

Pre-sentence assessment

- 7.7.43 To assist the Court in its deliberations on sentencing options, the court requests, or in some cases is required to request, a pre-sentence report prepared by CSD.¹¹² As discussed previously in this Chapter, in the Commission's view, the pro forma pre-sentence report is overly deficit and compliance based. The Commission believes these reports should be reframed to better reflect the YLS/CMI risk assessments, as well as young people's strengths and the opportunities and resources available to them, and has made a recommendation to that effect in recommendation 7.22.
- 7.7.44 Prior to sentence a Magistrate may refer a young person for further assessments than those contained in the pre-sentence report. One such option is the Court Alcohol Drug Assessment Service (CADAS), which commenced in the ACT Childrens Court in 2002. The CADAS is a pre-sentencing and sentencing treatment option for clients charged with alcohol and other drug (AOD) related offences. The CADAS clinician is located at the Court, and provides an immediate AOD assessment, and recommends an appropriate treatment plan. If the young person is released on bail to comply with the treatment plan, the

109 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 21, Appendix A.

110 Ibid 25.

111 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 57 at Appendix A.

112 The Crimes Sentencing Act requires that pre-sentence reports for young people are prepared by the Chief Executive CSD. In most cases a report is discretionary, but a report must be ordered when the court is considering periodic detention or a good behaviour order involving community work or a rehabilitation program.

CADAS clinician monitors attendance, and reports all outcomes to the Court. Non-compliance is reported directly to a Court and may be taken into account at sentencing.

7.7.45 In their submission to this Review, the Alcohol Tobacco and Other Drug Association noted that:

'Whilst CADAS referrals have remained fairly steady, averaging about 40 young people per year since 2003 / 2004, this number has decreased since March 2010. Since September 2010 there has only been one referral for assessment from the Children's Court Magistrates which was received in March 2011.

ATODA understands that the reason for such a dramatic reduction in referrals is not clear. It will be important that the Diversionary Framework provide strategies to ensure that current barriers to referral (including limited awareness, perceptions of efficacy, feedback loops, etc) are included so that the programs the ACT currently has are being effectively utilised.'

Recommendation 7.28: The Community Services Directorate and the Health Directorate work with the ACT Childrens Court to determine why recommendations by the Court Alcohol Drug Assessment Service for referral are not being implemented.

7.7.46 In April 2011, a six month trial commenced where all youth justice alcohol and drug treatment referrals will go through to CADAS. This trial has been developed in partnership between CSD, ACT Health, the Gugun Gulwan Aboriginal Corporation and the Ted Noffs Foundation. In their submission to the Review, the Alcohol Tobacco and Other Drug Association expressed optimism for the trial on the basis that it will create opportunities to significantly improve the likelihood of young people benefiting from uptake of alcohol and other drug services.

7.7.47 The Commission understands the ACT Childrens Court is considering introducing a Youth Drug and Alcohol Court and that a practice direction has already been drafted. The Alcohol Tobacco and Other Drug Association is supportive of this proposal, as is the Commission. The Commission notes some of the components for a drug court already exist in ACT, being: the legislative ability to make deferred sentencing orders, and a centralised drug and alcohol assessment and monitoring team in CADAS. These components, coupled with the care teams proposed as part of the new case management model recommended in Chapter 8, would bring together the necessary supervisory, criminogenic, psycho-social and community aspects of a drug court model.

Recommendation 7.29: The Justice and Community Safety Directorate, in partnership with other Directorates, consider implementing and evaluating a two year pilot of a Youth Drug and Alcohol Court.

Non-custodial sentences

7.7.48 When the Court elects to sentence a young person, a number of non-custodial options are available. Almost all young people who were found guilty in the Childrens Court in 2008-2009 were placed on a non-custodial order (95.7%). The most common order was a good behaviour bond (45.7%). This varies from what has occurred previously in the ACT and what is occurring nationally, where the proportion of non-custodial sentences is relatively evenly distributed across community supervision/work orders, monetary orders, good behaviour bonds and other types of non-custodial sentences.¹¹³ These sentencing decisions have contributed to the ACT having the second highest rate nationally of young people being under community-based supervision.

7.7.49 Aboriginal and Torres Strait Islander young people are over-represented in community supervision in the ACT.¹¹⁴ Aboriginal or Torres Strait Islander young people are approximately 12 times more likely to be under supervision on an average day than their non-Indigenous counterparts. Of the 200 young people under community based orders in 2008-2009, 17.5% (n=35) were Aboriginal and Torres Strait Islander.¹¹⁵

113 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 25 at Appendix A.

114 Australian Institute of Health and Welfare, *Juvenile justice in Australia 2007 – 2008* (2009)

115 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 29 at Appendix A.

- 7.7.50 Participants in the Review felt that the Courts referred young people to CYJ supervision too readily. As one participant reported:

'A young person with a first offence might be put on a 12 month supervision order and then they come in and meet all the other young people and get better at crime. It also puts them at risk of breaching for things like not attending school, when the original offence may not have been that serious. The YLS/CMI suggests that those kids at low risk should be kept away from the system as far as possible. The courts are sending kids here for minor matters, misguided referrals and then if we breach them they end up in Bimberi.'

- 7.7.51 For Aboriginal and Torres Strait Islander young people there is an additional sentencing option – the Galambany Circle Sentencing Court. The Commission welcomes the recent budget measure that provides for funding for the Galambany Circle Sentencing Court panel members. The Galambany Circle Sentencing Court has the same sentencing powers as the ACT Childrens Court. Participants at the Circle may recommend any sentence they see fit, including a period of incarceration. Where the young person consents to the sentence recommended by the Circle, the Magistrate remands the offender for sentence in Court. Where the young person does not consent, the charges are referred back to the Court to be dealt with. Sentencing focuses on imposing an appropriate sentence that considers a healing process, moving on from the offence, and helping the young person address a range of issues that include education, health, housing, rehabilitation and unemployment.¹¹⁶
- 7.7.52 The referral of Aboriginal and Torres Strait Islander young people to the Galambany Circle Sentencing Court commenced in 2009-2010. In that period eight young people were referred to the circle court. From that period date, two young people have been referred to the circle court.¹¹⁷ Data on young people at the ACT Childrens court is not disaggregated by Aboriginal and Torres Strait Islander status. Therefore, it is not possible to calculate the percentage of those Aboriginal and Torres Strait Islander young people before the Court who are referred to the Circle. The Commission makes recommendations on data collection by the Court in Chapter 6 (evidence based practice).

Custodial sentences

- 7.7.53 The last resort available to the court is to sentence a young person to a custodial order. Only a small proportion (3.9%) of young people found guilty in the ACT Childrens Court received a custodial sentence during 2008-2009. In that year, no young people received custody in a correctional institution, 2.5% received custody in the community, and 2% received a fully suspended sentence. As at June 2009, one third (n=3) of young people in Bimberi were sentenced.¹¹⁸
- 7.7.54 Aboriginal and Torres Strait Islander young people are over-represented in detention in the ACT.¹¹⁹ However, data on young people at the ACT Childrens Court is not disaggregated by Aboriginal and Torres Strait Islander status. It is therefore unclear what proportion of young people adjudicated by the Court are Aboriginal and Torres Strait Islander. Collecting this data is important given the over-representation of Aboriginal and Torres Strait Islander young people in detention, and would allow greater analysis into the stages at which the over-representation of Aboriginal and Torres Strait Islander young people becomes entrenched.¹²⁰

Continuing education of police and court officers

- 7.7.55 The effectiveness of the ACT's diversionary strategy is almost fully dependant on the actions of individuals and agencies outside the control of CSD. ACT Police exercise a significant degree of discretion which contributes to the number of young people coming into contact with or entering the youth justice system. The exercise of this discretion is not subject to legislative guidance, but rather police guidelines and local operating procedures which are not publically available. Many participants in this Review felt ACT Police were not as informed about prevention and diversion options as they would like them to be.
- 7.7.56 Similar concerns were expressed in relation to the ACT Courts and the officers within. Judges, Magistrates, the DPP, Legal Aid, Aboriginal Legal Services and the private legal profession each can have a determining influence over a young person's diversion from and progression through the youth justice system.

116 ACT Government, *The ACT Government's Submission to the Children and Young People Commissioner's Inquiry into the Youth Justice System in the ACT and the Human Rights Commissioner's Audit into Conditions of Detention at the Bimberi Youth Justice Centre*, (2011) 45.

117 Ibid.

118 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 25 at Appendix A.

119 Australian Institute of Health and Welfare, *Juvenile justice in Australia 2007 – 2008*, (2009)

120 Richards, K., Rosevear, L., & Lyneham M., *Juveniles' contact with the criminal justice system in the ACT: An overview*, Australia Institute of Criminology (2011) 57 at Appendix A.

Recommendation 7.30: The Community Services Directorate:

- Work with the National Judicial College to develop and implement an annual training program for judges and magistrates on issues relevant to youth justice, including, for example, child development; Aboriginal and Torres Strait Islander culture; the structural causes of youth offending; the What Works principles; the provision of case management to young people involved in the youth justice system; the YSL/CMI risk assessment tool; the new Youth and Family Support Program Framework; and available supported accommodation services.
- Develop and implement an annual education program for the ACT Police, Director of Public Prosecution, Legal Aid, Aboriginal Legal Services and the private legal profession on a range of issues relevant to youth justice, including: child development; Aboriginal and Torres Strait Islander culture; the structural causes of youth offending; the What Works principles; the YLS/CMI risk assessment tool; the new Youth and Family Support Program Framework; and available supported accommodation services.

7.8 An integrated diversion system for children and young people

- 7.8.1 Respondents to the Diversionary Framework consultations and participants in this Review expressed concern that the ACT Government was undertaking a fragmented or piecemeal approach to the development of a more effective diversionary framework.¹²¹ In its consultation report on the *Towards a Diversionary Framework for the ACT Discussion Paper*, Noetic Solutions called for a whole-of-ACT strategy on youth diversion that applied across ACT Government agencies and non-government service providers.¹²² Respondents and participants agreed with this suggestion, calling for a diversionary framework that includes clear objectives, with indicators and targets for specific types of diversion. Stakeholders also called for investment in evaluation to ensure that diversionary strategies were meeting their stated objectives, and governance models that allowed the Framework to be monitored by the range of stakeholders involved.
- 7.8.1 The Commission supports these views and recommends that the ACT Government develop a comprehensive diversion plan. In the Commission's view, the diversion plan should clearly state:
- How the diversion plan furthers the statement of purpose for the ACT youth justice system;
 - A vision for diversion in the ACT;
 - The values and principles the system will apply in achieving that vision;
 - A definition of diversion;
 - A set of objectives drawn from an evidenced-based theory of change;
 - The role and capabilities of Government in achieving these objectives (whole-of-government);
 - The role and capabilities of the community sector in achieving these objectives (whole-of-community);
 - The role and capabilities of young people and their families in achieving these objectives (whole-of-community);
 - The outcomes measures and performance indicators Government agencies and community providers will pursue in order to collectively contribute to the objectives;
 - The governance arrangements for the plan which reflect a whole-of-Government and whole-of-community approach, and allow for meaningful participation of Aboriginal and Torres Strait Islander people;
 - A commitment to improving diversionary outcomes for young Aboriginal and Torres Strait Islander people;
 - A commitment to continuous improvement through evaluation, action learning and innovation; and
 - The relationship between this strategy and the Canberra Social Plan, the CSD service delivery platform, the ACT Children's Plan 2010-2014, the ACT Young People's Plan 2009-2014, the ACT Prevention Plan (recommended above), the YFS Framework, and the ACT Aboriginal Justice Agreement 2010-2013.

Recommendation 7.31: The ACT Government works with key stakeholders to develop an ACT Diversion Plan.

121 Murphy, P., Victorsen, D., & Richards, S., *Consultations: Towards a Diversionary Framework for the ACT Discussion Paper*, Noetic Solutions, April 2011 (2011) 32.

122 Ibid 33.

7.9 Justice reinvestment

- 7.9.1 The ACT Government is expecting a great deal from an improved diversionary framework. The ACT Budget for 2011-2012 sees the forecasted expenditure on 'enhanced youth justice services' at Bimberi dramatically fall by almost two thirds, from \$1,435,000 in 2013 to \$538,000 in 2015. The Government believes this reduction in expenditure will be driven by the effectiveness of the diversionary framework, reducing the number of young people at Bimberi, particularly those on remand. The Commission is concerned about how realistic these expectations are and urges the Government to retain the 2013 levels of expenditure for at least a further two years and reduce the projected expenditure on a more graduated sliding scale.
- 7.9.2 The anticipated budget savings generated by effective diversion strategies gives rise to the consideration of a justice reinvestment approach in ACT. As the name suggests, justice reinvestment, is premised on reinvesting public funds currently allocated to dealing with the consequences of crime, and redirecting them to address the causes of crime through investment in prevention and diversion strategies. Evidence from jurisdictions who have adapted justice reinvestment indicates that justice investment is an effective means of achieving measureable benefits in reduced crime, reduced cost to Government, and the associated long term benefits to the community.

Evidence base

- 7.9.3 Justice reinvestment as a social policy was pioneered in the United States and a body of evidence now exists to demonstrate the effectiveness of the approach. In their report to the NSW Government, Noetic Solutions summarised the US evidence in the following way:
- 'The avoidance of future prison construction in Washington State through evidence based options for adult corrections programs, juvenile corrections programs, and prevention has saved approximately \$2 billion and reduced crime rates. Justice reinvestment has been adopted in a number of states including Arizona, Connecticut, Kansas, Michigan, Nevada, New Hampshire, Ohio, Pennsylvania, Rhode Island, Texas, Vermont and Wisconsin. For example, Kansas has experienced a 7.5% reduction in their prison population, and the re-offending rate for people on parole has dropped by 35% since adopting Justice Reinvestment. Additionally, Oregon has reduced youth incarceration by 72%, which is the biggest ever decrease in juvenile detention according to the National Centre for Juvenile Justice.'*¹²³
- 7.9.4 A major publication produced in the United Kingdom, *Backing the Future*, makes a compelling case for significant investment in prevention services for children and young people. It argues that targeted interventions for the most vulnerable children will deliver wide benefits to society, reduce the need to deal with the impact of problems later, and break the intergenerational cycle of deprivation.¹²⁴ Importantly, the evidence shows that the most effective programs are those delivered and administered in the community, as opposed to the youth justice systems.
- 7.9.5 In practice, effective justice reinvestment is the integrated investment in and delivery of programs such as: nurse home visits, mental health assessments for new mothers, parenting education, two days a week of early education before starting kindergarten, restorative justice for low-risk offenders, Aggression Replacement Training, Multi-systemic Therapy, Functional Family Therapy and Multidimensional Treatment Foster Care and youth drug courts.¹²⁵
- 7.9.6 Effective implementation of justice reinvestment programs requires a commitment to long term reinvestment and staged implementation. The Noetic Report to the NSW Government stated:
- 'A Justice Reinvestment approach will have the greatest return on investment over an extended timeframe such as 10 years. This is because the majority of diverted funds will target earlier intervention, including broader care and protection issues for children and families. This will have a greater likelihood of preventing children and young people from entering the juvenile justice system, but will of course have a longer lead time to realise the benefits of the investment.'*¹²⁶
- 7.9.7 The UK's *Backing the Future* report recommends a staged approach to implementation, whereby immediate investment is first made in young people at high risk, delivering short term results. Subsequent to that, investments are made to embed and broaden the improvements through deeper structural change.

123 Murphy, P., McGinness, P., Balmarks, A., McDermott, T., and Corriea, M., *A Strategic Review of the New South Wales Juvenile Justice System: Report to the Minister for Juvenile Justice*, Noetic Solutions (2010) 190.

124 Murphy, P., McGinness, P., Balmarks, A., McDermott, T., and Corriea, M., *A Strategic Review of the New South Wales Juvenile Justice System: Report to the Minister for Juvenile Justice*, Noetic Solutions (2010) 190.

125 Ibid.

126 Ibid.

- 7.9.8 In the US, effective justice reinvestment policies have been implemented using a data-driven four phase approach that comprises:
- **Step 1: Analyse.** Reviewing detention admission data to determine what is driving increases in the population. Geographic analysis is used to identify communities that have disproportionate numbers in detention, and how money is being spent on programs and services.
 - **Step 2: Provide.** Generating various options that consider the characteristics of the state's justice system and tailor them to better manage the growth in detention population and increase public safety. These options include strategies to prevent offending, reduce re-offending, focus community-supervision and holding offenders accountable for the successful completion of programs such as drug treatment and job training.
 - **Step 3 Quantify.** Determine how much can be saved, and how much investment can be avoided, through adopting options identified in Step 2. Plans are developed for reinvesting a portion of these savings in new or enhanced initiatives in local communities.
 - **Step 4: Measure.** Setting performance measures and projected outcomes, for example, costs saved or avoided, re-offending rates, and indicators of community capacity. This may also involve establishing systems that can collect and analyse data and provide periodic reports to policy makers. These reports can be used to determine whether initiatives are being implemented effectively, and as a result, expected benefits are being realised, to determine whether adjustments need to be made.¹²⁷

The potential application of justice reinvestment in the ACT

- 7.9.9 A number of participants in the Review advocated for the adoption of a justice reinvestment approach in the ACT. One participant felt:
- 'we should have invested in the youth justice system as a whole before building a new detention centre. Bimberi was seen as the shining light of the youth justice system but detention alone can never achieve the goals of youth justice. We need to look at early intervention and intervention at all stages before incarceration, every avenue to keep young people out of detention. I think there has been an investment in detention at the expense of investment in community services. We need avenues for early support. The Territory as a whole needs a plan for youth justice. We need to review and invest in community services and determine what should be provided by government and what could be done in the community.'*
- 7.9.10 In the Commission's view, justice reinvestment is a viable policy option for the ACT. The size of the ACT jurisdiction and the anticipated budget savings from custodial services as a result of effective diversionary strategies are such that a reorienting of policy and programs is not only possible, but likely to be easier and more effective than in larger jurisdictions. If a justice reinvestment approach were adopted in the ACT, the Commission anticipates significant benefits being realised, namely:
- Long term cost savings for the ACT Government and community;
 - More effective supports and resources being targeted to children, young people and families at risk of social exclusion;
 - Targeted investment of resources in children and young people at greater risk of offending ;
 - A safer and more cohesive community through a reduction in offending and re-offending rates;
 - A reduction in the number of young people in detention, which will prevent a repeat of the difficult circumstances within Bimberi last year; and
 - A reduction in the over-representation of Aboriginal and Torres Strait Islander young people in detention and community supervision.
- 7.9.11 The Commission views the commissioning of this Review into the ACT youth justice system as a unique opportunity for the ACT Government to signal a change in justice policy by adopting a justice reinvestment approach. In the Commission's view, investing over the long term in an integrated prevention and diversion strategy will provide the best opportunity to reduce offending (and re-offending) and deliver significant long term benefits to the ACT community.

Recommendation 7.32: The ACT Government adopt a long-term Justice Reinvestment Strategy that addresses the underlying causes of crime.

127 Murphy, P., McGinness, P., Balmarks, A., McDermott, T., and Corriea, M., *A Strategic Review of the New South Wales Juvenile Justice System: Report to the Minister for Juvenile Justice*, Noetic Solutions (2010) 190.

7.9.12 In particular, the Commission anticipates significant benefits would flow to the ACT's Aboriginal and Torres Strait Islander community. Aboriginal and Torres Strait Islander young people are over-represented in the ACT in both community supervision and detention, and under-represented in their access to diversionary options. A justice reinvestment response would allow for a specific, partnership response to address these circumstances. The foundations for such a partnership response are already laid by:

- The work being undertaken by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) to progress justice reinvestment within the ACT; and
- The existing commitment and mechanisms created by the 2010 released *ACT Aboriginal Justice Agreement 2010-2013*.

7.9.13 In the Commission's view, a specific justice reinvestment response for the Aboriginal and Torres Strait Islander community must:

- Be designed and delivered in partnership with the Aboriginal and Torres Strait Islander community; and
- Must be informed by a clear understanding of the current levels of investment in the programs and services currently being delivered to the Aboriginal and Torres Strait Islander community, including levels of service engagement.

Recommendation 7.33: The ACT Government develop meaningful mechanisms to partner with Aboriginal and Torres Strait Islander communities to design and deliver a long-term Justice Reinvestment Strategy that will reduce offending by Aboriginal and Torres Strait Islander young people. Consideration be given to conducting a thorough 'mapping' of all programs and services offered to Aboriginal and Torres Strait Islander communities, including the level of engagement by Aboriginal and Torres Strait Islander people.



Chapter 8: Case Management

A Quality Youth Justice System Is Supported By An Effective Case Management System

Terms of Reference:

- Programs for education and training, health and well being and rehabilitation
- Throughcare and aftercare services provided to detainees and CYJ clients

Human Rights Standards:

- Protection of Family and Children (HR Act s.11, CROC Arts 3, 19)
- Humane Treatment (HR Act s.19)
- Right to education (POJ r.13, 38 and 39, CROC Arts 28, 29, ICESCR Art 13)
- Vocational Training and Work (POJ r.43-46, 67)

8.1 Introduction

- 8.1.1 Although there has been much debate about how it is implemented, case management is most often described as a process to coordinate the often diverse and complex roles and responsibilities organisations have with a client. Elizabeth Moore defines it as: *'A set of logical steps and a process of interaction within a service network which assure that a client receives needed services in a supportive, effective and cost efficient manner...that it is viewed, not simply as a set of practices, but a system of intervention within its specific context, with objectives, ideology, functions and structures'*¹
- 8.1.2 Experts in the youth justice field have consistently argued that positive outcomes are most likely to be achieved if supports and services are well designed, managed and implemented, and point to case management as a key tool in enabling effective collaboration and enhanced opportunities.
- 8.1.3 According to Day et al, *'Case management provides the assessment and case planning components; it sets the objectives, tasks, activities, and forms the basis for planning, sequencing or scheduling of any required tasks or interventions'*.² As such, case management helps identify what supports would be most effective and sets a plan for these supports to be provided: *'Casework often involves the application of some of the techniques understood to be effective in offender rehabilitation, and case management provides the structure in which rehabilitation interventions are offered. Both can have an impact on the success or otherwise of the intervention'*.³
- 8.1.4 In addition to having clear and well structured processes, evidence suggests that effective case management systems are also tailored to the specific needs of the individuals that they are supporting⁴.

8.2 Case management in the ACT

- 8.2.1 In 2002, RPR Consulting released a Community Services Directorate (CSD) commissioned report *Turning Lives Around* which suggested that the ACT service system was not adequately meeting the needs of young people with intensive and complex support needs because it *'was uncoordinated, crisis driven and structured around service and program models rather than the needs of the young person'*.⁵ The report strongly recommended that intensive case management systems be developed and targeted to support those young people most at risk of adverse life trajectories (including, but not limited to engagement

1 Elizabeth Moore 'Designing case management systems in juvenile justice contexts' (2004) 6, 2 Australian journal of case management, 2
2 Andrew Day, Kevin Howells & Debra Rickwood, The Victorian Juvenile Justice Rehabilitation Review (2003)
3 Andrew Day, Kevin Howells & Debra Rickwood, The Victorian Juvenile Justice Rehabilitation Review (2003)
4 Elizabeth Moore 'Designing case management systems in juvenile justice contexts' (2004) 6, 2 Australian journal of case management, 2
5 RPR Consulting *Turning Lives Around: Effective service responses for young people with intensive support needs: Final report* (2002)

with youth justice). As a result of the report, a number of CSD and community-wide projects (including reviews, workshops and community development projects) attempted to clarify and integrate case management systems and to improve broad outcomes.

- 8.2.1 At present, case management services are provided at the Bimberi Youth Justice Centre (Bimberi) and within Community Youth Justice (CYJ), as well as by a range of Government and non-government service providers, including in the education, health, mental health, alcohol and other drug, youth and family sectors.

Current limitations

- 8.2.2 Participants in this Review pointed to the potential benefits of collaborative case management processes but also highlighted the fact that until services and systems developed a shared case management framework (which includes a shared vision, goal and model) these benefits may be compromised and lead to service duplication, inconsistency and gaps.
- 8.2.3 These dangers were illustrated in the 2008 report *Lost in Transition*⁶ which examined the experiences of young people exiting youth detention in the ACT, and which showed that many young people engaged in the youth justice system were often left with little or no support, and that services and systems failed to meet their broad psychosocial and criminogenic needs. This was despite the fact that organisations had made genuine commitments to young people and that case conferences, case plans and case work supports were put into place.
- 8.2.4 In discussions during this Review with young people, families and workers, it would appear that this level of inconsistency and confusion remains.
- 8.2.5 Some of the key challenges in implementing an effective case management system identified by participants, including youth justice and community workers, and by a review of current case management documentation, include:
- **A lack of a shared vision related to case management and its provision:** participants suggested that workers from different services and professional groups (eg health, justice, care and protection, community) had different philosophical views about case management, used different language and had different expectations about how and to what end case management systems were in place;
 - **A lack of clarity around the roles of different players:** participants were often confused about the roles and responsibilities of particular stakeholders and their capacity to actively engage in case management processes.
 - **A lack of a designated key case manager or multiple case managers with divergent goals:** participants noted that in many cases young people either had multiple workers who saw themselves as 'key case managers' or had none.
 - **An excess of 'case managers' and a lack of 'case workers':** participants were concerned that there was too much of a focus on the management of plans and too little on the provision of supports to achieve the goals in the plans.
 - **Limited information sharing and poor communication:** participants noted that although assessments are conducted by workers in a variety of programs and systems (eg Looking After Children assessments, YLS/CMI assessments, CADAS assessments, CAMHS assessments), the results of these assessments are often not shared or centralised or used to shape case management systems. Similarly, significant amounts of information is stored about young people which may be of benefit to those supporting them, and there are limited opportunities to 'compare notes' and to ensure congruity of intervention.
 - **Varying degrees of professional respect:** some participants reported that they felt disregarded or disrespected by workers from other professions and that this affected their level of participation.
 - **A lack of participation by young people and their families:** some participants (including young people and families) reported that poor engagement with needs identification and decision-making led to unresponsive and ineffective case plans and poor levels of commitment to meeting expectations. We discuss this more broadly in Chapter 3 (embedded in community)
 - **Poor monitoring and evaluation:** participants noted that a lack of scrutiny, particularly at the implementation stage, sometimes limited the effectiveness of arrangements and the level of responsibility taken by various players.

6 Tim Moore, Vicky Saunders and Morag McArthur *Lost in Transition: Exploring young people's transition from youth detention in the ACT (2008)*

A way forward

- 8.2.6 The Commission understands that the Office for Children, Youth and Family Support (OCYFS) has a case management framework that has been implemented across all of its programs, and that this framework guides the provision of case management services at Bimberi and in CYJ. Although the Commission recognises the value of this framework, it believes that it requires further development and needs to:
- Articulate how it can be used to progress and operationalise the vision of the youth justice system;
 - Clarify the roles and responsibilities of the different services and organisations (both Government and non-government) from a variety of systems and sectors; and
 - Articulate how identified goals and intended outcomes are developed, achieved and monitored.
- 8.2.7 The Commission recommends that case management for young people in the youth justice system be seen as a process for enabling coordinated responses, and not a service in and of itself. An effective case management model would draw together supports and services that ultimately achieve rehabilitation and desistance, while also meeting psychosocial need. To be effective, such a model needs to be action and outcome focused rather than process oriented, and it needs to be regularly monitored and reviewed.
- 8.2.8 Key components that could shape the provision of a new case management model for Youth Justice Services include:
- **Alignment of the model to reflect the vision, goals and objectives of the proposed Youth Justice Practice Framework** (as suggested in Chapter 4 (vision)): the model needs a clear focus, and should be aligned to the principles underpinning the proposed YJPF so that sustainable outcomes can be achieved through care.
 - **The development of a single care team:** a single care team needs to be established for each young person, and exist throughout the young person's time in the youth justice system, or preferably throughout their engagement with the tertiary service system. This team could operate as a declared care team (with information sharing provisions governed by the *Children and Young People Act 2008*; CYP Act) and should include the young person, a family member or identified informal support person, a representative from each relevant organisation working with the young person, and the identified 'case manager'. The team could be expanded to include other key stakeholders identified by the young person, the family or members of the team as having a key role in achieving positive outcomes for the young person throughout their engagement with the youth justice system and beyond. As Winkworth and White discuss in their attached report (see Appendix B), there are benefits in this care team being interdisciplinary and regionally based.
 - **The development of a single case plan:** a single case plan needs to be developed which encompasses the young person's engagement across the entire youth justice system (including, but not limited to, their detention in Bimberi and their involvement with CYJ) or, preferably, across their engagement with the tertiary service system. This plan should clearly articulate who is responsible for enacting each strategy, what timeframes are expected, and what resources will be allocated. The plan should also be reviewed and evaluated on a regular basis.
 - **The appointment of a single case manager:** a single case manager needs to be identified for each young person, and be responsible for overseeing the implementation of a young person's case plan. Ideally, this case manager should remain the same for the duration of the young person's engagement with the tertiary service system, or at least while involved in youth justice.
 - **The appointment of an advocate:** the case manager should work with the young person to identify an appropriate advocate whose responsibility it is to assist the young person before, at and after case conferences in raising their needs, views and issues with the case management process.
 - **The provision of timely case conferences:** care teams need to meet regularly to discuss progress and identify and respond to emerging issues and needs. The team should also meet at pivotal points: including, for example: before court appearances; following incarceration in Bimberi; prior to exiting Bimberi; and prior to exiting the youth justice system.
 - **The development of an OCYFS-wide Memorandum of Understanding:** OCYFS needs to develop an MOU which clearly articulates how OCYFS services (including CPS, ATSSIS, CYJ, Bimberi, Turnaround and Youth Connections) work together to support the case manager throughout the young person's engagement with OCYFS services.

Recommendation 8.1: The Community Services Directorate, in consultation with key stakeholders, develop a new Youth Justice Case Management Model that includes:

- mechanisms for operationalising the Youth Justice Practice Framework
- a single care team
- a single case plan
- a single case manager
- an advocate for the young person
- timely and regular case conferences.

Recommendation 8.2: The Community Services Directorate develop a Memorandum of Understanding which clearly articulates how Office for Children, Youth and Family Support services work together to support implementation of a young person's case plan.

8.3 Case management at Bimberi

- 8.3.1 Bimberi has three case management positions as part of its client support services team, however since August 2010 the Aboriginal and Torres Strait Islander targeted position has been vacant.
- 8.3.2 Young people and families who participated in this Review often commented on the positive relationship that they had with staff with the Bimberi client support team, and that they welcomed the supports that were offered. These supports often included assisting young people to have contact with family members (via phone or in person), getting advice on personal problems, and championing their needs and wishes within the Centre.
- 8.3.3 Administratively, Bimberi case managers develop pre-sentence reports for the courts, liaise with external providers and, in a growing number of cases, provide advice to other Centre staff on behaviour management plans, incentives and strategies for achieving positive outcomes. Evidence within client files also points to case managers conducting case meetings, developing centre-based case plans and working with other stakeholders.
- 8.3.4 In such ways, Bimberi case management staff assume both pastoral and organisational roles which primarily relate to day-to-day issues and planning, and to matters confined to within the Centre.

Current limitations

- 8.3.5 The Commission recognises the positive outcomes that the Bimberi case management team has achieved for many young people within the Centre, yet is concerned that a number of the key components of best practice case management systems are missing from current practice.
- 8.3.6 Table 8.1 (below) provides an overview of an audit of Bimberi case files. The audit looked at the presence of a number of key elements of an effective case management system, as identified within CSD's own case management framework⁷ and within the youth justice literature.
- 8.3.7 In undertaking this audit, the Commission examined 15 current case files, and compared the results of this audit with a similar audit conducted by the Institute of Child Protection Studies as part of its *Lost in Transition* report. Where there was significant evidence of key elements of effective case management (documents existed that pointed to these activities) we classified them as being 'high', where only certain aspects of the task had been completed we classified them as being 'medium', and where there was little or no evidence of the activity we classified them as being low.

7 Department of Disability, Housing and Community Services 'Case Management Framework' (2006)

Table 1: Progress related to case management processes

Case Management Stage	Activity / Task	Lost in Transition audit	Commission audit	Notes on current files
Screening / Intake	Initial Assessment undertaken	High	Medium	CM notes state that assessments occur. Only some files include details of these and the assessments primarily relate to risks on admission (such as mental health problems, difficult behaviours, and relationship problems).
Assessment	Risk Factors identified	Low	Medium	CADAS, PSRs and other reports include a broad list of risks
	Protective Factors identified	Low	Low*	Some files include mention of positive family relationships. Other factors are generally not highlighted. In the small number of files that included YLS / CMI young people's risk and protective factors are clearly assessed.
Planning	Initial case plan developed (during assessment stage)	Low	Low	Case plans are often completed some time after intake.
	Participation of young people	Low	Medium	Young people are often present in case conferences and sign plans but there is limited detail as to how they are involved.
	Participation of family	Low	Medium	There are some examples of parents / siblings being present but limited detail on their level of engagement. Family feedback suggests ad hoc involvement
	Case conferences	High	High	Case conferences do occur – although their regularity and timeliness differ significantly.
	Medium term case plans developed	Medium (limited content)	Medium (limited content)	Case plans often are developed at CCs. They do not necessarily identify / respond to broad criminogenic and psychosocial needs.
	Medium term case plans – strengths identified	Low	Low	Case plans sometimes highlight achievements in education but do not identify resources available throughcare.
	Medium term case plans – supports offered	Low	Medium	Supports offered at BYJC (often within the Centre) are identified. Limited community engagement occurs.
Implementation	Programs to respond to risks / needs provided	Low	Medium	There is evidence that YP see FMH and engage in education. There is limited engagement with AOD and broad psychological supports (unrelated to MH issues) and no evidence of supports targeting issues such as sexual assault, trauma, anger management etc.
	Programs to enhance protective factors	Low	Medium	There is evidence of education programs (particularly art and music) which build on YPs strengths. However programs that prepare young people for transitions and enable them to capitalise on opportunities post-release are limited.
Monitoring & Review	Case conferences review plans and monitor outcomes	Low	Low	There is little evidence to suggest that plans are reviewed and for progress to be mapped. There is no evidence of client feedback or assessment of the level of engagement of collaborating organisations.
	Strategies are clearly articulated and achievable	Low	Medium	Strategies generally require YP to change behaviour / participate in programs. There is no evidence of organisational 'buy in' or accountability. Strategies are not as achievable as they may be when a partnership is articulated and monitored.
Evaluation	Case management processes are evaluated	Low	Low	There is some evidence to suggest that audits of files have occurred but no evidence that practice has changed significantly as a result.
Closure	Transition plan developed	Low	Medium	Some case files include transition plans. However, the ongoing issue of service 'buy-in' continues: plans do not demonstrate that parties have agreed to referrals or clear handover processes (they are often absent from meetings). CYJ & C&P plans are often different and sometimes incongruous with BYJC transition plans.
	Exit case conference	Low	High	Most young people have a case conference prior to exit. Community engagement (other than CYJ) remains limited.

- 8.3.8 The Commission acknowledges that many of the issues identified in the above table relate more to systemic and organisational challenges rather than to the performance of individual staff. Some of the challenges that we observed include:
- **Low staffing and high case loads:** even before the Aboriginal and Torres Strait Islander case management position became vacant, case managers at Bimberi appeared to be under-resourced and were inducting, assessing, coordinating and supporting up to 12 young people at a time. With increasing requirements from the courts and limited opportunities to work closely with CYJ staff, Bimberi case managers often struggled to provide face-to-face assistance and to facilitate community engagement.
 - **Breadth of brief:** staff from the client support team were attempting to undertake a wide range tasks, including: supporting the day-to-day management of young people; reporting to the court and managing young people's appearance before the court; maintaining ongoing family contacts; developing case plans and transition plans; consulting on behaviour management; advocating for young people with other professionals at the Centre; providing personal support; and conducting assessments and programs (including the CHART and YLS/CMI tools). It appears that case managers did not have time to do all this, and there is evidence to suggest that some tasks were not able to be completed.
 - **Lack of clarity around who in Youth Justice and in OCYFS was responsible for case management at different points:** there remains a lack of agreement as to who provides what to young people throughout their time in the youth justice system, including while in Bimberi. In some instances, an individual young person might have a CYJ worker, a CPS worker, a Turnaround worker, a Bimberi worker, and a NGO worker, and have five different case plans. Ironically, young people and families reported that even with this large number of workers or case managers, information, coordination, services, and supports were often limited at pivotal points, particularly on re-entry to the community.

A way forward

- 8.3.9 The Commission suggests that the model of care provided to young people while in Bimberi be reviewed to include:
- **The development of a single Bimberi support team:** a single Bimberi support team needs to be established to oversee the implementation of the young person's case plan while the young person remains in Bimberi. This team should be made up of the young person, an identified family member or support person, the young person's Bimberi support coordinator, (see below), the young person's key worker (see below), and other staff who may be working with the young person (including health, mental health, education, sports and recreation). This team should be involved in decision-making related to classification of risk and behaviour management plans, and inform administrative tasks such as the preparation of pre-sentence reports.
 - **The development of a single Bimberi support plan:** a single Bimberi support plan which deals specifically with the young person while in Bimberi needs to be developed and sit underneath the young person's case plan. This plan should include details on how Bimberi staff will support implementation of the young person's case plan, and also include details of any additional goals and needs that the young person and the Bimberi support team would like to address while the young person is in Bimberi.
 - **The appointment of a single Bimberi support coordinator:** a single support coordinator needs to be identified for each young person, and be responsible for overseeing the implementation of the young person's case plan while at Bimberi.
 - **The appointment of key workers:** the Bimberi support team should work with the young person to identify one or more Bimberi staff who will work with the young person to provide ongoing support and mentoring. Their role would primarily be informal, but would help young people to reflect on their time at the Centre, to provide feedback on their progress, and to assist manage any complaints or grievances the young person may have. This informal mentor would also help the young person manage any tensions with other staff or young people as required.
 - **The appointment of a family support and liaison officer:** As noted in Chapter 3 (embedded in community) we would recommend that family support be further integrated into the youth justice system and would advocate for a designated position to be established to help facilitate ongoing family involvement and to implement the proposed family engagement strategy suggested in Chapter 3 (embedded in community)
- 8.3.10 The Commission is aware that the ACT Government has announced the development of a youth justice system where a single case manager oversees a single case plan. The Commission supports this initiative but is of the view that there is still a role for the client services team at Bimberi to coordinate and assist young people at the Centre, particularly in regards to the areas identified above.

Recommendation 8.3: The Community Services Directorate, in consultation with key stakeholders, develop a new *Bimberi Support Model* that includes:

- a single Bimberi support team
- a single Bimberi support plan
- a single Bimberi support coordinator
- key workers for the young person.

8.4 Case management in Community Youth Justice

- 8.4.1 According to the ACT Government submission to this Report, Community Youth Justice (CYJ) *'is responsible for the supervision of children and young people placed on a court order by the ACT Children's Court or the ACT Supreme Court as well the preparation of court reports about young people as required'*.
- 8.4.2 The CYJ team is made up of 11 case managers, two team leaders and two assistant managers. However, over the past two years the Commission understands a full complement of staff has never been achieved.
- 8.4.3 Unlike in other OCYFS case management programs (eg Turnaround and Youth Connections where case loads are capped at 10 clients), each case worker in CYJ works with between 12 and 20 clients at a time and assumes responsibility for overseeing orders, ensuring compliance, assessing criminogenic need, managing external stakeholders, and facilitating programs such as CHART.

Current limitations

- 8.4.4 In interviews with CYJ workers, and key stakeholders from the broader community, a number of systemic and practice-oriented challenges were identified. Generally these related to difficulties stemming from a lack of staffing and the increasing number of young people appearing before the courts and receiving an order
- **Competing responsibilities:** as has been discussed elsewhere in this report, workers in CYJ reported a tension in managing what they believed to be two competing rather than complementary roles of care and control. Most believed that their primary responsibility was to manage and oversee young people's compliance with orders and that the add-on 'supportive' aspect of their role (which many believed was the more rewarding and the part they most preferred) could only be provided if compliance was first achieved. Writers such as Trotter⁸ challenge this dichotomy, and promote the view that a therapeutic relationship can provide a framework for clients which promotes safety, security and compliance, and can be transformative when fostered within an environment that allows such relationships to occur.
 - **Inability to provide outreach:** CYJ workers reported that due to staff shortages, limited access to government cars, and ambivalence about doing community-based work, they were often unable to do outreach support and, as a result, were unable to develop an understanding of the environments within which their clients were living, their relationships with family and friends, or their general progress.
 - **Issues with current location:** Parents, young people and CYJ workers were often critical of the requirement that young people travel to Moore Street for appointments (often through multiple bus interchanges where distractions and potential hazards were many), with one parent noting that to meet this obligation her son had to *'waste 6 hours on the bus'*. Many talked about how having to sign in and to sit in the reception area at the front of the building, or just inside, was a stressful and often humiliating experience for young people and families. Both CYJ workers and young people reported difficulty in beginning interviews after waiting in this area, with young people feeling anxious or angry and needing to calm down as a result of feeling uncomfortable and judged by the constant flow of office staff. Other workers felt that having a space in the city where young people were forced to congregate with potentially problematic peers was an issue and that decentralising CYJ was needed.
 - **Mix of young people:** CYJ staff were well aware that involvement with statutory organisations can be detrimental to low risk offenders and that every attempt needs to be in place to divert young people away from the youth justice system. They reported, however, that until the YLS/CMI tool was further operationalised and alternative providers (namely non-government youth services) were available to pick up these young people, that involvement of CYJ was inevitable.

8 Chris Trotter, *Working with Involuntary Clients* (2006)

- **Lack of discretion:** Stakeholders reported that there is a legislative discretion available in relation to breaches for post-release orders but that there is no explicit discretion in relation to breach of bail conditions. Stakeholders report that this has been interpreted by CYJ to mean that case managers could not take into account other factors related to a young person's desistance in determining whether to report a breach of bail conditions, but were bound to report in these circumstances.
- **Increased managerialism:** CYJ staff and others reported that there were increasing demands related to reporting and information management. Although they recognised the benefits of information sharing, they believed that without an effective information system (which drew together files from Bimberi and Care and Protection Services) unreasonable amounts of time was being spent trying to collate and analyse information about young people.
- **Poor planning and information sharing with Bimberi:** CYJ staff reported frustration that their relationship with Bimberi was limited and that they were often unaware of their clients' progress while in detention. They also reported that they were often not involved in transition planning, even though they would be the ones required to implement or monitor many of the strategies being developed.
- **Lack of access to young people while incarcerated:** Like other stakeholders, CYJ staff reported difficulty in maintaining relationships with young people while incarcerated at Bimberi. They reported that messages didn't get through, that visits were cancelled, and that as visiting times were restricted to between 3.00pm and 5.00pm each day (when the young people are not in school) managing contact was difficult.
- **Incongruence of philosophy and approach within OCYFS programs:** CYJ staff reported that some of the goals and strategies developed in other parts of the system did not reflect the types of goals and strategies that the legislation required them to achieve. There was a range of views as to whether CYJ staff should consider needs unrelated to a young person's criminogenic behaviour, especially when not specified in court orders. This was particularly an issue in trying to implement transition plans being developed in Bimberi.

A way forward

- 8.4.5 The Commission suggests that young people's involvement with statutory services be differentiated in relation to need, and that only those young people with medium and high level risks be managed by CYJ. In some other jurisdictions, low risk offenders are referred to non-statutory programs with increasing success. As such, the Commission would advocate that programs such as Turnaround, Youth Connections, or agencies funded through the Youth and Family Support Program assume many of the supervision and support roles currently provided by CYJ to this group. Low risk offenders would still be monitored by CYJ workers but only in relation to compliance.
- 8.4.6 The Commission is of the view that young people should not be required to participate in supervision sessions at the Moore Street office unless a more discrete entry and welcoming waiting area is made available. The Commission would also encourage CYJ to conduct more assertive outreach and to make use of other community facilities. Ultimately, the Commission agrees with Winkworth and White that regionally based multidisciplinary support teams would produce the best outcomes for young people and would recommend that such arrangements be further scoped.

Recommendation 8.4: The Community Services Directorate require that Community Youth Justice report against broad outcome based indicators (such as: achievement at school; ongoing participation in work or vocational education; minimising alcohol or other drug use) rather than focusing solely on recidivism as a measure of success.

Recommendation 8.5: The Community Services Directorate consider alternative arrangements, including the development of multidisciplinary teams, for the provision of case management services to young people supervised by Community Youth justice.

Chapter 9: Programming

A Quality Youth Justice Centre Has A Clearly Articulated Practice Framework

Relevant Terms of Reference

- Programs for education and training, health and wellbeing and rehabilitation
- Through care and aftercare services provided to detainees and CYJ clients

Relevant Human Rights Standards

- Protection of Family and Children (HR Act s.11, CROC arts 3, 19)
- Humane Treatment (HR Act s. 19)
- Right to Education (POJ r13, 38 and 39, CROC arts 28, 29, ICESCR art 13)
- Vocational Training and Work (POJ r43-46, 67)

9.1 Introduction

- 9.1.1 In the youth justice literature there is growing evidence to suggest that centres that are underpinned by particular philosophies and practice approaches are more successful in rehabilitating young people than centres that are not. For the purposes of this chapter we will talk about a Centre-wide program which encapsulates the vision and functioning of the Centre, with particular services and supports sitting below it. We will also discuss services related to education, health, mental health, and alcohol and other drug issues as they relate to this Centre-wide program.

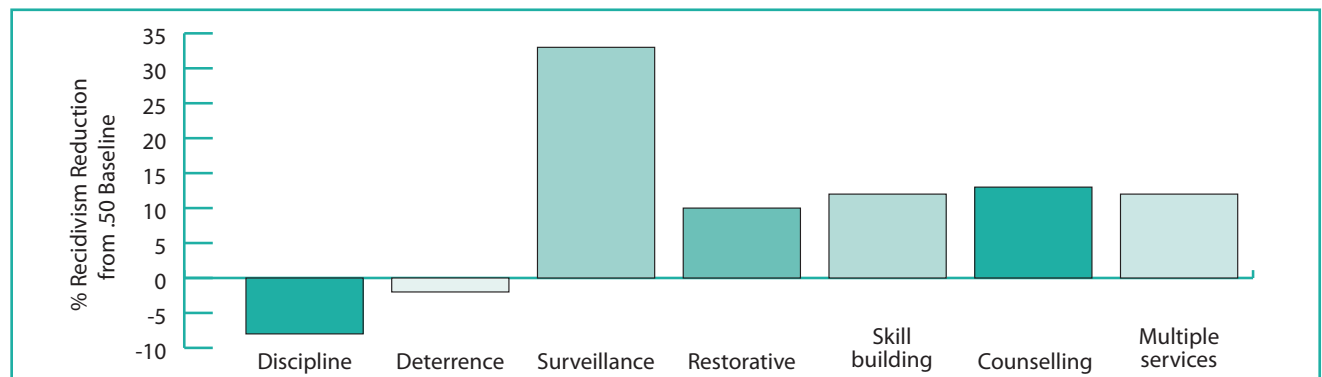
9.2 Good practice in programming

- 9.2.1 After evaluating and identifying the characteristics of effective youth justice systems in the US and abroad, David Roush points to the fact that Centres with clearly stated goals and strategies to implement the broad vision for the Centre are more effective.¹
- 9.2.2 Programs that are successful have core principles or assumptions that guide program development, decision-making and problem solving. These underpinning principles define the Centre's overarching purpose and then the way that individual program goals and content are developed, they articulate what the institution and its programs aim to accomplish and clarify the operations that it uses to accomplish these goals. These 'core values' also influence decisions about the facility, the levels of staff, and the training and the development needs staff have in implementing the program.
- 9.2.3 Although fundamental, Roush notes that:
'It is a seeming paradox that many institutions have fine programs, but no program.'
- 9.2.4 As discussed in Chapter 3 (embedded in community) it is the responsibility of the whole community to establish the overarching vision for the youth justice system. A set of program-level goals and objectives for implementing this vision is required.

¹ David Roush, Juvenile detention programming (1993) 57 *Federal Probation* 20–33.

- 9.2.5 In his meta-analysis, Lipsey² found that, in general, program visions were shaped by an overarching philosophy, which enshrined 'the global approach to altering juvenile behaviour taken by the program'. He distinguished two broad program philosophies. The first featured external control techniques for suppressing delinquency and included three categories:
- Programs oriented toward instilling discipline (e.g. paramilitary regimens in boot camps);
 - Programs aimed at deterrence through fear of the consequences of bad behaviour (e.g. prison visitation programs such as Scared Straight); and
 - Programs emphasising surveillance to detect bad behaviour (e.g. intensive probation or parole supervision).
- 9.2.6 The second contrasting philosophy facilitates personal development through improved skills development and encourages relationships and improved insight in its attempts to bring about behaviour change. This therapeutic philosophy included the following categories of programs:
- Restorative (eg restitution, victim-offender mediation);
 - Skill building (eg cognitive-behavioural techniques, social skills, academic and vocational skill building);
 - Counselling (eg individual, group, family; mentoring); and
 - Multiple coordinated services (eg case management and service brokering).
- 9.2.7 Lipsey's work suggests that models with a therapeutic, restorative and skill-building philosophy are more effective than those focused primarily on discipline, deterrence or surveillance.³ This is demonstrated in Figure 9.1, below.

Figure 9.1: Mean recidivism effects for the program categories representing control and therapeutic philosophies



9.3 A clearly articulated vision for Bimberi

- 9.3.1 It became clear in discussions with management at Bimberi that the management team had developed clear goals and ideals for the Centre, and had come some way in implementing these. Within this context, senior management spent some time considering what the Centre should achieve and reported that they wanted to create a physical environment that was conducive to positive growth and, through its programs 'create every opportunity for every young person to progress'.
- 9.3.2 Although these goals and ideals include the rhetoric of therapy and rehabilitation, management reported difficulties in achieving demonstrable outcomes due to the fact that many young people were only at the Centre for short periods of time. It was their view, and one that seems to have permeated the operations at Bimberi, that young people who were on remand were less likely to achieve therapeutic or rehabilitative outcomes and that attempting to do so was not a priority.

2 Mark W. Lipsey, 'The primary factors that characterise effective interventions with juvenile offenders: A meta-analytic overview' (2009) 4, *Victims and Offenders* 125, 124–47

3 Mark W. Lipsey, James C. Howell, Marion R. Kelly, Gabrielle Chapman, Darin Carver, *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice* (2010)

- 9.3.3 Staff at Bimberi were often able to articulate what they believed should be the purpose of the Centre (often being rehabilitation and supporting young people's growth) but did not always believe that this purpose was communicated, reinforced or enabled through training or in day-to-day operations (particularly during periods when staffing levels were low). A number of staff reported that the disconnect between their expectations of their job and the practical reality was significant and caused them to question their role.
- 9.3.4 The management team also reported challenges of motivating and enabling some youth workers to work in a way consistent with their vision, suggesting that some staff still maintained an authoritarian and punitive approach to working with young people.
- 9.3.5 At a broad level, it does not appear that rehabilitative and therapeutic goals were achieved at Bimberi for all residents. Some young people interviewed reported that the Centre was primarily a 'holding ground' and that although they often appreciated relationships formed with workers and achievements they made at school, they felt the Centre's focus was punitive rather than developmental. This view was shared by a number of staff, community partners and parents.

9.4 A focus on rehabilitation

- 9.4.1 Rehabilitation generally refers to the process of assisting offenders to change their behaviours and so preventing further offending. Day et al suggest that:
- 'Rehabilitation is used ... to refer to those types of practice in Juvenile Justice that are most directly aimed at reducing reoffending in young people and is used to refer to specific forms of intervention, rather than the social or administrative context in which interventions take place'.⁴*
- 9.4.2 Youth justice experts Altschuler and Brash stress the need to orient youth justice systems to achieve rehabilitation, and argue that programs provided in detention need to facilitate this outcome.⁵ This is in recognition of the fact that without the provision of rehabilitative programs, incarceration in and of itself may have long lasting consequences for young people and ultimately increase the likelihood of them committing further crime.
- 9.4.3 Halsey argues that this is a matter of children's rights: *'Formally, sentencing a juvenile to detention places an obligation on the state to do everything within its power to provide the structures and support believed to be integral to the rehabilitation of each resident (this much is stated in the... UN Convention on the Rights of the Child to which Australia is a signatory).'*⁶

Rehabilitation and Bimberi

- 9.4.4 Although there was a clearly articulated expectation that Bimberi would attempt to rehabilitate young people, there was a belief among many internal stakeholders that the Centre's capacity and practical commitment to do so was limited.
- 9.4.5 There was a view that Bimberi often only worked with young people for short periods of time and that rehabilitation was therefore not achievable. Bimberi management suggested that the broader system should be held more accountable for failures to rehabilitate young people realising that young people spent more time out of the Centre than within it. Some participants felt that Bimberi was judged unfairly by the failures of the broader system.
- 9.4.6 Although this might be true (most young people only spend days or weeks at the Centre) the Commission notes that many young people return to Bimberi for multiple stays over extended periods of time. As such, we believe that attempts to rehabilitate young people should be considered cumulative and that every opportunity should be taken to engage young people in rehabilitative activities.
- 9.4.7 In addition, although young people often spend short periods of time at Bimberi, they often spend years engaged with the broader youth justice system. Accordingly, rehabilitative goals need to be considered and addressed through care: while young people are incarcerated and within the community. This requires a joined-up approach to service delivery and shared responsibility for setting and achieving rehabilitative goals.
- 9.4.8 Secondly, there remains some debate about what programs were actually rehabilitative. When both current and former staff were asked about the effectiveness of Bimberi's rehabilitation programs, many asked *'what rehabilitation programs?'*

4 Andrew Day, Kevin Howells & Debra Rickwood, *The Victorian Juvenile Justice Rehabilitation Review* (2003) 1.

5 David Altschuler & Rachel Brash, *Adolescent and Teenage Offenders Confronting the Challenges and Opportunities of Reentry* (2004) Youth Violence and Juvenile Justice 2(1), 72-87

6 Mark Halsey, *Negotiating conditional release: Juvenile narratives of repeat incarceration* (2006) *Punishment and Society* 8(2) 147-81

- 9.4.9 Conversely, in the ACT Government's submission to the Review, programs focusing on transitions back into the community were seen as rehabilitative even though they generally did not address criminogenic need or consider the attitudes, criminal behaviours or environmental factors that might influence young people's reoffending. Although invaluable, these programs need to be extended to better understand and respond to rehabilitation needs.
- 9.4.10 Staff at Bimberi and in the community reported that mental health services provided at Bimberi do not, in general, consider the attitudes or beliefs that influence young people's criminality, nor do they consider ways that past experiences of abuse or trauma might relate to young people's behaviours and provide them with particular ways of coping with internal challenges. Family support is not utilised, even though programs such as multisystemic therapy has shown to have positive rehabilitative outcomes.
- 9.4.11 Although evidence based programs such as the Changing Habits and Reaching Targets (CHART) Program have been purchased for use in Bimberi (and within Community Youth Justice and Turnaround), staff reported that during 2010 the CHART Program was not consistently used because case managers did not have the time or resources to help young people work their way through the series of tasks required. The Commission was informed by CSD that in 2011 CHART is being provided to all young people at Bimberi and in Community Youth Justice who have the appropriate cognitive capacity, and who have admitted guilt. The Commission is encouraged by this development.
- 9.4.12 Despite the above, the Commission understands that young people who have not pleaded guilty or who have not yet been given a sentence, but who are remanded at Bimberi, do not participate in this program. While we recognise that the presumption of innocence warrants the exclusion of young people from offence-related programs, the Commission is of the view that programs that target psychosocial needs (which ultimately deal with criminogenic factors) rather than specific crimes may be of significant benefit to young remandees and should be sourced from other jurisdictions. This is in recognition of the fact that young remandees deserve the same level of assistance as those who are on committal and would benefit from programs that respond to their needs.
- 9.4.13 Broadly, the Commission is of the view that, in spite of its stated vision, Bimberi is not sufficiently oriented towards rehabilitation, and that significant investment is required for it to achieve rehabilitative outcomes. This view is consistent with those reported to the Review by young people, families, workers, CSD staff and members of the community:
- Young people were generally unconvinced that Bimberi had a rehabilitative function, recognising that they were there for committing crimes but highlighting that there weren't many services to help them change their behaviours. One young person said: *'The programs need to be constructive. There is no rehabilitation at all at Bimberi; they're not preparing people for the real world at all. It is like they're just marking time'*.
 - Parents also hoped for rehabilitation, with one parent remarking: *'As a parent all you want is the rehabilitation of your child. You have taken him away from us but what are you going to do with him?'* Parents felt that incarcerating children had a detrimental effect on young people's criminality, and that through the process of incarceration they became more detached and that they, as parents, were less able to help develop and nurture their child.
 - Community representatives advocated for a rehabilitative model of youth justice that helped young people to take responsibility for their criminal behaviour while providing them with opportunities to repair connections and prepare them for a positive reintegration back into their communities. As one group of providers commented: *'Rehabilitation shouldn't compound the idea that the young people are seriously wrong and need to be fixed. It needs to recognise that crime is an event and one that exists within a broader context.'* They believed that to achieve positive rehabilitation, staff should adopt a mentor-like role rather than using punitive and coercive approaches that are shown to be counter-productive. They believed that while staffing shortages continued, and while the dominant culture focused on control and containment, such rehabilitative approaches remained secondary.

9.5 Reintegration and throughcare

- 9.5.1 As rehabilitation is important, so is reintegration. In their review of the literature, Borzycki and Makkai stress the importance of continuity of care and throughcare. Continuity of care refers to the seamless provision of service as experienced by the consumer (i.e. that they feel as though supports and services are provided in a consistent and planned way, preferably by consistent and reliable workers), while throughcare refers to the period beginning at the young person's first contact with the youth justice system through to when they are exited (and sometimes beyond). As Borzycki and Makkai note:

*'Research now supports the notion that aftercare should commence before release (see Travis 2000), and so is more rightly called throughcare. In providing care that spans the gap between prison and community, gains from in-prison treatment are retained and can be applied, can be seen as relevant, and can be reinforced in daily life ...'. This is especially true for drug-involved offenders It is optimal that the treatment and services offered in prison are continued (or at least mirrored) upon release, which includes ensuring that the treatment ethos is consistent between community and custody (see Fox 2002). Continuous care naturally requires enhanced links between custodial institutions and the broader community.'*⁷

- 9.5.1 Altschuler & Brash observe that reintegration:

*'... is the means by which institutional and community corrections can be bridged, for it takes into account both what happens when an offender is incarcerated and afterward. It also involves both offender change and offender ecology. The concept of reintegration rests on the premise that public safety is ultimately accomplished by offender reformation and opportunity. Accordingly, reintegration programs aim to develop offender competencies through various types of services and to guide offenders to crime-free lifestyles in the community. The central tenets of balanced and restorative justice (competency, public safety, and accountability) are compatible with reintegration.'*⁸

- 9.5.2 In their reports on corrections systems in Australia, Borzycki and Makkai identify a number of reasons why it is imperative for correction systems to focus on prisoner reintegration. Firstly, they recognise that there has been a steady increase in prisoner populations and that the costs related to incarcerating offenders are significant. They also note that the costs continue if an offender returns to the community and continues to commit crimes: the costs to victims, of policing, of adjudicating new offences and of administering new sanctions. They point to the fact that when positive reintegration is achieved, these costs are reduced as the rates of recidivism drop, the level of services needed to sustain offenders diminishes, and the level of monitoring required is also minimised.
- 9.5.3 Other writers have also recognised the human and social costs of crime to the offender and to the victim, but also to their families and communities. They recognise that without appropriate levels of pre-entry planning and support, each of these individuals and groups can experience unnecessary stress and conflict. Providing support to families and communities through the reintegration process has shown to reduce these issues and, in doing so, improve outcomes for the offender, the family and the broader community.
- 9.5.4 Incarceration can be an unsettling and disruptive experience for young people. As a result of their removal from the community, they often lose bonds and connections with informal support networks, with normalising activities such as school and work, and from the broad service system. However, during periods of incarceration they receive varying levels of support and stability and may be given opportunities to develop skills and abilities which are often missing in the community outside. In recognition of this, Roush comments that without transition and aftercare programs, any changes achieved during periods of incarceration are unlikely to have long-lasting effects.⁹ (Transition programs move young people back into the community gradually while aftercare programs are those provided to young people in the community.)
- 9.5.5 In taking these factors into account, Mears and Travis argue that the juvenile justice system must be re-oriented and adopt the goal of ensuring the successful re-entry of young offenders as its primary consideration. They argue that this reorientation requires that re-entry planning and services become the core part of delivery of justice, and begin as soon as the young person is incarcerated and continue after they return home.¹⁰

7 Maria Borzycki & Toni Makkai *Prisoner reintegration post-release* (2007), 142

8 David Altschuler & Rachel Brash, 'Adolescent and Teenage Offenders Confronting the Challenges and Opportunities of Re-entry' (2010) 2(1) *Youth Violence and Juvenile Justice* 72-87.

9 David Roush, Juvenile detention programming (1993) 57 *Federal Probation* 20-33.

10 Daniel Mears & Jeremy Travis Youth development and reentry (2004) *Youth Violence and Juvenile Justice* 2(1): 3-20.

Throughcare and continuity

- 9.5.6 As noted elsewhere in this report, Bimberi's general lack of community embeddedness and its siloing of services and supports may have had a detrimental effect on young people during and after periods of incarceration. Rather than capitalising on the fact that young people are often willing to engage with positive adults, to begin rehabilitative programs, and to make amends for their past offending, it would appear as though Bimberi has failed to minimise the disconnection that young people experience through periods of incarceration. Additionally, a number of organisational and procedural issues have kept both internal and external services from restoring or creating new networks for young people during their time at the Centre.
- 9.5.7 At the same time, the Commission found that there was a perception among Bimberi staff and young people that external services were not willing or able to provide ongoing assistance to young people during periods of incarceration and that it was normal practice to put young people 'on hold' while inside.
- 9.5.8 In their 2008 report *Lost in Transition*, the Institute of Child Protection Studies (ICPS) found that connections with informal and formal supports were generally strained during periods of incarceration, and that the level of assistance dropped dramatically post release. They pointed to the fact that this was often traumatic for young people who frequently understood this disconnection as a form of rejection: that those with whom they believed they should have an ongoing relationship but who failed to provide ongoing support had 'turned their back' and 'let them down'. We have identified a number of these challenges in Chapter 3 (community embeddedness) and in Chapter 8 (case management).
- 9.5.9 The Commission is of the view that services working with and for young people in the youth justice system should make a commitment to providing supports to young people regardless of their incarceration, and that every effort should be made to maintain these relationships. This may require flexibility in funding guidelines and additional resources to enable services to do effective outreach.
- 9.5.10 We are of the view that a mapping of each young person's formal and informal supports would help staff at Bimberi better facilitate ongoing support, as well as help young people to identify those people who can assist them during incarceration and beyond. Instilling a commitment to facilitating, strengthening and restoring connections in throughcare, and in all programming planning, is vital.
- 9.5.11 We would also argue that when considering what programs are offered at Bimberi, the need for a mirrored service in the community should also be taken into account so that any lessons learned during periods of incarceration can be reinforced and practiced in the community so that their efficacy is maximised. This requires community agencies to make an active commitment to supporting young people not only when they are at the Centre and a 'captive audience', but also when they are in the community and not always as easily accessed and supported. Unfortunately, the Commission heard that most services had not been able to provide this level of throughcare assistance.

Transitional planning and release

- 9.5.12 As we note in Chapter 8 (case management), transition planning is fundamental to achieving positive outcomes and increasing the potential for sustained desistance post-release. Although there is evidence that transition plans for young people are developed prior to their release from Bimberi, there are a number of programming issues that were reported by stakeholders that warrant further attention, including:
- Independent living skills training;
 - Opportunities for young people to develop their confidence in living independently: in managing their behaviours, in practicing new skills, in looking after themselves, in forming and building new relationships;
 - Opportunities for young people to connect or reconnect with education and employment prior to exiting, in preparation for reintegration;
 - Opportunities for young people to establish new accommodation options and to gradually experience independent living (often for the first time);
 - Involvement of families and informal support people in the development of transition plans: in identifying potential risks, in coming up with strategies that respond to the young person's environment and family needs, and in capitalising on the skills, resources and opportunities available; and
 - A shared vision for post-release services and supports by young people, families, external service providers, community youth justice and others.

- 9.5.13 While in Bimberi, young people are not required to undertake routine living skills such as grocery shopping, paying bills, or putting the bins out. Particularly for young people who have been in custody for a long period of time, they need preparation to adjust to the change they will experience on release into the community. Additionally, some of the young people in Bimberi have also grown up in environments where they did not have the opportunity to learn more complex living skills, such as relationship skills, handling conflict, and budgeting. There is an opportunity to assist them to develop these skills while they are in Bimberi.
- 9.5.14 The Commission agrees with the participants in the Review who reported a need for a transition unit between Bimberi and independent living, and is aware that a wing of one of the existing units has recently been established to meet this need. A number of participants reported that this unit should be located outside of Bimberi and, ideally, within the community.

Promising Practice: A wing of one of the units has been painted, refurnished and re-established as a transition unit for young people prior to their release. Young people in this unit are given extra privileges and participate in unit meetings where they give input in the way that things are run on a day-to-day basis. It is understood that young people in this unit will be given opportunities to plan, budget for and cook meals and be given more opportunities to engage with the broader community.

Aftercare

- 9.5.15 Aftercare assistance is fundamental to sustaining positive outcomes. Altschuler and Brash refer to the Seven Domains of Reentry: family and living arrangement, peer groups, mental and physical health, education, vocational training and employment, substance abuse, and leisure and vocational interests. Altschuler and Brash argue that when risks are identified and redressed in relation to these domains and supports and services are put in place to achieve goals related to each of them, sustained benefits are achieved.¹¹
- 9.5.16 The Review heard numerous stories of young people being released from Bimberi to apparently inadequate or unsupported situations. While we cannot confirm all of the accounts that were reported to us, they do indicate a widespread belief that all players in the youth justice system need to provide better support for young people in the transition from Bimberi to the community and post-release to ensure that positive outcomes are achieved.
- 9.5.17 In relation to pre-release planning, participants reported a number of concerns to the Review, including:
- For some young people with complex needs, participants reported that there are no appropriate services available to meet their needs post-release;
 - For other young people, who did have prior connections with community based support services before custody, participants reported difficulty gaining permission to visit Bimberi to maintain a relationship with the young person during their detention; and
 - For those young people who are introduced to new support services when they are released from Bimberi, participants felt they should be engaged much earlier in the preparation for release, and be permitted to develop a relationship with the young person over several weeks or months before release.
- 9.5.18 In *Lost in Transition*, the ICPS further considered the challenges post-release, and noted that service delivery models were not always effective or responsive to young people's needs. In particular, they noted that a lack of outreach, a lack of services available after hours and on weekends, and an expectation that young people will seek supports and will do so during the first few weeks after leaving detention were detrimental to achieving sustainable outcomes. They argued that services need to be more assertive, more accessible and more flexible to ensure that young people are able to receive support when and where they need it, and have established relationships prior to release so that young people trust workers, understand what supports are available and have confidence that programs will meet their needs.
- 9.5.19 Although aftercare support may not be the primary responsibility of Bimberi, aftercare needs to be integrated into its program planning and be further reflected in the overarching youth justice framework.

11 David Altschuler & Rachel Brash, *Adolescent and Teenage Offenders Confronting the Challenges and Opportunities of Reentry* (2004) *Youth Violence and Juvenile Justice* 2(1), 72-87

9.6 The unintended consequences of incarceration

- 9.6.1 In addition to providing young people with new attitudes and beliefs and behavioural responses, criminologists argue that quality programs acknowledge and try to minimise, overcome and provide prisoners with opportunities to deal with the inevitable and unintended consequences of incarceration. They do so in recognition of the fact that without responding to these issues, young people will not achieve positive outcomes, and that the efficacy of programs provided during and post-care will be severely hampered if these issues are not resolved. Some of the negative impacts of incarceration include:
- Institutionalisation (which has been characterised as a dependence on institutional structure);
 - Hypervigilance, interpersonal distrust and suspicion;
 - Emotional over-control, alienation, and psychological distancing;
 - Social withdrawal and isolation;
 - Incorporation of exploitative norms of prison culture;
 - Diminished sense of self-worth and personal value; and
 - Post-traumatic stress reactions to the pains of imprisonment.
- 9.6.2 In his influential book *From Prison to Home: The Effect of Incarceration and Re-entry on Children, Families, and Communities*, Craig Haney suggests that programs attempting to better deal with these challenges must respond to a number of truths:
- The goal of penal harm must give way to a clear emphasis on prisoner-oriented rehabilitative services;
 - The adverse effects of institutionalisation must be minimised by structuring prison life to replicate, as much as possible, life in the world outside prison. A useful heuristic to follow is a simple one: 'the less like a prison, and the more like the free world, the better';
 - Prisons that give inmates opportunities to exercise pockets of autonomy and personal initiative must be created;
 - Safe correctional environments that remove the need for hyper vigilance and pervasive distrust must be maintained, ones where prisoners can establish authentic selves, and learn the norms of interdependence and cooperative trust;
 - A clear and consistent emphasis on maximising visitation and supporting contact with the outside world must be implemented, both to minimise the division between the norms of prison and those of the free world, and to discourage dysfunctional social withdrawal that is difficult to reverse upon release;
 - Program rich institutions must be established that give prisoners genuine alternative to exploitative prisoner culture in which to participate and invest, and the degraded, stigmatised status of prisoner transcended. Prisoners must be given opportunities to engage in meaningful activities, to work, and to love while incarcerated;
 - Adequate therapeutic and habilitative resources must be provided to address the needs of the large numbers of mentally ill and developmentally disabled prisoners who are now incarcerated; and
 - The increased use of supermax and other forms of extremely harsh and psychologically damaging confinement must be reversed. Strict time limits must be placed on the use of punitive isolation that approximate the much briefer periods of such confinement that once characterised American corrections, and prisoners must be screened for special vulnerability to isolation and carefully monitored so that they can be removed upon the first sign of adverse reactions.¹²

The unintended consequences of incarceration at Bimberi

- 9.6.3 In *Lost in Transition*, the ICPS reported that young people at Quamby experienced a number of unintended consequences of incarceration. Young people in that study often reported feeling institutionalised and were fearful about their return to the community. As one young person reported:
- 'You lose everything inside. You get out and you don't know how to do shit anymore. And everyone expects you to do stuff for yourself and you're like really wanting to do it but sometimes you just don't know how. And it freaks you out and you start stressing and then you get all angry at yourself and then you can't do stuff even if you wanna. You kinda need someone just saying, 'yeah that's it', not doing it for you but like letting you know you're doing the right thing or going 'how about you try this' and helping you cos its completely different out, hey. Nothing like inside. And the longer you're in the harder it is.'*
- 9.6.4 Young people who spoke with the Review reported similar concerns: that they felt as though they were losing their skills while inside, and that they needed opportunities to develop and learn. Others were fearful of their return to the community, believing that they didn't know how to relate to others anymore and that were afraid of how they might respond to people on the outside.

12 Craig Haney, *From Prison to Home: The Effect of Incarceration and Re-entry on Children, Families, and Communities* (2002)

- 9.6.5 One worker told us that a young person had asked them whether it was possible to ask the court not to release them because they didn't want to go home. The young person said that they could better manage their feelings inside Bimberi because there were limits in place, and that if they acted out there would be immediate consequences. They didn't believe that they could deal with stressors in the community. The young person reported that although they were unhappy with being in detention, at least they understood the environment.
- 9.6.6 Young people need to be provided opportunities to gradually return to the community, to sustain and foster new relationships with adults and peers who can sustain them through their engagement with the system and out of it and provide them opportunities to develop and practice skills that can alleviate these impacts and help them cope with the challenges outside.

9.7 Informed by effective assessments

- 9.7.1 In line with the What Works principles, Roush¹³ argues that in completing its broad vision, a jurisdiction must identify the characteristics of its juvenile offender population and target programs and services that are best suited to the group of young people it is working with.
- 9.7.2 Assessment is therefore a key task in ensuring the best match between offender needs and facility programs and services. As assessment of individuals should shape case planning, an assessment of the needs of the target population provides the Centre with a good picture of what types of services might be needed and a framework on which to assess the Centre's success. As Day et al note:

*'Information from the risk/needs assessments should be used not only to plan individual service plans, but also to identify levels of need in specific groups in the juvenile justice client population. This would offer important information about areas of unmet need, which could then be mapped against existing service provision. Mapping unmet need will be of particular value in developing services for young women, younger boys, Indigenous and disabled juvenile justice clients. The development of an information management system that includes details of the assessment would assist this task of population monitoring.'*¹⁴

The implementation of needs assessment

- 9.7.3 At present there is limited evidence that assessment of young people's criminogenic needs at the individual level occurs, let alone at the population level. As discussed in Chapter 15 (management and oversight), data collection in Bimberi is limited, which has meant that rigorous analysis has not been possible. Instead, it would appear as though broad needs assessment has been based on intuition rather than on any systematically gathered evidence.
- 9.7.4 The Commission notes that CSD has purchased the Youth Level of Service / Case Management Index (YLS/CMI)¹⁵ tool to better inform the assessment of young people and is encouraged that it is slowly being used in practice. According to the Government Submission:

'A significant practice change occurred in youth justice practice in the ACT in 2009/2010 with the implementation of the Youth Level of Service/Case Management Inventory (YLS/CMI). The YLS/CMI is an evidence-based risk assessment tool designed to measure a range of static and dynamic factors known to be related to recidivism which also includes psychosocial factors such as prior and current offences/dispositions, family circumstances/parenting, education/employment, peer relations, substance abuse, leisure/recreation, personality/behaviour and attitude/orientation. The results of the YLS/CMI provide a rating (low, moderate, high) for each of the eight criminogenic needs which, in conjunction with the young person's strengths, other needs, any special considerations, provides an overall estimation of the young person's likelihood of re-offending.'

13 David W. Roush, Construction, Operations, and Staff Training for Juvenile Confinement Facilities (2000)

14 Andrew Day, Kevin Howells & Debra Rickwood, The Victorian Juvenile Justice Rehabilitation Review (2003)

15 The Youth Level of Service/Case Management Inventory (YLS/CMI) is a risk/needs assessment and a case management tool combined into one convenient system. According to its creators, the YLS/CMI helps probation officers, youth workers, psychologists, and social workers identify the youth's major needs, strengths, barriers, and incentives; select the most appropriate goals for him or her; and produce an effective case management plan.

- 9.7.5 The Commission is of the view that when the YLS /CML tool has been implemented more broadly, Bimberi will have a better understanding of emerging trends. While such tools are not being used, it would appear as though programs are developed based on the interests, skills and abilities of the current staff or external providers supporting the Centre rather than on the needs of the particular client group. The Commission understands that only one staff member at Bimberi is currently accredited to administer YLS/CML, yet also understands that more staff are to be trained in 2011.
- 9.7.6 As discussed in Chapter 6 (evidence based): better processes of information dissemination would also help Bimberi, and the broader youth justice system, to more adequately respond to young people's needs.

Targeting of services to those most likely to benefit from supports

- 9.7.7 There is strong evidence to suggest that youth justice systems and youth justice centres that target their programs to those most at risk are most successful. As Lipsey comments:
- 'In practical terms, juvenile justice systems will generally get more delinquency reduction benefits from their intervention dollars by focusing their most effective and costly interventions on higher risk juveniles and providing less intensive and costly interventions to the lower risk cases.'*¹⁶
- 9.7.8 In recommending a best model for rehabilitation of young people in Victoria, Day et al¹⁷ suggest that a hierarchy of support needs to be developed which includes a differentiated response for young people with different levels of risk and need. The model (see Table 9.1 below) is cumulative (all young people should be provided with support at Level 1, then those with more needs at Level 2 and so on) and recognises that those young people who are most high risk, need their basic health and social needs to be met before more intensive programs can be effective. Day et al argue that effective programs recognise that such supports need to be provided so that a basic level of functioning necessary for offence-focussed rehabilitation can take place. They also argue that for higher risk offenders these broader needs should be prioritised before criminogenic-focused interventions are delivered.
- 9.7.9 In this model, the first level of service delivery focuses solely on sentence or order administration for those young people who are assessed as being low-risk offenders. This group of young people, who generally do not end up in detention for extended periods of time, are most unlikely to reoffend but are most susceptible to experiencing detrimental effects of engagement with the system if their involvement is significant.
- 9.7.10 These low-risk offenders will only require supervision and monitoring (Level 1) from the youth justice system, but will sometimes need family support to achieve positive outcomes. In some circumstances young people will also need assistance in integrating into their communities (Level 2), with programs addressing issues that might be obstructive: such as employment, accommodation, education and leisure.

Table 9.1: Framework for rehabilitation

Level of Case Management Service Delivery	Support Needs
Level One	Sentence administration
Level Two	Social integration programs
Level Three	Offence focussed criminogenic programs for medium/high risk
Level Four	Intensive programs for serious and persistent offenders

- 9.7.11 For those young people who are medium or high risk of offending, interventions at Levels 3 or 4 are required. Programs at these levels should aim to reduce the risk of offending and explicitly target criminogenic needs. Examples of these needs include substance abuse, pro-offending attitudes, criminal associations, and negative family influence. Day et al argue that, as a minimum, systematic interventions should target these needs.

16 Mark W. Lipsey, James C. Howell, Marion R. Kelly, Gabrielle Chapman, Darin Carver *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice* (2010)

17 Andrew Day, Kevin Howells and Debra Rickwood, *The Victorian Juvenile Justice Rehabilitation Review*. Melbourne, Victoria: Department of Human Services, Victorian Government. (2003).

- 9.7.12 In Day et al's hierarchy, only the highest risk and most persistent offenders should be provided with interventions at Level 4, which will generally target particular offending groups such as serious and persistent violent or sexual offenders.

Targeting of programs at Bimberi

- 9.7.13 Due to limited assessment and program planning processes within Bimberi, there is little evidence to suggest that rehabilitative programs are targeted to the needs of specific groups of young people. The Commission recognises that in a small jurisdiction like the ACT developing programs that are both targeted but cost efficient can be costly, but would suggest that more collaborative approaches to service delivery might be useful. Engaging young people who might have experienced sexual assault in community based counselling programs might be an example of this type of approach.

9.8 Development of an ample program at Bimberi

- 9.8.1 The most effective Centres are those where programs are 'ample' and where young people are involved in positive, prosocial activities for as many as 14 hours a day¹⁸. In addition to being enjoyable, the most effective programs are physically and emotionally challenging and foster a sense of mastery and belonging¹⁹ among participants (young people and staff alike). They are purposeful, educational and helpful and provide positive outlets for young people's energy.
- 9.8.2 Programs that mix leisure and sports programs with education and vocational sessions are shown to be effective. According to Day et al, *'Leisure/sports programs are aimed at fostering socially-valued skills, increasing self-esteem, self-discipline, responsibility and respect for rules. Another rationale is that these types of activities can provide youth with an acceptable outlet for releasing energy and pent-up frustration, thus reducing their need to offend. However, meta-analyses suggest that these types of programs are not very effective in reducing recidivism amongst participants.'*²⁰
- 9.8.3 According to the Government Submission:
'Central to a young person's experience at Bimberi is a structured day that reflects as closely as possible accepted standards in the broader community. Young people leave their units (residence) in the morning and spend the day at programs (school or vocational training). Morning tea, lunch, [and] afternoon tea are all held within the town square rather than in individual units. The 'day' also includes recreational and physical activities. As far as possible, disruptions to a young person's education and programming are minimised by structuring visits after school hours.'
- 9.8.4 At Bimberi, young people are engaged in school-based programs for six hours each day. We will discuss the nature of this involvement in Chapter 12 (education) but recognise that the Murrumbidgee Education and Training Centre is well valued by young people in the Centre.
- 9.8.5 In addition, a number of limited services and supports are provided to young people in the areas of health, alcohol and other drugs, cultural literacy and art, music and recreation. However, the Commission would make the observation that other than the educational programs, there are not many opportunities for young people to engage in programs which respond to their criminogenic or psychosocial needs or prepare them for positive re-entry into the community. This observation was reflected in submissions from young people, families, staff and community organisations.
- 9.8.6 The Commission recognises that in 2011 a number of programs (primarily a program run by Nutrition Australia and the barista course run internally) were implemented, and that there was an increase in the number of organisations entering the Centre. However, the programs that were offered were often only made available to a small group of young people for short periods of time and rarely addressed risks or needs.²¹

18 David W. Roush *Construction, Operations, and Staff Training for Juvenile Confinement Facilities* (2000) U.S. Department of Justice Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention: Washington

19 Jeffrey Butts, Gordon Bazemore & Aundra Saa Meroe *Positive youth justice—Framing justice interventions using the concepts of positive youth development* (2010)

20 Andrew Day, Kevin Howells & Debra Rickwood, *The Victorian Juvenile Justice Rehabilitation Review* (2003)

21 In July 2011, DCS provided the Commission with a list of organisations that entered Bimberi in 2010-11 but there was no detail as to what these organisations provided. The Commission is aware, in fact, that many of the listed organisations do not provide programs, per se, and is of the view that their involvement at the Centre was often related to meetings with Centre staff and participation in case conferences. Although this involvement is beneficial to the Centre it does not relate to the discussion here.

Young people reported sporting activities (primarily playing football); vocational activities (such as the Barista course, bricklaying and construction); art; music; metalwork; and woodwork classes as being some of the best programs they completed while at the Centre.

- 9.8.7 However, almost 90% of the young people reported that there were not enough things to do at Bimberi (n=16). Some reported wanting more cooking and life-skills courses, while others reported wanting opportunities to do science and youth work classes.
- 9.8.8 More than half of young people reported that they were able to spend time out-doors, use the pool, read the paper, and watch the news each day. All young people reported that they were never able to access the internet, with most reporting that they were unable to use computers or to play table tennis.
- 9.8.9 Parents reported that they did not believe that programs were sufficient during the school term, with their children acting up as a result of feeling bored and unoccupied. They also reported that during school holidays, when educational programs were generally not offered, young people were left for hours with little to do. Parents reported that they recognised that this may be the result of low staffing levels, but suggested that critical incidents would be reduced significantly if programs that enable teamwork, a sense of collective responsibility and strong relationships between staff and young people were provided.

9.9 Relationship-based practice

- 9.9.1 There is a growing body of literature that asserts the importance of relationship-based practice in youth justice. As noted in Chapter 5 (staffing), having a safe and secure group of adults who can help guide, challenge and support young people during incarceration and on return to the community is vital in achieving positive outcomes and is seen as the most valued characteristic of programs and workers identified by young people.²²
- 9.9.2 The rehabilitative function of relationships has been well considered by youth justice expert Dr Larry Brendtro and members of the Reclaiming Youth International network, who assert that to be able to learn new strategies for dealing with pain-based stressors (which are often clustered around the young people who are part of the youth justice system) and to have the confidence to draw from them, young people need to have strong mentors who both model the behaviour, beliefs and attitudes being promoted and provide them with the rationale for adopting them²³.
- 9.9.3 Meta-analyses reflect this view. They generally find that staff in effective programs are active: they model behaviours and skills, demonstrate prosocial attitudes and beliefs and affirm young people as they achieve tasks, demonstrate positive interactions and work effectively with others. The relationship between workers and young people, which is sometimes called a 'working alliance',²⁴ is fundamental and is the cornerstone of rehabilitative efforts. Workers must have faith in young people and constantly reassure them that success is possible.
- 9.9.4 As McIvor and Barry found in 1998 (as illustrated in Figure 9.2, below), these characteristics are supported by prisoners of all ages.

22 Shawn Marsh & William Evans 'Personal and Social Characteristics Associated with Perceived Likelihood of Success in Incarcerated Youth', *Residential Therapy for Children and Youth* 27, (2010) 304-313

23 Alistair Lemmon 'The bleeding obvious: Long-term support reconnects at-risk young people' (2008) 27(1), *Youth Studies Australia*, 9-16; Larry Brendtro, Martin Brokenleg & Steve Van Bockern *Reclaiming youth at risk: Our hope for the future* (1990)

24 Ros Burnett and Fergus McNeill 'The place of the officer-offender relationship in assisting offenders to desist', *Probation Journal* 52 (2005) 221

Figure 9.2: Offenders' perceptions of the helpful and unhelpful features of the social worker²⁵

Helpful			
Practical Support	Gave me options	Easy to talk to	Emotional support
	Put things in perspective	Calm, relaxed, friendly	
	Knowledgeable	Treated as equal/with respect	
	Influential	A good listener	
		Tactful/trustworthy	
		A friend	
		Straightforward	
		A motivator	
	Inexperienced	Domineering	
	Did not understand the problem	Too busy	
	Too 'empowering'	Too intrusive	
		Treated as a child	
		Did not care	
Unhelpful			

Relationship-based practice at Bimberi

- 9.9.5 Throughout the Review, the Commission was impressed by the positive nature of relationships demonstrated between most Bimberi youth workers and young people.

Promising Practice: In a trip in 2009, international youth justice expert Dr Larry Brendtro was reported in saying that Bimberi demonstrated the type of relationships that all youth justice workers should aspire to develop and that the culture was conducive to therapeutic outcomes.

- 9.9.6 However the Commission was concerned to note that a small number of staff and staffing practices did not reflect this approach.
- 9.9.7 Workers at Bimberi, parents, government and non-government providers and community members also pointed to the limitations in helping young people develop and sustain relationships with positive adults outside of the Centre and saw this as a major weakness within the program. Service providers who had positive relationships with individual young people reported that they often were not invited to sustain their work and that this had a detrimental impact post-release.
- 9.9.8 These stakeholders also reported feeling unsupported by Bimberi in their attempts to connect and remained connected to young people during periods of incarceration. Many suggested that by providing programs to young people while inside relationships were forged and the likelihood that young people would seek them out post exiting would be increased substantially. This view was not supported by former management who appeared ambivalent about the value of services visiting the Centre primarily to meet young people, to build rapport and to communicate programs that might be available on the outside.

25 Monica Barry, 'The Mentor/Monitor Debate in Criminal Justice: 'What Works' for Offenders' *British Journal of Social Work* 30 (2000), 575–595

- 9.9.9 Parents also reported that it was difficult to support young people through their engagement with Bimberi and that they faced challenges in having some of the children's natural support networks (including coaches, trusted family members, teachers etc) maintain an ongoing relationship for similar reasons.

Fostering positive peer cultures

- 9.9.10 Recognising the important part that peers play in the life of young people but also their value in challenging and providing young people with socially acceptable ways of responding to challenges, researchers have promoted peer-based programs²⁶. These recognise that young people are more motivated to behave appropriately when other young people are involved in decision-making about an intervention and when (using positive strategies) they keep each other accountable to achieving positive outcomes. Through this process, young people develop a greater sense of self-worth when they help each other and are given opportunities for their skills and knowledge to be validated within a social setting. In regards to effectiveness, Lipsey showed that group counselling and mentoring were well placed.
- 9.9.11 In the international arena, there is growing evidence to support group-based programs for young people in youth justice settings. Such programs can prevent negative subcultures and create environments within which young people can constructively participate in their treatment.
- 9.9.12 Larry Brendtro's Positive Peer Culture program, which has been implemented in a number of US correctional facilities, has shown to counter the powerful influence of negative peers by providing young people with the opportunities to develop effective social and conflict resolution skills. Staff in this program hold young people responsible for caring for themselves and their peers and reinforce effective habits by modelling caring behaviours and providing them with experiences where they can have their skills affirmed within a safe and secure environment. Young people often engage in volunteer programs and group sessions which continue post-release to ensure that lessons are reinforced and any early challenges overcome.
- 9.9.13 At present there is little evidence to suggest that positive peer interactions are supported at Bimberi at the Centre level. However, the move towards Unit-based program delivery is promising with many opportunities for smaller groups of young people to meet and to participate in group decision-making and problem-solving. The Commission understands that Dr Larry Brendtro, youth justice expert, has offered to meet with Bimberi staff to consider how positive peer cultures might be developed at the Centre and encourages CSD to consider how these might be facilitated.

Instilling these characteristics into practice

- 9.9.14 Implementing a Centre-wide program that responds to these principles and characteristics may be considered a daunting task, but it is one that can have multiple positive system-wide effects. In Missouri, for example, the youth justice system made a significant commitment to instilling in all of its Centres a culture that enabled its overarching philosophy to be ingrained in practice at all levels and graphically showed how these changes influenced long-lasting change. Centres in Missouri had less numbers of critical incidents, achieved better educational outcomes, cost less per young person and ultimately had more success in regards to reducing rates of incarceration and sustaining positive psychosocial outcomes for young people.
- 9.9.15 Underpinning their approach is a number of core beliefs including:
- *'Every young person wants to succeed—and can succeed.* No matter how serious their past crimes, and no matter how destructive their current attitudes and behaviours, all youth hunger for approval, acceptance, and achievement.
 - *Change can only result from internal choices made by the young people themselves.* Delinquent youth can't be 'scared straight'; they cannot be reformed through a military-style boot camp; and few will be deterred from crime by fear of punishment. Rather, change happens through a process that helps them to adopt more positive behaviours, seek out more positive peers, and embrace more positive goals.
 - *Relationships are critical to overcoming resistance and fostering positive change.* Young people respond best and overcome resistance most readily when they know that staff members care about them and expect them to succeed. Young people also benefit enormously both from helping and being helped by other young people in the treatment group.
 - *Young people are more likely to succeed in a safe, nurturing, and non-blaming environment.* It is critical that young people be listened to and guided by trusted adults, encouraged to try out new behaviours, and treated with patience, acceptance, and respect.

26 Larry Brendtro, L.K., and Ness Re-educating Troubled Youth: Environments for Teaching and Treatment. (1983); Wilson Wasmund 'The social climates of peer group and other residential programs' 17 (1988) Child & Youth Care Quarterly, 146–155

- *Every young person is unique.* Each young person has fallen into delinquent behaviours in response to his or her own individual circumstances, and each will make the decisions to change and grow, or not to, for his or her own personal reasons.
- *Many young people lapse into delinquency as a coping mechanism in response to earlier abuse, neglect, or trauma.* These underlying difficulties must be acknowledged and addressed before change is likely to occur.
- *Delinquent young people typically suffer from a lack of emotional maturity.* They have an absence of insight into their own behaviour patterns; an inability to distinguish between feelings and facts, perception and reality; along with an underdeveloped capacity to communicate their feelings clearly and express disagreement or anger responsibly.
- *All behaviour, no matter how maladaptive or destructive, has an underlying emotional purpose.* Therefore, the emotions expressed by young people during treatment should not be judged, lest young people withhold their feelings and lose out on crucial opportunities for personal growth.
- *Most young people entering custody have very low confidence in their ability to succeed as students, or adults, and lack exposure to mentors or positive role models.* Enabling young people to taste success in the classroom and to develop trusting relationships with staff (and other caring adults) can provide an invaluable impetus for them to embrace healthy attitudes and adopt a law-abiding lifestyle.
- *Parents and other family members remain the most crucial people in young people's lives, and the keys to their long-term success.* Families retain enormous influence over young people, for good or ill. Rebuilding family relationships is a powerful motivator for virtually every young person who enters a facility'.²⁷

9.9.16 In Chapter 4 (vision) the Commission recommended that CSD develop a statement of purpose for Bimberi, and that the statement be translated into a Bimberi practice framework with outcome measures and performance indicators. The Commission recommends that this practice framework includes a 'program framework' for Bimberi which articulates the range of targeted, evidence based, and rehabilitative programs available in Bimberi, and which:

- Clarifies the vision for the program and links it with other relevant policy and program plans;
- Outlines the values and principles that underlie an approach to working with young;
- Describes specific approaches and techniques considered fundamental to achieving the desired outcomes. This might include 'evidence based' approaches, promising practices and/or approaches believed to be effective through practice based experience;
- Identifies and describes the way that partners will work together to achieve the vision and to integrate values and principles; and
- Articulates how services and programs at Bimberi will:
 - Promote rehabilitation and positive reintegration throughcare
 - Redress negative impacts of incarceration
 - Include quality needs assessment processes
 - Respond to needs and risks
 - Target those most likely to benefit from assistance
 - Ensure that the program is ample and engaging
 - Support relationship based practice
 - Foster positive peer relationships
 - Ensure continuity of care

Recommendation 9.1: The Community Services Directorate develop a 'program framework' for Bimberi which sits within the Bimberi practice framework (see recommendation 4.11).

27 The Anne E Casey Foundation, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders* (2010)

Chapter 10: Individual Needs

A Quality Youth Justice System Responds To Individual Needs

Relevant Terms of Reference

- Programs for education and training, health and wellbeing and rehabilitation
- Through care and aftercare services provided to detainees and CYJ clients.

Relevant Human Rights Standards

- Protection of Family and Children (HR Act s.11, CROC Arts 3, 19)
- Right to Equality (HR Act s.8)
- Rights of Minorities (HR Act s.27)
- Royal Commission into Aboriginal Deaths in Custody
- Access to cultural education (UN Declaration on the Rights of Indigenous Peoples, Art 14)

10.1 What works: responsivity

- 10.1.1 In providing interventions and programs aimed at rehabilitation, the ‘what works’ literature indicates that to be successful, interventions must be responsive to individual characteristics and needs. The responsivity principle requires that interventions be implemented in a way that is tailored to the learning style of the participant and delivered in a way that maximises change using therapeutic techniques known to work.¹
- 10.1.2 Within the context of youth detention, a range of individual factors including culture, gender, sexuality, age and disability need to be considered in determining the content and delivery of programs and services offered to young people, and the management of young people within the detention environment.
- 10.1.3 This Chapter considers some of the particular needs of Aboriginal and Torres Strait Islander young people, young people from culturally and linguistically diverse backgrounds, young women, gay, lesbian and gender diverse young people, younger offenders (aged 10 to 14), young adults (aged 18 to 21) and young people with a disability or mental illness. It also briefly examines the needs of young people in out of home care. While we refer to each group separately, it is clear that these categories overlap considerably and create layers of complex needs. This Chapter outlines particular challenges in providing responsive interventions for identified categories of young people, and the current practice in ACT youth justice, with a particular focus on the programs and environment at Bimberi Youth Justice Centre (Bimberi).

10.2 Human rights standards

- 10.2.1 Section 8 of the ACT *Human Rights Act 2004* (the HR Act) provides that all people should be treated equally before the law, and everyone should be able to enjoy his or her rights without distinction or discrimination of any kind. The right to equality is further entrenched in ACT law by the ACT *Discrimination Act 1991* (the Discrimination Act) which prohibits unfavourable treatment in specified areas of public life because of a protected attribute, including disability (including health and mental health), race, sex, gender identity or sexuality.
- 10.2.2 Section 27 of the HR Act provides special protection for minority groups. The UN Human Rights Committee has identified the equivalent of this right in the *International Covenant on Civil and Political Rights* (ICCPR) as being distinct from, and in addition to, other human rights.² It also highlights the need for substantive equality, as opposed to mere formal legal equality. Section 27 is aimed at the long-term survival of cultural minorities and recognises the diversity of humanity.

1 D.A. Andrews, Ivan Zinger, Robert Hoge, James Bonta, Paul Gendreau and Francis Cullen, ‘Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis’ (1990) 28 *Criminology* 369-404.

2 United Nations Human Rights Committee, *General Comment No. 23: The rights of minorities* (Art. 27) 08/04/1994, para 1.

It is the right of those belonging to a minority group who share a common culture, religion or language to enjoy their own culture, to practise their religion, and speak their language. This right applies to everyone including those who are not citizens or permanent residents and includes an obligation to ensure effective participation of members of minority communities in decisions that affect them. However, such activities are subject to the law of the Territory and may be subject to reasonable limitations that meet the proportionality test of s. 28 of the HR Act.

10.3 Aboriginal and Torres Strait Islander Young People

- 10.3.1 As discussed in Chapter 7 (prevention and diversion), Aboriginal and Torres Strait Islander young people are dramatically over-represented at all levels of the ACT youth justice system. Current diversionary processes have not been equally accessible to Aboriginal and Torres Strait Islander young people, and the extent of over-representation of this group of young people increases at each level of the system, from initial contact with police to incarceration in Bimberi. The Australian Institute of Health and Welfare (AIHW) reported that in 2008-2009 on an average day, seven of 15 (46.6%) of young people in detention in the ACT were Aboriginal or Torres Strait Islander, and that Aboriginal and Torres Strait Islander young people were 35 times more likely to be detained than non-Indigenous young people.³ The Commission understands from discussions with the Community Services Directorate (CSD) that this over-representation of Aboriginal and Torres Strait Islander young people in detention has in fact increased in the ACT since 2009 when these statistics were last collected.
- 10.3.2 Aboriginal and Torres Strait Islander young people in the ACT are at high risk of entry into and further entrenchment in the youth justice system and should be a priority group for targeted prevention and diversion programs, as discussed in Chapter 7, as well as case management and programs in detention. However, to be effective, interventions for Aboriginal and Torres Strait Islander young people must be responsive to their criminogenic and cultural needs.
- 10.3.3 Article 14 of the United Nations Declaration on the Rights of Indigenous Peoples recognises that States must *'in conjunction with Indigenous peoples, take effective measures, in order for Indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.'*⁴
- 10.3.4 The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) in 1991 also made a number of recommendations regarding the needs of Aboriginal and Torres Strait Islander people for particular support and assistance while in custody.

Criminogenic needs

- 10.3.5 Aboriginal and Torres Strait Islander young people often experience multiple disadvantages and share a range of criminogenic risks and needs with other young people, such as family abuse or neglect, cognitive disabilities, mental health issues and drug and alcohol abuse.⁵ Noetic Solutions' *Review of Effective Practice in Juvenile Justice* (Noetic Review) singles out access to alcohol and substance abuse programs as one of the key indicators of effective practice in Aboriginal and Torres Strait Islander youth justice, as alcohol and substance abuse are strongly linked with recidivism.⁶ However, Aboriginal and Torres Strait Islander young people may also have particular criminogenic or holistic needs that are not addressed in mainstream programs. The lower life expectancies and poor health outcomes in Aboriginal and Torres Strait Islander communities mean that Aboriginal and Torres Strait Islander young people are likely to be exposed to significant stresses of bereavement and illness across extended families, in addition to the intergenerational trauma that is the legacy of the recent stolen generation,⁷ as well as historic impacts of colonisation. These young people may also have holistic rehabilitation needs relating to societal alienation and disconnection from culture. Jones argues that in addition to universal criminogenic needs, Aboriginal and Torres Strait Islander people have specific needs which must be considered in programming:
- *'Acculturation/deculturation* (not feeling part of either 'white' culture or Aboriginal culture)
 - *Separation, displacement and abandonment*
 - *Coping with discrimination*
 - *Identity issues and being bicultural*
 - *Reconnecting with spirituality and Aboriginal heritage.*⁸

3 Australian Institute of Health and Welfare, *Juvenile Justice in Australia 2008–09* (2011) 99.

4 2007, endorsed by the Australian Government in 2009.

5 See eg Andrew Day, Kevin Howells and Debra Rickwood, *The Victorian Juvenile Justice Rehabilitation Review*. (2003).

6 Noetic Solutions, *Review of Effective Practice in Juvenile Justice* (2010) 68.

7 Matthew Willis and John Patrick Moore, 'Reintegration of Indigenous Prisoners' (2008) 90 *Australian Institute of Criminology, Research and Public Policy Series*.

8 Robin Jones, 'Indigenous programming in correctional settings, A national and international literature review', (2001), paper presented at the AIC Best Practice Interventions in Corrections for Indigenous People Conference, Sydney, October 2001.

- 10.3.6 In addition, Aboriginal and Torres Strait Islander young people may face higher levels of anxiety and distress in a detention environment than other young people, and may require specific program interventions to assist them to adapt to this environment.⁹ Programs which are informed by this range of needs are thus more likely to be effective at engaging Aboriginal and Torres Strait Islander young people and meeting their holistic rehabilitation needs.
- 10.3.7 The ACT Council of Social Service (ACTCOSS) further notes in its submission the importance for Aboriginal and Torres Strait Islander young people of working with the whole family, not just the young person in isolation: *'This approach has had some good reported outcomes and links in with good practice holistic program delivery. Consideration of family needs to be broad to recognise the range of close and supportive relationships a child or young person may have with people outside of their biological family.'*

Culturally appropriate programs

- 10.3.8 The responsivity principle requires that programs be delivered in a way that is targeted and effective for participants. For Aboriginal and Torres Strait Islander young people this principle suggests that programs should be culturally appropriate, and should involve the Aboriginal and Torres Strait Islander community in the design and/or delivery of programs.
- 10.3.9 The Noetic Review proposes that:
- 'The provision of culturally relevant programs is of utmost importance in effectively addressing Indigenous youth offending. The inclusion of culturally specific elements in youth justice programs helps to reduce the sense of alienation commonly experienced by young Indigenous offenders and conveys a message of respect and community acceptance which in turn tends to improve the responsiveness of young indigenous offenders in reforming their offending behaviours. Culturally relevant programs can also benefit young offenders by providing them with a value system and sense of group identity which they are more likely to embrace and which is more likely to influence their behaviour.'*¹⁰
- 10.3.10 The development and delivery of culturally appropriate programs requires the consultation and involvement of the Aboriginal and Torres Strait Islander community and elders. As well as making programs culturally relevant, this allows young people to form connections with local community organisations, who can provide vital continued support on release. ACTCOSS notes that :
- 'It is imperative Aboriginal and Torres Strait Islander communities are consulted in the design of programs in order to ensure programs are going to be appropriate. If robust consultation and design is undertaken programs would significantly reduce levels of young Aboriginal and Torres Strait Islander peoples incarcerated and provide them with opportunities for rehabilitation.'*¹¹
- 10.3.11 It has been suggested that culturally appropriate program delivery may be more experiential, active and varied in its activities than non-Indigenous programs, which tend to be talk-focused. Jones suggests that relevant methods may include:
- *'art projects such as painting*
 - *music, song, poetry*
 - *storytelling and narrative approaches*
 - *talking circles*
 - *drama projects*
 - *dance and movement*
 - *traditional rituals and ceremonies*
 - *meditation, prayer and other spiritual elements*
 - *use of native language.'*¹²
- 10.3.12 Some concerns have been raised over the effectiveness of cognitive behavioural rehabilitation programs for Aboriginal and Torres Strait Islander people. It has been suggested that these methods *'do not encompass Aboriginal people's wisdom and knowledge'*,¹³ and *'tend to emphasise individual factors and de-emphasise contextual or cultural factors'*.¹⁴ Nevertheless, there is strong evidence for the effectiveness of such programs generally in the 'what works' literature, including in cross-cultural contexts in North America.¹⁵ It appears that programs such as anger management programs based on cognitive

9 Jessica Grainger and Geoffrey Troth 'Psychological impact of custody on the Aboriginal adolescent', (2000) 7(1) *Psychiatry, Psychology and Law*, 89-96.

10 Noetic Solutions, *Review of Effective Practice in Juvenile Justice, Report for the Minister for Juvenile Justice NSW* (2010), 68-69.

11 ACTCOSS Submission to this Review.

12 Jones 'Indigenous programming in correctional settings' above n 8.

13 Cheri Yavu-Kama-Harathunian, 'The Therapeutic Needs of Indigenous Violent and Sex Offender Males' (2002), Paper presented to the Probation and Community Corrections Conference, AIC, Perth.

14 Andrew Day, 'Reducing the risk of re-offending in Indigenous offenders: what works for whom?' (2003) 37(2) *Journal of Offender Rehabilitation*, 1-15.

15 Sandra Jo Wilson, Mark Lipsey and Haluk Soydan, 'Are mainstream programs for juvenile delinquency less effective with minority youth than majority youth? A meta analysis of outcome research', (2003), 13 no. 1 *Research on Social Work Practice* 3-26.

behavioural therapy are also helpful for Aboriginal and Torres Strait Islander people.¹⁶ The Commission is not aware of any studies regarding the effectiveness of the Changing Habits and Reaching Targets (CHART) program for Aboriginal and Torres Strait Islander young people, and we note that this program requires the completion of a series of worksheets on offending behaviours, which may not be sufficiently culturally accessible or have an engaging format. The delivery of such programs could be adapted with the involvement of Aboriginal and Torres Strait Islander experts to ensure that they are more culturally relevant.

- 10.3.13 In the Commission's view, while programs for Aboriginal and Torres Strait Islander young people should, as far as possible, be culturally appropriate, they should also be evidence based. These young people should not be denied access to mainstream programs if they best meet their particular criminogenic needs or preferences.
- 10.3.14 While programs within detention are important, it is vital that changes made in detention are supported and continued on release to the community. As Jones notes:
- 'While [continuity] is important for offenders from all ethnic backgrounds, the unique issues for Indigenous offenders suggest the need for continuity between prison programs and community programs is especially acute... Prison-based programs can do the best job in the world and the internal changes an offender has made can all be undone by the external circumstances to which he or she is released.'*¹⁷
- 10.3.15 In working with local Aboriginal and Torres Strait Islander organisations and Elders to develop and deliver culturally appropriate programs, the need for continuing programs and support in the community should be a key factor in program design and funding.

Current practice

- 10.3.16 As discussed in Chapter 9 (programming), a number of vocational and recreational programs are provided for young people at Bimberi but, historically, there has been a lack of an overarching rationale which links programs to the identified criminogenic needs of young people. Gudan Gulwan Youth Aboriginal Corporation (Gudan Gulwan) provides an ongoing Aboriginal and Torres Strait Islander art program at Bimberi. This popular program is offered to young people twice each week as part of the Murrumbidgee Education and Training Centre (METC) school curriculum. The Commission understands that this program focuses on engaging Aboriginal and Torres Strait Islander young people in Aboriginal and Torres Strait Islander art practice and informal dialogue with an Aboriginal rehabilitation support worker.

Promising Practice: The Gudan Gulwan Aboriginal Corporation provides a regular art program which is highly regarded by Aboriginal and Torres Strait Islander young people at Bimberi. A general practitioner from Winnunga Nimmitiyah health service attends the health clinic once each month and staff regularly visit Bimberi to see Aboriginal and Torres Strait Islander young people.

- 10.3.17 A general practitioner from the Aboriginal health service Winnunga Nimmitiyah (Winnunga) attends Bimberi once each month to provide health services as part of the weekly medical clinics. Workers from Winnunga also attend Bimberi on a regular basis to meet with Aboriginal and Torres Strait Islander young people to make connections and to link them to the range of health services provided at Winnunga. However, we understand that these are informal visits rather than a structured program. In addition there have been one-off programs offered as part of the school holiday recreational program, such as the break dancing program Kulture Break.
- 10.3.18 Local Aboriginal and Torres Strait Islander organisations including Gudan Gulwan and Winnunga have expressed concern about the lack of culturally appropriate programs for Aboriginal and Torres Strait Islander young people at Bimberi and noted their interest in becoming more involved in the design and delivery of programs at Bimberi.
- 10.3.19 One Aboriginal young person in Bimberi remarked in interview that:
- 'There is f*** all cultural programs or anything there. There was a NAIDOC week celebration but that was only one day out of the year, there needs to be something weekly so kids can get involved in it and feel that connection and support. The Gudan art program was good. Art and music is what keeps you sane here, it was what got me through.'*
- 10.3.20 The Commission strongly supports the continuation of the Gudan Gulwan art program and regular outreach visits from other Aboriginal and Torres Strait Islander organisations. However, it appears that there is an unmet need for further structured programs to address issues of connection to culture for Aboriginal and Torres Strait Islander young people,

16 Robyn Gilbert and Anna Wilson, 'Staying strong on the outside: improving the post-release experience of Indigenous young adults', (2009) *Indigenous Justice Clearinghouse Brief*.

17 Jones, 'Indigenous programming in correctional settings' above n 8.

and for culturally appropriate evidence based programs targeting identified criminogenic needs of these young people, including drug and alcohol, anger management and offending behaviour programs. Local Aboriginal and Torres Strait Islander organisations should be resourced to assist in the development and delivery of these programs.

Recommendation 10.1: The Community Services Directorate work with and resource local Aboriginal and Torres Strait Islander organisations to develop programs addressing specific cultural needs for Aboriginal and Torres Strait Islander young people in Bimberi.

Recommendation 10.2: The Community Services Directorate consult local Aboriginal and Torres Strait Islander organisations regarding programs addressing key criminogenic needs for Aboriginal and Torres Strait Islander young people including drug and alcohol abuse, anger management, and offending behavior, to ensure that these programs are delivered in a way that is culturally appropriate for Aboriginal and Torres Strait Islander young people.

Special needs in detention

- 10.3.21 Incarceration can have a particularly detrimental impact on Aboriginal and Torres Strait Islander young people. Day et al note that:
- '[The] needs of young Indigenous Australians, may differ from other ethnic minority groups, by virtue of the impact of colonisation and the subsequent disintegration of Indigenous cultures within Australia. Applying these models to Indigenous offenders would suggest that special efforts should be made to support Indigenous offenders whilst in custody.'*¹⁸
- 10.3.22 Research indicates that Aboriginal and Torres Strait Islander young people may experience a greater sense of anxiety about custody than non-Indigenous young people. This level of anxiety experienced was found to relate to negative beliefs about custody, and less developed coping skills, with Aboriginal and Torres Strait Islander young people generally having less feeling of control over their circumstances in custody than other young people.¹⁹
- 10.3.23 The RCIADIC made a range of important recommendations in recognition of the particular cultural needs of Aboriginal and Torres Strait Islander people in detention. The recommendations that received the most attention generally related to the accommodation needs of Aboriginal and Torres Strait Islander people in detention, particular In relation to adjoining rooms.²⁰ The RCIADIC also recommended initiatives be directed to providing a more humane environment through introducing share accommodation facilities for community living, and other means should be supported and pursued in accordance with experience and subject to security requirements.
- 10.3.24 There were several other key recommendations, including around support services, as follows:
- *'recognition [be given] to the special kinship and family obligations of Aboriginal prisoners which extend beyond the immediate family and give favourable consideration to requests for permission to attend funeral services and burials and other occasions of very special family significance.'*²¹
 - *'Aboriginal prisoners should be entitled to receive periodic visits from representatives of Aboriginal organisations, including Aboriginal Legal Services.'*²²
 - *'Aboriginal Welfare Officers [be employed] to assist Aboriginal prisoners, not only with respect to any problems they might be experiencing inside the institution but also in respect of welfare matters extending outside the institution, and that such an officer be located at or frequently visit each institution with a significant Aboriginal population.'*²³
- 10.3.25 Other important RCIADC recommendations highlighted the need to avoid technological surveillance options (in favour of human ones),²⁴ and the importance of cultural considerations in the design of detention facilities.²⁵

18 Day et al, *Victorian Rehabilitation Review* above n 5, 76.

19 Grainger and Troth 'Psychological impact of custody on the Aboriginal adolescent', above n 9.

20 Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 3, 329, rec. 144.

21 Ibid rec 171.

22 Ibid rec 172.

23 Ibid rec 173.

24 Ibid rec 139.

25 Ibid rec 253.

- 10.3.26 Day et al further suggest that the provision of peer-support and liaison officers from Aboriginal and Torres Strait Islander communities represents a reasonable response to the particular needs of Aboriginal and Torres Strait Islander people in custody.²⁶

Current practice

- 10.3.27 The policy framework for Bimberi contains an important recognition of the rights and needs of Aboriginal and Torres Strait Islander young people in custody. The *Children and Young People (Aboriginal and Torres Strait Islander Young Detainees) Policy and Procedures 2008 (No 1)*, specifically requires staff to be mindful of the impact of the policies of child removal in creating a 'stolen generation', and 'the impact that detention and separation can have, including feelings of shame and guilt and disruption to the family unit, that may be associated with being placed in custody or having a family member detained'.
- 10.3.28 The Policy recognises and seeks to implement the recommendations of the RCIADC, including the need to place Aboriginal and/or Torres Strait Islander young detainees with other Aboriginal and/or Torres Strait Islander young detainees, or with another young detainee that they know, wherever possible. The Policy provides that 'the use of conjoining rooms must be positively considered for Aboriginal and/or Torres Strait Islander young detainees on admission to the detention place'.
- 10.3.29 However, in practice, it is not clear that there has been sufficient attention given to the special needs of Aboriginal and Torres Strait Islander young people in detention at Bimberi. The Commission is concerned by reports that in fact conjoined rooms have never been used as intended for Aboriginal and Torres Strait Islander young people, as the doors between cabins have never been opened to allow access between cabins.
- 10.3.30 The use of segregation directions can have particularly negative effects on Aboriginal and Torres Strait Islander young people. As discussed in Chapter 14 (conditions of detention), the Commission is concerned that young people are being held in isolation without access to education or programs. Aboriginal organisations have raised concerns with the Commission regarding the lack of access to visit young people being held on segregation directions.
- 10.3.31 A number of Aboriginal and Torres Strait Islander participants noted the newly created role of an Indigenous Official Visitor at the Alexander Machonochie adult correctional facility, and suggested that there should also be an official visitor for Aboriginal and Torres Strait Islander young people at Bimberi. In the Commission's view this would be an important mechanism for providing accountability in relation to the management of Aboriginal and Torres Strait Islander young people in detention, and monitoring the adherence to the recommendations of the RCIADC. The Commission recommends the creation of an Aboriginal and Torres Strait Islander Official Visitor for Bimberi in Chapter 15 (oversight).
- 10.3.32 As discussed in Chapter 5 (staffing), the Commission is also concerned that the Aboriginal and Torres Strait Islander Youth Liaison Officer position has been vacant at Bimberi since August 2010, and that only one member of 56 permanent staff at Bimberi identifies as being Aboriginal or Torres Strait Islander. One Aboriginal young person who spoke to the Commission noted that 'You need an Aboriginal Elder in there to feel safe and connected to culture. You need more Aboriginal workers there.' In Chapter 5, the Commission recommended that the Aboriginal and Torres Strait Islander Youth Liaison Officer position be filled immediately.
- 10.3.33 The Commission welcomes the commitment in the ACT Government submission that:
'A fulltime Education Indigenous Liaison Officer will be recruited to support Aboriginal and Torres Strait Islander young people move from Bimberi to schooling, training or employment. METC will continue to work with case managers at Bimberi so that the student's pathway plan informs the young person case management plan, particularly the transition component.'
- 10.3.34 An Education Indigenous Liaison Officer could play an important role in providing support for schooling and vocational pathways and creating strong links between education and case management for Aboriginal and Torres Strait Islander young people at Bimberi.

10.4 Young people from culturally and linguistically diverse backgrounds

- 10.4.1 The last census, in 2006, demonstrated that people born overseas make up 22% of the population in the ACT, and 15.2% of Canberrans speak a language other than English at home.²⁷ The available evidence suggests that, in general, migrants have the lowest rates of criminality in Australia, followed by first generation Australians, with the remaining Australian-born population having the highest rates of criminality.²⁸ However, some groups of first generation migrant young people

26 Day et al, *Victorian Rehabilitation Review* above n 5, 76.

27 Australian Bureau of Statistics, *National Regional Profile: Australian Capital Territory* (2010) available at <http://www.abs.gov.au/AUSSTATS/abs@nrrp.nsf/Latestproducts/8Population/People12005-2009?opendocument&tabname=Summary&prodno=8&issue=2005-2009>.

28 Jenelle Baur, 'Future migration and policing: Examining assumptions', (2006) 5 *Australasian Centre for Policing Research Issues Series*, 3.

have been found to be over-represented in Australian youth justice systems, with young Lebanese, Turkish, Vietnamese, Indo-Chinese, New Zealanders (including Maori), and Pacific Islanders seen to be at particular risk of involvement in youth justice.²⁹ This may in part be due to the disproportionate social disadvantage experienced by these migrant communities in Australia. Young people from new and emerging communities such as Sudanese and Somali migrants may also be at risk of over-policing and subsequent involvement in the youth justice system.³⁰

- 10.4.2 The prevalence of young people from culturally and linguistically diverse (CALD) backgrounds involved in the ACT youth justice system is not readily ascertainable, as data on young people from cultural backgrounds other than Aboriginal or Torres Strait Islander is not collected in an accessible form. Other than the over-representation of Aboriginal and Torres Strait Islander young people at Bimberi, as discussed above, there do not appear to be consistent patterns related to over-representation of particular groups of young people from CALD backgrounds in detention, although at the Quamby youth justice centre at times there were several young people from Pacific Islander backgrounds.³¹

Criminogenic needs

- 10.4.3 Young people from CALD backgrounds may have a range of criminogenic and other needs. As noted by the Office of Multicultural Interests in Western Australia, CALD young people are not a homogenous group and their risks and needs will differ:

*'Like any other demographic, the needs of CALD young people are diverse ... The needs of newly-arrived CALD young people, for example, are different to the needs of second or third generation CALD young people. Refugee and Humanitarian entrants, and Family Stream entrants, experience different issues from young people who enter with their parents under the Skilled Migration stream. At-risk behaviour associated with CALD young people, furthermore, is not limited to those born outside Australia. Second and third-generation Australians are susceptible to a complex set of issues that often overlap with those of their first-generation peers. These issues include intergenerational conflict and identity issues, as well as risk factors associated with marginalisation and exclusion.'*³²

- 10.4.4 Noetic Solutions noted that some general conclusions can be drawn about the issues facing young people from CALD backgrounds in youth justice generally:

*'These include language and community barriers (including accessibility to reliable interpreters), difficulties in accessing legal services, inadequate and inappropriately targeted information, problematic relationships with police and inadequate research and evaluation of multicultural issues in juvenile justice.'*³³

- 10.4.5 Young people from CALD backgrounds who become involved in the youth justice system are likely to share a range of criminogenic needs with other young people, such as disconnection from education and employment, and alcohol and other drug use. However they may also have particular criminogenic needs relating to:

- Intergenerational conflict and family breakdown;
- Acculturative stress/cultural isolation;
- Racism and discrimination;
- Exposure to adverse life events/trauma (particularly for humanitarian migrants); and
- Limited English language proficiency.³⁴

- 10.4.6 CALD young people may experience dissonance between the values and expectations of their Australian peers and the cultural expectations of their families. The process of acculturation has the potential to cause significant intergenerational conflict, which may be exacerbated by the potentially differing speeds at which young people can adapt to a new culture and language compared with older family members. Family dynamics and traditional power structures may become disturbed when parents become dependent on their children to navigate through a new culture, which can cause frustration for both parents and young people.³⁵ Intergenerational conflict may place young people at risk of family violence or family breakdown and homelessness.

²⁹ Ibid 4.

³⁰ Australian Human Rights Commission, *African Australians: human rights and social inclusion issues project. A compendium detailing the outcomes of the community and stakeholder consultations and interviews and public submissions*, (2010) 158,160.

³¹ See eg Tim Moore, Vicky Saunders & Morag McArthur (2008) *Lost In Transition: Exploring young people's experiences of transition from youth detention in the ACT*.

³² Office of Multicultural Interests, *Not drowning, waving: Culturally and linguistically diverse young people at risk in Western Australia* (2009) 6.

³³ Noetic Solutions, *A Strategic Review of the New South Wales Juvenile Justice System*, (2010) 167.

³⁴ Office of Multicultural Interests *Not drowning, waving*, above n 32, 8.

³⁵ Ibid 10.

- 10.4.7 Young people from CALD backgrounds may also be affected by racism and discrimination, which can affect self esteem and identity. As noted in the *Wealth of All Nations* report on refugee young people:
*'Young people experiment with an emerging sense of identity through social interaction and constant feedback from others. When the host society's reaction involves racism or the under-valuing of minority groups, this feedback will be negative or at best contradictory. The ambivalent reception of the host society, combined with possible intergenerational conflict within the family, can result in extremely confusing crosspressures.'*³⁶
- 10.4.8 CALD young people may also experience discrimination in their interactions with police, due to higher visibility and stereotypes regarding ethnic young people congregating in public places. These interactions may place them at risk of greater involvement in the youth justice system. Some CALD young people may not have detailed knowledge of the Australian legal system and unwittingly become involved in offences involving matters such as driving, public transport or public order. The *Wealth of all Nations* report suggests that patterns of over-representation of certain groups of CALD young people in youth justice 'may be indicative of either actual offending patterns or particular policing practices or perhaps a combination of these factors'³⁷
- 10.4.9 CALD young people from refugee backgrounds are likely to have directly experienced trauma, or to be affected by the trauma of family members, which can be both a criminogenic need and a responsivity issue affecting the ability of these young people to develop relationships and to benefit from rehabilitation programs.
- 10.4.10 It has been suggested that protective factors for CALD young people which may mitigate the effect of criminogenic risk factors include access to social services, attachment to the community, participation in church or other community groups, strong cultural identity and ethnic pride, and community/cultural norms against violence.³⁸

Responsive programming and practice

- 10.4.11 Given the apparently small numbers of CALD young people in the ACT youth justice system and in Bimberi it is likely that the diverse cultural needs of these young people will need to be addressed through individual case management, and through linking young people with programs and services in the community, for example through Multicultural Youth Services, which provides a range of support services for migrant and refugee young people, and Companion House, which provides specific support for refugees who have experienced torture or trauma.
- 10.4.12 In addition, it is vital that all youth workers and case managers work with CALD young people in a way that is culturally sensitive and appropriate. Where a young person is not proficient in English, an appropriate interpreter must be arranged to ensure that the young person can participate in case management and programming. Workers should ensure that they develop an understanding of the particular culture of the young person, and be provided with additional training on specific cultures to meet the needs of clients.
- 10.4.13 The *Wealth of Nations Report* suggests that good practice with refugee young people (which may be appropriate for CALD young people more generally) requires an organisational commitment to integrate multiculturalism into practice, and specifically adopting:
- 'A holistic approach to identifying and responding to need;
 - Closely supported and managed referrals as part of an integrated service system;
 - Flexible and individualised service delivery;
 - Active maintenance of cultural appropriateness;
 - The involvement of family members and the development of broad community networks; and
 - Commitment by front-line staff to developing their cultural knowledge and skill in the supportive context of a 'whole of organisation' commitment to meeting the needs of [CALD] young people.'³⁹
- 10.4.14 Where possible, the employment of workers from the cultural background of young people in youth justice may be an effective way of providing culturally appropriate support and services. The employment of a number of youth workers from Pacific Islander backgrounds at Bimberi is likely to be a useful source of support for Pacific Islander young people, but needs to be complemented by Islander workers in the community to provide support to families and to assist young people transitioning from custody.

36 Louise Coventry, Carmel Guerra, David MacKenzie and Sarah Pinkney, *Wealth of all Nations, Identification of strategies to assist refugee young people in transition to independence* (2002) 39.

37 Ibid 48.

38 Lorana Bartels, 'Crime prevention programs for culturally and linguistically diverse communities in Australia' (2011), *Australian Institute of Criminology Research in Practice Report No 18*, 4.

39 Coventry et al, *Wealth of all Nations*, above n 36, 93.

- 10.4.15 Involving and supporting families of CALD young people involved in the youth justice system is particularly important, as these families may experience significant challenges in understanding the legal system and the role they can play in supporting their child through the legal process, including any period of detention. In the *Lost in Transition* report, it was noted that young people from Pacific Islander backgrounds in Quamby 'reported that unlike 'back home', family members felt quite disengaged from the process and for cultural and language-based reasons often found it difficult to understand'.⁴⁰ These family members felt disempowered by the ACT youth justice system, which was very different to the justice system in their traditional communities, where offending was seen as both an individual and a community responsibility.
- 10.4.16 Involvement of families is also critical for CALD young people experiencing intergenerational conflict, as interventions will be more effective if they involve families and communities as well as individuals. The Office of Multicultural Interests suggests that '*intensive support is required both for young people who are not coping with their families, and for families and communities, in order for all groups to learn how to deal with the young people in their communities.*'⁴¹
- 10.4.17 In Chapter 5 (staffing) the Commission makes specific recommendations regarding the need for cultural awareness training for youth workers at Bimberi and case workers in Community Youth Justice.

10.5 Young women

- 10.5.1 Young women are considerably less represented at all levels of the ACT youth justice system than young men, although the level of involvement of young women in the youth justice system in the ACT is somewhat higher than in other jurisdictions in Australia. In 2008-2009, young women made up 25% of defendants with matters finalised in the ACT Childrens Court, compared with 20% at national level. At 30 June 2009, 8.5% of young people in detention nationally were female, compared with 33.3% in the ACT, but this disparity reflects the variance in data with very small numbers in the ACT.⁴² In 2008-2009, three young women were detained at Bimberi on an average day, and data provided by the Department shows that numbers of young women have fluctuated between zero and seven since the opening of Bimberi in December 2008.⁴³ The Government Submission notes that it is not an uncommon experience in the ACT to have a single young woman in detention at Bimberi. While young women are statistically at reduced risk of involvement in the youth justice system, the low numbers of young women in the system can create challenges in providing responsive interventions and meeting their needs in the detention environment.

Human rights standards

- 10.5.2 Rule 26 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) provides that '*Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured.*'
- 10.5.3 These rights are reflected in the Discrimination Act, which prohibits discrimination on the grounds of sex, but authorises special measures taken to ensure that members of disadvantaged groups have equal opportunities to other people.⁴⁴
- 10.5.4 The human rights audit of Quamby in 2005 (2005 Quamby Audit) noted gender inequalities in the treatment of young people and recommended that female detainees receive the equivalent access to activities and training as males.

Special needs of young women

- 10.5.5 Many studies have found high levels of abuse and experiences of trauma among young women in detention. While there is no available data in the ACT, the NSW *Young People in Custody Health Survey* in 2009 found significant differences by gender for all forms of childhood abuse in the young detainees surveyed. Overall, young women were nearly twice as likely to have experienced any form of abuse as young men (81% vs 43%), and significantly more young women experienced severe childhood abuse or neglect than young men (49% vs 19%). Also eight times more young women reported sexual abuse than young men (39% vs 5%).⁴⁵ It has been suggested that among those who are exposed to trauma, young women

40 Moore et al, *Lost in Transition* (2008), above n 31, 71.

41 Office of Multicultural Interests *Not drowning, waving*, above n 32, 12.

42 Kelly Richards, Australian Institute of Criminology, *Juveniles' contact with the criminal justice system in the ACT: An overview*, (2011), Appendix A.

43 Australian Institute of Health and Welfare, *Juvenile justice in Australia 2008-09* (2011).

44 *Discrimination Act 1991* (ACT), s 27.

45 Devon Indig, Claudia Vecchiato, Leigh Haysom, Rodney Beilby, Julie Carter, Una Champion, Claire Gaskin, Eric Heller, Shalin Kumar, Natalie Mamone, Peter Muir, Paul van den Dolder, and Gilbert Whittton, *2009 NSW Young People in Custody Health Survey: Full Report*. (2011) Justice Health and Juvenile Justice. Sydney.

are more likely than young men to develop mental health problems as a result, and that unresolved trauma may be a criminogenic risk factor associated with alcohol and drug abuse, violence and other offending behaviour. Hennessey et al note that, *'For many of these adolescent females there appears to be a link between the experience of abuse and neglect, the lack of appropriate treatment, and the behaviors that led to arrest.'*⁴⁶

- 10.5.6 The Noetic Review noted the significance of abuse and trauma, among other risk factors for young women, suggesting that: *'Some of the challenges faced by young women in custody include a low socioeconomic background, poor engagement in education, a history of sexual and physical abuse and violence, neglect and/or trauma and homelessness. These risk factors generally lead to a tendency to put themselves in high risk situations. It is known that young women's offending behaviour is often related to this history and behaviour patterns, and is particularly related to substance abuse, with a large proportion of young women entering the juvenile justice system on drug-related charges.'*⁴⁷
- 10.5.7 The NSW *Young People in Custody Health Survey* supports the link between experiences of abuse and mental health issues for young women in detention, finding that young women in the 2009 sample were more than twice as likely as young men to have a diagnosis of post traumatic stress disorder (PTSD) (39% vs 17%), and to experience high levels of psychological distress (55% vs 24%). The survey also found higher levels of self harming behaviour and suicidal ideation among young women, and the authors note that: *'This finding is in keeping with data from other studies... that have shown increased numbers of female offenders presenting with psychiatric disorders and higher rates of self-harm, demonstrating the need for effective screening and provision of support for this vulnerable group.'*⁴⁸
- 10.5.8 Young women in detention are thus likely to have particular need for mental health support and programs that address the connection between trauma and offending behaviour. Day et al note that while there is a lack of research regarding gender-specific risk factors for young women, *'Applying the "what works" model to this group would suggest that particular consideration be given to the following areas of need: mental health, and support for survivors of abuse, substance use programs, and programs relating to peers.'*⁴⁹
- 10.5.9 Young women in custody are also likely to need assistance to navigate relationships with families and partners to reduce further victimisation, and to assist them to develop positive parenting skills to address intergenerational cycles of abuse. Hennessey et al argue that: *'Connection with others is a central organising feature of development in girls. Likewise, much of the trauma they face is interpersonal and relational in nature. Juvenile justice programs must help girls address complex and conflictual relationships with family members, boyfriends, and children. They should help girls negotiate gender and family roles, determine appropriate boundaries in relationships, and avoid conflict and violence in dating relationships. Programs should also assist girls to learn appropriate coping strategies and constructively explore and resolve their feelings.'*⁵⁰
- 10.5.10 Hennessey et al further suggest that treatment models for young women in custody should provide: *'developmentally reparative experiences that address not only PTSD but also issues of identity, trust, safety, body image, physical self care, affect regulation, peer group selection and engagement, and sexuality. Programs should screen for and address issues related to physical and sexual violence, HIV/AIDS, pregnancy, and drug and alcohol dependency.'*⁵¹
- 10.5.11 There is some contention as to whether gender specific programming is the best way to address identified needs of young women.⁵² Kempf-Leonard and Sample argue that although rates of abuse are higher for young women in detention, young men are also victims of abuse and require the same forms of mental health support. These authors contend that many of the qualities argued to be desirable in gender specific programs are actually features of good rehabilitation programs generally: *'Ideally, programs operate with well-trained staff members who serve as effective mentors, with a case-management plan, and with appreciation for cultural and gender diversities. Programs should be delivered in places where youths are safe and feel comfortable – probably with empathetic counselors and in sex-segregated locations, but not necessarily in geographically distinct facilities. Without exception, these gender-specific recommendations are identical to the components advocated more generally for effective youth programs.'*⁵³

46 Marianne Hennessey, Julian Ford, Karen Mahoney, Susan Ko and Christine Siegfried (2004), *Trauma among Girls in the Juvenile Justice System, Report of the National Child Traumatic Stress Network Juvenile Justice Working Group*, 4.

47 Noetic Solutions, *A Strategic Review of the NSW Juvenile Justice System* (2010) 166.

48 Indig et al, *2009 NSW Young People in Custody Health Survey*, above n. 45, 150.

49 Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5, 48.

50 Hennessey et al, *Trauma among Girls in the Juvenile Justice System*, above n 46, 4.

51 Ibid.

52 Kimberley Kempf-Leonard and Lisa Sample, 'Disparity based on sex: Is gender specific treatment warranted?' (2000) 17: 1 *Justice Quarterly*, 89-128.

53 Ibid 118.

- 10.5.12 Underlying these critiques of gender-specific programming is the practical concern that separation of programming may reduce the access of young women to mainstream programming for young men, which caters for larger numbers and is thus usually better resourced. Belknap et al note that gender specific programming may limit options for young women in practice:

*'Much of the variation in treatment and programming appears to be a result of administrators' and professional adherence to stereotyped gender roles. In general, the girls perceive the boys as getting more privileges, more space, more equipment and better treatment. For example, girls believe that boys have more educational, recreational and occupational opportunities.'*⁵⁴

- 10.5.13 As discussed below, the Commission considers that in practice, particularly in a small jurisdiction, young women may be best served by having equal access to mainstream programs, and in addition, being provided with gender-specific programs to meet specific content and responsivity needs.

Current practice

- 10.5.14 Bimberi is used as a detention facility for both young women and young men in the ACT. However, the numbers of young women are very small compared to young men. As one submission noted, *'Female residents at Bimberi continue to be young women in a young men's facility.'*⁵⁵ The Government Submission notes that:

'Unlike other jurisdictions that have separate facilities for male and female young people in detention, the ACT has only one facility. The number of female young people in detention often represents a small proportion of the overall population. The needs of female young people are often different to those of young males. Ensuring that the needs of young women are met and there is equitable access to facilities can be challenging given their small numbers.'

- 10.5.15 Young women are usually accommodated in a unit separate from young men, but may be accommodated in the same unit where they would otherwise be isolated. Young men and young women may mix during the day in education and recreational programs. As discussed in Chapter 13 (health), mental health services are provided on an individual basis at Bimberi, and some group programs are being developed. The Commission is not aware of ongoing rehabilitation-focused programs provided to young women on a gender-specific basis, although there have been a number of short term recreational programs designed to cater for particular interests of young women at Bimberi which were not being met in the mainstream programs.
- 10.5.16 Issues of gender equity at Bimberi were raised by both the young women and the young men who spoke to the Commission. Young women generally favoured greater mixing with young men, and wanted to participate in team sports and activities with young men (as it was not possible to play team sport with the small numbers of young women at Bimberi). Young women considered that their access to some facilities like table tennis and Xbox equipment was unfavourable. Conversely, in surveys and interviews conducted by the Commission, a number of young men at Bimberi expressed concern over what they perceived as more favourable treatment of young women in the application of behaviour management processes, and some were resentful of the short term recreational programs, eg craft and Zumba dancing provided for young women. A number of participants raised concerns that romantic relationships between young men and young women in custody led to conflict and jealousies among young people at Bimberi, and that young women were subjected to inappropriate sexual comments and harassment from young men. Some suggested that young women should not be held in the same facility as young men or should be completely segregated within the facility.
- 10.5.17 In the Commission's view the very small number of young women in custody in the ACT places them at a structural disadvantage compared to young men in terms of available resources for programming and services to meet their needs within the facility. In this environment it is not possible to offer young women a complete range of gender-specific education, rehabilitation and recreational programs equal to the range of programs available to young men. Within these constraints, the current model of shared education and gender neutral programming gives young women access to a greater range of opportunities, which would be lost if young women were to be separated completely from young men. We understand that this continues to be the model supported by CSD. In accordance with equality and non-discrimination rights, young women should generally be provided access on an equal basis to all of the recreational and vocational programs and facilities available to young men in custody (and in youth justice more broadly), and these programs should be designed to meet the needs and interests of all young people at Bimberi, as far as possible. In the Commission's view, although gender relations can be challenging at Bimberi, the mixing of young men and young women in this controlled environment could provide an opportunity for staff to model and support respectful gender relationships.

54 Joanne Belknap, Melissa Dunn and Kristi Holsinger, *Moving towards Juvenile Justice and Youth-Serving Systems that address the distinct experience of the adolescent female* (1997) Technical Report, Gender specific Service Work Group, Cincinnati.

55 Women's Centre for Health Matters Inc. and ACT Women and Prisons Group, Joint submission to this Review (2011).

- 10.5.18 Nevertheless, the Commission considers that there is a need for gender-specific programs to meet particular needs of young women at Bimberi. The joint submission of the Women's Centre for Health Matters Inc and the ACT Women and Prisons Group notes that: *'There are also no programs, except for art classes, that work with young women in a therapeutic way to address relationship, self-esteem and other issues.'*⁵⁶
- 10.5.19 Individualised mental health services and counselling support should be provided for both young women and young men who have been victims of abuse and trauma, but therapeutic groups dealing with issues of trauma and abuse may be more appropriately sex-segregated. In the Commission's view the particular needs and issues of young women in custody should be addressed through gender-specific programs on issues including body image, physical self care, sexuality, and respectful relationships with peers, family, partners and children. Young women should be consulted on their needs and preferences for specific programming.

Recommendation 10.3: The Community Services Directorate develop evidence based programs for young women at Bimberi to meet their specific needs on issues including body image, physical self care, sexuality, and respectful relationships with peers, family, partners and children. Young women should be consulted on their needs and preferences for specific programming.

- 10.5.20 In addition to program needs, the prevalence of abuse and trauma among young women in detention has implications for their management, and the use of procedures such as force, restraint, segregation and searching. As Hennessey et al note: *'Girls in juvenile justice settings who have trauma histories need to feel physically and psychologically safe. Many characteristics of the detention environment (seclusion, staff insensitivity, loss of privacy) can exacerbate negative feelings and feelings of loss of control among girls, resulting in suicide attempts and self-mutilation. The traditional methods of preserving order and asserting authority in these centers (especially "tough" physically confrontational approaches and the use of isolation and restraints) may backfire with female detainees who suffer from PTSD. In fact, for females with PTSD the detention experience may result in re-traumatization and/or re-victimization.'*⁵⁷
- 10.5.21 These issues are discussed in more detail in Chapter 14 (human rights). In that Chapter the Commission makes a number of recommendations to improve the practice of use of force and restraint, segregation and strip searching at Bimberi, and the need to involve mental health professionals in decisions relating to behaviour management of young people who are affected by trauma and other mental health issues.

10.6 Gay, lesbian, bisexual, transgender and intersex young people

- 10.6.1 Gay, lesbian, transgendered, bisexual and intersex (GLBTI) young people may be at increased risk of involvement in the youth justice system and may also be particularly vulnerable within the system. The Commission recognises that the spectrum of GLBTI young people is broad, covering same sex attracted young people and young people with diverse gender identities. We acknowledge that their experiences and interests cannot be assumed to be the same, however, all may be at increased risk of prejudice and discrimination within the youth justice system.
- 10.6.2 Australian studies suggest that young people who identify as having sexual attractions that are not exclusively heterosexual make up approximately 10% of the broad youth population.⁵⁸ In self reporting studies in youth justice, only 2% of young men identify as being same sex attracted, while 13% of young women do.⁵⁹ However, a number of commentators have argued that these are under-representations (particularly among young men) and that the percentage of GLBTI young people who are incarcerated most likely mirrors or is greater than that in the general population.
- 10.6.3 This proposed over-representation of same sex attracted young people has been explained by higher reported rates of surveillance and harassment from police, due to overt expression of gay or lesbian sexuality and alleged underlying homophobic attitudes present in the police, youth justice and court systems.⁶⁰ One US study, for example, found that young gay and lesbian people were *'about 40 percent more likely than other teens to be punished by school authorities, police and the courts.'*

56 Ibid. This submission notes that one example of a targeted program for young women in detention is the 'Lift Us Up, Don't Lock Us Down' program curriculum available from the Centre for Young Women's Development in the US <<http://www.cywd.org/gdap.html>>.

57 Hennessey et al *Trauma among Girls in the Juvenile Justice System*, above n 46. 5

58 Anthony Smith, Paul Agius, Anne Mitchell, Catherine Barrett and Marian Pitts *Report of the findings from the 4th National Survey of Australian Secondary Students, HIV/AIDS and Sexual Health*, (2009) La Trobe University, Melbourne.

59 Dianna Kenny, Paul Nelson, Istvan Schreiner, Christopher Jennings, Tony Butler, *Young Offenders on Community Orders: Health, Welfare and Criminogenic Needs* (2008).

60 Angela Dwyer, 'Visibly Invisible: Policing queer young people as a research gap'; (2007) Paper presented to the TASA Conference 4-7 December 2007 Auckland, New Zealand.

10.6.4 Due to the way that GLBTI young people may be mistreated by their families, schools and communities, many experience higher rates of psychosocial difficulties than others: they are more likely to attempt and complete suicide, abuse substances, leave school early, have physical and mental health problems and experience homelessness. As Curtin notes, *'it must be understood that [same sex attracted] youth are not inherently weaker psychologically than are their heterosexual peers; the majority of lesbian, gay and bisexual youth are well adjusted and resilient'*,⁶¹ but that they experience more difficulties and challenges than others. As Brown notes:

*'Young people who are same-sex attracted... experience victimisation, harassment and abuse because of their sexual identity. Those who are open about their sexuality frequently experience abuse and rejection by family and friends. Consequently they do not feel safe about 'coming-out' [and] instead prefer to keep their feelings hidden. This silence can lead to self-harming behaviours including substance abuse, indiscriminate and unsafe sexual practices, running away and even suicide. Community ignorance, prejudice and discrimination are key contributing factors to the ongoing invisibility and isolation of [same-sex attracted youth].'*⁶²

10.6.5 The challenges for GLBTI young people who are 'out' in youth detention have been broadly identified. A number of studies have shown that these young people are treated differently: they are often not allowed to show affection to others in a way accepted for other young people, may be punished more harshly if they are caught having sexual contact, are often isolated from other members of the same sex (by not being allowed to room, shower or change together in institutions where this is the norm) and may not be allowed to overtly display their sexuality or gender identity.⁶³ Young GLBTI people in youth detention also report higher rates of discrimination and harassment, physical, emotional and sexual abuse and bullying.

10.6.6 The *Children and Young People Act 2008* is generally silent regarding same sex attracted young people, but provides specifically for transgender and intersex young people in detention to determine the sex they choose to be identified with.⁶⁴ The sex they select is regarded as their sex for all procedures in detention (there is a similar policy for adults at AMC), so that, for example, a young transgender woman who chooses to be identified as female would be treated as female for the purposes of strip searching procedures and classification. This is an important protection for transgender and intersex young people because it does not impose medicalised or surgical criteria for recognition of gender identity.

10.6.7 Nevertheless, in a number of forums, stakeholders raised concerns about the capacity of Bimberi to adequately support and protect young people who identified as being gay, lesbian, bisexual, transgender or intersex. There was a view that staff were not adequately trained to deal with discrimination or harassment levelled at GLBTI young people and that there have been instances where young people were physically and verbally bullied by other young people and were not sufficiently protected by staff.

10.6.8 The Commission is aware that issues of homophobia and transphobia are prevalent in many schools, workplaces and other institutions and that existing educational and training programs focusing on diversity, bullying and harassment might be implemented at Bimberi to provide workers with better strategies for curbing homophobic and transphobic behaviours and creating a safe environment for all young people and staff.

10.6.9 In her article on young lesbian women in youth detention, Curtin makes a number of recommendations:

*'Much should be done to change this system's institutional culture of homophobia. Staff training around these issues is needed and staff diversity should be broadened to include openly lesbian, gay and bisexual people and their allies. Group programming, materials, and school curriculum in the juvenile hall must include discussion of lesbian, gay and bisexual issues. Continuous structured conversations with lesbian and bisexual girls about their experience in this system is needed to monitor and optimise changes. Finally, greater access to counselling, accurate and unbiased materials, and lesbian, gay and bisexual support groups are needed.'*⁶⁵

10.6.10 To create a climate of nonviolence and respect for all residents and ensure the safe integration of GLBTI youth into their facilities, Majd et al argue that staff should:

- Adopt policies that prohibit discrimination and harassment based on sexual orientation or gender identity.
- Affirm and model the principle that every person is entitled to respect and dignity and that disrespect and intolerance of any kind is prohibited.

61 Mary Curtin 'Lesbian and Bisexual Girls in the Juvenile Justice System' (2002) 19(4) *Child and Adolescent Social Work Journal* 285-301.

62 Rhonda Brown, 'Self-harm and suicide risk for same-sex attracted young people: a family perspective', (2002) 1(1), *Australian e-Journal for the Advancement of Mental Health*.

63 For example, girls being disallowed from shaving their heads, boys wearing makeup or wearing clothing usually attributed to those of the opposite sex: Curtin, 'Lesbian and Bisexual Girls in the Juvenile Justice System', above n 60; National Center for Lesbian Rights, *LGBTQ Youth in the Juvenile Justice System* (2006): San Francisco.

64 *Children and Young People Act 2008* (ACT) s.189.

65 Curtin 'Lesbian and Bisexual Girls in the Juvenile Justice System', above n 60.

- Closely supervise youth and maximise opportunities for interaction with staff.
 - Provide a range of supportive and programmatic services that meet the needs of individual youth and keep them engaged in meaningful activities.
 - Take swift action to stop bias or harassment on the basis of sexual orientation or gender identity or gender expression when it occurs and address the underlying issues.
 - Provide diversity training for all youth in the facility. Make available reading material that includes positive images of youth from different backgrounds and fosters acceptance and appreciation of diversity.
 - Develop activities and educational programs to celebrate the history, achievements, and struggles of historically marginalised communities (such as communities of color, women, and LGBT individuals.)
 - Create an orientation video that celebrates diversity and describes the harms that result from name-calling, bullying, and harassment.⁶⁶
- 10.6.11 The Commission recognises that ACT Health identifies GLBTI young people in their *Children and Young People's Youth Justice Health Plan 2008-12* as a group with specific needs, but that it does not provide particular guidance about what these needs are or how they might be met within the youth justice context.
- 10.6.12 In Chapter 5 (staffing), the Commission recommends that all staff be trained on issues of diversity and non discrimination, including issues of homophobia and transphobia.

10.7 Age and development

- 10.7.1 In the ACT young people may be held criminally responsible for their actions from 10 years of age, and may remain within the youth justice system beyond the age of 18 for offences committed before they reached adulthood. Young people at Bimberi may thus range in age from 10 to 21 years, covering a significant span of development and maturity, from late childhood, through adolescence to early adulthood. The differing criminogenic and responsivity needs of this diverse group of young people must be considered in the design and delivery of programs and services for young people at Bimberi. In this section we consider the increased vulnerability and level of risk of young people in the lower age range of 10 to 14 years, and the transitional needs young adults aged 18 to 21, who may not be adequately catered for by mainstream programming.

Young people 10-14

- 10.7.2 As discussed in Chapter 7 (prevention and diversion), there is strong evidence that for most young people, treatment in the community is more effective than detention in achieving rehabilitation.⁶⁷ The Commission has serious concerns over the use of detention for young people under 15 years of age. It is of particular concern that children as young as 10 years old could be held at Bimberi. In the 2005 Quamby Audit, the Human Rights and Discrimination Commissioner recommended that the ACT Government should consider reviewing and raising the age of criminal responsibility to 12 years old in the ACT. The Commission remains of the view that the age of criminal responsibility should be increased. While the *Convention on the Rights of the Child* does not specify any particular minimum age of criminal responsibility, the general approach of the Committee on the Rights of the Child has been to criticise jurisdictions in which the minimum age is 12 or less. Section 22(3) of the HR Act provides that '[a] child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation'. As the 2005 Quamby Audit noted, 'It is questionable whether a detention facility is the most appropriate place for children aged 10 or 11 years.'⁶⁸
- 10.7.3 Statistics provided by CSD indicate that between January 2008 and May 2011 there were no 10 or 11 year old people in Bimberi. During the same period, there were 21 12 years olds, all of whom were on remand.
- 10.7.4 Young people who are committing serious or multiple offences when aged 14 years or under are at higher risk of entrenchment in the youth justice system than young people who enter the youth justice system later in adolescence. Early onset of serious (particularly violent) offending is considered a risk factor for persistent life course offending.⁶⁹ While many young people experiment with offending behaviour during adolescence, most do not go on to be adult offenders. Moffitt notes that, 'A very large group participates in antisocial behavior during adolescence. A much smaller group continues serious

66 Katayoon Majd, Jody Marksamer Carolyn Reyes, *Hidden Injustice Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* (2009) http://www.equityproject.org/pdfs/hidden_injustice.pdf.

67 The meta-analysis of Lipsey et al suggests that community-based programs are more effective in reducing recidivism amongst young offenders than incarceration: Mark Lipsey, Thomas Cook, Harris Cooper, David Cordray, Heidi Hartmann, Larry Hedges, Richard Light, Louis Thomas, Frederick Mosteller, 'Juvenile delinquency treatment: A meta-analytic inquiry into the variability of effects' (1992) *Metaanalysis for explanation A casebook*, Russell Sage Foundation.

68 ACT Human Rights and Discrimination Commissioner, *Human Rights Audit of the Quamby Youth Justice Centre* (2005) 20.

69 Terrie Moffitt 'Adolescent-limited and life-course persistent antisocial behavior: A developmental taxonomy.' (1993) 100 *Psychological Review*, 647-701.

antisocial behavior throughout adulthood, and is the same group whose antisocial behavior was stable across the years from early childhood.⁷⁰ A pattern of serious early offending may reflect a combination of biological pre-disposition and risk factors in a young person's environment, where 'children's neuropsychological problems interact cumulatively with their criminogenic environments across development, culminating in a pathological personality'⁷¹ However, there is evidence that the trajectories of these young people can be altered by increasing protective factors in their environment.⁷²

- 10.7.5 The 'what works' literature clearly indicates that younger offenders can be kept from becoming life persistent offenders if targeted and intensive supports are provided early. Accordingly, younger detainees should be a priority group for intensive intervention while in detention. While this group is at high risk of further offending, there is also evidence to suggest that well designed and delivered rehabilitation programs addressing criminogenic needs can be very effective in reducing subsequent offending for young people under 15 years.⁷³ Day et al note that, 'It has also been argued that the "major biopsychosocial changes of adolescence make this a developmental period in which intervention can have especially lasting impact."⁷⁴
- 10.7.6 However, it is not clear that the standard cognitive-behavioural programs such as the CHART program are sufficiently adapted for young people aged 10 to 14 years. Day et al note that:
*'Many of the most effective offender rehabilitation programs...employ cognitive-behavioural methods, which tend to rely upon adult learning principles. Although these methods have been successfully employed with young people and children, consideration needs to be given to the extent to which the youngest age group (10-14 years) might be reasonably expected to engage with these methods... There is clearly a need to ensure that program content and style of delivery of programs originally designed for adults are changed in order to ensure the engagement of younger people.'*⁷⁵
- 10.7.7 Where standard programs are used for this younger cohort, case managers implementing these programs may require further training to successfully adapt their delivery of the program to be engaging and developmentally appropriate for this group.
- 10.7.8 Younger detainees may also be at greater risk of violence or negative influence from older detainees in detention. Some young people who participated in the Review noted their concerns for the safety and welfare of very young detainees at Bimberi, particularly when they are first admitted. While the Commission considers that youth detention will very rarely be the best rehabilitation option for the youngest cohort, in general, the Commission is satisfied that younger detainees are separated from older detainees at Bimberi and that these risks are managed appropriately. Issues of classification and placement are discussed in more detail in Chapter 14 (conditions of detention).

Young adults

- 10.7.9 Data from the Government Submission indicates numbers of young adults at Bimberi have fluctuated between one and five from commencement in December 2008. In December 2010 there were five young men at Bimberi aged 18 years and above, and no young women in this age group.
- 10.7.10 Young adults over 18 years who remain in the youth justice system also have specific responsivity needs. Many young people report increased motivation to address offending behaviour before they enter the adult correctional system. In the Commission's survey one young person commented that it is 'annoying to have someone trying to help when you aren't ready...Most kids have more motivation when they get to 18'. This theme was also reported in the *Lost in Transition* report, where young people:
*'[T]alked about how they had changed their attitudes to crime and that this was because they had become more mature over time. For some, this was a natural thing while others felt that their looming eighteenth birthdays and the knowledge that they would be transitioned into the adult facilities if they committed further crime was the major incentive.'*⁷⁶
- 10.7.11 Early adulthood is a critical time for interventions to address offending behaviour to avoid entrenchment into the adult

70 Ibid 678-679.

71 Ibid 674.

72 Jane Sprott, Jennifer Jenkins and Anthony Doob, *Early Offending: Understanding the Risk and Protective Factors of Delinquency*, Research paper of the Applied Research Branch of Strategic Policy, Human Resources Development, Canada, (2000) at 26. In this longitudinal study Sprott et al found that for young people who showed high levels of aggression in childhood, attachment to education reduced their risk of involvement in violent crime.

73 Charles Cleland, Frank Pearson, Douglas Lipton and Dorline Yee, 'Does age make a difference? A meta-analytic approach to reductions in criminal offending for juveniles and adults', (1997) Paper presented at the annual meeting of the American Society of Criminology, San Diego.

74 Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5, citing John Weiss and Kristin Hawley, 'Developmental factors in the treatment of adolescents' (2002) 70 *Journal of Consulting and Clinical Psychology*, 21-43.

75 Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5, 62.

76 Moore et al, *Lost in Transition*, above n 31, 146.

correctional system. However, interventions must respond to the developmental needs of young adults. Day et al note that in transitioning to adulthood, young people are on the brink of two major life transitions, forming intimate relationships and finding employment, and that these are the major factors that influence whether an older adolescent is likely to progress to adult criminality. They note that:

*'Clearly these are developmentally-specific tasks that are likely to require specialist interventions... Rehabilitation interventions may also need to be delivered in ways that are developmentally-appropriate in order to be responsive, for example, to take account of life stage issues such as forming intimate relationships, autonomy from family, work transitions.'*⁷⁷

- 10.7.12 The Commission considers that every effort should be made to provide support and intervention to young adults at this critical transitional phase, and that specific programs are required to address the developmental needs of young adults at Bimberi.
- 10.7.13 In Chapter 14 (conditions of detention), the Commission reviews the practices and decision-making regarding the transfer of young adults to adult correctional facilities to complete sentences imposed on them as young people. In the Commission's view these serious decisions are made without sufficient transparency, and without adequate transition planning to ensure continuity in case management and rehabilitation. The Commission is also concerned that the uncertainty surrounding the possibility of a transfer is unsettling to young adults at Bimberi and can undermine serious rehabilitation efforts in this period.
- 10.7.14 While there is a need to carefully manage risks posed by young adults to younger cohorts at Bimberi, the Commission considers that in most cases it will be preferable for intensive interventions to be provided within the Bimberi environment during this critical developmental period, with a view to avoiding a young person transitioning to the adult correctional facility wherever possible.

Recommendation 10.4: The Community Services Directorate review and enhance rehabilitation programs provided at Bimberi to ensure that appropriate evidence based programs are developed to meet the criminogenic and developmental needs of young people 10-14 and young adults 18-21 years old.

Recommendation 10.5: The ACT Government review the age of criminal responsibility and consider raising this age to 12 years old in the ACT.

10.8 Young people with disabilities

- 10.8.1 Young people with disabilities are over-represented in the youth justice system, with studies in Australia and abroad suggesting that between 10 and 100%⁷⁸ of young people who are incarcerated have a physical, intellectual or learning disability, or have a mental health issue. In fact the rates of incarceration of young people with disabilities are so high that Quinn et al make the observation that:
- 'The prevalence of such disorders among the juvenile justice population, has led some professionals to characterise juvenile justice as a "default system" for youth who can't read or write well, who have mental health problems, and who drop out or are forced out of school.'*⁷⁹
- 10.8.2 In Australia, the percentage of young people with a disability in custody, particularly those from Aboriginal and Torres Strait Islander backgrounds, is consistently high. NSW Justice Health and Juvenile Justice, for example, found in their 2009 survey of young people in custody that:
- 'Intellectual ability in the range indicating possible intellectual disability was common. One in five (20%) Aboriginal young people were assessed as having a possible intellectual disability (IQ scores less than 70); a significantly greater proportion than the 7% found for non-Aboriginal young people. One-third (32%) of the young people scored in the borderline range for intellectual ability (IQ 70 to 79); again, a higher proportion of Aboriginal than non-Aboriginal young people were affected (39% vs 26%).'*⁸⁰

77 Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5,65.

78 Mary Quinn, Robert Rutherford, Peter Leone, David Osher & Jeffrey Poirier 'Youth with a disabilities in Juvenile Corrections: A national study' (2005) *Exceptional Children* 71 (3) 339-345.

79 Ibid.

80 Indig et al 2009 *NSW Young People in Custody Health Survey*, above n 45.

10.8.3 The Australian Human Rights Commission (AHRC) notes in its report on Indigenous young people with cognitive disabilities and mental health issues that:

*'there is concern that the incidence of cognitive disability for Indigenous young people is inflated due to culturally inappropriate assessment tools which measure intelligence in a profoundly anglo-centric fashion. Because Indigenous children do not possess the assumed cultural knowledge of the dominant culture, they are disadvantaged in testing and likely to score lower.'*⁸¹

10.8.4 Nevertheless, there is agreement that a disproportionate number of Aboriginal and Torres Strait Islander young people experience cognitive disabilities, because of a range of structural and social inequities in Aboriginal and Torres Strait Islander communities.⁸²

10.8.5 Although statistics on the number of all young people with a disability in the ACT youth justice system are difficult to gather, key stakeholders were of the view that as many as a third had a cognitive impairment, were on the autistic spectrum or suffered from foetal alcohol syndrome. Teachers, in particular, were of the view that learning difficulties were prominent in most of their students and that this influenced their ability to positively engage in the classroom.

10.8.6 The reasons why young people with a disability are over-represented in the youth justice system are wide and varied. Young people with intellectual disabilities often have lower IQs than other young people, are more suggestible and more easily coerced, they often display low impulse control and deficits in social and adaptive behaviour management skills, and are often unable to delay gratification and have anger management difficulties. They are more likely to have dropped out of (or been excluded from) school, to have an alcohol or other drug issue, and to associate with negative peer groups.⁸³ They are also more likely to be caught because they are less likely to be able to conceal their crimes, they are more likely to agree or confess to crimes because they are eager to please and they are often more visible to police and others.⁸⁴

10.8.7 Although over-represented, young people with intellectual disabilities are generally more likely to be minor but repeat offenders or commit a single major violent crime. For the former group, targeted early intervention and diversion programs which take into account the special needs of this group are warranted. The literature suggests that the protective value of connecting young people with intellectual disabilities to education and employment is particularly important.⁸⁵

10.8.8 When incarcerated, young people with disabilities can experience a number of difficulties: they can be discriminated against, experience bullying and generally become isolated from the general population, or conversely, be manipulated and threatened by others.⁸⁶

10.8.9 Managing young people with disabilities in youth justice centres can also be difficult, as can the provision of effective rehabilitative programs. Evaluations have shown that cognitive based programs are not always accessible to young people with intellectual disabilities or cognitive impairments. Targeted supports need to be developed which take into account young people's capacity to develop skills and change attitudes, their learning needs, and their preferred learning styles. This requires concerted effort and a solid understanding of the group being assisted. As Day et al note,

*'Managing this client group presents considerable challenges. Concerns have been raised about assessments of disability, staff training to deal with disabled young people, use of normalisation principles, and difficulties in providing inter-agency programs. The NYARS report (1997) found "little evidence of a clearly articulated or coordinated approach to addressing the specific needs of young people with a disability in juvenile detention".'*⁸⁷

10.8.10 Some stakeholders suggested that the ACT system wasn't particularly effective in identifying, assessing, supporting or responding to the needs of young people with disabilities in youth justice. At the *Forging New Pathways* forum held as part of the Review,⁸⁸ participants were of the view that while the system continued to fail to appreciate the impacts of these conditions, young people were often unfairly judged for their poor performances (participants reported that these young people were often considered to be uncommitted or unwilling to engage in programs that they did not understand, or benefit from). Participants observed that, in particular, text-based and cognitive behaviour programs may be particularly ineffective for these young people. They advocated for better assessments, training and services targeted to these young people.

81 Australian Human Rights Commission, *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues* (2008), 21.

82 Ibid, 22.

83 Ibid.

84 Department of Human Services, Victoria, *Protocol between Disability Services and Youth Justice and Guidelines for workers* 2009 (2009).

85 Michael Bullis, Paul Yovanoff, Gina Mueller and Emily Havel, 'Life in the "outs" - Examination of the facility-to-community transition of incarcerated youth' (2002) 69(1) *Exceptional children*, 7-22.

86 Australian Human Rights Commission, *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues* (2008).

87 Day et al, *Victorian Juvenile Justice Rehabilitation Review*, above n 5. 80.

88 See Appendix E for more detail about this forum.

- 10.8.11 Since the *Victorian Juvenile Justice Rehabilitation Review* was released, a number of jurisdictions have developed programs and protocols to ensure that the needs of young people with disabilities are adequately met both while in detention and in the community. Of particular note is the protocol between Disability Services and Youth Justice, and accompanying guidelines for workers, developed in 2009 by the Victorian Department of Human Services. This protocol demonstrates a commitment to ensuring that young people with disabilities in detention are provided with appropriate services, and that disability support is integrated into ongoing care.
- 10.8.12 The Commission considers that a similar protocol should be developed to articulate the ACT Government's approach to working with young people with a disability in the youth justice system. The Commission recognises the development of the *ACT Government Policy Framework for Children and Young People with a Disability and their Families (2009)* but notes that (other than a brief mention of the role of the Office for Children, Youth and Family Support), this framework does not clearly discuss how the disability and youth justice systems interact.

Recommendation 10.6: The Community Services Directorate develop a protocol to articulate the ACT Government's approach to working with young people with a disability in the youth justice system.

- 10.8.13 The Commission recognises, in particular, the service principles codified in the policy framework and recommends that these principles underpin any practice approach developed for working with young people with disabilities in detention:
- 'A child with a disability should be recognised as a child first with similar needs to other children.
 - A child with a disability should have access to the services, supports and education programs that are available to all children.
 - Children with a disability should be welcomed into their community and supported to participate in social, educational, sporting and recreational pursuits.
 - Children with a disability should grow up in stable, secure, loving and nurturing families.
 - Families have the primary responsibility for the care and protection of their child with a disability.
 - Agencies should recognise the expertise of families regarding their child's needs and their own lives and circumstances.
 - Services should be designed to recognise and build on the strengths of families and increase their resilience.
 - Services should be available as early as possible – early in the life of the child and early in the life of a problem
 - Children with a disability should be given the opportunity to participate in all aspects of interventions that affect them.'⁸⁹
- 10.8.14 In 2008, the AHRC recommended that a 'common sense' screening tool for cognitive disabilities and/or mental health issues be developed to be used by youth workers and Indigenous services.⁹⁰ The AHRC notes in that report, that the Victorian Offending Needs Indicator for Youth assessment tool may have the capacity to identify young people with intellectual disabilities. If this is the case, this tool should be used more extensively with young people in the ACT youth justice system to identify disabilities and enable the system to respond more effectively to special needs.

10.9 Mental health, and alcohol and other drug issues

- 10.9.1 Mental health issues are some of the most pressing and influential for young people in Australia, particularly those in the youth justice system. In 2008 mental health disorders were found to be the leading cause of disability amongst young people aged 15 to 24 years,⁹¹ accounting for 50% of the burden of disease in this group of young Australians,⁹² with 26% of young people meeting diagnostic criteria for a mental health disorder (primarily substance use disorders). In 2005, the Australian Institute for Health and Welfare found that 10% of 15 to 19 year olds reported mental or behavioural problems, with mood disorders most common for females and psychological development problems most common for males.⁹³ Prevalence of these problems was higher for Aboriginal and Torres Strait Islander young people.

⁸⁹ ACT Government *ACT Government Policy Framework for Children and Young People with a Disability and their Families* (2009).

⁹⁰ Australian Human Rights Commission *Preventing Crime and Promoting Rights for Indigenous Young People with Cognitive Disabilities and Mental Health Issues* (2008).

⁹¹ Australian Bureau of Statistics *National Survey of Mental Health and Wellbeing: Summary of results* (2008).

⁹² Australian Institute of Health and Welfare, *Making progress: the health, development and well-being of Australia's children and young people* (2008).

⁹³ Ibid.

10.9.2 Within the youth justice population, high rates of co-occurring disorders and a high prevalence of attentional and behavioural and substance use disorders have been found in a number of studies, as demonstrated in the results of the NSW Young People in Custody Health Survey table below:

Table 10.1: Mean Number Of Lifetime Psychological Disorders (NSW Department of Juvenile Justice)

	Young Men (n=254)		Young Women (n=39)		Aboriginal (n=140)		Non-Aboriginal (n=153)		Total (n=293)	
(Multiple response)	n	%	n	%	n	%	n	%	N	%
Any attention and/or behavioural disorder	172	67.7	32	82.1	105	75.0	99	64.7	204	69.6
Any alcohol and/or substance disorder	161	63.4	25	64.1	97	69.3	89	58.2	186	63.5
Any anxiety disorder	72	28.3	21	53.8	48	34.3	45	29.4	93	31.7
Any mood disorder	47	18.5	22	56.4	31	22.1	38	24.8	69	23.5
Any schizophrenia and/or psychotic disorder	12	4.7	4	10.3	11	7.9	5	3.3	16	5.5
Any psychological disorder	218	85.8	36	92.3	129	92.1	125	81.7	254	86.7
Two or more disorders	177	69.7	36	92.3	111	79.3	102	66.7	213	72.7

(Note: these figures come from the NSW Health Survey, and have not been verified by the Commission)

10.9.3 Studies have consistently identified high rates of co-occurring disorders and a high prevalence of attentional and behavioural and substance use disorders within the detained youth population:

*'The relationship between mental health and criminal behavior is complex... but mental health issues are likely to be important criminogenic needs for some young people. The related issue of suicide risk is also especially relevant to juvenile and young adult offenders, as both younger age and mental disorders are risk factors for suicide'*⁹⁴

10.9.4 Participants in this Review also highlighted the high prevalence of trauma experienced by young people in the system. As reported at the *Forging New Pathways* workshop, many of the young people engaged in the youth justice system have experienced trauma and there is evidence (both anecdotal in the ACT and empirical in the wider youth justice literature) that engagement with the system can be traumatising for young people and those who work with them. Participants argued that better assessment and training was required to help the system be more informed on trauma-related issues and further consideration of ways that the system might be improved to ensure that negative impacts of incarceration were minimised and, optimally, redressed.

10.9.5 The interrelationship between psychological difficulties and mental health disorders and young offending is complex, but now better understood. Developmental psychologists, for example, have pointed to a period of confusion between 13 and 17 years during which *'adolescents may or may not develop skills akin to those of adults in understanding and accounting for their own behaviour'*. During this period of development, it can normally be expected that a young person be able to understand and have the appropriate cognitive and emotional development to account for his or her behavior and be responsible for it. However, research shows that some young people do not, as a result of trauma and other psychosocial stressors, achieve this milestone and find it difficult to use these skills. Such theorists have suggested a causal relationship with criminal offending.⁹⁵

10.9.6 In their review of the Victorian youth justice system, Day et al note that there are at least three different associations between mental health problems and offending:

- *'Firstly, offending itself might play a role in causing mental health problems in young people, such as through the death of friends caused by accidents during offending in cars;*
- *Secondly, contact with criminal justice systems may cause or exacerbate mental health problems. Nieland, McCluskie and Tait in their work in offender institutions in the UK (ages 17-21) suggest that young people may be more vulnerable emotionally to the stresses of incarceration, particularly given that victimization and bullying may be more commonplace in these settings. Peterson, Badali and Koegl ... have also reported that many young people's response to general questions*

⁹⁴ Day et al, *Victorian Juvenile Justice Rehabilitation Review* above n 5, 62.

⁹⁵ Chris Lennings, *Assessment of Mental Health Issues with Young Offenders* (2003) University of Sydney.

- about what it is like to be in secure care focused on 'safety concerns, problems with staff, or problems with other inmates'; and
- Thirdly, there may be some direct causal pathways between the experience of some types of symptoms (eg command hallucinations) and offending, although little of this research has been conducted with those less than 18 years old.⁹⁶
- 10.9.7 They argue that in light of these pathways, individualised assessments are warranted to determine the extent to which mental health functioning is criminogenic, arguing that it would be reasonable to suggest that alcohol and other drug misuse and a conduct disorder or related diagnoses (such as ADHD) should be considered a criminogenic need.
- 10.9.8 In determining how mental health issues (including alcohol and other drug issues) should be responded to in youth justice settings, there are a number of factors that should be considered. Firstly, the process of incarceration can influence young people's mental health. As the Institute of Child Protection Studies reports:
- 'By removing young offenders from their communities, important connections are broken or diminished sometimes leading to family dislocation and conflict. Young people may also experience prolonged periods of unemployment and disengagement from education; be more at risk of mental health concerns (Lennings, 2003), drug and alcohol problems (Prichard & Payne, 2005) and general poor health (NSW Department of Juvenile Justice, 2003). It has also been shown that when incarcerated for extended periods of time, young people may experience institutionalisation (a decreasing ability to live independently), poor self concept and negative attribution to crime (Borzycki, 2005).'*⁹⁷
- 10.9.9 Secondly, mental health issues can seriously affect the potency of rehabilitative programs, particularly when young people's ability to process information and to develop new cognitive abilities is affected. This should be considered when developing and providing services to young people.
- 10.9.10 Thirdly, young people with significant mental health needs can present considerable difficulties for services and workers supporting them. These include ensuring the safety of both the young person and those around them; the demands made upon staff and the impact on staff morale; and the difficulties in providing offence-focused interventions with this group. Day et al note, *'there are management issues related to housing, disciplinary segregation, and residential treatment and there are often disagreements about whose responsibility it is to provide services to this group'*.
- 10.9.11 Discussions about the provision of mental health and alcohol and other drug services at Bimberi can be found in Chapter 13 (health).

10.10 Young people who have experienced child abuse and neglect

- 10.10.1 There is a strong correlation between young people's experiences of child abuse and neglect, their involvement in out of home care and their participation in crime. While child abuse and neglect often occurs in the context of multiple disadvantages, *'its configuration with other risk factors is of clear and great significance'*.⁹⁸ In a longitudinal study of 41,700 children in Queensland, evidence was found of a causal relationship between maltreatment and juvenile offending.⁹⁹ Australian studies and those conducted overseas have shown that somewhere between 33 and 92%¹⁰⁰ of young people in custody have experienced some form of maltreatment, with young women in particular being more likely to have experienced childhood sexual assault (see further the discussion of the particular needs of young women above).¹⁰¹ Young people who commit more serious offences are more likely to have experienced child abuse and it is more likely that this abuse was serious and ongoing.¹⁰²
- 10.10.2 The needs of these young people are complex and wide ranging, with rates of mental health concerns amongst this group being as high as 80%. Young people who experience abuse in the early years are at greater risk of behavioural problems and criminal activity. As Melzak notes:
- 'The experience of potential violence in a child's first five years may lead to violent thoughts and behaviour in adult life if the child has no opportunity to experience a positive secure relationship.'*¹⁰³

96 Day et al, *Victorian Juvenile Justice Rehabilitation Review*, above n.5, 78.

97 Moore et al, *Lost in Transition*, above n 31, 21.

98 Caroline Day, Pam Hibbert, Spike Cadman, *A Literature Review into Children Abused and/ or Neglected Prior Custody* (2008), 5.

99 Anna Stewart, Susan Dennison and Elissa Waterson, 'Pathways from child maltreatment to juvenile offending' (2002) *Australian Institute of Criminology Trends and Issues in crime and criminal justice* No. 241.

100 See, for example: Katherine Hamilton, Louise Falshaw and Kevin Browne, 'The Link between Recurrent Maltreatment and Offending Behaviour' (2002) *International Journal of Offender Therapy and Comparative Criminology*, 75-94.

101 Indig et al, 2009 NSW Young People in Custody Health Survey, above n. 45, 150.

102 Gwyneth Boswell, 'The backgrounds of violent young offenders' in Ved Varma (ed), *Violence in Children and Adolescents* (1997), 22-36.

103 Sheila Melzak, 'The emotional impact of violence on children' in Ved Varma (ed) *Violence in Children and Adolescents* (1997), 2-21.

- 10.10.3 These issues are even more pronounced for young women. Widom, for example, showed in 2000 that girls in a sample of young offenders who had been abused or neglected in childhood were twice as likely to be arrested while adolescents, twice as likely to be arrested as adults and 2.4 times more likely to be arrested for violent crimes than non-abused and neglected girls. Importantly, Widom notes that 70% of young women in the abused and neglected sample had not gone on to offend, so the relationship between the two factors was considered neither *'inevitable nor deterministic'* but it was an instrumental factor for those young people who did go on to offend.¹⁰⁴
- 10.10.4 Not surprisingly, there is also a recognised relationship between out of home care experience and juvenile offending. In one Victorian study, for example, 88% of young people sentenced to imprisonment by the children's court in 2001 had been subject to an average of 4.6 notifications to a child protection agency and 86% had been in out of home care. Over half of these young people had had more than five care placements.¹⁰⁵ Stewart et al found that maltreated children who were placed in out of home care were twice as likely to offend as maltreated children who remained in their home, and noted that removal often reflected experiences of more serious or ongoing abuse.¹⁰⁶
- 10.10.5 One of the reasons that many young people who have experienced abuse and are estranged from their families are over-represented in custody is a lack of available and appropriate accommodation where young people can be remanded.¹⁰⁷ Without stable accommodation, young people may be remanded until trial, even when a custodial sentence is an unlikely outcome. As the Wood Inquiry noted:
- 'Coming within the juvenile justice or criminal justice system should not exclude a young offender from long-term services from [child protection agencies] and other human service agencies. Nor should a shortage of refuges or other forms of accommodation result in young people who cannot live safely with their families, being remanded in custody unnecessarily, pending trial.'*¹⁰⁸
- 10.10.6 The Australia Law Reform Commission also recognised these significant issues, observing:
- 'The Commission acknowledges the serious community concerns for many young people who traverse the child protection and juvenile justice divide. The lack of suitable accommodation and other support services, and the consequent remand in custody of increasing numbers of young people, undermines established juvenile justice principles of diversion and rehabilitation. Of particular concern are young people who are homeless as a result of family dysfunction and violence.'*¹⁰⁹
- 10.10.7 Young people who are part of the care system who are incarcerated present with a number of significant issues that must be acknowledged when developing supports to assist them. Boswell, for example, found that almost two-thirds of young people who were incarcerated had experienced significant grief and loss. Day et al argue that these experiences are more significant and more likely for those who had been removed from their families as children.¹¹⁰ Other studies have shown high rates of post traumatic disorder, suicidal ideation and poor mental health outcomes generally.
- 10.10.8 In supporting these young people, it should be recognised that past experiences of exploitation and rejection by significant adults can affect their willingness to connect with positive adults and to learn new ways of dealing with stressors.¹¹¹ Trauma has also been shown to affect the efficacy of a number of treatments, and social and emotional pain can affect the capacity of young people to change criminal attitudes and behaviours. There is growing evidence to suggest that unless the legacy of childhood abuse and neglect is fully appreciated and responded to within youth justice systems, positive outcomes (including the rehabilitation of young offenders) are likely to be limited.¹¹²
- 10.10.9 Young people who are engaged in both care and protection and youth justice systems are some of the most vulnerable and disadvantaged of all young people, and they are at particular risk when leaving these systems. In 2008, the CREATE Foundation found that 19.2% of young people in their survey who were transitioning from care had been involved with the youth justice system.¹¹³ This was often due to issues related to poverty, poor accommodation options and limited formal and informal support networks. As Snyder found:
- 'These juveniles have been under the control of the ... system for most of their lives. They rarely have a stable family unit. Many have been unable to build bonds that will enable them to thrive independently in their communities. Many have not learned*

104 Cathy Widom, 'Post traumatic Stress Disorder in Abused and Neglected Children Grown Up' (1989) *American Journal of Psychiatry General Research*, 156.

105 Victorian Department of Human Services, *An Integrated Strategy for Child Protection and Placement Services* (2002), 52-53

106 Stewart et al, 'Pathways from child maltreatment to juvenile offending', above n 100,5.

107 James Wood, *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (2008)

108 Ibid.

109 The Australian Law Reform Commission, *Family Violence – A National Legal Response* (2010) ALRC Report 114.

110 Day et al, *A Literature Review into Children Abused and / or Neglected Prior Custody*, above n.99, 30.

111 John Seita and Larry Brendtro, *Kids who outwit adults* (2002).

112 Larry Brendtro, Martin Mitchell and Herman McCall *Deep Brain Learning: Pathways to Potential with Challenging Youth* (2009).

113 Joseph McDowall, *Report Card: Transitioning from Care* (2008) CREATE Foundation.

the skills needed to live independently (e.g., driving a car, managing their own finances). These youth have relatively high levels of educational failure, unemployment, drug use, and law-violating behaviour. Many fail to thrive during their transition into adulthood, due at least in part to the lack of official or unofficial support systems. At age 18, many are sent out on their own to make their ways in the world, without the financial or emotional safety net of a family or social programs.¹¹⁴

- 10.10.10 Young people who are transitioning from both care and the youth justice system are particularly vulnerable, as they often lack the positive influence and support of parents, extended family members and the broader informal support networks which families may enable. Transitioning planning that helps young people create new support networks is essential, as Stein highlights, it is ‘very important to these young people that somebody [is] there for them, that they [are] not abandoned.’¹¹⁵

Current services and supports for young people in youth justice

- 10.10.11 Although the links between childhood experiences of abuse and neglect, engagement in care and protection systems and youth offending are well recognised, and despite the co-location of Care and Protection and Community Youth Justice in the ACT within the same Directorate, there is limited evidence to suggest that this group of young people are well understood, assessed or supported within the current system.
- 10.10.12 The Commission was unable, for example, to obtain statistics on the prevalence of young people at Bimberi who were also involved in the ACT care and protection system nor those related to the prevalence of childhood experiences of abuse or neglect. The Commission was also concerned by reports of ongoing issues related to the case management of young people engaged in both the care and protection and youth justice systems. Both care and protection and youth justice staff report limited cross-system coordination and difficulties in maintaining collegial trust and respect and shared case planning. It appears that communication between the two areas can sometimes be problematic even though Community Youth Justice and Care and Protection share premises. This is despite a number of previous calls for more streamlined system-wide support mechanisms to be put in place for young people traversing the two systems.¹¹⁶
- 10.10.13 The Commission considers that there is a need for greater clarity regarding the responsibilities of Youth Justice and Care and Protection case workers, and the way in which they can work together in the best interests of young people involved in both systems. In Chapter 9 (case management) the Commission recommends that CSD develop a Memorandum of Understanding that clearly articulates how relevant services (including Bimberi, community youth justice, Turnaround and care and protection services) work together to support implementation of a young person’s case plan.
- 10.10.14 The Commission also notes the need for improved data collection in relation to young people in the youth justice system, including data relating to the prevalence of young people involved in the care and protection system. Recommendations relating to data collection and record keeping are made in Chapter 6 (evidence based).

¹¹⁴ Howard Snyder, ‘An empirical portrait of the youth reentry population’ (2004) 2 *Youth Violence and Juvenile Justice*.

¹¹⁵ Mark Stein, *Resilience and young people leaving care: Overcoming the odds* (2005).

¹¹⁶ See eg, ACT Legislative Assembly Standing Committee on Community Services and Social Equity ‘One-way roads out of Quamby: Transition options for young people exiting juvenile detention in the ACT’ (2004) at 27.

Chapter 11: Housing

A Quality Youth Justice System Meets Young People's Housing Needs

Relevant Terms of Reference

- Programs for education and training, health and wellbeing and rehabilitation
- Throughcare and aftercare services provided to detainees and CYJ clients

Relevant Human Rights Standards

- Article 11, ICESCR

11.1 Introduction

- 11.1.1 One of the themes of the interviews and submissions received during the Review is the importance of suitable housing for young people involved in the youth justice system.
- 11.1.2 This chapter discusses the significance of housing for successful outcomes in early intervention, diversion and rehabilitation programs. Lack of suitable housing is a risk factor for involvement in the youth justice system; it is a contributing factor to high rates of remand in the ACT; and it is associated with recidivism when young people leave detention.

11.2 Importance of safe, secure and affordable housing

- 11.2.1 Housing is a fundamental component of well being, and helps fulfill our essential need for shelter, security and privacy. The right to housing is enshrined in Article 11 of the International Covenant on Economic, Social and Cultural Rights.
- 11.2.2 Homelessness is a complex, dynamic experience, and the term is now understood to encompass more than simply 'sleeping rough'. Recent definitions of homelessness acknowledge the diverse nature of people's experiences:
- *Primary homelessness* includes all people without conventional accommodation, such as people living on the streets, sleeping in parks, squatting in derelict buildings, or using cars or railway carriages for temporary shelter.
 - *Secondary homelessness* includes people who move frequently from one form of temporary shelter to another. It includes all people staying in emergency or transitional accommodation provided under the Supported Accommodation Assistance Program (SAAP). Secondary homelessness also includes people residing temporarily with other households because they have no accommodation of their own (including couch surfing) and people who are staying temporarily in boarding houses.
 - *Tertiary homelessness* refers to people staying in boarding houses on a medium to long-term basis, defined as 13 weeks or longer. They do not have a separate bedroom and living room; they do not have kitchen and bathroom facilities of their own; their accommodation is not self-contained; and they do not have security of tenure provided by a lease.¹
- 11.2.3 Homelessness is difficult to measure. A census of young people aged 12 to 18 years conducted by the Australian Government reported that there were 400 homeless young people in the ACT in 2001, and 307 homeless young people in the ACT in 2006.²
- 11.2.4 During the 2008-2009 reporting year, just under 450 individual young people aged 16 to 21 years accessed specialist homelessness services funded by SAAP in the ACT. This number does not include young people who were sleeping rough,

1 David MacKenzie and Chris Chamberlain, (2008) *Youth Homelessness in Australia 2006*.

2 Ibid.

or living with relatives and friends.³ During the same period, SAAP services provided an average of 95 beds each night specifically for young people, out of a total of 300 funded beds in the ACT.⁴

- 11.2.5 A range of organisations provide accommodation for young people in the youth justice system in the ACT, including: Care and Protection Services, Housing ACT (incorporating two youth housing managers in the Housing for Young People Program) and community organisations. Currently 12 community organisations are funded by the Community Services Directorate (CSD) to provide youth homelessness services in the ACT.⁵ A further group of organisations are funded to provide residential care for children and young people in out of home care.
- 11.2.6 Accommodation needs are particularly high among children and young people in the youth justice system.⁶ Indeed, given the significant challenges they face, arguably young people who come into contact with the youth justice system are in greater need of stable accommodation than the youth population as a whole.⁷
- 11.2.7 In England and Wales during the late 1990s, the agency administering the youth justice system, the Youth Justice Board (YJB), began measuring their performance in engaging young people under youth justice supervision or on release from detention in suitable accommodation. Suitable housing is defined by the YJB as that which takes into account young people's needs, views and wishes. In reviewing the YJB, the Centre for Crime and Justice Studies recommended that the Government of England and Wales go further, by committing to provide medium-term or long-term accommodation for young people in the youth justice system, and to measure the period of time during which the young person remains in stable accommodation.⁸
- 11.2.8 Translating to the ACT context, we might conclude that 'suitable' housing for young people in the youth justice system is that which:
- Takes into account the young person's needs (including health, mental health, disability, education/employment);
 - Takes into account the young person's views and wishes; and
 - Is medium term or long term.
- 11.2.9 The nature of suitable housing will depend on the needs and circumstances of the particular young person, but could include:
- Living with parents or other family members;
 - An out of home care placement with a foster carer or residential institution;
 - A placement in a supported accommodation service; or
 - A lease with Housing ACT.

11.3 Housing and early intervention

- 11.3.1 Safe, affordable and secure housing can contribute to early intervention and crime prevention. However, the current circumstance in the ACT and other Australian jurisdictions is that homelessness remains a contributing factor for involvement in the youth justice system.
- 11.3.2 There are established links between homelessness and youth justice. Many children and young people who enter the youth justice system will do so having experienced well known risk factors. Such factors include family 'dysfunction', intellectual disability, poor mental health, dislocation from education, and homelessness, and they often emerge early in the child's life.⁹ Homelessness, particularly among young people and people with an intellectual disability or mental illness, is a major risk factor for a young person becoming a perpetrator or victim of crime.¹⁰
- 11.3.3 English research into the housing needs and experiences of 152 young people, who had been convicted of an offence and were either in custody or community supervision, found that all of the young people in the group were in housing need. Three-quarters (75%) 'had lived with someone other than a parent at some time' and 40% 'had been homeless or had sought formal housing provision and/or support'. The research also discovered that two-thirds of the group had moved at least twice in the previous 12 months; 17% of these young people had moved between five and 14 times in the previous 12 months.

3 ACT Government Department of Disability Housing and Community Services, (2011) *Discussion Paper: Modernising youth housing and homelessness services in the ACT*.

4 Ibid.

5 Ibid.

6 Youth Justice Board, (2007) *Accommodation Needs and Experience*.

7 Enver Solomon and Richard Garside, Centre for Crime and Justice Studies, (2008) *Ten years of Labour's youth justice reforms: an independent audit*.

8 Ibid.

9 Noetic Solutions, (2010) *A Review of the NSW Juvenile Justice System*, p.vii

10 NSW Legislative Council, Standing Committee on Law and Justice, (2000) *Crime prevention through social support*, Parliamentary paper no. 437.

The most common factor underlying their housing need was relationship breakdown with parents or family. Other factors included concerns about safety, leaving custody and leaving care.¹¹

- 11.3.4 While there are established links between homelessness and youth justice, the nature of the correlation is complex and not easy to resolve. For any particular young person, crime may occur prior to becoming homeless, it may accompany the experience of homelessness, or it may be an outcome of homelessness.¹²
- 11.3.5 In reviewing the NSW youth justice system, Noetic Solutions found that:
*'Given the high numbers of children and young people either homeless or in out-of-home care and the known risks around increased likelihood of entry into juvenile justice, the [government] needs to do all it can to provide suitable accommodation.'*¹³
- 11.3.6 The Commission heard views expressed by many people that there are insufficient accommodation options for young people at risk of involvement in the youth justice system in the ACT. CSD are currently redesigning the funding structure for the ACT youth housing and homelessness sector, which could offer potential for systemic improvement.¹⁴ The Commission recommends CSD measure the level of unmet need for out of home care placements and supported accommodation services, and provide adequate resources to address this need.

Recommendation 11.1: The ACT Strategic Board sub-committee on vulnerable children, young people and their families make a commitment that every vulnerable young person in the ACT will have their housing needs met in a way that serves their best interests.

Recommendation 11.2: The Community Services Directorate measure the level of unmet need for out of home care placements and supported accommodation placements, and provide adequate resources to address this need.

Recommendation 11.3: The Community Services Directorate identify and resource a wider range of supported accommodation options that are proven to meet the needs of young people with challenging behaviours and complex needs.

- 11.3.7 See Chapter 7 (prevention and diversion) for further discussion about early intervention.

11.4 Housing and diversion

Accommodation options for young people on bail

- 11.4.1 For some young people in the youth justice system, placement in suitable housing can allow them to be diverted from custody. However, the current situation in the ACT and other Australian jurisdictions is that there is an increasing proportion of young people on remand, and many people claim the underlying cause of this increase is a lack of suitable housing in the community.
- 11.4.2 National statistics show that the proportion of young people in detention who are remanded (rather than sentenced) has increased substantially in the past three decades. At 30 June 1981, 21% of all young people in detention in Australia were on remand, compared with 59.6% of all detained young people at 30 June 2008. This is due to an increase in the numbers of young people placed on remand, and an increase in the average length of remand episodes.¹⁵ The most recent data from the ACT shows that, at a census count on 30 June 2009, two-thirds (66%) of young people in Bimberi were being held on remand.¹⁶

11 Youth Justice Board, above n 6.

12 P Crane and J Brannock, (2009) *Homelessness among young people in Australia, Early intervention & prevention*, National Youth Affairs Research Scheme, p.7

13 Noetic Solutions, above n 9.

14 ACT Government, Community Services Directorate, (2011) *Modernising Youth Housing and Homelessness Services in the ACT: feedback to the community consultation*; ACT Government, Department of Disability Housing & Community Services, (2010) *Discussion Paper: Modernising youth homelessness services in the ACT*.

15 Kelly Richards, (2011) *Trends & Issues in Crime and Criminal Justice no.416*, Australian Institute of Criminology.

16 Kelly Richards, Lisa Rosevear and Mathew Lyneham, (2011) *Juvenile's contact with the criminal justice system in the ACT: and overview*. For full text see Appendix A.

- 11.4.3 The increase in the remand population is concerning and problematic because only a very small proportion of remand episodes result in a young person being convicted and sentenced to custody. This means that the majority of young people may be in custody unnecessarily. Further, periods of remand represent '*missed opportunities to intervene in young people's lives with constructive and appropriate treatment*' in the community.¹⁷
- 11.4.4 Bimberi is similar to most other detention centres in finding it difficult to plan and provide appropriate programs for young people on remand, because of the uncertainty about their length of detention. Some young people in Bimberi on remand would receive greater benefit from intensive individualised support that can more easily (and more cheaply) be provided in a supported accommodation service in the community.
- 11.4.5 Nationally, two primary explanations are put forward for the increase in remand: more restrictive bail legislation, and lack of appropriate accommodation options for young people experiencing homelessness.¹⁸
- 11.4.6 During the Review, the Commission heard many reports of young people being remanded into custody in Bimberi, not due to the nature of their offence or their risk to the community, but due to:
- A shortage of placements in residential institutions providing out of home care services, and supported accommodation services in Canberra; or
 - A young person's inability or refusal to participate in housing options that were offered or created for them, with the consequence that they breached their bail conditions.
- 11.4.7 While it is difficult to measure the dimensions of the problem, we can conclude that some young people are placed in Bimberi due to lack of suitable housing options in the ACT community. Even a reported refusal by some young people to stay in particular residential placements suggests that, though a housing option was technically available to them, it was perhaps not really suitable for those young people at that time in their lives.

Access to supported accommodation placements

- 11.4.8 Some participants told the Commission that it is difficult to access supported accommodation services. The centralised intake service for supported accommodation services (First Point) is unavailable on Saturday morning, which means young people appearing at the Childrens Court to apply for bail on that day may be remanded in detention because they are unable to confirm a placement in a supported accommodation service for that evening. A few participants said they had difficulty contacting First Point at other times, and had to wait a period of hours for a return phone call. One participant expressed the view that the decision by some supported accommodation services to ask young people to leave the premises between 8am and 3pm:
- 'gives young people nowhere to go and increases their chance of getting into trouble.'*

Investment in a wider range of accommodation options for young people on bail

- 11.4.9 Greater resourcing is needed for supported accommodation options in the ACT. CSD are currently redesigning the funding structure for the ACT youth housing and homelessness sector, which could offer potential for systemic improvement.¹⁹ Greater resourcing would allow the system to be flexible and better able to meet individual young people's needs, through:
- A wider range of supported accommodation options, particularly for young people with challenging behaviours and complex needs;
 - An increased number of supported accommodation placements; and
 - Consistent and intensive provision of individualised support.
- 11.4.10 While investment in supported accommodation involves expense, the current situation – where some young people are being detained on short periods of remand because of a shortage of accommodation options in the community – is both costly for the community and detrimental for the young people involved. As discussed above in the section on early intervention, the Commission makes three recommendations to improve the availability and suitability of housing options for young people with high and complex needs.
- 11.4.11 In the recent discussion paper *Towards a Diversionary Framework for the ACT*, the ACT Government raised the possibility of an intensive bail support program with crisis accommodation.²⁰ Some participants in the Review have suggested there should be a 'bail hostel' or residential bail support program in the ACT, which would prevent young people on short periods of remand being detained in Bimberi. Such services do exist in other jurisdictions, such as Queensland, and there has been

17 Richards, above n 15.

18 UnitingCare Burnside, (2009) *Releasing the pressure on remand: Bail support solutions for children and young people in New South Wales*.

19 ACT Government, Community Services Directorate, above n 14.

20 ACT Government, Department of Disability Housing and Community Services, (2011) *Towards a Diversionary Framework for the ACT* p.17.

support for such a service in NSW.²¹ They aim to provide courts with suitable supported accommodation as an alternative to remanding young people in custody.

- 11.4.12 However, researchers have argued that better outcomes for young people, and greater value for money, would be obtained by increasing funding to existing accommodation service providers. In reviewing the NSW youth justice system, Noetic Solutions suggested that some previous attempts at 'bail hostels' in NSW failed because they grouped at risk young people together, and were highly resource intensive ('less than custody, but more so than funding existing service providers'). Instead, Noetic Solutions recommended that the government increase funding to existing supported accommodation services to provide a higher number of guaranteed beds for young people on bail.²² The Commission similarly suggests this approach.

Recommendation 11.4: The Community Services Directorate increase funding to supported accommodation services to provide a higher number of dedicated places for young people on bail.

Therapeutic Protection Orders

- 11.4.13 When discussing diversion, it is important to note that there is provision in the *Children & Young People Act 2008* (CYP Act) for Therapeutic Protection Orders (TPOs) and the declaration of Therapeutic Protection Places (TPPs). A TPO is an order which directs that a young person be confined for a certain period in a TPP for the implementation of a therapeutic plan (including therapy, counselling, education or other services). Although the legislative provisions have been in place for several years, they have not yet been used. Some stakeholders in the youth justice system have highlighted that many young people are placed in Bimberi in response to care or welfare issues. They suggest that TPOs could be used to prevent some young people entering Bimberi, by providing for their care and therapeutic needs to be addressed in the community.
- 11.4.14 Due to legislative change in 2008, now only the Director-General of CSD can apply for a TPO. The Commission understands that CSD is currently building a TPP facility and designing a TPO service, but it is unclear when this facility is expected to be operational. However, there is scope for a wider range of places to be declared as TPPs, according to the best interests of individual young people. The Commission recommends that the CYP Act be amended to allow the Public Advocate, or another party with leave of the court, to apply for a TPO. We also recommend CSD progress the implementation of the proposed TPP facility, and also consider the possibility of TPOs being applied in the context of other residential settings when in the best interests of a particular young person.

Recommendation 11.5: The ACT Government amend the *Children and Young People Act 2008* to allow the Public Advocate, or another party with leave of the court, to apply for a Therapeutic Protection Order.

Recommendation 11.6: The Community Services Directorate progress the implementation of the proposed Therapeutic Protection Place facility, and also consider the possibility of Therapeutic Protection Orders being applied in the context of other residential settings when in the best interests of a particular young person.

Residential institutions contracted to provide out of home care placements

- 11.4.15 The Commission heard concerns expressed about the practices of some residential institutions contracted by CSD to provide out of home care services. Several participants believed some institutions too readily report an alleged breach of bail conditions following relatively minor actions by a young person, such as refusal to comply with instructions. These participants formed the view that such institutions should be highly trained and resourced, and able to work with young people exhibiting challenging behaviour without invoking legal processes to manage non-criminal behaviour.
- 11.4.16 The Commission heard an allegation of inappropriate use of force in one particular residential institution contracted to provide out of home care services. It was claimed that young people are restrained in inappropriate circumstances, and without legal authority. Allegedly, during one restraint a young person was 'sat on' by a worker for 45 minutes.

²¹ Australian Institute of Health and Welfare, (2011) *Juvenile justice in Australia, 2008-09* Juvenile justice series no.7; UnitingCare Burnside above n 19.

²² Noetic Solutions, above n 9, para 241.

- 11.4.17 These issues are outside the terms of this Review, however, given the potential significance of the first allegation, and the potential seriousness of the second, the Commission recommends a review of residential institutions contracted to provide out of home care services for vulnerable and high risk young people.

Recommendation 11.7: The Community Services Directorate undertake a review of residential institutions contracted to provide out of home care services for young people, particularly in relation to their practices regarding use of force and enforcement of bail conditions.

- 11.4.18 For further discussion of diversion see Chapter 7 (prevention and diversion).

11.5 Housing, throughcare and aftercare

- 11.5.1 Suitable housing can help contribute to young people achieving positive outcomes and avoiding recidivism when they leave detention. However, there are indications of barriers to young people accessing suitable housing on release from Bimberi: there is limited pre-release planning at Bimberi; it is difficult to find suitable housing options for some young people, the transition from Bimberi to housing in the community is not always well managed; and there are some concerns about the provision of follow-up support and aftercare.
- 11.5.2 The Commission heard numerous stories of young people being released from Bimberi to apparently inadequate or unsupported housing situations or, indeed, to homelessness. These accounts included claims of: a young person with an intellectual disability waiting in Bimberi reception for more than an hour to be collected, then leaving with someone unknown to the Centre; a young person moving from their intended placement to another house where a worker feared they were at risk of exploitation; and a young person not making it to their new accommodation, but reoffending and being detained again within a short period of time. While we cannot confirm all the accounts we received, they indicate a widespread belief that the community needs to provide better planning and support for young people before, during and after their transition from Bimberi to the community.
- 11.5.3 In relation to transition planning and throughcare, there are three aspects to the claims made to the Commission:
- For some young people with complex needs, workers report that there are no accommodation services available to meet their needs.
 - For other young people, who did have prior connections with community based accommodation support services before custody, workers reported difficulty gaining permission to visit Bimberi to maintain a relationship with the young person during their detention.
 - For a third group of young people, who are introduced to new accommodation support services when they are released from Bimberi, workers feel they should be engaged much earlier in the preparation for release, and be permitted to develop a relationship with the young person over several weeks or months before release.
- 11.5.4 The Commission also heard reports of inadequate follow-up and aftercare support following release from Bimberi. The phrase 'set up to fail' was used by several people. Many participants described difficult challenges experienced by young people when they were released from custody into the family home or independent living. For example, a family member said their young person was put in a flat without enough supervision and support. One young person and several family members said that the organisations that promised to support them when they left Bimberi were not there when they needed them most.
- 11.5.5 For young people to achieve their goals and thrive when they leave Bimberi, it is important that they move immediately into suitable and supported housing. Without a stable accommodation base, the other challenges they are confronted with can be too difficult to manage.
- 11.5.6 CSD does fund a number of non-government organisations to deliver accommodation and supported independent living services to young people transitioning from custody. However, the Review heard widespread reports of a shortage of supported accommodation in the ACT for young people who are involved in the youth justice system. As mentioned above, CSD are currently redesigning the funding structure for the ACT youth housing and homelessness sector, which could offer potential for systemic improvement.²³
- 11.5.7 The Commission has been told that better transition to housing is provided at the adult detention facility than the youth detention centre. The Alexander Maconochie Centre (AMC) accommodates young people aged 18 to 25 years on remand

23 ACT Government, Community Services Directorate, above n 14.

or custodial sentence. Young people leaving the AMC experience similar challenges to the young people leaving Bimberi. However, it was reported to the Review that the AMC organises pre-release conferences for young people several weeks or more before their release date. Workers assisting the young person in different realms of their life (including housing, mental health, drug and alcohol) are invited to the meeting, where they have the opportunity to meet each other and discuss case coordination. Some workers who support young people leaving Bimberi and AMC believe that the earlier attention to planning at AMC, and involvement of all the workers supporting the young person, contributes to better outcomes for young people.

- 11.5.8 Several participants in the Review suggested a need for a transition facility between Bimberi and independent living. Bimberi is an institution in which young people are detached from many basic living skills such as grocery shopping, cooking, cleaning, paying bills, or putting the bins out. Young people who have been in custody for a long period of time need preparation to adjust to the change they will experience on release into the community. Some of the young people in Bimberi have grown up in environments where they did not have the opportunity to learn more complex living skills, such as relationship skills, handling conflict, and budgeting. There is an opportunity to assist them to develop these skills while they are in Bimberi. These issues are further discussed in Chapter 9 (programming) and Chapter 12 (education). The Commission understands that Bimberi management is currently developing plans for a transition unit, and we encourage CSD to progress this work as a priority.
- 11.5.9 Further, the Commission recommends that, where possible, young people be granted conditional day leave to visit their proposed accommodation in the preparation for release, to develop relationships and minimise the stress of transition.

Recommendation 11.8: The Community Services Directorate continue to improve transition planning for young people leaving Bimberi by:

- Progressing plans for a Transition Unit to help young people prepare for release into the community
- Organising pre-release conferences at least several weeks before the young person's date of release, to facilitate case coordination between the agencies supporting the young person
- Utilising conditional day release to allow young people to visit their proposed accommodation and develop relationships and familiarity before they exit Bimberi
- Building relationships with supported accommodation service providers to strengthen communication and partnerships.

Measuring and reporting young people's engagement in suitable housing

- 11.5.10 Given the potential negative impact of unsuitable housing on young people's rehabilitation, the Commission believes there would be benefit if CSD were to measure and report on:
- The number of young people under Community Youth Justice supervision who are in suitable housing; and
 - The number of young people released from Bimberi who are in suitable housing on release, after three days, one week, three weeks, three months, and six months.
- 11.5.11 By measuring and setting targets for suitable accommodation of young people in the youth justice system, CSD can understand the scope and nature of the reported housing problem, and develop strategies to improve accommodation outcomes for young people. However, this suggestion is not a formal recommendation of this Review, due to the possibility that such reporting activity may be confused with monitoring of compliance with court orders. The intention of this suggestion is to measure CSD's success in placing and supporting young people in suitable housing, not to create a perverse outcome of unnecessarily restricting the places that a young person is permitted to live, and penalising the young person for moving to alternative suitable accommodation.

Chapter 12: Education

A Quality Youth Justice System Meets Young People's Education Needs

Relevant Terms of Reference

- Programs for education and training, health and well being and rehabilitation
- Throughcare and aftercare services provided to detainees and CYJ clients

Relevant Human Rights Standards

- Protection of Family and Children (HR Act s.11, CROC arts 3, 19)
- Right to Education (POJ r.13, 38 and 39, CROC arts 28, 29, ICESCR art 13)
- Vocational Training and Work (POJ r.43-46, 67)

12.1 Introduction

- 12.1.1 Evidence shows a correlation between poor education outcomes and involvement in the youth justice system. It also shows that education programs within detention centres have great potential to help young people change their lives. Further, human rights standards require that young people have access to education and vocational programs while in detention. For these reasons the Commission has examined the interaction between education services and the ACT youth justice system.
- 12.1.2 This chapter begins with a brief discussion of the importance of school engagement in preventing young people's involvement in the youth justice system; it then examines the provision of education programs at Bimberi; and discusses issues of throughcare, and the importance of maintaining young people's engagement in education, vocational training or employment after release from Bimberi. The chapter concludes with a discussion of specific issues relating to vocational training programs, and living skills programs.

Human rights standards relating to education

- 12.1.3 The right to education is enshrined in the International Covenant on Economic, Social and Cultural Rights. A joint research project between the Australian National University and the Department of Justice and Community Safety, funded by an Australian Research Council linkage grant, recommended the inclusion of specific economic, social and cultural rights, including education and health care, in the ACT *Human Rights Act 2004* (the HR Act). The ACT Government is currently considering this recommendation.
- 12.1.4 Nonetheless, young people held in detention have further, specific rights to rehabilitation, health and education. Young people in detention should receive equal opportunities to those outside of detention. However, in some cases, the rights may be broader than this minimum entitlement. In particular, the Commission considers that detention should be viewed as an opportunity to provide intensive support to a group of young people who have previously been failed by the system. As former MLA Kerry Tucker stated in the preface to the 2001 Legislative Assembly Committee Report examining the Government's response to the Soames inquest into the death of a young person in Quamby:

*'The stories of the young people in detention in Quamby are a reflection of serious social failure. It is clearly established that supportive intervention and prevention strategies need to be given a high priority to address these failures. These young people who come into contact with youth justice services are clearly at high risk of being continually socially isolated unless such strategies are carefully implemented.'*¹

1 ACT Legislative Assembly Standing Committee on Justice and Community Safety, 'Report examining the Government's response to the Soames inquest' (2001).

- 12.1.5 Consistent with this, international human rights standards for young people also emphasise the importance of rehabilitation and reintegration into the community. Under Articles 28 and 29 of the United Nations *Convention on the Rights of the Child* (CROC), primary education must be available and free to all, and governments should develop different forms of secondary education, including vocational education, which must be available and accessible to every young person. Education should be directed to:
- The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - The development of respect for the child's parents, his or her own cultural identity, language and values, the national values of the country in which the child is living, the country from which he or she may originate, and civilizations different from his or her own;
 - The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and
 - The development of respect for the natural environment.
- 12.1.6 Rules 13, 38 and 39 of the United Nations *Rules for the Protection of Juveniles Deprived of their Liberty* (POJ) further elaborate on these rights. The POJ requires that young people deprived of liberty should not be denied the economic, social or cultural rights to which they would otherwise be entitled. It further requires that every juvenile of compulsory school age has the right to appropriate education designed to prepare him or her for return to society. Wherever possible, education should be provided outside the detention facility in community schools and, in any case, by qualified teachers through programs integrated with the education system so that, after release, juveniles may continue their education without difficulty. Young people who are illiterate or have cognitive or learning difficulties should have the right to special education. Particular attention should also be given to young people with particular cultural or ethnic needs.
- 12.1.7 Under Rule 40 of the POJ, any certificates awarded to young people while in detention should not indicate in any way that the young person was institutionalised. Rule 41 requires that young people have access to an adequately stocked library.² Principle 28 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (BOP) requires that a detained or imprisoned person shall have the right to obtain, within the limits of available resources if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Relationship between education and the youth justice system

- 12.1.8 There is a well established connection between poor education outcomes and involvement in the youth justice system. During a study conducted in 2007-2008 with 12 young people in the former Quamby Youth Detention Centre (Quamby), all young people in the group:
- '...reported having poor experiences at school prior to incarceration at Quamby and all but one stopped going to school at a young age... most young people had left school before they turned 14, with three having disengaged during their primary school years.'*³
- 12.1.9 Evidence shows that the factors contributing to poor education outcomes can also adversely affect a child's behaviour and, at the same time, early behavioural problems can lead to poor education outcomes and school disengagement.⁴ Therefore for many young people, disengagement from school is a significant risk factor for detention.⁵ This dynamic means that young people in detention have significant education needs. An education expert involved with the youth justice system provided the Commission with a profile of the group of young people they worked with in the years before 2008:
- 'Young people entering the youth justice system are among the most disadvantaged young people in our community. A significant number have special education needs or have an intellectual disability. Many have experienced significant trauma through exposure to domestic violence and some have had personal experiences of abuse and neglect from a very early age. A significant proportion of these young people have both physical and mental health problems with associated substance abuse issues. Almost without exception this group of young people has struggled with education and often due to behaviour problems have been unable to make satisfactory relationships with their peers and teachers. By the time they enter the youth justice system and detention their literacy and numeracy skills are well below their age level and they have a strong perception of themselves as failed learners.'*

² See also Rule 40 of the SMR, and Article 17(c) of CROC.

³ Institute for Child Protection Studies, *Lost in Transition* (2008) 113.

⁴ Antonis Katsiyannis, Joseph B Ryan, Dalun Zhang, Anastasia Spann, 'Juvenile delinquency and recidivism: the impact of academic achievement', (2008) *Reading & Writing Quarterly* 24: 177-196.

⁵ Peter E. Leone, Michael Krezmien, Loretta Mason, and Sheri M. Meisel, 'Organizing and Delivering Empirically Based Literacy Instruction to Incarcerated Youth' (2005) *Exceptionality*, 13(2), 89-102.

- 12.1.10 Evidence shows that a high proportion of young people in the youth justice system lack basic skills in reading and writing, and many have diagnosed learning disabilities.⁶ One study found that young people in detention read at about the Year 4 level, and function four years behind their peers of the same age.⁷ However, it is important not to assume all young people in detention have experienced poor educational outcomes; a very small minority of young people in detention do perform at or above the level of their age peers.
- 12.1.11 Research indicates that successful education programs improve life outcomes for individual students, and reduce future community expenditure in the youth justice system. *'The implementation of sound academic interventions, particularly in reading, can effectively reduce rates of both delinquency and recidivism'*.⁸ Therefore, the delivery of education services for young people at risk or in the youth justice system should be a priority for the ACT Government.

12.2 Education and early intervention

- 12.2.1 Evidence shows that *'sustained involvement in the education system is a key factor in reducing the risk of entry into the juvenile justice system'*.⁹ More precisely, engagement with school has been shown to reduce antisocial behaviour and protect young people from a range of negative risk factors that may exist in other areas of their life.¹⁰ Therefore, helping children and young people to engage with education can improve their life outcomes and reduce rates of detention.
- 12.2.2 During this Review, the Commission received numerous reports of:
- Children and young people failing to attend school, with no response or intervention;
 - Schools suspending young people with complex needs, with the consequence that young people are left to roam around unsupervised, 'getting into trouble'; and
 - A lack of appropriate early intervention services to respond to children's disengagement from school.
- 12.2.3 While it is difficult to measure the dimensions of these problems, it seems clear that the ACT community needs to put greater effort towards identifying school disengagement at an early stage, and implementing strategies by which Government and non-government organisations can work with families to reconnect young people with education. The literature demonstrates that early intervention and prevention programs can increase a child's resilience and prevent offending behaviour by addressing the 'risk factors' in their life, and strengthening the 'protective factors'. In a recent discussion paper about diversion, the ACT Government recognised *'the need for early identification of young people at risk of disconnection from education and the implementation of intensive support strategies to assist young people to maintain connection with education and training'*.¹¹ The Commission will examine future development of ACT Government policies and programs to ensure there is ongoing attention to these issues.

Identifying children who are at risk of disengaging from school

- 12.2.4 Research has established that certain early signs in a child's life can indicate a risk of future school disengagement and involvement in the criminal justice system. Primary schools and high schools are places where these signs can be identified, and children and families can be connected with early, supportive referrals to appropriate intervention services.¹²
- 12.2.5 However, some participants in the Review told the Commission that indications of risk are not being identified early enough, and we are losing opportunities to maintain children's engagement in education.
- 12.2.6 There are two aspects to school disengagement. Some families gradually withdraw from participation in school, for a variety of reasons, including parental homelessness, drug use or mental illness. Other families are supportive of their children's attendance at school, but the child is regularly removed from class or suspended due to behavioural issues. Sometimes these experiences are interrelated within the one family.
- 12.2.7 Schools should be supported to identify and record children's non-attendance, poor achievement or disruptive behaviour, to make effective referrals when they identify signs of risk, and to connect children with effective intervention. There are services available in this context (including Schools as Communities, and Youth Workers in Schools). However, some families

6 Katsiyannis, above n 4, 189.

7 Ibid.

8 Katsiyannis, above n 4.

9 Noetic Solutions, *A Strategic Review of the NSW Juvenile Justice System* (2010), para 298.

10 ICPS, above n 3, 112.

11 ACT Government Department of Disability Housing and Community Services, 'Discussion Paper: Towards a Diversionary Framework for the ACT' (2011), 48.

12 R Gilligan, 'The importance of schools and teachers in child welfare' (1998) 3 *Child & Family Social Work* 1.

and workers have reported that young people did not receive a response, or that they fell through the gaps between services.¹³

Collaboration to support children's re-engagement in school

- 12.2.8 According to some participants in the Review, schools are successfully identifying children at risk, but the problem lies in the response provided to these children. Greater collaboration among education and treatment professionals is fundamental to appropriate education services for young people at risk of involvement in the youth justice system.¹⁴ Some parents told the Review it would have helped their child to keep out of trouble if they had assistance with transport to school, and if their child was engaged in activities after school. They felt a transport program could also provide mentorship, and pro-social adults could talk with children during the car ride.
- 12.2.9 Suspensions and expulsions are shown to increase the likelihood of school disengagement, and involvement in the youth justice system.¹⁵ In NSW there are 22 suspension centres designed to support children and young people who are suspended for periods of more than five days. Suspension centre programs are intended to assist students placed on long suspension to return to school. They focus on addressing the causes of poor behaviour, conflict resolution, self esteem building, literacy and homework support.¹⁶ The Commission is aware of the Achievement Centres that are available to some high school students in the ACT who are not engaging in education, and we encourage the Education and Training Directorate (ETD) to provide similar support to children in primary school.

Recommendation 12.1: The Education and Training Directorate provide increased support for children and young people to remain engaged with education during periods of suspension from school.

- 12.2.10 For young people under Community Youth Justice (CYJ) supervision, CYJ should focus on assisting the young person to engage with education or training as a priority. As mentioned above, the research clearly indicates the positive impact of education on rehabilitation. Young people and their families also report they are less likely to 'get into trouble' if they are engaged in positive activities that interest them. The Commission recommends CYJ staff be provided with resources, time and professional guidance to focus on young people's engagement in education, training or employment. For a further discussion of these issues see Chapter 7 (prevention and diversion).

12.3 Education programs for young people at Bimberi

- 12.3.1 Research indicates that the education program at Bimberi has significant potential to improve life outcomes for young people, and to reduce future expenditure in the criminal justice system. Mathur and Schoenfield found that:
*'Within the broad spectrum of services provided by juvenile justice systems, the education of [young people in detention] has perhaps the greatest long-term influence.'*¹⁷
- 12.3.2 Further, Mazzotti and Higgins found that:
*'The manner in which school staff and educators structure the learning and social atmosphere can facilitate the rehabilitation of the student. Through the provision of a stable, secure, and welcoming support system, school personnel and educators provide important elements for the life successes of students.'*¹⁸
- 12.3.3 However, to be successful education programs must be well designed and operated. Further, the environment of the detention centre can present barriers to young people's enjoyment and success in education.
- 12.3.4 The literature shows that Bimberi is not alone in experiencing challenges in implementing effective education and vocational programs. Many other detention centres in other jurisdictions experience similar difficulties, where the school is not integrated within the management of the centre.

13 ICPS, above n 3, 126-127.

14 S Meisel, K Henderson, M Cohen, and P Leone, 'Collaborate to educate: Special education in juvenile correctional facilities' (1998) in *Building Collaboration Between Education and Treatment for At-risk and Delinquent Youth* (pp. 59-72).

15 Marsha Weissman et al, 'The Right to Education in the Juvenile and Criminal Justice Systems in the United States Submission to Vernor Muñoz Special Rapporteur on the Right to Education Human Rights Council United Nations' (2008).

16 NSW Department of Education and Training, 'Long Suspension and expulsion summary 2008' (2008).

17 Sarup R Mathur and Naomi Schoenfield, 'Effective instructional practices in juvenile justice facilities', (2010) 36 *Behavioural Disorders* 1, 20-27.

18 Valerie Mazzotti and Kyle Higgins, 'Public Schools and the Juvenile Justice System: Facilitating Relationships', (2006) 41 *Intervention in school and clinic*, 5, 299.

12.3.5 Houchins et al asked a sample of 78 teachers in youth detention centres in the United States what they perceived to be the barriers and facilitators to providing young people in detention with a quality education. Their responses were grouped into nine themes:

- Personnel concerns (lack of necessary administrative support, lack of support staff in the classroom, too much paperwork);
- Academic issues (inappropriate curriculum for the young people, students with different levels allocated to the same classroom);
- Student concerns (poor motivation, lack of treatment/support services);
- Behaviour and discipline;
- Materials and supplies (funding restrictions, and difficulty purchasing);
- Desire to have parental involvement;
- Lack of funding;
- Communication with detention centre management and lack of teacher involvement in decisions; and
- Need for better facilities.

12.3.6 These themes were very similar to the information provided to the Review by young people, families and teachers at Bimberi.

Current education programs at Bimberi

12.3.7 The Murrumbidgee Education and Training Centre (METC) is a school-related institution established under the *Education Act 2004*. It operates within Bimberi during normal school hours and across the school term. METC is governed by ETD and a Board that comprises ETD executives, Community Services Directorate (CSD) executives, community workers, and one student representative. Administratively METC is separate from other ACT Government schools, and is located within the Student Wellbeing and Behaviour Support unit of ETD.

12.3.8 The current staff team at METC comprises:

- One executive teacher with day-to-day supervisory responsibility for the program. This position is currently being upgraded to a Deputy Principal position;
- Two full-time teachers (Literacy, Numeracy, Studies of Society and Environment, Information Communications Technology);
- One full-time teacher (Art);
- One 0.6 FTE teacher (Woodwork);
- One 0.6 FTE teacher (Metalwork);
- One 0.6 FTE teacher (Music); and
- One 0.4 FTE teacher (variety of introductory trade programs).¹⁹

12.3.9 Other Government and non-government organisations are engaged by both ETD and CSD to provide short courses for young people at Bimberi in specialist subjects, during school holidays, or when a sudden increase in numbers of young people in detention requires additional teaching resources.

12.3.10 The curriculum for high school age students currently includes Mathematics, English, SOSE, ICT, Art, Music, Horticulture and Woodwork. Class sizes are generally six young people in education classrooms, six young people in the art room, and four young people in the wood and metal workshops. Term Reports are written; students receive the original and a copy is sent to their parent/carer. Further copies are held by METC and Bimberi case managers as supporting documentation of their work and effort while at METC.

12.3.11 METC has achieved some positive outcomes with young people, and during the Review young people at Bimberi generally spoke positively of the school. For example one parent told the Commission: *'I've got nothing but praise for Bimberi school'*. Young people at Bimberi also spoke highly about the school and felt that some of the teachers had played an important part in their lives. For many, the achievements that they had made while in detention were ones that they had previously believed unattainable and were greatly appreciated.

¹⁹ ACT Government submission.

Promising practice: Young people and parents generally spoke positively of the Murrumbidgee Education and Training Centre.

- 12.3.12 However, despite indications of positive outcomes for some young people, there are some fundamental challenges that undermine the educational outcomes for young people at Bimberi.

Good practice in education programs in youth detention centres

- 12.3.13 The literature provides us with a good indication of 'what works' in education programs based in youth detention centres. For example, in the United States, there is a list of key components of effective education programs in youth detention centres.²⁰ In England and Wales, the independent agency responsible for inspection of prisons has developed criteria for assessing the education services provided to young people in detention centres, based on international and UK human rights standards.²¹
- 12.3.14 The Review examined the current provision of education services in Bimberi using a combination of these standards:
- Professionalism, leadership and advocacy;
 - Integrated, multidisciplinary framework for service delivery;
 - Competency based curriculum options;
 - Early, appropriate, and coordinated assessments and planning;
 - Students are allocated to courses at an appropriate level to meet their assessed needs and their aspirations and interests;
 - A range of effective and age-appropriate offending-behaviour and other interventions is available to promote social integration and personal development;
 - Students attend the activities to which they are allocated and that are set out as objectives in their training plan;
 - Students engage actively in, contribute to and enjoy the activities they are involved in;
 - Adequate IT and library resources to support young people's education;
 - Pro-social skills curriculum;
 - Community and business involvement;
 - Ongoing support and professional development for teaching staff; and
 - Sufficient fiscal resources.

Professionalism, leadership and advocacy

- 12.3.15 Meisel et al state:
- 'Skillful administrative leadership is essential to maintain a focus on the needs of educational and treatment programs as a priority within correctional facilities, to encourage collaborative structures, to provide ongoing support for staff, and to build links with parent and community groups. Leadership also is critical to advocate for social policies that support correctional education programs as public sentiment increasingly grows unsympathetic to funding educational and treatment services for youthful offenders. Communicating the importance of correctional education programs to the general public, elected officials, legislators, and the media is fast becoming an essential professional skill.'*²²
- 12.3.16 The teachers at METC are situated in a difficult organisational structure, as they are employed by ETD, and METC is administered by ETD, but their operational environment is controlled by Bimberi management and CSD. The Commission supports the existing model by which education services in Bimberi are provided by ETD (and health services are provided by ACT Health), and believes that the independence and transparency provided by this structure are important. However, staff at METC are caught between two Directorates, budgets and cultures. If not well managed, this could impact poorly on education outcomes for young people.
- 12.3.17 The Commission identified several problems with the management structure during the Review. METC is not fully integrated within Bimberi, and there are several areas in which communication could improve.
- *Poor induction.* Not all staff at METC reported receiving a formal site induction or training when they began working at Bimberi;
 - *Lack of shared planning.* For example, before 2011 teachers were not involved in Bimberi case management meetings;

²⁰ Meisel, above n 14.

²¹ Her Majesty's Inspectorate of Prisons, *Criteria for assessing the treatment and conditions for children and young people held in prison custody* (2009).

²² Meisel, above n 14.

- *Lack of input into decision-making about METC.* For example, the decision to remove youth workers from the classrooms in late 2010 was made by Bimberi management with insufficient consultation and preparation with METC staff (this issue is discussed further below);
- *Lack of input into decision-making about individual young people.* For example, when making classification decisions, Bimberi management do not consult with teachers to seek information about young people's behaviour during school hours. Further, teachers are not consulted or informed before Bimberi management make a decision that will interfere with a young person's schooling (such as placing a young person in lock down or segregation); and
- *Limited communication.* This year communication has reportedly begun to improve, and the senior teacher at METC attends the new morning briefings with Bimberi staff. However, there could be further improvement in the way METC and Bimberi staff convey information when the young people move between the units and the school at the beginning and end of the school day.

Promising practice: METC teachers have become involved in Bimberi case management meetings in 2011.

- 12.3.18 Also, it appears that historically Bimberi management have demonstrated little professional respect towards METC staff.
- *Making decisions about risk.* Young people have very restricted access to online education resources. While it is appropriate to have some restriction on internet access in a detention centre, it appears that security processes are inefficient and unnecessarily impact on young people's education opportunities. METC teachers are not permitted to use their professional judgement to determine which websites are suitable for use by students in class. Rather, teachers are required to submit a list of educational websites for signoff by Bimberi management. This process was agreed by CSD and ETD early in the operation of Bimberi, however based on feedback from teachers, there may be benefit in reviewing the process. See Chapter 14 (conditions of detention) for a discussion of the wider issue of internet access outside the classroom.
 - *Managing risk in the classroom.* As mentioned above, the decision to remove youth workers from the classrooms in late 2010 was made by Bimberi management with insufficient consultation with METC staff. Further, Bimberi management sometimes deny certain young people access to school due to 'security risk', without consultation with the teachers. Some teachers reported they had no concern with the behaviour of these particular young people in the classroom, and disagreed with the decision to exclude them.
 - *Determining programs and resources.* For example, young people are placed in classes according to young people's unit of residence, and their demographic characteristics. The teachers are not able to arrange class groups according to the educational needs and capacity of the students, such as grouping young people according to their reading level, or similar musical skills together. Further, security concerns have restricted young people's access to particular classes, such as woodwork and metal work.
 - *Difficulty gaining approval for teaching material/equipment to enter the Centre.* CSD informed the Commission that an agreement between CSD and ETD requires equipment to be provided to METC within two days of the request. However, there are reports of this timeframe not being met in some circumstances. Some teachers reported frustration with the process for bringing educational materials into Bimberi. They claimed the requirements for gaining security approval for classroom materials, tools, films and internet access are lengthy and complex, and that the reasons provided by Bimberi management for refusing requests are sometimes unreasonable and unnecessary.
- 12.3.19 The 'youth workers in classrooms' issue, which received significant media attention in late 2010, seems to demonstrate these problems of poor communication and professional respect. Bimberi management proposed to withdraw youth workers from classrooms. The Commission heard differing reports about the adequacy of consultation with teachers and youth workers before the decision was made. It seems clear that there was inadequate preparation before the decision was implemented; teachers and youth workers told the Review there was no lead-in time, and no written procedures to guide them during the change.
- 12.3.20 Following the decision to remove youth workers, some teachers publicly expressed concern about safety in classrooms. Other teachers have told the Review they were willing to make the change, but were frustrated by the lack of consultation and the immediate implementation of the decision. Youth workers also had mixed views: some youth workers told the Review that they would prefer the option to be involved in the classroom when needed, and that they enjoy the opportunity to help young people with their reading skills; other youth workers said they were relieved to have an opportunity for a break during their long 12-hour shift.

- 12.3.21 The Commission understands that staff shortages have a significant impact on youth workers and young people, and agrees that Bimberi management needed to find ways to address the problem. However, this decision does not seem to have been well managed. METC was not seen as an equal partner, and there was limited trust and commitment from METC staff because of the way the decision was made. As a result of the removal of youth workers from classrooms, teachers have decreased resources and increased responsibility.

Recommendation 12.2: The Education and Training Directorate and the Community Services Directorate work together to provide alternative support and resources to young people in the Murrumbidgee Education and Training Centre following the removal of youth workers from the classrooms, perhaps through teaching assistants or additional qualified teachers.

- 12.3.22 See below for further discussion about education resources at Bimberi.
- 12.3.23 These problems of communication and professional respect may stem in part from the fact that there is no onsite principal or deputy principal with authority equivalent to Bimberi senior management. Officially CSD and ETD are partners in the management of METC; they have equal participation on the school board, and on the Strategic Reference Group, and have negotiated formal policies to govern the school. However, in practice, each day Bimberi staff make decisions which affect the teachers and young people who attend METC, and any conversations conducted onsite between Bimberi management and METC occur with a power imbalance. An onsite principal or deputy principal could increase support for the staff at METC and assist communication with Bimberi management.

Recommendation 12.3: The Education and Training Directorate and the Community Services Directorate give direction and support to Murrumbidgee Education and Training Centre staff and Bimberi staff to:

- clarify their daily operational relationship and interactions, with the aim of improving education outcomes for young people
- negotiate mechanisms to exchange appropriate information about young people, centre operations and school operations, at the beginning and end of the school day.

Recommendation 12.4: The Community Services Directorate give direction and support to Bimberi management to ensure they consult with Murrumbidgee Education and Training Centre staff before making decisions that impact on a young person's access to education.

Recommendation 12.5: The Education and Training Directorate employ an onsite principal equivalent to the level and authority of Bimberi management.

Recommendation 12.6: The Education and Training Directorate communicate with the Community Services Directorate about any operational decisions that detrimentally impact on young people's education at Bimberi.

Integrated, multidisciplinary framework for service delivery

- 12.3.24 Collaboration among education and treatment professionals is fundamental to providing effective education programs at Bimberi.²³ The school at Bimberi needs to be connected with the youth workers, case managers and health professionals who also work with the young people at Bimberi. Many participants in the Review identified a need for collaborative case management: for all services at Bimberi to work together to meet the needs of young people. Individual learning plans should be meaningfully integrated with Bimberi case management plans. For further discussion of this issue see Chapter 8 (case management).

Competency based curriculum options

- 12.3.25 Leone et al state:
*'The overall purpose of correctional education is to engage [young people] in positive educational experiences and prepare them for successful re-entry to their schools and communities.'*²⁴

²³ Meisel, above n 14.

²⁴ Leone, above n 5, 90.

- 12.3.26 Bimberi needs to provide a range of curriculum options to meet the diverse needs of young people in detention. This includes literacy and numeracy, vocational training, physical education, living skills, and social and emotional learning.
- 12.3.27 Some participants expressed the view that one type of education is more important than others; for example, that it is more important for young people to learn to read, or to prepare for work, or to learn to interact with other people. However, in the Commission's view, different types of education programs can be integrated, and teachers will adopt a particular focus according to the needs and wishes of individual young people. Some teachers described how young people could learn emotional awareness or social skills while they were in a literacy or music class with other students. To teach effectively in Bimberi, teachers create a climate in the classroom that promotes positive teacher–student relationships, positive peer relationships, a personal sense of self, and an ability to manage emotions.²⁵
- 12.3.28 The curriculum at Bimberi needs to be modular and achievable. This has proven to help young people build confidence, and help METC manage the difficult fact that many young people are in Bimberi for very short periods, and often it is not known how long they will be in detention until their next court appearance. Also, the METC curriculum needs to be transferable, and able to monitor and report systematic progress. The curriculum should be benchmarked to appropriate standards.²⁶ Achievements should be accredited in a way that enables this progress to be recognised when re-entering the mainstream education system or moving into the vocational training system. METC should maintain a record of achievement for each young person, to facilitate their continuation of courses when they leave Bimberi.
- 12.3.29 Currently there are some restrictions that prevent young people accessing curriculum options that meet their needs:
- There are limited opportunities in Bimberi for young people who have already completed Year 10. The only way that a young person can complete Year 12 at Bimberi is by distance education through Karabar High School in Queanbeyan, which is part of the NSW education system. While this difficulty does not affect a large group of young people, the Commission believes that ETD should explore options by which the ACT education system can meet the needs of these young people, perhaps on a model similar to the Canberra College Cares program;
 - Access to vocational programs involving tools is sometimes denied by Bimberi management due to security reasons; and
 - At Quamby young people were permitted to apply for day leave to attend school in the community. This was helpful for young people who wanted to maintain existing relationships with a school, and for young people preparing for release. There have been no episodes of day release for education or training purposes at Bimberi. Reportedly, one young person was granted leave for childcare training, although they were released from detention prior to the training occurring. There should be a process by which young people or teachers can apply for day release to a community based school if the young person meets appropriate criteria.

Recommendation 12.7: The Education and Training Directorate explore options by which the ACT education system can meet the needs of young people wishing to complete Year 12 qualifications while in Bimberi, instead of referring them to the NSW education system.

Recommendation 12.8: The Community Services Directorate assertively implement the provision in the *Children and Young People Act 2008* which allows for the conditional day release of young people in Bimberi for purposes of education, training or employment.

Recommendation 12.9: The Education and Training Directorate assist young people to submit applications for day release for education purposes, when it is in the best interests of that young person.

- 12.3.30 If a young person completes a Year 10 Certificate or other qualification while in Bimberi, their accreditation certificate names METC as the education institution in which they completed their studies. Human rights standards require that if a young person achieves an educational qualification while in detention, their accreditation certificate should not disclose the name of the detention centre. ETD has clearly considered this requirement in naming the school 'METC' and removing any reference to Bimberi from the title. However, the Commission is concerned that as community awareness of Bimberi increases, METC may become commonly identifiable as the school within the ACT detention centre. In these circumstances, to protect young people from stigma or discrimination, it may be preferable for METC to establish a connection with a local primary school and high school to allow certificates to be printed with the name of a community based education institution.

²⁵ Mathur, above n 17, 21.

²⁶ Leone, above n 5, 92.

Early, appropriate, and coordinated assessments and planning

- 12.3.31 When a young person arrives at Bimberi there should be a comprehensive assessment and planning process to identify their education history, skills, interests, and learning support needs. The process should be coordinated, and be used to inform the goals for the young person's education, and the preparation for classes. Some of the areas requiring assessment are: current reading level and writing level, numeracy, behavioural issues, learning disability, and intellectual disability.
- 12.3.32 Currently the teachers do perform some testing in the classroom to assess the skills and interests of the students. Students are also provided with an individual learning plan (ILP) to plan their education while in Bimberi. However, there are significant challenges in planning for young people's education in Bimberi:
- Education programs in detention centres are impacted by variable lengths of detention, and high mobility rates.²⁷ The average length of stay for young people on remand in Australia is 11 days.²⁸ This level of mobility among many young people at Bimberi makes it difficult for teachers to develop relationships and to plan for their education. This highlights the need for small, modular curriculum options for young people on remand;
 - The difficulty of short periods of remand is complicated by the fact that some young people later re-enter Bimberi, sometimes several times. The mobility of some young people in detention is a challenge for METC and the wider school system in the ACT. Young people moving between schools in the community, or between schools and Bimberi, have a disrupted education. There need to be clear procedures and guidelines for exchange of information during the transition to and from Bimberi;²⁹ and
 - Teachers report they often do not know much about their students' backgrounds.
- 12.3.33 There are several ways to improve education assessments and planning at Bimberi:
- *Improved agency coordination.* There should be more coordination between Bimberi case management, CYJ case management, Care and Protection Services, and METC. For further discussion of these issues see Chapter 8 (case management).
 - *Induction case conference.* Before a new student is placed in a class, they could be inducted through a case conferencing model in which the young person, executive teacher, teachers and youth workers discuss the young person's education history, skills and interests. Although a similar conference occurs in the ILP process, this may not occur until three weeks after a young person arrives at Bimberi;
 - *Transfer of information from previous schools.* METC teachers need to quickly make contact with young people's previous schools to obtain their relevant education records. This is a core component of effective education programs in youth detention centres.³⁰ Obviously ETD should assist METC with this process. Ultimately, engaging staff from the schools from which young people are coming (and hopefully returning) would also be helpful in ensuring a continuity of care and enable METC to understand and meet each student's broad needs; and
 - *Involvement of parents.* Some teachers and youth workers have expressed interest in speaking with young people's parents, to gain a better understanding of the young person's background, needs and interests. Communication with and involvement of parents is another core component of effective education programs in youth detention centres.³¹ Bimberi and METC should develop accessible opportunities for parents to be involved in the development of their young person's ILP, when this is in the best interests of the young person. For example, they could schedule ILP meetings to coincide with family visiting times, or involve parents in meetings via speakerphone.³² We have been informed that METC invited parents to a parent/teacher evening in 2010, but that no parents or carers attended. Given the difficulty accessing transport to Bimberi, perhaps more flexible options might be considered in future, including meetings at different times of the day or more accessible locations.

Recommendation 12.10: The Community Services Directorate, in consultation with the Murrumbidgee Education and Training Centre and Bimberi management, develop and implement flexible and accessible methods to facilitate parental involvement in young people's education.

27 Ibid.

28 Kelly Richards, 'Trends and issues in crime and criminal justice, no.416' (2011) Australian Institution of Criminology.

29 Regine M Foley and Jing Gao, *Correctional Education Programs Serving Incarcerated Juveniles: A Status Report*, (2002) *JCE* 53(4).

30 Leone, above n 5, 92.

31 Ibid.

32 Meisel, above n 14.

Students are allocated to courses at an appropriate level to meet their assessed needs and their aspirations and interests

- 12.3.34 Currently young people are not allocated to class groups or subject areas based on their educational need. Rather, class composition has historically been based on security decisions made by Bimberi management, with limited information sharing about the reasons for decisions. Issues of mixing are discussed further in Chapter 14 (conditions of detention). The restrictions on class composition have a detrimental impact on education outcomes for young people. Young people are less likely to enjoy or benefit from a class if they are in a group with students at a different reading level. Clearly some risk assessment is needed to ensure safety of young people and staff, however, the Commission believes there should be more flexibility for METC to determine class composition. Extra resources may be required to allow smaller class sizes that take into account both security issues and educational need.

Recommendation 12.11: The Education and Training Directorate and the Community Services Directorate facilitate greater flexibility for the Murrumbidgee Education and Training Centre to determine class composition. Extra resources may be required to allow smaller class sizes that take into account both classification issues and educational need.

- 12.3.35 Some young people told the Review they were unable to be involved in courses they were interested in. Some of the new subject areas young people nominated were childcare, youth work, mechanics and hairdressing. Other young people said they were forced to participate in programs they did not have interest in. Some young people in Bimberi are aged over 17 years and therefore not legally obliged to participate in education, and there should be a range of vocational options available for them. These issues are further discussed further below, in the section on vocational training and employment.

A range of effective and age-appropriate offending-behaviour and other interventions is available to promote social integration and personal development

- 12.3.36 The Commission has identified a range of therapeutic and education programs that are not currently being provided at Bimberi, but that would assist young people's rehabilitation:
- *Therapeutic services to help young people address their offending behaviour.* This is a significant need, and is discussed further in the Chapter 8 (case management);
 - *Programs to support the cultural needs of Aboriginal and Torres Strait Islander students.* A teacher suggested the Indigenous Education Section staff in ETD could assist METC staff with appropriate curriculum content that will support cultural learning for Aboriginal and Torres Strait Islander young people. The Commission urges CSD to employ an Indigenous liaison officer at Bimberi as soon as possible;
 - *Wider education needs of young people in the youth justice system.* Young people in Bimberi need improved access to information about a range of issues that may affect their lives, including:
 - legal education;
 - sexual health education;
 - drug and alcohol education;
 - anger management groups;
 - human rights education; and
 - swimming or lifesaving lessons.
- 12.3.37 CSD informed the Commission that there have been programs in sexual health education, drug and alcohol education and swimming at Bimberi. However, they were unable to provide the dates of these programs, the duration, or the numbers of young people who participated. The Commission has seen no documentation to indicate an integrated and consistent approach to programming, or an assessment process that ensures that young people are able to access programs to meet their individual needs.
- 12.3.38 Government or non-government organisations could be invited to provide young people with short-course workshops on these subject areas. Workshops could be structured to take place during the school day, providing additional teaching resources, which would allow smaller class sizes for literacy and numeracy tutoring. Alternatively, workshops could take place on weekends, or in the evening before the young people are locked in their rooms at 7.30pm.

Recommendation 12.12: The Education and Training Directorate consider how the Indigenous Education Section in the Directorate could assist Murrumbidgee Education and Training Centre staff with appropriate curriculum content that will support cultural learning for Aboriginal and Torres Strait Islander young people.

Recommendation 12.13: The Community Services Directorate consider the best means to engage government or community service providers to facilitate programs in legal education, sexual health education, drug and alcohol education, anger management groups, human rights education, swimming or lifesaving lessons, and other subject areas relevant to young people in Bimberi.

Students attend the activities to which they are allocated and that are set out as objectives in their training plan

- 12.3.39 As described above, young people in Bimberi have a right to education, and evidence shows that education can assist in a young person's rehabilitation. However, despite this clear standard and strong evidence, education programs at Bimberi have been interrupted by security concerns and staff shortages. For several months during 2010 young people were placed in lockdown during the middle of the day to allow staff to have a lunch break during their 12-hour shift. This interrupted the school day.
- 12.3.40 In the past Bimberi management have refused to allow certain young people access to vocational programs, apparently because these classes involve access to tools. However, the criteria for risk assessments in this context is not clear. There should be objective criteria on which a young person and their teacher can apply to access vocational classes, and clear process of decision-making, with an explanation of the reasons for decisions, and a clear statement for the young person of what they need to do to gain access to the class.
- 12.3.41 Young people are sometimes excluded from school by Bimberi management for behavioural reasons. Young people on segregation or in lockdown are not permitted to attend school. The Commission has concerns about the practice of segregation and lockdown (or 'time out') at Bimberi, which are discussed in more detail in Chapter 14 (conditions of detention). Such decisions should be based on a formal risk assessment, should not continue indefinitely, and should be reviewed by an independent person.
- 12.3.42 The Australian Education Union told the Review that:
'The breaks in the education program as a result of lockdowns undermine the capacity of teachers to maintain the interpersonal rapport and continuity in their programs. The practice of withdrawing the right to education results in the classroom environment being destabilised and generates safety and security issues for all concerned.'
- 12.3.43 Young people have a perception that, when they are denied access to school, it is punishment for past behaviour. Bimberi management insist that segregation and school exclusion decisions are based on risk management considerations. However, in the absence of clear criteria for segregation, behaviour management and school exclusion, Bimberi management remain open to criticism that such decisions are imposed as punishment.
- 12.3.44 If a young person is not permitted to attend school, they should still receive access to education. It is not clear whether this is happening adequately. Young people on segregation told the Review that, for long periods while in segregation, they did not receive education. Youth workers said young people in segregation do receive 'a bunch of papers', but that it would be more effective for teachers to visit the young people. Teachers report difficulty accessing young people when they are kept in their unit or in segregation. They say they endeavour to provide schoolwork to these young people, and they can sometimes visit them to assist them with their work, but this is not always possible due to security restrictions imposed by Bimberi management, and resource levels at METC.
- 12.3.45 Recommendations regarding more transparent decision-making in relation to segregation directions and disciplinary matters are discussed in Chapter 14 (conditions of detention).

Recommendation 12.14: The Education and Training Directorate inform the Public Advocate and Official Visitor if a young person is denied permission to attend school for two consecutive days in a row, to ensure transparency of segregation or behaviour management decisions that impact on young people's right to education.

Recommendation 12.15: The Education and Training Directorate and the Community Services Directorate ensure young people receive equal access to education while in segregation.

Students engage actively in, contribute to and enjoy the activities they are involved in

12.3.46 Mathur and Schoenfield state that:

*'Young people need the opportunity to find their own reasons for becoming literate—reasons that go beyond reading for factual knowledge or to conform to immediate academic requirements and that have functional value and meaning.'*³³

12.3.47 Due to the fact that young people in Bimberi have had a variable (often not very good) experience of education during their lives, it is challenging to reengage them in school, and the success of some teachers and youth workers in establishing positive relationships with young people is noteworthy. Teachers at Bimberi have described their role as 'relational'; and say it often takes time for young people to develop trust and become comfortable in the classroom. As discussed above, some young people in detention have skill deficits, behavioural problems or disabilities. Some young people in detention also report feeling afraid of being involved in the education program, or of not wanting to 'feel dumb'.³⁴

12.3.48 For these reasons METC needs to provide a supportive environment, and teachers need to give students affirmation and recognition for achievements. From our experience visiting METC and speaking with current and former staff, the Commission is confident that this takes place.

12.3.49 Some young people participating in the Review said they would like to participate in decisions made about the school, the courses available, and about their own education. Currently young people are consulted in the development of their ILP, and a student representative is appointed to the METC Board.

Adequate IT and library resources to support young people's education

12.3.50 Bimberi has a library with a range of written material displayed on shelves, located near to the classrooms and teachers' staff room. However, young people do not have sufficient access to information technology to facilitate their education. In particular, Bimberi management tightly restricts the use of the internet in school classes. Access to the internet at METC is not equivalent to the access available to students at ACT Government schools in the community. As discussed above, the Commission is concerned that security processes are inefficient and possibly too restrictive of young people's education outcomes, and suggests that ETD and CSD management negotiate a more suitable protocol for internet access. See Chapter 14 (conditions of detention) for a further discussion of the wider issue of young people's access to the internet outside the classroom.

Pro-social skills curriculum

12.3.51 Many young people in detention have significant problems with anger management, relationship skills, impulse control and other social skills. Young people should receive training to help them develop understanding and skills that support positive behaviour. A program of social and emotional learning should be a core component of the education program at Bimberi, and it should be implemented jointly by teachers, health professionals and youth workers.

12.3.52 The Commission is confident that the teachers at METC endeavour to integrate this learning into their curriculum and daily class plans. However, such efforts could be more structured and effective if Bimberi provided individualised therapeutic services to assist young people's rehabilitation. This issue is discussed above, and in Chapter 8 (case management).

Community and business involvement

12.3.53 A range of community and government organisations have provided short-term education and recreation programs in Bimberi. However, there are still significant gaps in the education program. As discussed above, there are several subject areas in which external Government and non-government organisations might visit Bimberi to provide sessional education programs, particularly in relation to: legal education, sexual health education, drug and alcohol education, anger management groups, human rights education, swimming or lifesaving lessons, and cultural learning for Aboriginal and Torres Strait Islander young people. There is also potential to engage employer organisations to provide vocational training and establish employment pathways for young people when they leave Bimberi. This is discussed further in section 12.5 (vocational training and employment).

12.3.54 The Review is aware that shortages of youth workers and limited resources for teaching staff mean that there is only limited opportunity for one-on-one tutoring with young people in Bimberi. Further discussion of education resources is below. However, there is potential for trained and supported volunteers with appropriate skills to assist young people in Bimberi with literacy skills.

33 Mathur, above n 17, 22.

34 ICPS, above n 3.

Ongoing support and professional development for teaching staff

- 12.3.55 Although METC is an ACT Government school, the teachers are isolated from ETD and from their colleagues in other schools, and they are in a special environment where they require additional support.
- There has been a high turnover of staff at METC since the opening in September 2008. Reportedly 14 teachers began working at Bimberi, and have now left. ETD find it difficult to employ staff for METC, and participants have suggested this is because teachers in the community are not aware of METC, or that there is a perception of a safety risk.
 - As mentioned above, the principal of METC is located offsite. A principal or deputy principal onsite would provide support to the teachers, and assist them in communicating with Bimberi management.
 - Due to the location and size of METC, teachers do not have the same convenient access to professional development opportunities as exists in larger schools in the community. The teachers do not have a free line in the weekly timetable, therefore it is difficult for them to access professional supervision or support during the work day. Some teachers reported reluctance to attend training courses, as they felt their absence would place a burden on their colleagues. The Commission recommends that ETD consult with METC staff about the supports that can be provided to assist them in their work. At Quamby the teachers established links and partnerships for professional development with Erindale College and Kaleen High School. Perhaps a similar model would be useful at METC.
- 12.3.56 ETD must pay close attention to the professional and personal well being of teachers at METC, and continually identify methods for supporting them in their work. For further discussion of staff support see Chapter 5 (staffing).

Recommendation 12.16: The Education and Training Directorate consult with Murrumbidgee Education and Training Centre staff about the supports that can be provided to assist them in their work.

Recommendation 12.17: The Education and Training Directorate develop professional linkages between Murrumbidgee Education and Training Centre staff and other schools in the community. The Education and Training Directorate develop strategies to promote METC as a place to work among teachers in the ACT.

Sufficient fiscal resources

- 12.3.57 As discussed above, education programs can have a transformative impact on young people in detention, reducing recidivism and improving their life outcomes. Therefore ACT Government should ensure METC has sufficient resources to operate effectively, both for the well being of the young people and teachers, and for the potential long-term cost savings in the criminal justice system. However, despite the strong imperative to provide adequate resources, teachers reported that METC is not adequately funded to provide intensive individualised education for young people.
- Unlike in other schools teachers do not have a free line in the weekly timetable, therefore they do not have many breaks during the school day, or the ability to have some time to themselves and refresh between classes;
 - Teachers told us it is difficult to provide a positive learning experience when there are six young people in the class, all with varied levels of reading ability. Young people would benefit from more opportunities to do intensive individualised work with a teacher;
 - It seems that METC cannot guarantee individualised education support for young people excluded from school on segregation; and
 - Teachers also spoke of 'too much paperwork', and lack of administrative support.
- 12.3.58 While teachers readily acknowledge they have fewer commitments than their colleagues in community based schools (such as marking and playground supervision), nonetheless their students have more significant behavioural difficulties and educational needs than exist in other class groups, and their work is intensely demanding. Further, when youth workers were removed from classrooms in late 2010, teachers took on increased responsibility as they had less support for behaviour management in the classroom. This increase in demand on teachers should be acknowledged and compensated.

Recommendation 12.18: The Education and Training Directorate and the Community Services Directorate negotiate funding for additional teaching resources, to ensure the well being of Murrumbidgee Education and Training Centre staff, and improved education outcomes for young people at Bimberi.

- 12.3.59 Increased teaching resources will allow for smaller class sizes, more intensive literacy and numeracy work, and individualised education for young people on segregation. As mentioned above, a high proportion of young people in detention have a

learning or intellectual disability or impairment.³⁵ When in a community based school these young people are eligible for special education services and learning support. While in Bimberi they should be eligible for the same (or greater) access to individualised learning support. ETD should ensure that young people in Bimberi are receiving the entitlements they are eligible for under existing departmental criteria for special education funding.

Recommendation 12.19: The Education and Training Directorate ensure that young people in Bimberi are receiving the full level of service they are entitled to under existing departmental criteria for special education services.

- 12.3.60 A further resource consideration is the length of the school year at METC. A core component of effective education programs in youth detention centres is year-round operation.³⁶ At Quamby in 2004 the education program was made available 48 weeks per year. Staff received the same holiday entitlements, and had a staggered schedule of breaks across the year. The extended year allowed the school to maximise opportunities to improve young people's education outcomes.

Recommendation 12.20: The Education and Training Directorate reinstitute the extended school year (48 weeks) that previously existed at Quamby, or alternatively develop a planned and coordinated summer school program which provides young people access to quality education and training programs throughout the year.

12.4 Education and throughcare

- 12.4.1 Leone et al state:

*'When [young people] return to their communities without essential literacy, vocational skills, and social skills, they face significant disadvantages including heightened risk for continued delinquency, unemployment, poverty, arrest, and incarceration.'*³⁷

- 12.4.2 Despite the challenges involved in engaging young people in education programs at METC, as described above, many young people do have positive school experiences and achieve good outcomes while at Bimberi. Unfortunately young people face a further set of challenges when they leave detention, and it is difficult to maintain their engagement in education as they transition to the community.

- 12.4.3 There is very good reason for the ACT Government to put significant effort towards improving young people's transition to education and training opportunities on release from Bimberi. Educational achievement is a significant deterrent to recidivism.³⁸ Conversely *'[r]ates of recidivism are highly correlated with low levels of academic performance'*.³⁹ Therefore investment in throughcare in education not only improves life outcomes for young people, it is likely to bring about long-term savings in expenditure in the criminal justice system.

- 12.4.4 Many participants in the Review described the difficulties young people experience when they transition from Bimberi into the community. There is a need for increased planning and support for transition generally, to connect young people with housing, health care, mental health care, drug and alcohol counselling, and education, training or supported employment. These issues are further discussed in Chapter 8 (case management).

- 12.4.5 Young people need intensive support to establish contact with a new education program in the first place, and to maintain engagement when things become difficult. One young person and several parents said the organisations who had promised to support them were not there when they were needed most. Additionally, the school or education provider needs support to ensure they are ready for the young person's entry. The Australian Education Union told the Review: *'The receiving schools are inadequately funded to manage appropriate transitional programs and the students are left to their own devices in a 'sink or swim' environment. While the schools do their best through Student Welfare officers and Counsellors there is no resourcing to provide close guidance, mentoring and transitional support for the students through a case-management model. This is a safety and security issue for the recently arrived student, the teachers in the receiving schools and the other students. It could be managed more effectively if the teachers at METC, who have developed a professional relationship with*

35 Leone, above n 5.

36 Leone, above n 5, 92.

37 Leone, above n 5, 100.

38 Leone, above n 5.

39 Katsiyannis, above n 4.

the student, were allocated time to attend the receiving schools as transition coaches for both the students and the staff at the receiving schools.'

- 12.4.6 Connections should be made with the young person's new education provider before release. As mentioned above, at Quamby young people could apply for day release to attend school in the community, however, Bimberi management have refused to allow this due to security reasons. If young people were permitted to apply for such an arrangement, they could visit their new education provider and develop relationships before the difficult period of transition.
- 12.4.7 Planning should begin months before the young person is released. On transition out of Bimberi, METC completes a form explaining the young person's status and provides it to the new education provider. Bimberi ILPs are designed for use only in METC. Despite this, the Commission suggests that when a young person leaves Bimberi their ILP and other relevant documents reporting their progress should travel with them to assist their new education provider to identify and meet their needs.
- 12.4.8 Schools not only need to be prepared, they need to be willing to receive young people leaving Bimberi. Young people and their families report perceptions of negative attitudes from the school community. Some young people returning to their old school feel judged by their teachers and the other students, and young people entering new schools still find it difficult to have a fresh start.⁴⁰ The Commission would be extremely concerned if ACT schools were reluctant to take on 'difficult' students and failed to provide full support to young people exiting Bimberi. Depending on the circumstance, such experiences may form the basis for a complaint under the *Human Rights Commission Act 2005* or the *Discrimination Act 1991*. Young people and their families or support workers are very welcome to contact the Commission to discuss their experiences and the options available to them.
- 12.4.9 It is important to note that many young people leaving Bimberi do not go on to a mainstream school in the community. Some of them are more comfortable with alternative education programs, vocational training, or supported employment. However, there are problems also with transition to non-school based education programs. For example, workers in the community reported they do not receive young people's Access 10 records and had difficulty facilitating a place for them to continue their course. Other workers reported a shortage of placements in alternative education programs.
- 12.4.10 One practical consideration is the time of year during which a young person exits Bimberi. In 2007-2008 the Institute for Child Protection Studies spoke with 12 young people at Quamby about their engagement with school after their release from detention. Young people reported that it was more difficult to re-engage with school when they exited Bimberi during the school holidays; they said they needed something to do straight away.⁴¹ METC and Bimberi case management should anticipate this and connect young people with a support service that can assist the young person across the holiday period to the start of the education program.
- 12.4.11 The recent review of the NSW juvenile justice system recommended that '*NSW DET establish a service for children and young people exiting community orders or custody to enrol them in education and training opportunities*.'⁴² Given the small size of the ACT community, such a role could be performed by the Student Support section of ETD.

Recommendation 12.21: ACT Government provide increased resources to the Education and Training Directorate to offer more coordinated and individualised support for young people to continue their educational opportunities when they leave Bimberi.

- 12.4.12 For young people who leave Bimberi under CYJ supervision, CYJ should focus on assisting the young person to engage with education or training as a priority. As mentioned above, the research clearly indicates the positive impact of education on rehabilitation. Young people and their families also report they are less likely to 'get into trouble' if they are engaged in positive activities that interest them.

12.5 Vocational training and employment programs at Bimberi

Human rights standards relating to vocational training and employment programs

- 12.5.1 Rule 42 of the United Nations *Standard Minimum Rules for the Treatment of Prisoners* (SMR) requires that every young person have the right to receive vocational training in occupations likely to prepare him or her for future employment. Generally

40 ICPS, above n 3, 123-124.

41 Ibid, 122.

42 Noetic Solutions, above n 9, para 418.

speaking, young people should be able to choose the type of work they wish to perform. Vocational programs are suited to individual needs, interests and market-place opportunities, provide positive learning experiences, and systematically assess and improve the numeracy levels, literacy levels and the work-place knowledge, experience and qualifications of young people.

12.5.2 The SMR also provides rules relevant to paid work:

- Rule 67 requires that any labour be viewed as an educational tool;
- Rule 44 requires that all relevant standards in relation to young workers should apply to young people in detention;
- Rule 43 requires that young people choose the work they would like perform;⁴³
- Rule 45 requires that, wherever possible, young people should be provided with the opportunity to undertake remunerated labour. The type of work should be to provide training to the benefit of the young person on release. Work offered in the Centre should mirror similar work in the community; and
- Rule 46 requires that a young person should have the right to equitable remuneration for such work. The interests of the young person should not be superseded by any desire for the Centre to make a profit. Some of the earnings should normally be set aside for release, with the remainder used by the young person whilst in detention.⁴⁴

Importance of pathways for vocational training and employment

12.5.3 For three reasons it is important that Bimberi offer a range of vocational training options in addition to the literacy, numeracy, music, art, SOSE and ICT classes that are currently available.

12.5.4 First, a wide range of options will assist Bimberi to meet the needs of individual young people. There is increasing awareness that some young people are more interested in and suited to work-oriented programs than traditional education classes, and vocational training programs are becoming more widespread in all schools. Some young people at Bimberi are aged 17 to 18 years, and it is possible that they may stay at Bimberi until age 21. Young people in this group are above the age for compulsory school attendance; therefore it is essential to have vocational and work options available to them.

12.5.5 Second, research shows employment is correlated with rehabilitation, and that accessing meaningful work is a key element in keeping young adults out of the criminal justice system.⁴⁵

*'[T]wo major life transitions, forming a long-term relationship and finding employment, are the major factors that influence whether an older adolescent is likely to progress to adult criminality. Clearly these are developmentally-specific tasks that are likely to require specialist interventions. It has also been suggested that these transitions are best facilitated in community, rather than custodial, settings.'*⁴⁶

12.5.6 Assisting young people in Bimberi to engage with a vocational training program or work placement, and assisting them to develop skills, confidence and positive relationships in this setting, may improve their long-term outcomes. In the past young people at Quamby had the opportunity to learn new work based skills and to connect with an employer, and some of them spoke about the positive impact it had on their lives:

*'You get some good support in here from... education staff... All the people down there, the variety of things down there. They help you with your schoolwork... You learn all different strategies... like doing metal work, woodworking, art, horticulture and stuff... When I first came in I had a thing for wood... And twelve months in this time my woodwork teacher said I should like follow things through with my woodwork cos I was good at it... I wanted to become a cabinet maker... So he helped me find an apprenticeship and got me work experience [while in]... My woodworker got someone to come in and do an interview and then I was on work experience for three months... and then he offered me an apprenticeship... My boss is a good bloke... They've taken the time from my work experience and put it on my apprenticeship.'*⁴⁷

12.5.7 Finally, human rights standards require that youth detention centres assist young people with the transition to community based education and employment programs after release, through education plans, and day leave programs that allow young people to visit their new training provider or employer and build relationships before leaving detention.⁴⁸ Bimberi should focus on building education, vocational training and employment pathways for young people. Bimberi can deliver high quality programs and interventions aimed at increasing the employment chances of young people on release.

43 See also Rule 71 of the SMR.

44 See also Article 32 of CROC.

45 Kieran McEvoy, 'Enhancing Employability in prison and beyond: A Literature Review' (2008) Queen's University Belfast for NIACRO Northern Ireland Association for the Care and Resettlement of Offenders

46 A Day, K Howells, and D Rickwood, *The Victorian Juvenile Justice Rehabilitation Review* (2003) Department of Human Services, Victorian Government.

47 ICPS, above n 3.

48 Article 79, United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

Current provision of vocational programs in Bimberi

- 12.5.8 METC provides vocational education and training in the areas of woodwork, metal work, horticulture and introductory trade programs. Vocational education is supplemented by short course certificated trade programs in construction and hospitality.
- 12.5.9 According to the ACT Government submission to the Review (Government Submission), in 2010 the following vocational programs were available to some young people at Bimberi:
- Woodwork, metal work (METC);
 - 'Bricks and Blocks' bricklaying program (Australian Brick and Block Training Foundation);
 - Horticulture / gardening program (CIT);
 - Barista skills (Bimberi); and
 - 'White Card' training (National Occupational Health and Safety Construction Industry).
- 12.5.10 So far in 2011 some young people have participated in:
- Vocational Options Programs (CIT); and
 - Certificate II in Construction Pathways (Construction Industry Training and Employment Association).
- 12.5.11 A Strategic Reference Group (SRG) comprising senior officers and executives from CSD, ETD and CIT oversees the selection of educational and vocational programs at Bimberi. The ACT Government says building vocational skills is a priority at Bimberi during 2011:
- 'METC will continue to develop partnerships with agencies that deliver vocational training to students... For those students who have achieved their Year 10 certificate via Access 10, METC will work with Registered Training Organisations or the CIT to develop vocational pathways such as apprenticeships or traineeships. These vocational pathways will allow students to begin their training in METC and move onto work experience in the community (if assessed as suitable) during their transition from Bimberi to the community.'*⁴⁹

A way forward

- 12.5.12 Despite the potential for vocational training and employment pathways to assist young people's rehabilitation, young people in Bimberi face barriers to engaging in these pathways.

Recommendation 12.22: The Education and Training Directorate and the Community Services Directorate continue to focus on the following areas to ensure young people have full opportunity to access vocational opportunities while they are in Bimberi:

- Provide a range of flexible options to meet individual needs
- Evaluation of programs
- Integrate vocational training and employment programs with other rehabilitative programs
- Integrate vocational and employment pathways into Bimberi operations
- Pre-release planning
- Day release for training or employment
- Post release support
- Partnerships with training providers and employers in the community
- Attitudinal barriers and discrimination in the community.

Provide a range of flexible options to meet individual needs

- 12.5.13 Evidence shows that an individualised approach is needed to help young people connect with vocational training and employment pathways. The research suggests that delivering a flexible, individualised response to the needs of participants is a major factor in the success of projects.⁵⁰
- 12.5.14 When talking with the Commission, some young people spoke positively of the barista course, bricklaying and construction. Young people and their parents provided the Commission with some suggestions for additional courses, including cooking and hairdressing. The Commission expects that the SRG will consult with young people to learn their interests and obtain feedback when identifying potential new programs.

49 ACT Government submission.

50 McEvoy, above n 45.

- 12.5.15 The Commission has spoken with several young people who said they were forced to participate in classes they were not interested in. Some teachers also said it would be preferable for young people to be able to elect the classes or programs they attend, to ensure their interest and to avoid disruptive behaviour. Engaging young people in education programs can be challenging, especially when the young person has not had a positive experience of education in the past. The wider the range of opportunities available, the more likely reluctant young people will identify a program they are willing to engage in.

Evaluation of programs

- 12.5.16 The Commission is aware of a range of vocational programs occurring at Bimberi, but it is not clear which ones are ongoing. It appears some programs have been discontinued, or were intended as a one-off activity for a brief period of time (such as over the school holidays). Some of the past vocational programs seem to be the product of the commitment and enthusiasm of one or two staff members. It also appears that some programs are initiated by METC, and some by Bimberi management.
- 12.5.17 The range of vocational options is likely to change over time, and there needs to be flexibility to meet young people's needs. However, there should be clear criteria for deciding which vocational programs will be offered. Programs should be chosen on the basis of evidence of effectiveness. During operation the vocational programs provided at Bimberi should be evaluated to assess their suitability and effectiveness in that context, and the evaluation outcomes should determine which programs continue.

Integrate vocational training and employment programs with other rehabilitative programs

- 12.5.18 According to CSD and ETD young people at Bimberi each have a Case Management Plan, an ILP, and a Pathways Plan. In theory these planning processes should be thorough and integrated, and provide a comprehensive assessment of young people's needs, both in the education context and more widely in terms of their health and well being.
- 12.5.19 Young people in Bimberi have complex needs. Vocational programs or work placements alone are unlikely to help them transition successfully to the community. Many young people require individualised supports and interventions to address disability or mental health needs, or to develop the communication and inter-personal skills that assist people to participate in a classroom or workplace.

*'Given the wide range of other social and personal problems offenders face, employment interventions alone are unlikely to succeed. Properly integrated programmes are required which address personal development, accommodation and substance misuse needs as well as training and employment issues.'*⁵¹

Integrate vocational and employment pathways into Bimberi operations

- 12.5.20 For vocational programs to withstand the pressures of other competing priorities in Bimberi, they must be 'mainstreamed' into the Centre:
- 'Young people's access to education and training... is often impeded by a range of problems including the primacy of security and management concerns, ... and the difficulties of devising programmes for short term [remandees].'*⁵²

- 12.5.21 The Government Submission acknowledges there are 'challenges' to be addressed in the areas of:
- *'Day-to-day communication between Bimberi staff and METC';*
 - *'Provision of timely information about student participation in programs';*
 - *'Provision of materials for lessons';*
 - *'Consistent understanding of supervision arrangements';* and
 - *'Coordination of vocational education for students between Bimberi and METC including the clarification of the role Bimberi plays in the provision of education and training programs.'*⁵³
- 12.5.22 A range of sources indicated to the Commission that education and vocational programs are not yet viewed as a fundamental part of Bimberi. 'Security concerns' have been upheld as a reason to:
- Prevent or delay material and equipment being obtained for vocational programs, making it difficult for teachers to plan classes (for example, nails are not able to be used in woodwork classes);
 - Prevent the metal work room being used for considerable time; and

51 Ibid.

52 P Noonan, *Equity in Education and Training in Correctional Services Institutions* (2003).

53 ACT Government submission.

- Exclude particular young people from vocational programs in which they may have access to tools, without clear criteria or stated reasons for such decisions.

12.5.23 Risk management is a basic component of any school environment, particularly a school within a detention centre. However, the Commission is concerned that security has become the primary focus of Bimberi, without properly taking into account young people's rights and best interests. The Commission encourages METC and Bimberi management to continue to work to resolve the 'challenges' acknowledged above, and place education and vocational programming at the centre of Bimberi operations.

Pre release planning

12.5.24 The goal of vocational programs in Bimberi should be to connect young people with training or employment opportunities once they leave detention. Therefore pre-release planning must be a fundamental part of vocational programs in Bimberi, and the earlier it begins, the better.

12.5.25 Young people need assistance to manage their transition back to the community. Depending on their circumstances this may include:

- Arranging a placement in a school, alternative education program, or training program;
- Receiving their accreditation from education or vocational programs in Bimberi (ensuring young people have the documents, and are informed what they can do with them);
- Preparing for job-seeking;
- Preparing for work;
- Organising transport to education/training/employment; and
- Helping young people clarify their court ordered or supervisory obligations and manage their schedule.

12.5.26 The ACT Government is confident that adequate pre-rerelease support is provided at Bimberi:

*'...through the case management meetings a transition process is developed and includes actions to support the young person's Pathways Plan (that is, education/training/employment goals) and transition from custody back into education, vocational learning, employment or a combination of these.'*⁵⁴

12.5.27 However, it acknowledges two areas of 'challenges', namely clarifying which agency is the lead case manager for individual students transitioning from Bimberi; and ensuring that education staff are involved in case management and decisions are made in a timely manner. The Commission encourages Bimberi management and METC to continue to improve communication and planning processes, to ensure young people are prepared for release into the community. There are a range of workers at Bimberi who may be suitable to work with particular young people to prepare them for release, including teachers, case managers and youth workers. The Commission has heard many staff speak passionately about their interest in doing this type of work with young people, and suggests that planning processes take this into account.

Day release for training or employment

12.5.28 It is essential that a training or employment place be organised and confirmed before a young person leaves Bimberi. It is also highly preferable that young people have the opportunity to visit their new placement, build relationships, and develop confidence before they are released. Young people provided with opportunities to participate in employment on day release from detention centres said it assisted their eventual transition to the community when they were released. During research conducted by Keys Young in NSW, young people stated:

'Work release is a good idea because it forces someone into the situation of learning. It gives kids the chance to participate and do a job and just start to learn.'

*'Work release gives you the chance to ease your way back into society. Instead of getting out and coming out against a brick wall. It's a bit like having a big brother watching over you, making sure you are all right. Without it, I reckon I'd have gone back in.'*⁵⁵

12.5.29 Day release for training or employment is consistent with SMR Rule 28.1: 'Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent and shall be granted at the earliest possible time'.

12.5.30 The *Children and Young People Act 2008* (CYP Act) provides for young people to apply for a local leave permit to be absent from Bimberi for education, training or employment purposes.⁵⁶ Bimberi has established policies and procedures that allow

54 ACT Government submission.

55 Keys Young 'Juvenile Justice: Services and Transition Arrangements' (1997) *National Youth Affairs Research Scheme*.

56 Section 241 *Children and Young People Act 2008*.

for young people to be absent from Bimberi for employment as part of a transition plan for the young person's transition to the community; or for the young person to attend education or training programs that form part of their case management plan.⁵⁷ The ACT Government stated in the Government Submission that '[w]ith day release it becomes possible to seamlessly transition some young people into education, training and employment pathways'. Accordingly there is official support for day release to be available when appropriate, and mechanisms exist to facilitate it. However, so far there have been no episodes of day release for education, training, or employment purposes. CSD informed the Commission that 110 episodes have been granted for young people in Bimberi since November 2008. The leave was granted for health appointments, hospital leave, dental appointments, life skills trips for grocery shopping, sport and recreation activities, and home visits. CSD report that one young person was granted leave for childcare training, although they were released from detention prior to the training occurring. The Commission encourages greater use of s.241 of the CYP Act, and asks that METC and Bimberi management ensure that young people eligible for local leave for education or employment do in fact receive leave. Experts suggest that: 'Greater use of these leave provisions will facilitate contact with support agencies and individuals, help reintegration post incarceration and reduce the likelihood of offending in the period post-detention.'⁵⁸

Promising practice: The CYP Act encourages the use of conditional day release to help young people prepare for the transition to education, vocational training or employment placements in the community.

Post release support

- 12.5.31 Many young people in Bimberi face challenges that make it difficult for them to live independently, let alone to maintain involvement in training or employment. Such challenges can include lack of skills or confidence, disability or mental health diagnoses, limited support from family, limited access to transport, unstable housing, poor living skills, or drug use.
- 12.5.32 Once young people leave Bimberi they need ongoing support: *'Even the best work programs delivered in prison may not result in prisoners finding and maintaining employment if this is not linked to, and supported by, good aftercare provision.'*⁵⁹
- 12.5.33 The ACT Government submission acknowledges some 'challenges' in this area:
- *'Ensuring that students who have gained competencies, white cards or vocational certificates leave with employment/training opportunities arranged and are supported by agencies in these opportunities.'*
 - *'Monitoring the progress and pathways of all students who have left Bimberi.'*
- 12.5.34 The Commission welcomes, in principle, the efforts to develop relationships with Registered Training Organisations (RTOs) in the community, as there is potential for young people to attend RTOs in the community on day leave, and then maintain their involvement with the same program when they are released from Bimberi. However, with a sub-contracting arrangement there are risks of communication problems, and METC, Bimberi management and the RTOs need to have documented and clear responsibilities and obligations.
- 12.5.35 The Commission asks ETD and CSD to continue to work to ensure young people receive adequate follow up and support after release. For example, according to the Government Submission, *'the trainers keep track of the vocational competencies that students achieve'*. However, the RTO may not be the agency best placed to ensure young people understand what they can do with their accreditation, or to support them to pursue further opportunities.

Partnerships with training providers and employers in the community

- 12.5.36 Evidence shows effective partnerships are needed in programs designed to help young people connect with vocational training and employment pathways.⁶⁰ Such partnerships, in addition to those with RTOs in the community, might also extend to employers. The literature suggests it may be ineffective to provide short-term interventions for young offenders to improve their employability but to not actually provide long-term employment.⁶¹ According to McEvoy, *'properly targeted interventions to the local job market and/or employer involvement in programmes are core to the potential success of any programme.'*⁶²

⁵⁷ Bimberi Youth Justice Centre, 'Local and Interstate Leave Policies and Procedures' (2008).

⁵⁸ NSW Juvenile Justice Advisory Council 'Briefing Paper – Outings and Leave' (2005).

⁵⁹ McEvoy, above n 45.

⁶⁰ Ibid.

⁶¹ Australian Institute of Criminology, *What works in reducing young people's involvement in crime? Review of current literature on youth crime prevention* (2002).

⁶² McEvoy, above n 45.

Attitudinal barriers and discrimination in the community

- 12.5.37 Finally, unfavourable attitudes or discrimination treatment by potential employers are also barriers that may affect young people's ability to pursue vocational training or employment pathways:
*'Australians who have a criminal record often face significant barriers to full participation in the Australian community. Trying to find a job is one of the areas of greatest difficulty for former offenders.'*⁶³
- 12.5.38 The *Discrimination Act 1991* prohibits discrimination on the basis of criminal record.⁶⁴ A young person may suffer this kind of discrimination if, because they have a criminal record, they are refused a job, dismissed from employment, denied training opportunities, denied promotion, subjected to less favourable working conditions or terms of employment, or harassed in the workplace.⁶⁵
- 12.5.39 The *Spent Convictions Act 2000* allows people to have their criminal records amended, and in some cases expunged if they have no further convictions within a certain period of time. Depending on the offence for which they are convicted, a young person's conviction will become 'spent' five years after they complete their sentence. Once this occurs potential training providers and employers are not entitled to take a spent conviction into account in assessing the young person's character.⁶⁶
- 12.5.40 Young people in Bimberi or under CYJ supervision should be informed of their rights in relation to employment and discrimination; and where to go for assistance if they have questions or concerns in future. They should also receive individual advice about their 'criminal record', including whether they are prohibited from working in particular positions, and which convictions or charges will be made known to potential employers if they complete a police check.

12.6 Independent living skills programs at Bimberi

- 12.6.1 According to the Youth Coalition of the ACT (YCACT):
*'Independent living skills are personal skills considered necessary for an individual to function on a day-to-day basis. The key word is 'skills' – inculcated resources. Living skills training encompass a range of models, methods and toolkits that aim to encourage self-sufficiency through assorted experimental and didactic programming delivered at various times throughout a young person's transition into independence. These skills are a range of attributes that help a young person to maintain aspects of independent living. These living skills are often the taken-for-granted skills of those that have acquired them over a prolonged period of stable and reliable learning that begins from a very young age and continues into adulthood.'*⁶⁷
- 12.6.2 YCACT found that living skills programs generally included reference to any number of the following 12 domains:
- Cooking;
 - Cleaning;
 - Budgeting and money matters;
 - Health (including alcohol and other drugs and mental health);
 - Sexual health;
 - Personal hygiene;
 - Social development (friends, family and relationships);
 - Personal development (ie counselling);
 - Education and employment;
 - Tenancy and accommodation (obtaining and maintaining accommodation);
 - Accessing and using Government and non-government services; and
 - Parenting skills and support.⁶⁸
- 12.6.3 For the purposes of this Report, we will group these in relation to domestic skills (cooking, cleaning, budgeting); personal skills (personal development, hygiene); relationship skills (social development, parenting); and help-seeking (including accessing and using Government and non-government services). We examine issues related to education and employment in Chapter 12, tenancy and accommodation in Chapter 11 and health and sexual health in Chapter 13.

63 Australian Human Rights Commission, 'Discrimination in Employment on the Basis of Criminal Record Discussion Paper' (2004).

64 Section 7(1)(o), *Discrimination Act 1991*.

65 Australian Human Rights Commission, above n 63.

66 *Spent Convictions Act 2000*.

67 Youth Coalition of the ACT, 'Living skills and youth supported accommodation assistance scheme consultation project paper' (2009).

68 Ibid.

Domestic skills

- 12.6.4 Domestic skills generally relate to cooking, serving and eating communal meals, cleaning, washing, maintaining households (including doing minor repair work, budgeting etc).
- 12.6.5 It would appear that there are no comprehensive or consistent living skills programs at Bimberi that focus on helping young people to develop their domestic skills. However, the Commission is aware that young people are required to keep their units neat and tidy, wash their own clothes and make the occasional meal in their unit and, through an incentive scheme, are encouraged to take on domestic tasks throughout the Centre.
- 12.6.6 CSD informed the Commission that:
'Two programs were run in 2010 under the Bimberi Youth Justice Lifeskills Program. The Centre received funding under the ACT Health Promotions Grants program and developed a lifeskills program to assist young people transitioning from custody back into the community with a broad range of practical skills necessary to maintain a healthy lifestyle. Nutrition Australia supported the program through the provision of training resources and program design in relation to aspects of domestic cooking. Two staff underwent certification as workplace trainers to deliver the program. These staff also provided the Barist[a] and cafe training courses. Complementary living skills programs were provided by Woden/ Belconnen and Northside Community Services including budgeting and accessing community services.'
- 12.6.7 However, it is unclear over what period this program operated, how many young people were involved, or for how many hours they were involved in the program.
- 12.6.8 The Commission is encouraged that planning is underway for opening the transitions unit where young people will have more opportunities to cook for themselves and to maintain the unit as if it were their own home. Also, one of the catering team has been employed to develop a living skills program and has worked with a growing number of young people to cook the weekly barbecue and the occasional meal and to serve coffee after completing a barista course.
- 12.6.9 However, the Commission is concerned that more systematic domestic skills planning does not occur at the Centre, recognising that young people often spend considerable parts of their adolescence inside. METC teachers told us that they would like to include food science classes in the curriculum and make use of the kitchen that is available onsite. They reported, however, that due to risk classifications, most young people at the Centre were not able to participate in such studies. They felt that this was unfortunate as such classes not only helped young people develop their cooking skills, but also their numeracy (ie measurements) and literacy (ie following recipes).
- 12.6.10 Staff at the Centre did not believe that young people were given ample opportunities to develop other types of domestic skills, particularly related to budgeting and shopping. In fact, most could think of only two times where young people on long-term committals were given the opportunity to put together a weekly menu, a shopping list, a budget and to then to leave the Centre to shop for these items. They believed that this was a significant limitation and that young people often returned to the community with little confidence in their ability to live independently, and only a limited number of skills that could help them survive.

Personal development and presentation skills

- 12.6.11 Personal development generally includes skills related to managing one's own emotions, one's anger and in dealing with past and current difficulties. As noted in Chapter 9 (programming), young people entering the youth justice system often do so with a series of difficulties related to past experiences of trauma and abuse, of grief and loss and of ongoing dislocation and disconnection. Programs that support young people to deal with these issues as well as those more criminogenic in nature (such as attitudes towards offending, thinking errors, managing risks) should be promoted within correctional facilities.
- 12.6.12 At Bimberi, personal development is primarily considered within the CHART program, which is conducted one-on-one and in relation to young people's offending. Although the benefits of this program are well documented, the Commission believes that a broader suite of supports to assist young people to deal with these major stressors is warranted throughcare.

- 12.6.13 Presentation skills generally are those related to the way that one presents oneself to the world: grooming and personal hygiene and confidence and assertiveness. Young people at Bimberi voiced a keen interest in relation to these issues, often asking Commission staff to advocate for better grooming and hygiene products, and may therefore be keen to participate in programs that relate to these topics.
- 12.6.14 At Bimberi, a number of programs are being developed to help girls in this area: a beauty program will soon be implemented focusing on the use of cosmetics, nail care and overall presentation. The Commission recognises that all young people exiting the Centre may benefit from such programs as well as informal conversations about hygiene and appearance, and encourages staff at the Centre to integrate these discussions into day-to-day interactions. A program like that developed by the Chutzpah Factory to help young women develop presentation skills and then take them out to the community may be of benefit at Bimberi.

Relationship skills

- 12.6.15 Interpersonal relationship skills have been shown to be limited for young people who have prolonged engagement with the youth justice system, and this often causes, leads to or exacerbates criminal engagement and poor psychosocial outcomes. Seeking out and forming positive relationships, dealing with conflicts, managing anger, resolving relationship issues and reconciling broken friendships are all key developmental tasks that are not always developed or practised during periods of incarceration.
- 12.6.16 At Bimberi (like at other custodial facilities) young people adapt to the confining and controlling environment within which they live and relate to others. Although they develop skills to form and manage relationships inside, it is evident that these skills are often not transferable to the outside world where the types of people with whom they relate and the ways that they relate are vastly different. In fact, a number of participants shared that young people often found it difficult, even in Bimberi, to make and forge relationships with newcomers or outsiders. This was evident in interactions observed by staff from the Commission between external CSD staff and guests and young people at social gatherings and the weekly Centre barbeque.
- 12.6.17 As such, it is vital to provide young people with opportunities to develop these skills and to form intimate and ongoing relationships with positive people as throughcare. Youth practitioners suggest that young people need to be given opportunities to transition back into the community, where they can practice these skills incrementally and where they can reflect on their progress with a trusted and affirming mentor. As such, the Commission would encourage (as it has in other parts of this Report) increased community involvement at the Centre: with additional participation of community organisations, of sports teams, of local businesses and of vocational opportunities where young people can interact in less institutional and more natural ways. The benefits of giving young people opportunities to have ongoing participation in education and employment as well as other normalising activities, such as involvement in sporting teams and volunteer work, are also asserted.
- 12.6.18 Relationships with family and positive peers are often most vital for young people, but are often restricted or weakened through the process of incarceration. Providing young people with supports to understand, reconcile and strengthen relationships with positive people in their existing support networks is important. As recommended elsewhere, the Commission strongly encourages the Youth Justice system to further its assistance to families with throughcare, providing mediation and restoration programs to enable this growth to occur.
- 12.6.19 One area that was identified by a number of community stakeholders related to helping young people develop their parenting skills. Although there are no young women at the Centre who are currently expecting or who have children of their own, the Commission heard of a number of young women and men who became parents shortly after exiting detention. This mirrored the findings of the Lost in Transition report, which highlighted the number of young men, in particular, who had children and who wanted to be the best parents that they could be.⁶⁹ Providing programs not dissimilar to those offered to young people in mainstream high schools that look at parenting, pregnancy and families may be of benefit to young people at the Centre.

69 ICPS, above n 3.

Help-seeking

- 12.6.20 In the *Lost in Transition* report, the Institute of Child Protection Studies showed that young people were not good at seeking support from friends, family or other formal or informal support networks prior to, during or after their incarceration. In fact, the Institute highlighted the fact that many young people felt that the process of incarceration was de-skilling: that they were less likely to ask for help after being detained than before.
- 12.6.21 This finding is consistent with work being completed by the University of Canberra and advice provided by a number of stakeholders in this Review: young people need help to create formal support networks and to develop the interpersonal skills required to access these in times of need.
- 12.6.22 Unfortunately, young people's inability to seek support has not been recognised in the provision of services to them. Young people are required to identify and seek support from external services while at Bimberi if they are to be offered, and young people are often required to approach services post-release to enact case plans and to raise issues and seek out assistance when confronted with challenges. These expectations are often unrealistic and, in our view, may set young people up to fail. Developing and providing skills-based programs and opportunities that help young people create new help-seeking strategies (and reworking current arrangements that also encourage support providers to more actively create support pathways) seem vital if progress is to be made.

Principles related to how living skills programs are implemented

Consideration and application of strategies that recognise and account for the different living conditions and personal histories of individual young people

- 12.6.23 As noted elsewhere in this Report, there are limited mechanisms for the personal histories of individual young people to be used to shape the nature of supports provided to individuals or groups at the Centre. Alongside the YLS/CMI tool, Bimberi should develop a framework for better understanding young people's needs (particularly young people's felt needs) and for feeding this into program development processes.

Consideration of varied learning styles including hands-on and one-on-one training

- 12.6.24 Currently, most living skills activities are ad hoc and provided in small groups based on placement rather than on need. The Bimberi care teams (as discussed in Chapter 8) should identify what types of programs are needed by individual young people and consider the most appropriate mode for providing them. The Commission would commend opportunities where young people could develop their skills not only inside Bimberi but outside its walls. This would require additional day leave provisions, which might be facilitated by community partners in collaboration with Bimberi care team staff.

Recognition of the context of what is realistic and what is available to young people

- 12.6.25 One of the key criticisms of many living skill programs is that they have expectations that are unrealistic for the client group: expecting young people living below the poverty line to budget effectively is unhelpful, as is expecting that young people are going to be able to manage their own alcohol or other drug issues when placed in a family or friendship circle where drug use is prevalent. As such, programs need to include flexibility and provide young people with strategies to deal with these factors (how to seek further financial assistance, to find alternative places to live or new ways to manage relationships, so that the pressures of using don't become too great).

Recognition of the vulnerability faced by individual young people in admitting they need assistance in capacity building

- 12.6.26 As noted above, acknowledging problems and seeking assistance can be a confronting experience for many young people and is a key weakness in systems that rely too heavily on them identifying and asking for help. As such, the youth justice system needs to allow young people opportunities to explore their needs and issues in a comfortable environment with workers who they trust and respect. The Commission is encouraged by the development of care teams and the appointment of key workers at Bimberi and hopes that this will help resolve these concerns.

Recognition of the need to mirror learning in and out of correctional settings

- 12.6.27 To those principles identified by the Youth Coalition, the Commission would add a principle that recognises that skills developed during periods of incarceration need to be practised and reinforced on return to the community. This principle is driven by research that suggests that young people often find it difficult to transfer skills that were developed in an often controlled and alien environment to environments that are less restrictive and require greater levels of self direction and motivation.

Recommendation 12.23: The Community Services Directorate, in partnership with internal and external providers, develop a living skills program that addresses the needs of young people in Bimberi in relation to the Youth Coalition of the ACT's 12 Living Skills Domains and reflects best practice principles, and for this to be implemented through formal and informal supports.

Recommendation 12.24: The Community Services Directorate provide increased resourcing so that the existing 0.5 FTE living skills position can be made full-time.

Chapter 13: Health

A Quality Youth Justice System Meets Young Peoples Health Care Needs

Terms of Reference:

- Health and well being
- Throughcare and aftercare services

Human Rights Standards:

- Protection of Family and Children (HR Act s.11, CROC Arts 3, 19)
- Humane Treatment and Consent to Medical Treatment (HR Act ss. 10, 19)
- Right to Health (ESCR)

13.1 Introduction

- 13.1.1 Young people who enter the youth justice system have been shown to be some of the most vulnerable and disadvantaged in the community. The 2003 NSW Young People in Custody Health Survey showed that young people's physical, emotional and psychological health was often compromised, being '*at risk from a range of environmental factors, social stressors and risk*'.¹ As such, health care is among the most critical of the services young people at Bimberi will receive.
- 13.1.2 Human rights principles determine a minimum standard of equivalence, which generally requires that the level of service provided in a closed environment is consistent with that available in the community. However, evidence suggests that specialised intensive services for young people in custody will provide long term benefits to those young people and the community. The Commission considers that detention should be viewed as an opportunity to provide intensive support to a group of young people, many of whom have previously been failed by the system. Consistent with this, international human rights standards for young people emphasise the importance of rehabilitation and reintegration into the community.
- 13.1.3 The recent Hamburger Review of the Alexander Maconochie Centre (AMC) also recommended that the Government not be committed too closely to a community health model of delivery, but recognise that for some detainees their time in detention is one of the few times in their lives when they will receive health services, and that they will benefit most from a structured health delivery model.² Such intervention is all the more critical for young people.
- 13.1.4 Our findings in this chapter are informed by Health Directorate incident reports concerning Bimberi, obtained under a s.73 notice under the ACT *Human Rights Commission Act 2005* to that Directorate, as well as other relevant records, and verbal and written interviews with young people, staff and key stakeholders.

13.2 General human rights standards and equivalence

- 13.2.1 The right to health care is enshrined in the International Covenant on Economic, Social and Cultural Rights, to which the Australian Government is a signatory. It has been defined to include the right to control one's health and body, including sexual and reproductive freedom and the right to be free from interference, such as the right to be free from non-consensual medical treatment.³ A joint research project between the Australian National University and the Justice and Community Safety Directorate, funded by an Australian Research Council linkage grant, recommended the inclusion of specific economic, social and cultural rights, including education and health care, in the ACT *Human Rights Act 2004* (the HR

1 NSW Department of Juvenile Justice, *NSW Young People in Custody Health Survey: Key Findings Report* (2003), 10.

2 Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre* (2011), 208.

3 This definition is drawn from General Comment 14 of the UN ESCR Committee. The World Health Organisation also declared in 1946 that the highest attainable standard of health is a fundamental right of every human being, without distinction of race, religion, political belief, economic or social condition.

Act). The ACT Government is currently considering this recommendation.

- 13.2.2 Under human rights standards, the delivery of health care in detention must respect the principle of equivalence. These requirements are perhaps best summarised by Principle 9 of the Basic Principles for the Treatment of Prisoners, which states that prisoners shall have access to the health services available in the country in which they are imprisoned without discrimination on the grounds of their legal situation. Similar protection is provided for in Article 24 of the Convention on the Rights of the Child (the CROC), which recognises:
- ‘...the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.’*
- 13.2.1 Other relevant standards require that:
- Young people receive adequate medical care, both preventative and remedial, including dental, ophthalmological and mental health care;⁴
 - Health services detect and treat any physical or mental illness, substance abuse or other condition that may hinder the re-integration;⁵
 - Prompt medical attention be provided;⁶
 - A young person is examined by a doctor on admission;⁷
 - A doctor who believes a young person is suffering because of continued detention, a hunger strike or any condition of detention should report this immediately;⁸
 - Health information be kept on a confidential file;⁹ and
 - Aboriginal Health Services be involved in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees and that funding arrangements necessary for them to facilitate their greater involvement be made available.¹⁰
- 13.2.1 The HR Act also contains a range of rights applicable to the provision of health care at Bimberi and in the wider youth justice system:
- Right to life;
 - Prohibition of torture and inhuman or degrading treatment or punishment;
 - Right to liberty and security of the person;
 - Humane treatment while in detention;
 - Protection of the family and children;
 - Right to privacy;
 - Freedom of thought, conscience and religion; and
 - Right to equality.¹¹

13.3 Current provision of general health services

- 13.3.1 Consistent with the relevant human rights standards, s.180 of the ACT *Children and Young People Act 2008* (the CYP Act) states that young people in detention should receive a standard of health care equivalent to and available to other children and young people in the ACT. Various sections of the CYP Act and the specific Children and Young People (Health and Wellbeing) Policy and Procedures 2008, notified by the then Chief Executive of DHCS, provide a range of obligations and procedures that are largely consistent with the human rights principles outlined above. Many of them are detailed at the beginning of the Health and Wellbeing Policy and Procedures. These include:
- Equivalence of health care;¹²
 - Health check within 24 hours of admission;¹³
 - Providing that, with the Manager’s approval, treatment can occur outside the institution;¹⁴

4 Rule 49 of the POJ

5 Rule 51 of the POJ

6 Rule 51 of the POJ. See also Rule 24 of the SMR

7 Rule 50 of the POJ. See also Rule 24 of the SMR and Rule 24 of the BOP

8 Rule 52 of the POJ. See also Rule 25 of the SMR

9 Rule 19 of the POJ

10 RCIADC Part 127(C)

11 See sections 10, 18, 19, 11, 12, 14 and 8.

12 S.180

13 S.161 and para 6.36 of the Health and Wellbeing Policy and Procedures.

14 Para 6.48 of the Health and Wellbeing Policy and Procedures

- Details of discharge planning and ongoing management of needs on discharge including referrals and arrangements for treatment;¹⁵
- Requiring that the person with daily care responsibility for a young person is notified about a young person's medical treatment; and ¹⁶
- Providing that a young person may have access to a second opinion in health matters if requested by a young detainee or person with parental responsibility including the Chief Executive or the Manager.¹⁷

13.3.2 The ACT Government submission to this Review (Government Submission) notes the Health Directorate has the following responsibilities within the youth justice system:

- Delivery of the *ACT Children's and Young People's Justice Health Services Plan 2008-2012*. The underpinning principles of the Plan include an emphasis on the provision of the health service within a human rights context;
- Provision of general and mental health services to young people in the ACT community including young people on community-based supervision; and
- Funding a range of external providers to provide services to young people in both detention and community-based supervision. These services include alcohol and other drug assessment; case management and support services; medical services; residential programs; group and program assessment; and therapy services.

13.3.3 The Government Submission notes that the promotion of the holistic health and well being of children and young people in detention is vital to their rehabilitation and reintegration into the community. It advises that Justice Health (formerly known as the Corrections Health Program) has been providing services at Bimberi since it opened in September 2008. The Government suggests that the model of care to deliver health services at Bimberi has remained essentially unchanged since the opening of the centre, although a change has recently been implemented to allow clients to self-refer to Justice Health. Generally, services have included:

- General health services, including medical services, general nursing services, dental services, immunisation, individual counselling, health promotion, pharmaceutical services, pathology services, imaging services, specialist allied health services, drug and alcohol services; and
- Mental health services, including clinical management, psychological assessment, individual counselling, mental health interventions.

13.3.4 Services are provided within Bimberi in the Client Services Building and operate from a dedicated health clinic, with any emergencies treated in accordance with clinical need, either by an on-call medical officer or at Calvary or Canberra Hospital.

13.3.5 The Justice Health Doctor is appointed under s.97 of the CYP Act. Justice Health recognises the gender specific needs that are unique to young women, and a female medical officer provides these services twice monthly.

13.3.6 The primary care team includes registered nurses (RNs) and medical officers (MOs), who undertake clinical services at the centre. When the centre initially opened, a nurse was on site for eight hours a day. In late 2009, this was reduced following difficulties in accessing clients within Bimberi and, after negotiations between Justice Health and Bimberi management, the service level was reduced to an RN being in attendance for between two and four hours per day, with the RN travelling from the AMC daily to attend Bimberi. A specialist youth nurse was recruited in January 2011 and is currently providing greater continuity of care with a focus on youth health issues for young people at the centre. The youth nurse works six hours per day Monday to Thursday; on Friday and weekends nurses from AMC attend for shorter periods, primarily to ensure that newly admitted young people are given a health assessment.

13.3.7 MOs provide clinical services at the centre each week, with the Bimberi Treating Doctor, a female general practitioner and a general practitioner from the Aboriginal and Torres Strait Islander Health Service Winnunga Nimmityjah on a monthly rotation. The current roster alternates between the male and female MOs on a weekly basis. An MO is always available on call for emergencies outside these clinics.

13.3.8 In relation to sexual health, the Government Submission advises that screening of infections is co-ordinated through the Canberra Sexual Health Service. Justice Health performs primary level sexual health and blood borne virus screening and interventions. Referral to Specialist Sexual Health Physicians occurs on an as-needs basis.

13.3.9 The submission further notes that Aboriginal and Torres Strait Islander health services are provided in a holistic way to encompass mental, physical, cultural and spiritual health. A designated Aboriginal and Torres Strait Islander health clinic is

¹⁵ Para 6.64 of the Health and Wellbeing Policy and Procedures

¹⁶ Para 6.70 of the Health and Wellbeing Policy and Procedures

¹⁷ Para 6.10 of the Health and Wellbeing Policy and Procedures

held monthly, although the Commission understands that this clinic, provided by an MO from Winnunga Nimmityjah, is part of the regular clinic roster, and that the MO will treat both Aboriginal and Torres Strait Islander and non-Indigenous young people who need to see the doctor that week.

- 13.3.10 Dental services are provided by the Health Directorate Dental Health Program, with young people being seen at the Civic Dental Clinic. The services include oral health promotion, diagnostic services, periodontics, endodontic, oral surgery, general restorative services, prosthetic services and external specialist referral when required.
- 13.3.11 Public health and health promotion services are in place to combat the spread of blood borne viruses and sexually transmitted infections as well as to monitor public health at Bimberi. These initiatives include disease surveillance, investigating infectious disease outbreaks, nutritional advice, immunisation and hepatitis C information and education.
- 13.3.12 The Government Submission states that in 2010-2011, 114 clients have been seen by Justice Health (to February 2011), with 1,046 occasions of service being provided.
- 13.3.13 The Government Submission notes that community sector agencies have a vital role in the provision of supports and services to young people in the youth justice system. A range of programs and services are delivered by community sector agencies that are funded by the ACT Government and the Australian Government. A range of external providers also provide services to young people at Bimberi as well as other youth justice clients. These services include:
- Fortnightly art therapy and regular case management for Aboriginal and Torres Strait Islander young people in Bimberi by Gudan Gulwan Youth Aboriginal Corporation; and
 - The Junction Youth Health Service provided by Anglicare.

Promising Practice: A dental health and well being program has been implemented at Bimberi in collaboration with the Health Directorate. The program will provide a direct appointment system to ACT Dental Health Services in Civic and will be coordinated by the Bimberi Health Nurse. This program will cover regular check ups and non emergency treatment. Young people at Bimberi will also be able to access emergency appointments via the triage service at ACT Dental Health Services.

Views of young people

- 13.3.14 The Commission surveyed young people at Bimberi about their impressions of the health service. Most young people believed that the quality of health services at the Centre was good or very good; just under half believed that it was easy to access a counsellor, psychologist or alcohol or other drug service. However, 20% of young people said that they were not receiving support for their mental health issues, and doctors, nurses and opticians were generally seen as hard to access. One young person noted particular difficulty making appointments for health services while in segregation. Young people were often unsure about what sexual health programs, if any, were offered or how to access them. Most young people reported that if you need medication at Bimberi it would be provided to you.

Throughcare and aftercare

- 13.3.15 A number of studies and inquiries have stressed the need for continuity of care for those in the justice or corrections environment. In assessing discharge planning in Juvenile Justice centres in NSW, Jarvis, Beale and Martin found that adequate discharge planning for health services encompassed a series of phases in which continuum of care is paramount.¹⁸ A central feature of their recommendations is that there be a discharge co-ordinator, usually the detention centre nurse, who combines the role of co-ordinating the multidisciplinary team treating the young person in detention, and also the development of a discharge plan. This nurse is likely to have formed a trusting relationship with the young person during their detention. This person would be complemented by an equivalent community liaison co-ordinator, who would attend discharge planning meetings and also build rapport with the young person prior to release. These best practice guidelines are recommended for both discharge to the community and to adult facilities. Issues with transfers to the AMC are discussed at Part 14.14.
- 13.3.16 Such a model is consistent with case management principles suggested by the Commission, discussed in Chapter 8 (case management). Nonetheless, in the health context, this study emphasises the need for continuity of care for the young person based on trusting relationships built while in detention. Similar findings were made in the South Australian study by Wilson, which examined the barriers young people exiting detention face accessing primary health care.¹⁹ That study also found a high degree of trust among young people in detention with detention centre nurses. Wilson recommended that:

18 L A Jarvis, B Beale and K Martin, 'A Client-Centred Model: Discharge Planning in Juvenile Justice Centres in New South Wales Australia', *International Nursing Review*, (2000) 47 184-190.

19 Anne Wilson, 'Planning primary health-care services for South Australian young offenders: A preliminary study' (2007) 13 *International Journal of Nursing Practice* 296, 299.

'It was considered essential that detainees see the same health workers regularly to build trust and confidence. Doing so was instrumental to building trust in external services: so they would consider following up outside.'

- 13.3.17 Similarly, Hiller, Knight and Simpson in reviewing prison-based substance abuse treatment in the United States found continuity of care, from detention through post-release, was linked to better outcomes for prisoners.²⁰ Consistent with this, ACT Council of Social Service (ACTCOSS) recommended in its submission to this Review that commitment is required to the implementation of strategies and policies supporting continuity of care during detention and post-release. The Commission believes that continuity of care is a critical component of the delivery of health services to vulnerable young people, such as those at Bimberi.
- 13.3.18 Two issues concerning throughcare/aftercare in relation to the general health of young people were raised with the Commission during this Review. The reduction in the number of hours a nurse was on site at Bimberi was an issue of concern to the Commission, and we welcome the return to increased service provision. Participants reported that during the period of reduced hours, discharge planning and aftercare suffered as a result of the nurse not being able to do these functions in the time available. However, even with the increased hours, the Commission understands the number of hours the Bimberi nurse spends on site is still less than was the case at Quamby. We understand that at Quamby there was one full-time equivalent position shared between three nurses. At Bimberi, even with the increased service, there is only 0.6 of a full-time equivalent on-site. We recognise that Justice Health is committed to a model of throughcare and aftercare, where some services, such as sexual health programs, are delivered by non-government organisations and supplement the services provided by the on-site nurse. However, we have already noted the difficulties that non-government organisations have reported in providing services at Bimberi since its opening. We also see value in a nurse being available at least during all business hours during the week to see young people.
- 13.3.19 At a minimum, we believe Justice Health nurses should be on site at Bimberi for the same number of hours as they were at Quamby. Preferably, increasing funding to have two nurses, coupled with outreach services, would allow greater service provision at Bimberi. The outreach work could include taking young people to appointments, visiting them in their new accommodation, delivering medication, or having a quick consultation in a safe space. Such a model would also allow the nurses to build up rapport and a trusting relationship with the young person before, during and after release.

Recommendation 13.1: The Health Directorate increase the hours of on-site nursing at Bimberi to at least the levels provided at Quamby.

- 13.3.20 A related issue that was voiced by participants in this Review was the access of young people to primary health care post-release. As detailed above, a number of general practitioners visit Bimberi, however, only some are able to continue to see young people in the community. Post-release can be a critical time in the health of young people. As one participant in the health sector noted:
- 'So many clients drop off their treatment in those few weeks and months.'*
- 13.3.21 One suggestion put to the Commission was that Justice Health retain carriage of primary health care services for young people after release. The Commission understands that Justice Health currently funds general practitioners (GPs) to provide services to ex-AMC detainees post-release at the Canberra Hospital for alcohol and other drug services on a sessional basis. Currently, the same general practitioners employed at AMC are also employed to do this work in the community. While this may not have been originally intended, this model does have advantages and could also work well at Bimberi. A period of transitional care after Bimberi could ensure that young people continue receiving services, and give time for an appropriate transfer to be made to another GP.

Recommendation 13.2: The Health Directorate work with Justice Health to provide access to general practitioners (GPs) for young people exiting Bimberi for a period of 3 months after release, either directly or through funding GPs in the community. This would ensure that a young person's care can be maintained and links with general practitioners in the community can be made.

20 'Effective in-prison treatment appears to require a continuum of care that takes the drug-involved offender from the institutional environment to the reintegrative processes of community-based initiatives.'

- 13.3.22 A related solution put forward by one participant was that young people in Bimberi receive some sort of higher or guaranteed access to a range of free Government and non-government health services for a period of 12 months after release. It was proposed that the Health Directorate could contract with key service providers, particularly GPs, who would provide services to these young people on provision of appropriate identification, and bill the Health Directorate. The Commission understands that young people in the care of the Territory already receive some priority access, but this proposal would enhance that service.
- 13.3.23 We also see merit in this proposal, on the basis that this would be a free service, noting that many young people cannot afford even the reduced co-payment the Health Directorate offers to those holding a health-care card. However, we are concerned about young people exiting Bimberi being stigmatised, and therefore suggest that this proposal apply to all young people exiting care (including custody).

Recommendation 13.3: The Health Directorate work with the Community Services Directorate to consider a model for young people exiting care (including custody) to access ACT Government health services for free for a period of 12 months after release.

Access to young people

- 13.3.24 Participants reported significant restrictions at Bimberi for nurses and doctors to see young people. During the review, the Commission was informed that pre-arranged medical appointments were cancelled, and even the regular Wednesday afternoon clinic with the MO was often cancelled, apparently due to staffing shortages among youth workers. This lack of access was reported consistently across the range of health professionals we interviewed, and some commented on the waste of resources involved in highly qualified professionals being left to wait without patients at Bimberi, including the treating psychiatrist who is flown in from Sydney.
- 13.3.25 Participants reported that nurses would wait for hours without seeing a single young person, and then staff would bring six young people to the clinic all at once in the hour before the nurse was due to depart. The short time allocated to see multiple young people meant that nurses could not provide a high quality service or health education for young people during consultations. One participant noted that *'everything was a struggle'* and that nurses would spend much of their time at Bimberi on the phone trying to negotiate access to the young people. The participant noted that *'nurses used to say Bimberi was worse to work at than AMC. Bimberi felt more like the prison.'*
- 13.3.26 We understand that Justice Health worked with Bimberi management to change nurses' hours to better fit with Bimberi schedules, but even then, it was reported that nurses would often only be given access to see young people for one and a half hours each day. The change in service delivery hours also affected the service at AMC, as nurses staffed both centres. Participants have also informed us that at Quamby nurses had access to residential units to see young people in their cabins if they were feeling particularly unwell or if there was a difficulty with getting an escort to the clinic. However, this access has not been facilitated at Bimberi, so young people have to be brought to the clinic or miss their appointment.
- 13.3.27 We understand that appointments with external health providers, including dentists, were often cancelled at short notice due to staffing issues. Participants reported concerns about young people who needed urgent dental treatment being made to wait and have ongoing pain treatment because they could not be escorted to the dentist.
- 13.3.28 These issues have improved in recent times, particularly since late 2010. Participants reported that access to young people has significantly improved for Justice Health and Forensic Mental Health staff. It appears that much greater priority is now being given by management to ensuring that internal and external health appointments are facilitated, regardless of operational issues such as staffing shortages.

Promising Practice: Young People at Bimberi now have a direct line to call the youth nurse to make an appointment without the need to obtain assistance from a youth worker. This allows them to retain a degree of privacy and autonomy regarding their health care.

- 13.3.29 Since the commencement of the youth nurse at Bimberi, young people have been given a direct line from their cabin to contact the nurse to make an appointment, without requiring the assistance of a youth worker. The nurse can then arrange to have the young person brought to the clinic for the appointment. However, we understand that this direct line is not accessible for young people held in Coree Unit²¹, who have reported particular difficulties in accessing health care. This is

21 The formal admissions unit, which is also sometimes used for behaviour management reasons.

not acceptable, and must be addressed. The Commission also believes that there is value in nurses being able to see young people in their units.

Recommendation 13.4: The Health Directorate and the Community Services Directorate consider nurses being able to see young people in their units where this is in the best interests of the young people.

Recommendation 13.5: The Community Services Directorate develop and implement mechanisms to allow young people placed in the Coree Unit in Bimberi to call the nurse to seek primary health care.

Notification of admissions

- 13.3.30 Another concern reported by participants was that historically nurses were not always informed when young people arrived at the Centre. Notification had reliably occurred at Quamby, but some young people at Bimberi would be allowed to leave the admissions unit without a health assessment. Justice Health would often only find out about this at the end of the month when they compared assessment records with monthly reports of admissions. There is information to suggest that some young people entered and left custody at Bimberi without receiving a health assessment, contrary to the requirements of the CYP Act.
- 13.3.31 Again, we understand that this concern has been addressed by Bimberi management and that all admissions are now notified to Justice Health.

Respect for clinical judgement

- 13.3.32 Another theme of participants' interviews was the concern over apparent lack of respect given by Bimberi management to the clinical judgement and expertise of health professionals at Bimberi. Bimberi management strongly denied any such lack of respect and adverted to regular meetings with the Health Director and many health programs (including in relation to nicotine and drug and alcohol use) that were implemented by management during 2010 based on the input of health professionals as evidence of this.
- 13.3.33 Some participants reported that the approach to health care of Bimberi management, involved management assessing recommendations of health professionals to determine levels of urgency and whether the recommended treatment could be accommodated within operational requirements. Sometimes it appears that recommended appointments did not occur if they could not be accommodated due to staff numbers. One participant noted that *'the reality is that differences of opinion between professional groups are not new in a custodial environment. There will always be pressure on operations to provide an immediate response to medical recommendations.'*
- 13.3.34 Further, one incident report provided by the Health Directorate details a mental health nurse from the Crisis Assessment and Treatment Team (CATT) within Mental Health ACT seeking to provide medication to a young person recently admitted to Bimberi. The medication had already been prescribed and obtained, and its urgent administration was recommended by a Mental Health ACT psychiatrist. A Bimberi manager intervened and prevented the CATT member providing the medication, according to the incident report, because he did not trust that she was administering the correct medication. The manager also threatened legal action against the nurse on the basis she had brought alleged contraband into the Centre. The nurse had in fact approached the manager seeking clarification of the appropriate procedure for administering the medication, which was clearly not well known. Several conversations were subsequently held between the Centre manager and the Chief Psychiatrist to resolve the issue. In the meantime, the Corrections Health on-call doctor had to be called to endorse the recommendations of the Chief Psychiatrist and mental health nurse before the medication was provided. We are concerned that a health professional's motivations and judgment would be questioned in this way, particularly in circumstances in which a young person urgently needed medication.
- 13.3.35 Another example reported to the Commission involved a hand injury sustained by a young person following the use of an instrument of restraint. An x-ray was requested by both the on-call doctor and the Paediatrics Registrar, however the x-ray was not booked and consequently did not occur. Health Directorate have confirmed that it is the responsibility of Justice Health to follow through on such requests. The reason for the failure to follow through on required medical treatment on this occasion is unclear, however the Health Directorate note that it occurred during a time of staffing shortages within Justice Health. The difficulty the Commission had in determining whether the x-ray did or did not occur also confirms some of the information sharing challenges faced at Bimberi. This is discussed further below in relation to mental health.

- 13.3.36 We understand that some of these issues have improved in recent times. However, in the Commission's view, the need to follow the recommendations of health professionals should be more clearly specified in the CYP Act and the Health and Wellbeing Policy.

Recommendation 13.6: The ACT Government amend the *Children and Young People Act 2008* and the Health and Wellbeing Policy to:

- Better reflect that Bimberi management should follow the recommendations of treating health professionals regarding the treatment of young people, unless exceptional circumstances apply
- Include an obligation that management report to the Director-General and the Public Advocate where a recommendation for treatment has not been actioned in the time recommended by the health professional.

- 13.3.37 The Commission also noted that the Bimberi nurse has little say in program delivery at Bimberi. However, she is uniquely placed to identify key gaps in such services, particularly around issues such as sexual health and alcohol and other drugs. We suggest the Bimberi nurse be consulted directly on the development of programs.

Recommendation 13.7: The Community Services Directorate develop and implement mechanisms to require Bimberi management to consult the Bimberi nurse on the programs and services provided in Bimberi.

Delivery of medication

- 13.3.38 Another issue of serious concern to the Commission is the delivery of prescription medication to young people at Bimberi, which is currently done by youth workers rather than health professionals, and not always at a consistent time as required for some time-sensitive medications. This is contrary to the arrangements at AMC where, the Commission understands, medication is delivered in the mornings and evenings by nurses.
- 13.3.39 We have been informed that medications for Bimberi are dispensed and packaged in Webster packs by the pharmacist at Canberra Hospital. Youth workers then have responsibility to bring young people from their unit to the clinic in the morning and evening to deliver medications from the Webster packs. The delivery of medication by non health professionals is authorised under s.420 of the *Medicines, Poisons and Therapeutic Goods Regulation 2008*. However, concerns have been raised with the Commission, by several sources, regarding the reliability of youth workers delivering medication, particularly when there have been staffing shortages.
- 13.3.40 One participant noted that youth workers have to fit the 'medication round' into their day when they can. One participant reported that a young person who was being treated for pneumonia was not regularly given his medication and often had to remind the workers that he needed it. Further, an incident report provided by the Health Directorate confirms that on at least one occasion a young person was not provided medication because either youth workers had not brought the young person to the nurse at the right time, or they had failed to administer the dose themselves. Others reported concerns that staff may at times break off individual blisters from the Webster pack and place them in a pocket to be distributed to young people in their cabins, rather than completing the appropriate records as each item was dispensed.
- 13.3.41 Others raised concerns that where a young person refused medication this was not always communicated quickly by the youth worker to the treating practitioner, so that a young person may have missed several days of medication before this issue was recognised, and may have suffered behavioural disturbances as a result.
- 13.3.42 Finally, it was reported to the Commission that there were only a handful of youth workers properly trained in administering medication, which led to a range of serious consequences, brought about by things like a lack of understanding of appropriate record keeping and the need for certain medication to be given at specific times.
- 13.3.43 This range of issues combined demonstrates a serious risk to the proper administration of medication to young people at Bimberi. Given the seriousness of these concerns and risks for young people the Commission raised the issue with Justice Health during the course of the Review.
- 13.3.44 In response, Justice Health committed to providing greater oversight and training to youth workers administering medication. We believe, in the short term, such measures are critical if youth workers are to continue fulfilling this role. However, in the longer term, consideration should be given to providing young people the same level of service as adults receive at AMC, where medication is delivered regularly and consistently by nurses.

Recommendation 13.8: The Health Directorate and Community Services Directorate ensure, in the short term, that only youth workers who are properly trained by Justice Health distribute medication. This should be done with appropriate oversight and auditing.

Recommendation 13.9: The Health Directorate consider in the medium to long term the need to increase nurse staffing at Bimberi, to deliver not only the enhanced services already identified, but also to administer medication.

Clinic facilities

- 13.3.45 The Review Team inspected the health clinic at Bimberi and noted that the physical layout and features of the clinic cause a practical difficulty for the youth nurse in supervising young people during appointments. We understand that in some cases the nurse will be left alone in the clinic during an appointment with a young person (although not usually if a young person is regarded as high risk). Appointments are held in the treatment room. However, when the nurse needs to get supplies from the clean utility room (as is often the case) she is required to leave the young person alone in the treatment room and has no visual line of sight to monitor the young person's activities. It is noted that this may cause particular difficulty once a computer terminal is installed in the treatment room to facilitate access to records. The Commission recommends that these structural issues be addressed.

Recommendation 13.10: The Community Services Directorate management address the structural issues that prevent adequate supervision of young people at all times during health appointments.

- 13.3.46 We understand from previous incident reports that there were issues with the medication cabinet being secure. Information provided to the Commission suggests this has been resolved.
- 13.3.47 We understand that there is also sometimes a delay in the youth nurse being provided with medical supplies that have been ordered at the Bimberi clinic, which causes difficulties in primary treatment when supplies run short. It is unclear if this is due to delay in the ordering, delivery or supply of such materials. The Commission suggests that this issue be addressed.

Recommendation 13.11: The Health Directorate review the practices for order and delivery of supplies to the Bimberi Health Clinic to ensure that supplies are delivered promptly.

Role of treating doctor after use of force

- 13.3.48 As discussed further in Chapter 14, pursuant to s.223 of the CYP Act, where force is used on a young person at Bimberi, in all cases the young person should be offered the opportunity to see the treating doctor, and where injured they should be brought to the treating doctor as soon as practicable. From an inspection of the Use of Force Register, it appears that these requirements are generally being adhered to, although we have been informed of one incident where a young person who suffered injuries during a use of force was apparently taken to the nurse only after the intervention of a teacher at the Murrumbidgee Education and Training Centre (METC).
- 13.3.49 It does appear, however, that the role of the treating doctor in such cases may need to be more clearly specified in Health Directorate policies. In the Commission's view, in addition to providing clinical treatment to the young person in such cases, health professionals serve an important role as a safeguard against improper treatment. Accordingly, the documentation of injuries sustained in the use of force (including restraint) is important. We consider that nurses and doctors at Bimberi should be photographing any injuries observed after use of force, as well as documenting injuries on a diagram. We also note that doctors and nurses are mandatory reporters under s.356 of the CYP Act and should be reporting physical injuries sustained by a young person under 18 years of age to the Chief Executive.

Recommendation 13.12: The Health Directorate amend its policy regarding the role of the treating doctor or nurse in relation to the documentation of injuries sustained by young people at Bimberi following the use of force, including the use of restraints.

- 13.3.50 As detailed in Chapter 14, the current policy is that the young person subject to a use of force must elect to see the doctor or nurse. The Commission believes it would be preferable, given the vulnerability of the young person in such a situation, for the doctor or nurse to be automatically notified if a use of force has been made (in addition to the young person retaining that choice). The nurse or doctor could then assess the young person. If the doctor or nurse attempted to see the young person, and the young person refused treatment, the question of their ability to consent (or not) to treatment, as discussed below, should be considered. This is further discussed in relation to use of force in Chapter 14 (conditions of detention).

Second opinions, consent and family involvement

- 13.3.51 Under Rule 55 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (the POJ), medicines should be administered only for necessary treatment on medical grounds and, when possible, after having obtained the informed consent of the juvenile concerned.²² As noted above, s.10(2) of the HR Act provides specific protection against a person being given medical treatment without their consent. Rule 56 of the POJ further provides that the family or guardian of a juvenile has the right to be informed of the state of health of the juvenile on request and in the event of any important changes in the health of the juvenile. Principle 25 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the BOP) provides that a person in custody may seek a second medical examination or opinion.
- 13.3.52 Article 12 of the CROC states that governments must ensure a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. The most authoritative decision regarding a young person's right to self-determination was the House of Lords decision in *Gillick v West Norfolk & Wisbech Area Health Authority*²³ (Gillick), in which the court held that children who have sufficient understanding and intelligence to enable them to understand fully what is involved in a proposed intervention will also have the capacity to consent to that intervention. Australian courts have adopted the Gillick principle.
- 13.3.53 To varying degrees, the ACT *Guardianship and Management of Property Act 1991* (Guardianship Act), *Medical Treatment (Health Directions) Act 2006* and *Mental Health (Treatment and Care) Act 1994* (Mental Health Act) provide statutory schemes for the treatment of those who are either lacking capacity or refusing treatment on the basis of their mental health. It is possible that in some situations this may include children.²⁴ However, in the context of health provision for young people in the youth justice system, action would generally not be taken under these schemes without a treating health provider first considering questions of parental responsibility, capacity and informed consent.
- 13.3.54 The UK Department of Health's (UK DOH) reference guide to consent for examination or treatment (the Guide) provides a summary of the common law relevant to consent. While at times focused on British statutes, the Guide does usefully summarise general common law, and contemplates young people at varying ages, children in closed environments and the role of parents. The guide also notes the relevant human rights, the bulk of which are almost identically contained in the HR Act. The Guide notes:
- 'Compliance with the (UK) Human Rights Act is largely reflected in existing good ethical practice, but all health practitioners should be aware of the Human Rights Act and ensure that they act in compliance with it.'*
- 13.3.55 The Guide specifically recognises that consent issues in closed environments may be particularly complex:
- 'When people are seen and treated in environments where involuntary detention may be an issue, such as prisons and mental hospitals, there is a potential for treatment offers to be perceived coercively, whether or not this is the case. Coercion invalidates consent, and care must be taken to ensure that the person makes decisions freely. Coercion should be distinguished from providing the person with appropriate reassurance concerning their treatment, or pointing out the potential benefits of treatment for the person's health.'*
- 13.3.56 Finally, the Guide suggests that if a child lacks capacity, it is still good practice to involve the child as far as is possible and appropriate in the decision. The Guide is further supported by guidance material released by the UK DOH for specific situations, including for parents, children and people in prison.
- 13.3.57 For young people at Bimberi, parental responsibility may be further complicated by the facts that they are in the custody of the Territory, they may be under pre-existing care and protection orders, and they may be subject to orders under either the Mental Health Act or, for those over 18 years of age, the Guardianship Act.

²² Principle 22 of the BOP also provides similar protection.

²³ [1986] AC 112. Applied in Australia in *Secretary, Department of Health and Community Services v JWB & SMB* (1992) 175 CLR 218

²⁴ Note - Consent for certain prescribed medical procedures may only be granted by the ACT Civil & Administrative Tribunal, not by a person's guardian, if it is determined that the procedure would be in the best interests of the person. In relation to young people, sterilisation of a young person can only occur by order of the Family Court.

- 13.3.58 In undertaking such assessments, conflicts may arise between parents, doctors and young people as to whether the young person has capacity. At the extreme end of such conflicts, the European Court of Human Rights, in *Glass v United Kingdom*,²⁵ has stated that such cases should be referred to the courts to adjudicate. In the ACT, the Public Advocate can also provide advice in such situations.
- 13.3.59 Section 181(2) of the CYP Act provides that the Chief Executive can consent to health treatment where someone with daily parental responsibility is not available and delay would be detrimental to the young person's health. Further, s.187 allows the Chief Executive to approve the use of non-prescription medicine by a young detainee.
- 13.3.60 Beyond these provisions, in assessing a young person's competence, the principles in *Gillick* will generally apply. In 2008, the Health Directorate issued its Consent to Treatment policy and corresponding procedure, which refers to issues for children and young people and includes a discussion of the principles in *Gillick*. However, unlike the UK DOH's Guide, the document contains no specific discussion of parental involvement, or how consent issues should be considered in closed environments.
- 13.3.61 Although the Commission notes that the document is due to be reviewed in November 2011, in the meantime the Commission is concerned that the document's lack of coverage of parental involvement and how consent issues should be considered in closed environments may cause some confusion as to the assessments that should be made of young people in the youth justice system, particularly at Bimberi. As the UK DOH has noted, assessing competence in closed environments is particularly complex. The young people at Bimberi have a lower level of freedom than they would in the community, and the behaviour management system is generally aimed at achieving their compliance with directions from those with authority. To these young people, a doctor may seem such an authority figure.
- 13.3.62 In speaking to a number of different health service providers, the Commission was left with the impression that there is no agreed approach to issues concerning parental involvement and young people's capacity, whether for young people in Bimberi, or in treating young people in the community. This lack of agreement was most apparent in relation to mental health, which is not surprising given the added complexity mental health issues may present. Mental health is discussed at Part 13.4.
- 13.3.63 In relation to parental involvement, some health service providers suggested that generally, unless there are extraordinarily good reasons not to, they would normally involve parents in the treatment and consent process as standard practice, particularly for younger adolescents. If the *Gillick* test was satisfied, they would generally discuss such parental involvement with the young person to seek their consent. Even if a young person was found to be competent, service providers would nonetheless encourage the young person to voluntarily include their parents.
- 13.3.64 In contrast, other participants were less likely to involve parents, and some generally didn't involve parents at all. Similarly, the Commission found generally a lack of consideration among health services for whether a young person's willingness to consent might be impacted on by their detention.
- 13.3.65 The current system is also complicated for parents. One parent reported to the Commission that she was upset that she had not been told that her son had been placed on medication while in Bimberi.
- 13.3.66 Any consideration of the disclosure of health information to parents must be mindful of the obligations of health providers under the *Health Records (Privacy and Access) Act 1997* (Health Records Act). That Act creates a system whereby guardians may, in certain circumstances, be informed about the health information of a young person. A guardian is defined as a parent, a legally appointed guardian of the young person or someone else with parental responsibility for the young person under the CYP Act. If that young person is *Gillick* competent, the provision of that information will depend on whether that young person has consented to such disclosure. If a young person is not *Gillick* competent, then the guardian will generally be the relevant person to consent to any release of information.²⁶ It is worth noting that Principle 10 of the Health Records Act provides further guidance where a young person cannot consent, for example if they are unconscious. It states that a treating health service provider may disclose personal health information about a consumer to an immediate family member if:
- The consumer cannot give or withhold consent to the disclosure, whether or not because the consumer is a young person or legally incompetent person;
 - The disclosure is made for compassionate reasons;
 - The provider believes, on reasonable grounds, that the disclosure would be, or would have been, expected by the consumer; and

25 [2004] ECHR 102

26 See for example s.7(4)

- The disclosure is not contrary to any wishes previously expressed by the consumer of which the provider is aware or ought reasonably to be aware.

- 13.3.67 In relation to second opinions, the Commission also found confusion among service providers and family members. One service provider at Bimberi reported that they would facilitate this if the young person or family could pay for it. The Commission understands this is the Health Directorate's general policy, but how this might apply to young people in Bimberi is unclear. For example, the Commission also understands that Mental Health ACT's standard practice in the community is to offer a second opinion from another MHACT psychiatrist at no charge. The Commission would advocate that policy applying to Bimberi. We would further suggest that given a young person at Bimberi has generally little choice as to the general practitioner they see, Justice Health similarly offer a second opinion from another Justice Health doctor free of charge.
- 13.3.68 Overall, the Commission believes that the Health Directorate must take greater measures to ensure that clinicians at Bimberi are considering the ramifications of the closed environment on their clients, and to consider what involvement parents should have in the decision-making process. This should include the provision of guidance material to all stakeholders, including health providers, parents and young people, so they can better understand how issues of consent, information provision and the provision of second opinions at Bimberi are to be addressed.

Recommendation 13.13: The Health Directorate review its Consent to Treatment Policy and Procedures to:

- Include the development of specific guidance on how consent should be considered in closed environments, particularly for young people at Bimberi. Guidance on how health professionals should involve parents should also be considered
- Release corresponding guidance material for specific audiences on its Consent to Treatment Policy, including for children, parents and those in detention.

Recommendation 13.14: The Health Directorate have in place clear guidelines for young people and parents on when and how young people at Bimberi can seek second opinions and how arrangements of costs are to be determined. We recommend that second opinions from Health Directorate doctors be offered free of charge.

Recommendation 13.15: The Community Services Directorate be available at all times to provide consent to medical treatment, including urgent medical treatment. This should include providing Justice Health with alternative emergency after-hours contacts.

Care in the community

- 13.3.69 Rule 49 of the POJ states that young people in detention should receive care through the appropriate health facilities and services of the community in which the detention facility is located, in order to prevent stigmatisation of the juvenile and to promote self-respect and integration in the community. Further, Rule 36 of the POJ states that, wherever possible, young people removed from a facility for any purpose, including medical appointments, should be allowed to wear their own clothing. Rule 17 of the UN Standard Minimum Rules for the Treatment of Prisoners (the SMR) suggests, in the alternative to their own clothing, other inconspicuous clothing might be acceptable. The intention of this standard is, also, that young people in detention are not stigmatised in the community.
- 13.3.70 Section 141 of the CYP Act states that young people should have access to suitable health services and health facilities. It further mandates the provision of suitable clothing not likely to degrade or humiliate them, but it does not include the right for a young person to wear their own clothes outside the facility. However, the Health and Wellbeing Policy and Procedures provide that, wherever possible, a staff member should discuss the possibility of the young person wearing their own clothes to appointments, and *'where a resident expresses a preference to wear his or her own clothing, staff must facilitate this'*.²⁷ Staff are only required to wear de-identifying clothing 'when appropriate'.²⁸ This is not entirely consistent with the relevant human rights standards, but does make some attempt to prevent stigmatisation.
- 13.3.71 The use of restraints is dealt with in detail in Chapter 14 (conditions of detention), where we note that human rights standards dictate that such action must only be used as a last resort, and that it is characterised as a use of force under the CYP Act. However, the Commission is concerned that the intention of these principles and sections of the CYP Act aiming to prevent the stigmatisation of young people exiting Bimberi for appointments are being undermined through the use of restraints for medical appointments.

²⁷ Para 6.51

²⁸ Para 6.52

- 13.3.72 Since its opening, the practice at Bimberi has been that young remandees are routinely restrained during transfers to health appointments outside the Centre. This practice continues, and does not appear to be based on any risk assessment. In responding to this issue, the Community Services Directorate (CSD) suggested to the Commission that the use of flexi cuffs when a young person is on leave outside of the centre is a decision that is made on a case by case basis. The Directorate suggested that a young person's level of risk, past history, history in custody (for example if they are remand or an escape risk) is all taken into consideration when determining the use of flexi cuffs. The Directorate also reported that following feedback from the Commission prior to this Review, these events have been recorded as uses of force.
- 13.3.73 However, information considered during this Review suggested that this risk management approach was not being followed. Commission staff witnessed a conversation between senior Bimberi staff to the effect that a young person was not a flight risk but, as they were a remandee, they should be restrained for an appointment. These actions are contrary to the principle that remandees generally be treated appropriately for their unconvicted status.²⁹
- 13.3.74 While the Commission can understand the concerns of Bimberi management of the consequences of an escape during an appointment, we also note that young people attending such appointments are usually accompanied by two youth workers. We believe this measure surely negates any serious risk of escape during the appointment in the majority of cases. As such, the decision to restrain appears more driven by an inflexible policy, rather than a proper risk assessment. The Commission advocates that young people should not be restrained as a blanket rule. Doing so conflicts with the principle that force is to be used only as a last resort, and the principle that a young person in detention ought not be stigmatised.

Recommendation 13.16: The Community Services Directorate only restrain young people during transfers to health appointments after a thorough risk assessment is conducted. Young people should not be restrained simply because they are remandees.

13.4 Mental health

- 13.4.1 The Commission has identified two areas of health provision at Bimberi that warrant particular discussion – mental health, and alcohol and other drug treatment. These services are typically the most important in any detention environment, but are particularly important for young people, where early intervention can make a critical long-term difference.
- 13.4.2 Lenning has noted that one in six children and young people will be at risk of developing a significant mental health problem prior to the age of 18 years and that *'as many as 60% of incarcerated young offenders are at risk of significant mental health problems'*.³⁰ Brendtro and others suggest that, in response to a range of physical and social stressors (including disconnection from community, a lack of freedom and a sense of hopelessness), the actual process of incarceration can both cause and exacerbate underlying mental health concerns. This must be considered when developing responsive services and supports if therapeutic and rehabilitative outcomes are to be achieved.³¹ Harrington and Bailey have noted that the assessment of mental health and the promotion of the mental well being of young people within the youth justice system is integral to the delivery of effective youth justice services.³²

Specific mental health needs

- 13.4.3 Human rights standards require that a juvenile who is suffering from mental illness should be treated in a specialised institution under independent medical management. Steps should be taken, by arrangement with appropriate agencies, to ensure any necessary continuation of mental health care after release.³³
- 13.4.4 Many of the best practice approaches advocated above in relation to health generally, apply equally, and in some cases specifically, to mental health. Some of the sources already outlined also provide insight into specific diagnosis and treatment issues for young people, and often recommend a proposed way forward. The Commission is, however, mindful that this Report was not a comprehensive review of child and adolescent mental health services, and submissions were not

²⁹ See sections 19 and 20 of the HR Act.

³⁰ Dr Chris Lenning, 'Assessment of Mental Health Issues with Young Offenders', *Paper presented at the Juvenile Justice: From Lessons of the Past to a Road for the Future Conference* (2003)

³¹ Larry Brendtro, Martin Brokenleg & Steve Van Brockern, *Reclaiming Youth at Risk: Our Hope for the Future* (2006)

³² Richard Harrington and Sue Bailey, 'Mental Health Needs and Effectiveness of Provision for Young Offenders in Custody and in the Community', *Youth Justice Board for England and Wales* (2005).

³³ Rule 53 of POJ. See also Rule 82 of the SMR

made to the Review on this basis. We therefore do not seek to draw conclusions on the specific interventions that should be made for young people.

- 13.4.5 We note, however, that the Western Australian Commissioner for Children and Young People (the WA Commissioner) recently released the results of its Inquiry into the Mental Health and Wellbeing of Children and Young People in WA. It identified two important developments in Victoria and New South Wales based on integrated and coordinated state-based services. In Victoria, the Adolescent Forensic Health Services (AFHS) offers specialist forensic assessment and clinical counselling to all young people involved in the youth justice system, whether on community orders, in detention or exiting custody. The AFHS offers a broad range of services, including primary health care, offence specific programs and drug treatment. The team includes nurses, medical officers, psychologists, social workers, dual diagnosis clinicians, health promoters, criminologists and occupational therapists. The NSW Community Integration Team (CIT) was also singled out by the WA Commissioner as another positive model.
- 13.4.6 The WA Commissioner also found transition was a particularly important issue for young people. In examining the transition of young people into adult services, it noted that smooth transitional arrangements are particularly important for children and young people with complex needs, or those who are vulnerable and do not have strong family supports, such as children in the care of the Department for Child Protection. The WA Commissioner also recommended that transition strategies for young people exiting adolescent services ensure continuity of care is maintained.
- 13.4.7 The ACT Commission is also aware of individual reviews recently undertaken in relation to specific incidents at Bimberi, which have made recommendations regarding the provision of mental health services at Bimberi. Many of these recommendations have centred on information sharing, discussed further below. A recommendation has also been made that the HEADSS Assessment³⁴ screening tool be used for initial corrections health admission which, in the opinion of that external reviewer, provides a systematic framework for developing rapport with a young person and is designed to start with the less sensitive areas of a young person's life. The Commission does not intend to revisit these recommendations. We recommend that in general they be followed given the serious issues identified. The only issue we would further elaborate on is that headspace ACT separately reported to the Commission that HEADSS is a screening tool, not a risk identification and management tool, and thus may not adequately identify the level of risk of suicidal ideation.

Current provision of service

- 13.4.8 Section 161 of the CYP Act provides that on admission each young detainee must be assessed to identify any immediate mental health needs or risks, and any needs and risks identified should be addressed. As noted above, the Mental Health Act also includes provision for assessment orders, and emergency detention and care.
- 13.4.9 The Government Submission lists several community supports that are relevant to young people in the youth justice system, including:
- The Messengers Program, which targets young people with depression and anxiety who are at risk of early school leaving;
 - The Bungee youth resilience program delivered by Belconnen Community Services, which promotes good mental health in young people with individual short-term support for the young person and their family; and
 - headspace ACT, which provides primary mental health assessment, treatment and support, information and assistance for young people who are experiencing emotional or mental health issues and/or substance use issues.
- 13.4.10 The Government Submission also states that mental health services have been provided at Bimberi since it opened in September 2008. Services are provided by ACT Forensic Mental Health Services through the Bimberi Youth Justice Centre Mental Health Service (FMHS). It states that the FMHS at Bimberi is staffed by a full-time psychologist (five days per week), a part-time intern psychologist (three days per week), a part-time social worker (four days per week) and a consultant psychiatrist (visits once a week). Services offered include:
- Psychiatric reviews and medication;
 - An Induction Assessment of all young people on their arrival at Bimberi;
 - Clinical management services;
 - Psychological therapy when indicated;
 - Counselling or other time-limited interventions where indicated;
 - Advice to Bimberi staff regarding appropriate levels of observation for young people; and
 - Advice to Bimberi staff regarding mental health issues.

34 A screening acronym for adolescent patients representing Home Education/Employment Activities Drugs Sex Suicidality

- 13.4.11 The Government Submission suggests that all active clients of FMHS are referred following release from Bimberi to the Child and Adolescent Mental Health Service (CAMHS). CAMHS is responsible for providing child and adolescent mental health services to the broader ACT community.

Views of young people

- 13.4.12 As detailed above, the Commission surveyed young people at Bimberi about their impressions of the health service. Most young people believed that the quality of health services at the Centre was good or very good; just under half believed that it was easy to access a counsellor, psychologist or alcohol or other drug service. Anecdotally, many young people spoke positively of the full-time psychologist at Bimberi.
- 13.4.13 However, 20% of young people said that they were not receiving support for their mental health issues.

Conflicting philosophies

- 13.4.14 The major issue identified by the Commission in relation to the delivery of mental health services to young people in the youth justice system, particularly those at Bimberi, was the conflicting philosophies among the government and non-government mental health service providers. This conflict was at its most stark in relation to the ACT Government services of CAMHS and the FMHS. Their relationship is a critical one, given FMHS provide services within Bimberi and hand clients to CAMHS for post-release care.
- 13.4.15 CAMHS generally operates on a model of less intervention and more cautious diagnosis. CAMHS may prescribe medication for young people, but this may not be coupled with a formal diagnosis given concerns that a diagnosis can be difficult to discard, and that labels have the potential to stigmatise a young person. CAMHS rarely, if ever, seeks involuntary treatment orders. Generally, CAMHS will involve parents, with the consent of the young person if possible, and parental consent is preferred to involuntary treatment.
- 13.4.16 In contrast, FMHS advocate strongly that early intervention and assertive treatment is critical for children and young people. FMHS suggested to the Commission that diagnosis with corresponding medication should be introduced as early as possible for young people. FMHS believes involuntary care orders should be used if a young person does not consent to treatment. FMHS also suggested that a closed environment provides a very useful opportunity to diagnose issues, as external factors such as drugs and alcohol are not present.
- 13.4.17 Further complicating matters, non-government service providers generally have a different philosophy, again, although these appear to be more aligned to that of CAMHS than FMHS. Generally, non-government providers have very limited or no use of medication, with an emphasis on counselling. Non-government providers generally believe that medication should never be prescribed at the first consultation, and that assessing a young person in detention should be done cautiously, as the closed environment may impact on their behaviour.
- 13.4.18 As noted above, this Report is not an assessment of the child and adolescent mental health system in the ACT. The Commission does not seek to mediate the competing views of the government and non-government service providers. But we note that they are inconsistent and at times conflicting. One of the fundamental principles outlined above in the provision of best practice health care for young people in the youth justice system is continuity of care. The Commission believes that these conflicting philosophies are undermining this continuity.
- 13.4.19 This conflict is further exacerbated where treatment begun by one service does not continue under another. For example, CAMHS suggested they would generally not impose the requirements of a Psychiatric Treatment Order for a client referred to them by FMHS. As one parent summarised her experiences of the system:
- 'We were pulled in 3 directions with professionals all having discussions about him amongst themselves, not talking to me.'*
- 13.4.20 These philosophies reach a specific point of conflict when a young person exits Bimberi and leaves the care of the FMHS and becomes a client of CAMHS. They may also, or in the alternative, begin seeing a non-government provider at this time. In the Commission's view, this can result in the young person's care changing significantly from one day to the next. As one participant noted:
- 'My experience is that the transition out of Bimberi for young people with mental health needs is very variable and sometimes becomes controversial. There are times when there is a serious difference of opinion between the FMHS practitioners in Bimberi and CAMHS.'*
- 13.4.21 More generally, some participants reported concerns that different parts of the Health Directorate provide services within, and outside, Bimberi. As one participant stated:

'In my view the split between FMHS and CAMHS has the potential to create a fragmented service that does not best serve the interests of young people. It is potentially confusing for young people in this system to be subject to different diagnoses or treatment regimes.'

Recommendation 13.17: The Health Directorate undertake a comprehensive review of the mental health services provided to young people in the youth justice system. This should involve all key stakeholders, including non-government service providers. The result of such a review should be the development of an agreed model of care for young people which is applied consistently across the various service providers, noting that some may have particular expertise, such as in general counselling. This review should also consider whether the current model of Forensic Mental Health Services providing care within Bimberi, and Child and Adolescent Mental Health Services having primary carriage for young people outside of Bimberi, promotes continuity of care.

Counselling

- 13.4.22 The Hamburger Review of the AMC noted that a range of stakeholders have expressed concern at the lack of in-depth long-term counselling available for detainees. It found that there was a need for increased general counselling within the AMC.³⁵ The Burnet Institute Report also found that there was strong consensus among the range of stakeholders that there were too few counselling opportunities available to prisoners at the AMC. While there was some provision of counselling from FMHS, prisoners and ex-prisoners noted that they needed to have serious mental health problems to access it.³⁶
- 13.4.23 Participants in the Review reported similar concerns to the Commission in relation to Bimberi. In reading young people's files and in interviews with workers, parents and health professionals it was clear that many of those incarcerated at Bimberi had a number of underlying mental health issues. Many of these were clinical: young people presented with conditions such as anxiety and depression. However, there were other psychosocial issues that were more prevalent and related to early experiences of abuse and trauma, grief and loss and social anxieties.
- 13.4.24 It was the view of many participants that medical and forensic models of mental health only met the needs of some young people, primarily those diagnosed with chronic mental health issues, and that the broader and often more criminogenically influential issues were left relatively unconsidered. In particular, poor impulse control, attitudinal problems, thinking errors and anger management difficulties, which have each shown to strongly influence young people's capacity to desist from crime, do not seem to be considered by existing support models. The Commission heard from clinicians that they believed that these issues were important, and that they hoped that Bimberi would enable them to work with individuals and groups to redress these problems.
- 13.4.25 Given that large numbers of young men and women at Bimberi have experienced childhood abuse and trauma, the Commission is concerned that little systematic consideration of how to best provide young people with appropriate counselling and support has occurred. We understand that services such as those provided by the Rape Crisis Centre and the Service Assisting Male Survivors of Sexual Assault are available at Bimberi when young people individually seek them out, but that access to these services is not part of the standard suite of programs. The Commission believes that providing universal services to young people at Bimberi, on the understanding that a significant number of the client group have experienced abuse and trauma, is warranted and should be integrated into the broad support program. Workshops might be promoted to young people as relating to relationship development, sexual health or dealing with feelings rather than explicitly promoting them as being related to abuse and trauma, with similar anticipated benefits.
- 13.4.26 Rather than primarily focusing on mental ill health, community workers, parents and Bimberi staff also promoted activities that support good mental health, and advocated for more opportunities for young people to develop their resiliency, strengthen relationships, create positive images of themselves and give back to their communities. Some pointed to the strengths of using the *Circle of Courage* framework developed by *Reclaiming Youth International*, which advocates activities that build young people's sense of belonging³⁷, mastery³⁸, independence³⁹ and generosity⁴⁰. The Circle is powerful as it not only builds young people's positive mental health but also helps them better manage what Larry Brendtro argues are pain-based behaviours emerging from brokenness in one of the four domains.⁴¹

35 Knowledge Consulting, above n.2.

36 Burnet Institute, *External component of the evaluation of drug policies and services and their subsequent effects on prisoners and staff within the Alexander Maconochie Centre* (2011).

37 Belonging to communities through positive attachments and connections

38 A sense of achievement and worth

39 A sense of having some control over your life and a say in decisions made about you and the community within which you live and operate

40 Positive opportunities to give back and for your altruism to be validated and supported

41 Larry Brendtro, *From Coercive to Strengths-based Intervention: Responding to the needs of children in pain* (2004)

- 13.4.27 A lack of counselling for alcohol and drug issues was also identified, and this is discussed below. However, at a minimum, the Commission believes the complex, and at times traumatic, history of the vulnerable young people at Bimberi means greater emphasis should be placed on general counselling and support for their needs. Even for a young person without a traumatic background, the prospect of spending many months, or even years, in a closed environment is of itself likely to be traumatic. We believe the obligation is on the ACT Government to either provide these services directly, or ensure they are provided at the Centre by the non-government sector.

Recommendation 13.18: The Health Directorate, as part of its review of mental health services for young people in the criminal justice system, consider how more general and specific counselling services can be provided at Bimberi, with a focus on ensuring such services can deliver throughcare and aftercare.

Secure accommodation

- 13.4.28 The WA Commission's report in relation to mental health services for young people recommended that WA develop its own integrated service system for young people in the youth justice system. In making these recommendations, the WA Commission was conscious of the lack of a dedicated, secure facility for young people. Instead, they are often housed in the entirely inappropriate environment of an adult centre. A 1996 Coronial inquest regarding a death at Quamby made a similar recommendation for the ACT.⁴²
- 13.4.29 We recognise that in a jurisdiction the size of the ACT, building a facility solely for young people in detention who require in-patient mental health care is not likely to be feasible. However, it should be noted that recommendations for this type of facility date back to the 1996 Coronial Inquiry.
- 13.4.30 Nonetheless, where young people from Bimberi who require acute in-patient care are to be treated remains a live issue. Previous discussions between the Health Directorate and the Commission suggest that there is a possibility that young people from Bimberi could be treated in an adult facility.⁴³ If a compromise has to be made, the Commission would advocate that young people remain separated from adults wherever possible. Although the Adolescent and Young Adult Mental Health Unit (AYAMHU) is still only in the planning phase, this would seem a far better option for treating young people than an adult facility. It would also be consistent with the relevant human rights standards, which require that young people suffering from mental illness should be treated in a specialised institution under independent medical management.

Recommendation 13.19: The ACT Government provide sufficient facilities and resources so that young people in the youth justice system who require mental health care are accommodated in a health facility for young people.

Information sharing

- 13.4.31 The Government Submission states that information sharing is a key consideration in the single case management plan. Nonetheless, the Commission is aware that other recent independent reviews of incidents at Bimberi have raised issues regarding information sharing. One external reviewer found that information sharing is not sufficient at Bimberi, in particular relating to a decision by FMHS to place a young person on particular observations. This was driven by Corrections Health using hard copy documentation and FMHS using electronic files, utilising a system to which Corrections Health did not have access. Further, there was no formal process to enable shared client alerts such as risk of violence or self harm between Corrections Health, FMHS and Youth Justice staff.
- 13.4.32 Information sharing was found to be an issue in the 1996 inquest into the death of a detainee at the Belconnen Remand Centre.⁴⁴ Similarly, deficiencies in file keeping and information sharing were found in the 1996 coronial inquest into the death of a young person at Quamby.⁴⁵ In the latter matter, the Coroner found that critical information was spread across many different files. The Coroner recommended that all information relating to an individual is maintained in the one file. The Coroner

⁴² ACT Coroner's Court, CD 179 of 1996

⁴³ Those conversations were regarding the Secure Adult Facility. We note that the recent ACT Budget ceased the planning process for this facility and we understand this unit won't proceed.

⁴⁴ ACT Coroner's Court, CD 75/1996

⁴⁵ ACT Coroner's Court, CD 179/1996

also recommended that this file be available immediately to all staff members and be kept up-to-date. The Coroner also had concerns with the level of information sharing amongst service providers at Quamby. The Coroner recommended that a protocol be developed between the mental health services and Quamby administration to ensure that relevant information is passed on. Unfortunately, independent reviews recently undertaken at Bimberi have had cause to make similar recommendations:

- That Bimberi management consult and negotiate with other government and community partners to develop and formalise information sharing processes aimed at a holistic approach to young offender services;
- There be clear interagency guidelines and client focused forums in relation to referrals and information sharing;
- That information sharing within the Youth Justice Information System be improved, by incorporating many of the forms and templates such as incident reports, classification reviews, change of placement or observation reports directly onto the electronic system so that operation staff can access and record case notes in one place; and
- That all centre staff be notified of any alerts and information updates immediately.

13.4.33 We support these recommendations, but also note that the Health Records Act obligations should be considered in the development of protocols to action these recommendations. It seems a protocol must be agreed between the Health Directorate and CSD to address these issues, which seeks to balance young people's rights to privacy with the need for youth worker staff to be aware of potential self-harm issues. Both government and non-government health service providers should have input into resolution of this issue, and any resolution should consider recommendations of the recent independent reviews.

Recommendation 13.20: The Community Services Directorate and the Health Directorate jointly develop a protocol to resolve issues concerning the sharing of information between their staff, particularly regarding concerns about a young person's mental health at Bimberi.

13.4.34 The Institute for Child Protection Studies has noted that the link between alcohol or other drug use and young people's criminal behaviour has been highly contested within the literature.⁴⁶ They divide the literature into two camps – one argues that early alcohol and other drug use leads to early criminal behaviour, and another that this is not true.⁴⁷ In a 2005 study, the Australian Institute of Criminology examined the drug use of young people in the juvenile justice system. It found in the six months before entering detention, 71% of young people used one type of substance regularly, and 29% used more than one type regularly.

13.4.35 In terms of types of substances regularly used:

- 63% used cannabis;
- 46% used alcohol;
- 20% used amphetamines;
- 8% used ecstasy; and
- 7% used inhalants.⁴⁸

13.4.36 Non-Indigenous young people were more likely than Aboriginal and Torres Strait Islander young people to have tried amphetamines and ecstasy. Generally, however, young people's substance using patterns were very similar, including use of alcohol and inhalants.⁴⁹ In the ACT, the Institute for Child Protection Studies found that workers and practitioners from statutory and non-government organisations that participated in the study reported that their experience was that drug and alcohol use both leads to and is the cause of criminal behaviour in young people. They found that for young people who had begun using alcohol or other drugs by their early adolescence:

*'Regardless of which comes first, the link between the two issues has been established and has shown to be significant for many young people.'*⁵⁰

13.4.37 The study found that young people were aware of the reasons for their use of drugs but were unable to identify better strategies for coping with those underlying issues. Furthermore the authors found many programs were based upon a harm minimisation approach as opposed to abstinence, which is what is required in most directions ordered by the court.⁵¹

46 Tim Moore, Vicky Saunders & Morag McArthur (2008) *Lost In Transition: Exploring young people's experiences of transition from youth detention in the ACT*, 124.

47 *ibid.*

48 Jeremy Prichard and Jason Page, 'Alcohol, drugs and crime: a study of juveniles in detention', *Australian Institute of Criminology* (2005) 33

49 *Ibid.*

50 Moore et al, above n.46, 125

51 *Ibid*, 135

13.5 Alcohol and other drugs

- 13.5.1 Many of the best practice approaches advocated above in relation to health generally, apply equally, and in some cases specifically, to alcohol and drug treatment services.
- 13.5.2 In addition, under Rule 54 of the POJ, detention facilities should adopt specialised drug abuse prevention and rehabilitation programs administered by qualified personnel. These programs should be adapted to the age, sex and other requirements of the young people concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent young people.
- 13.5.3 Consideration must also be given as to how best to run such programs. The Institute for Child Protection Studies found evidence that young people in Quamby disliked attending these programs due to the age range of people attending them. Older adolescents were less likely to speak candidly about their drug and alcohol issues in front of young participants.⁵²
- 13.5.4 The Institute also identified that young people needed to be able to transfer skills to different settings. They reported finding it difficult to remember or use skills in their post-release lives that they had learnt during the alcohol and drug counselling. Most of the young people reported using drugs and alcohol shortly after release from Quamby.
- 13.5.5 In response, the Institute recommended:
- That programs be provided to children – given the findings that alcohol and drug use began in childhood. The Institute suggested that significant, appropriate and targeted drug and alcohol counselling and support is required to seek out children who are using drugs and to provide them assistance in dealing with these issues;
 - Better identification and resolution of underlying issues;
 - Any progress made with young people during periods of incarceration be mirrored in the community if positive outcomes are to be sustained;
 - More opportunities for young people to participate in alcohol and other drug programs out of the ACT; and
 - Family focused support.⁵³
- 13.5.6 The Commission also had access to recent independent reviews of particular incidents at Bimberi, which included recommendations regarding alcohol and other drug considerations. These reviews:
- Found that records of NGO drug and alcohol interventions were not recorded in either the Justice Health or FMHS client files, and recommended that drug and alcohol services document client assessment and treatment plans in the health files;
 - Recommended that the Health Directorate implement an assessment/screening instrument that has been developed for adolescents;
 - Recommended that training and specialist position requirements include adolescent drug and alcohol training and expertise; and
 - Recommended that the use of nicotine replacement therapy be examined.
- 13.5.7 The Commission does not intend to second guess these recommendations, but has observed issues in relation to nicotine replacement therapy, which is discussed further below.

Promising Practice: Participants reported positively the recent development that the Alcohol and Drug Program (Health Directorate) would begin offering counselling services to clients of Community Youth Justice and Bimberi. Historically, the Health Directorate had restricted access to this service to those 18 years and over. This change was made by ACT Health in recognition of the complex needs of many young people in the youth justice system.

Current provision of service

- 13.5.8 The Government Submission states that alcohol and other drug services are offered to youth justice clients and those at Bimberi, to prevent the uptake of use, treat those young people with substance misuse issues and reduce drug related harm to individuals. The ACT Alcohol, Tobacco and Other Drug Strategy 2010-2014 contemplates specific services for those at Bimberi, and clients of Justice Health, including that such clients:
- Are screened on admission for concurrent mental health and alcohol and other drug problems;

⁵² Ibid, 136.

⁵³ Ibid, 140-141..

- Have the opportunity to identify alcohol and other drug and mental health services that they have had contact with in the community;
 - Are able to access the same community-based alcohol and other drug programs and other services where appropriate in detention and when they leave detention; and
 - If Aboriginal and Torres Strait Islander, have improved access to health services and support.
- 13.5.9 The Government Submission notes that a range of external providers provide services to young people at Bimberi as well as other youth justice clients. These services include:
- Alcohol and other drug assessment, case management and support services and medical services for Aboriginal and Torres Strait Islander young people in Bimberi provided by Winnunga Nimmityjah Aboriginal Health Services;
 - Weekly groups and program assessment provided by the Ted Noffs Foundation;
 - Fortnightly art therapy and regular case management for Aboriginal and Torres Strait Islander young people in Bimberi provided by Gudan Gulwan Youth Aboriginal Corporation. Gudan Gulwan also offers a drug and alcohol program for Aboriginal and Torres Strait Islander young people aged 12 to 25 years with drug and alcohol issues; and
 - The Junction Youth Health Service provided by Anglicare.

Promising Practice: In April 2011 a six month trial commenced where all youth justice alcohol and other drug treatment referrals will go through the Court Alcohol Drug Alcohol Service (CADAS). CADAS will undertake all alcohol and drug assessments and determine which treatment agency is best to provide a service for the young person. This trial has been developed in partnership between the Community Services Directorate, the Health Directorate, the Gudan Gulwan Aboriginal Corporation and the Ted Noffs Foundation.

Views of young people

- 13.5.10 Of the young people surveyed for this Review, only 10% who identified having smoking issues believed that support was offered to help them. Similarly, only 20% of those who identified having alcohol and other drug issues reported that support for this was offered. In relation to the latter, this is likely due to the historic difficulties services have reported in providing alcohol and other drug services in Bimberi.

Bimberi's philosophy to alcohol and other drug intervention

- 13.5.11 The inherent tension identified by the Institute of Child Protection between harm minimisation and abstinence appears to the Commission to be exacerbated throughout the youth justice system. Many participants in the Review commented on the conflict between expectations of abstinence and harm minimisation. This was most pronounced at Bimberi.
- 13.5.12 However, the impact of this tension is hard to gauge, as it has been coupled with a period of chronic staff shortages at Bimberi. Throughout this Report we have assessed the results of this, and in particular at Chapter 8 (case management) we detail the impact it had on NGO services. Alcohol and other drug services were not immune from this and reported similar problems to those experienced by other participants in accessing Bimberi to provide services. The Alcohol, Tobacco and Other Drug Association ACT (ATODA) submission to the CSD Diversionary Framework process, provided to the Commission by ATODA, notes a major challenge for the system is the:
- 'Perceived and/or real barriers to access with young people in Bimberi for community services who work with young people pre and post detention.'*
- 13.5.13 As such, assessing the validity or appropriateness of alcohol and other drug services in Bimberi has been difficult for this Review. It is difficult to assess services that have been struggling to deliver their programs.
- 13.5.14 The promising practice outlined above is welcome, but has come only in recent months. In the Commission's view this is due largely to a change in the circumstances at Bimberi. In particular, an increase in staff resources.
- 13.5.15 Many participants described a culture at Bimberi of abstinence or security issues being preferred to implementing harm minimisation strategies. There was also some suggestion that the Bimberi management has not particularly valued or prioritised alcohol and other drug services, particularly from the non-government sector.
- 13.5.16 At times, it was difficult for participants to articulate what this might mean for service delivery, as many of the interventions provided at Bimberi were the same as those in the community. For example, young people detoxing from drugs like cannabis and ice are usually not provided significant pharmacological interventions, either in Bimberi or in the community, other than low-level pain relief. However, a significant example was raised by participants repeatedly and did seem to suggest that Bimberi management's attitude to clinical judgement on alcohol and other drug issues was impacting on service delivery. As detailed above, Nicotine Replacement Therapy (NRT) has been identified by other independent reviews as an issue at Bimberi.

- 13.5.17 Participants reported to the Commission that a significant number of young people enter Bimberi with a smoking habit. As young people cannot smoke at Bimberi, some participants suggested that this affected their behaviour considerably in the first days and weeks of admission, and that some young people were needlessly getting themselves into trouble because of withdrawal issues. A number of participants reported confusion as to what NRT was available, and in particular whether lozenges were the only option, or whether patches were possible. One parent reported that her son was prescribed and given patches while in the admissions area of Bimberi, but these were taken from him by Bimberi staff when he left admissions.
- 13.5.18 The Commission understands that this relatively minor alcohol and other drug issue caused significant tension between the Health Directorate and Bimberi management, and was the subject of conversations initially between the head of Justice Health and the Centre management, and then between more senior managers in CSD and the Health Directorate. Ultimately a NRT Local Operating Procedure (NRT LOP) was agreed. The NRT LOP now states that young people in detention, with clinical withdrawal from nicotine, are entitled to equal access to NRT as their peers in the community. However, the NRT LOP contemplates only lozenges being available to young people. The Commission understands that both patches and lozenges are appropriate therapies and that there is no clinical or security reason for preferring one method over the other. As many young people may dislike the taste of lozenges it seems appropriate to provide patches as an alternative.
- 13.5.19 Participants also noted that an approach to alcohol and other drugs that allows no or little intervention, and promotes only abstinence, is unlikely to build trust with a young person. It means a young person is unlikely to be honest about drug and alcohol use, and then engage with treatment.
- 13.5.20 It is concerning that a relatively minor alcohol and other drug issue like NRT could only be resolved by conversations at the very senior levels of the Health Directorate and CSD. The Commission is concerned about how quickly these issues will be resolved if more critical, but perhaps more controversial, clinical interventions for drug addiction are needed in future, such as young people being prescribed methadone.

Recommendation 13.21: The Health Directorate and the Community Services Directorate negotiate an overarching protocol on alcohol and other drug interventions in Bimberi. The Commission would suggest that a guiding principle to this protocol be that clinicians have the ultimate decision making authority for what interventions are utilised.

Recommendation 13.22: The Health Directorate and the Community Services Directorate ensure there is clarity among health providers at Bimberi about Nicotine Replacement Therapy. This should include amending the Local Operating Procedure to state nicotine patches as well as lozenges can be provided. We would see this as a short-term solution, until an over-arching protocol is developed.

Strategic planning

- 13.5.21 The Burnet Institute's recent evaluation of drug policies and services at the AMC also made some findings that are relevant to Bimberi. In reviewing the various key policy and strategic documents that inform drug policy and services at AMC, the Institute found the lack of a cohesive single drug policy had implications for role clarity, governance and the coordination of activities to fulfil specific objectives. The Institute found that there was a fragmentation of services and providers and that duplicate services delivered by external providers are likely to be unfunded. It found service duplication is problematic and not monitored, largely due to a lack of service coordination. The Burnet Institute recommended that:
- 'A consolidated strategic and policy framework should be developed specifically for the AMC to provide consistent, coordinated and clear governance and service provision guidance regarding drug-related policy and services.'*⁵⁴
- 13.5.22 The Commission welcomes the addition of the Health Directorate's Alcohol and Drug Program for young people in the youth justice system. However, as discussed above, a number of participants reported a gap in the provision of alcohol and other drug counselling at Bimberi. The Commission was told that in late 2010, CYJ, the Health Directorate, the Gugun Gulwan Aboriginal Corporation and the Ted Noffs Foundation formed a working group to develop a common pathway and procedures for assessment for young people in the youth justice system with drug and alcohol needs. The aim is to:
- Agree on interventions and programs for all clients of the youth justice system;
 - Establish policy/protocol for jointly reviewing alcohol and drug interventions and programs offered annually and identify gaps and emerging issues;

54 Burnet, above n.36, 179.

- Agree on the types of written client information that can be shared; and
 - Agree on opportunities for joint work.
- 13.5.23 The Commission encourages this work to continue, and include addressing potential issues with supply of services not being delivered according to strategic need.

Recommendation 13.23: The existing Bimberi alcohol and other drug working group established by the Health Directorate undertake an assessment of the AOD needs of young people in the youth justice system, and map the current supply of services, to ensure the appropriate provision of alcohol and other drug services

Smoking in workplace pilot

- 13.5.24 Smoking is currently not allowed for young people or staff at Bimberi. The Commission understands that staff usually go out to the car park, or beyond, to smoke during breaks. Young people reported to the Commission that their efforts to deal with nicotine withdrawal were often hampered by mixing with staff who smelt of smoke. A number of participants spoke positively of the Workplace Tobacco Management Project currently underway, which aims to increase awareness, and support the implementation, of workplace tobacco management policies, and reduce the impact of smoking behaviours for the staff in nine programs within the mental health, ATODA, and youth non-government sectors. The Commission sees merit in considering such a project at Bimberi.

Recommendation 13.24: Bimberi management consider adopting a similar program to the Workplace Tobacco Management Project to reduce the impact of smoking behaviours for staff.

CADAS referrals

- 13.5.25 Several participants also raised the issue of referrals recommended by the Court Alcohol and Drug Assessment Service (CADAS) in the Childrens Court. CADAS is a pre-sentencing treatment option for clients charged with alcohol and other drug related offences. The goals are to reduce recidivism during the bail period, and to engage the client in treatment. It is therefore designed as an immediate, short-term intervention, when a client first appears before the Court.
- 13.5.26 The CADAS clinician is located at the Court, and provides an immediate alcohol and other drug assessment, and recommends an appropriate treatment plan. If the Court accepts the plan and releases the client on bail to comply with the plan, the CADAS clinician monitors attendance, and reports all outcomes to the Court. Non-compliance does not necessarily result in a penalty, but is taken into account by the Magistrate at sentencing.
- 13.5.27 ATODA provided the Commission with a copy of its submission to the CSD Diversionary Framework consultation. It notes: *'Whilst CADAS referrals have remained fairly steady, averaging about 40 young people under 18 years per year since 2003 / 2004, this number has decreased since March 2010. Since September 2010 there has only been one referral for assessment from the Childrens Court Magistrates which was received in March 2011. ATODA understands that the reasons for such a dramatic reduction in referrals is not clear.'*

The Commission is anxious that young people with identified alcohol and other drug issues are diverted out of the criminal justice system and into treatment. Diversion is discussed further in Chapter 7.

Chapter 14: Conditions Of Detention

A Quality Youth Justice Centre Respects Human Rights

Relevant Terms of Reference

- Human Rights Audit of Bimberi Youth Justice Centre

Relevant Human Rights Standards

- Humane Treatment of Children (CROC, OPCAT, UNCAT, POJ r.67, HR Act ss. 10, 11, 19, 20)
- Natural Justice (POJ art 70, SMR r.20)
- Freedom of Association (HR Act s.15),
- Freedom of Movement (HR Act s.13)
- Right to Privacy (HR Act s.12)
- Right to Liberty and Security (HR Act s.18)
- Right to Equality (HR Act s.8)
- Freedom of Expression (HR Act s.14)
- Separation on Legal Status (HR Act s.19)

14.1 Purpose of a youth justice centre

- 14.1.1 One of the driving factors for the Legislative Assembly commissioning this Review was concern about issues at the Bimberi Youth Justice Centre (Bimberi). The Legislative Assembly's resolution Resolution called for a Human Rights Audit (the Audit) of Bimberi, and made specific reference to security, and the use of segregation and restraints on young people.
- 14.1.2 At Chapter 2, we have already summarised the findings across the Report in terms of broad human rights issues covering staffing concerns (Chapter 5), education (Chapter 12) and health (Chapter 13). In this Chapter we focus directly on the conditions of detention at Bimberi, and seek to analyse the factors identified explicitly by the Legislative Assembly: the safety and security of the staff, balanced with the needs of young people; and the necessity to use measures such as force and segregation as last resorts only.
- 14.1.3 It might be said that one of Bimberi's primary obligations is to balance the rights of staff with the rights of young people.
- 14.1.4 These rights are not necessarily always competing or mutually exclusive. In fact, evidence shows that a supportive, therapeutic environment for young people is one that not only best realises their rights, but is also more respectful and consistent with the rights of staff, and in which staff are most able to achieve their duties and aspirations.
- 14.1.5 The Commission believes substantial improvements have been made in the transition from the former Quamby detention centre to Bimberi. Returning six years after the 2005 Human Rights Audit of Quamby (2005 Quamby HR Audit), the Commission was impressed at the level of human rights dialogue demonstrated by all levels of staff, and the significant change the ACT *Children and Young People Act 2008* (CYP Act) and policies were having on the ground. In many areas, we found the recommendations of the 2005 Quamby HR Audit have been followed.

Promising Practice: Bimberi's physical features are significantly better than Quamby, and participants in the Review expressed their belief that a new Centre had directly led to more positive outcomes for young people.

- 14.1.6 However, human rights compliance is not a static circumstance, and constant monitoring is necessary to ensure that a closed facility respects human rights, and provides a therapeutic environment that is safe and secure for staff and residents alike. At times, Bimberi has not achieved these aims.

14.2 Behaviour management and discipline

Human rights standards

- 14.2.7 It is a fundamental principle of justice and the rule of law that any sanction, whether classified as disciplinary or criminal, must be clearly expressed and publicly accessible. The principle of legality is reflected in s.28 of the ACT *Human Rights Act 2004* (HR Act), which requires that any restriction on HR Act rights be set out in Territory law. This requirement applies to the internal management of a correctional facility.
- 14.2.8 In the context of imprisonment, whether of adults or young people, disciplinary measures must be established by law, and that law must set out the:
- Conduct constituting a disciplinary offence;
 - Type and duration of disciplinary sanction that may be applied;
 - Authority competent to impose the sanctions; and
 - Authority competent to consider appeals.
- 14.2.9 No young person should be subject to disciplinary sanction except in strict accordance with the terms of the law and the regulations in force at the relevant time that meet these basic criteria.¹
- 14.2.10 Human rights standards also mandate procedural fairness. A young person has the right to be informed of the offence alleged against them and the right to be heard and given a proper opportunity to present their defence before disciplinary action is taken.² They also have the right to have such action reviewed by an impartial and independent authority.³ As the 2005 Quamby HR Audit noted, it is appropriate in a youth detention environment to ensure that the reasons for a penalty are fully explained and understood. The implementation of the sanction and any conflict over the fairness of the penalty need to be resolved quickly. However, the opportunity to be heard is essential to fair treatment and plays an important part in preventing unnecessary grievances.
- 14.2.11 Disciplinary measures and procedures should maintain the interests of safety and order within the institution, but must also respect the inherent dignity of the young person.⁴ Punishment that is cruel, inhuman or degrading is absolutely prohibited.⁵ In particular, closed and solitary confinement or other punishments that may severely compromise the physical or mental health of the juvenile concerned are prohibited.⁶
- 14.2.12 Disciplinary proceedings within Bimberi could potentially engage a number of rights under the HR Act, including equality, protection from inhuman or degrading treatment, fair trial, privacy and humane treatment.⁷

Best practice

- 14.2.13 Behaviour management systems are most effective when they are well considered, well articulated, consistently applied and reviewable.
- 14.2.14 Discipline (rather than punishment) is a vital part of effective programs: positive behaviours should be mentored and rewarded, destructive behaviours challenged, and alternatives implemented. Positive discipline enables character development and promotes courage, pride and integrity, while setting the tone for all other program interventions. Research shows that effective discipline programs set high expectations for young people, employ graduated sanctions that match the behaviour being challenged and emphasise remedial measures. Research also suggests that systems are well understood by young people who are given opportunities to understand that disciplinary processes are in their own best interests. Roush and McMillan observe that '*effective discipline programs require strong and committed staff members, who must make discipline part of their own lives – not just part of their jobs*'.⁸
- 14.2.15 According to Roush, the behaviour management systems that are most effective:
- Provide structure and dependability, but do not overwhelm young people. They are clear and understandable and are based on general principles (eg cooperation, respect and responsibility) that attempt not only to promote conformity, but also help foster pro-social values and beliefs. Rules and structures provide the foundation for self-discipline and self-control. As Previte notes, '*rules are an institution's way of saying "I care" to youth*'.

1 Rule 70 Protection of Juveniles; Rule 20 SMR.

2 Rule 30.2 SMR.

3 Rule 67 Protection of Juveniles; Principle 30.1 and 30.2 Body of Principles; Rule 29 SMR.

4 Rule 66 Protection of Juveniles.

5 Article 7 ICCPR; s.10 HR Act; Article 3 ECHR; Rule 31 SMR; Principle 6 Body of Principles; Article 37 CROC; Rule 66 Protection of Juveniles.

6 Rule 66 Protection of Juveniles; Article 8 ECHR, Article 17 ICCPR.

7 See sections 8, 10, 12, 19, 21.

8 David Roush and Michael McMillan, *Construction, Operations, and Staff Training for Juvenile Confinement Facilities* (2000)

- Are enforced in a way that is both firm and fair. Young people in the youth justice system are often hypervigilant for injustice and don't cope well with inconsistency, punitive or coercive approaches, or passive endorsement of behaviours.
- Are consistently applied. To operate effectively, facilities need to develop a social order (or culture) which guides everyone in the Centre (including young people, frontline staff and management). Best practice programs instil rules of conduct that apply to everyone in the Centre and encourage the development of respect and dignity.⁹

14.2.16 Similar principles underpin the UK Government's 'Managing Children and Young People's Behaviour in the Secure Estate: A code of practice',¹⁰ which requires that:

- The responsibilities of managers are clearly set out;
- There is a clear statement of acceptable behaviour;
- There is a coherent system of rewards and sanctions;
- There is a planned approach to managing behaviour;
- There is a process for consulting young people;
- There is an independent advocacy service;
- There is a clear complaints procedure; and
- There is a process for diversion, de-escalation and diffusion.

14.2.17 In considering these principles, Smallridge and Williamson recommended the UK Government adopt the Therapeutic Crisis Intervention (TCI) package developed by Cornell University, which assists organisations in de-escalating potential and actual injury to young people and staff, and teaching young people adaptive coping skills. This is discussed further below.

14.2.18 The 2005 Quamby HR Audit found issues with the transparency of the former behaviour management system, and a lack of confidence among young people with the system.

Remissions

14.2.19 The 2005 Quamby HR Audit expressed concerns with the remissions system then in place. Section 127 of the *Children and Young People Act 1999*, then in effect, empowered the Chief Executive to reduce the period of a young person's committal by up to one third of the sentence, unless the Children's Court had ordered otherwise. Remission was discretionary and based on a subjective assessment of good conduct. The Human Rights and Discrimination Commissioner (the Commissioner) had some concerns in relation to procedural safeguards, including the right to be heard before a sanction applied remission was refused, and the right of appeal.¹¹ While noting that the principle of incentives and early release is consistent with the 1985 United Nations' Standard Minimum Rules for the Administration of Juvenile Justice (SMR) and the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (POJ), the Commissioner found that the lack of transparency and procedural fairness undermined the system.

Current practice

Legislation and policy

14.2.20 Following the recommendations of the 2005 Quamby HR Audit, remissions were removed from the behaviour management system for youth justice. On 23 June 2011, the Government announced proposed reforms to the youth justice system including the introduction of parole and an independent parole board. Based on the limited information available, these proposals seem consistent with the recommendations of the 2005 Quamby HR Audit.

14.2.21 Chapter 8 of the current CYP Act provides the Director-General powers to discipline young people for behaviour breaches in the Centre. Section 287 states that a behaviour breach includes:

- Being in a prohibited area;
- Smoking;
- Taking (in any way) alcohol, a prohibited substance or an unauthorised medicine into the young detainee's body;
- Making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the Chief Executive's approval;

9 David Roush, 'Juvenile detention programming' (1993) 57 *Federal Probation* 20–33.

10 United Kingdom Youth Justice Board, *Managing the Behaviour of Children And Young People in the Secure Estate* (2006)

11 Principle 30(2) Body of Principles.

- Being disrespectful or abusive towards a youth detention officer in a way that undermines the officer's authority;
 - Being disrespectful or abusive towards another person;
 - Fighting;
 - Theft; and
 - Planning, conspiring or attempting, or assisting anyone else planning, conspiring or attempting, to commit a behaviour breach.
- 14.2.22 A privilege is generally something not listed in the minimum entitlements of young detainees under the CYP Act.¹² Such minimum entitlements include access to food, drink, health care, clothing, exercise and fresh air.
- 14.2.23 If a youth worker suspects that a young person has committed a behaviour breach, he or she may elect to counsel or warn the young person, or can proceed to make a report. The person who investigates such an allegation must be a different person to the youth worker who makes the report. The report must be in writing and a copy must be given to the young person. A young person must be given the option to contact support people to assist them to respond if they choose.
- 14.2.24 After the investigation, the Administrator, the person appointed by the Chief Executive to impose behavioural consequences, may similarly elect to warn, counsel or reprimand the young person, or proceed to disciplinary action. This can be in the form of a 'minor behaviour breach' consequence, a formal behaviour breach charge or a referral to the police in the case of alleged criminal conduct.

Minor behaviour breach consequences

- 14.2.25 Section 297 of the CYP Act provides that the Community Services Directorate (CSD) must develop a behaviour management framework for Bimberi to deal with minor behaviour breaches, which must provide:
- Any behaviour management consequences imposed on a young detainee to be a reasonable and proportionate response to the minor behaviour breach;
 - How privileges can be withdrawn for minor behaviour breaches;
 - Review by the Director-General (including on request by a young detainee) of decisions to impose behaviour management consequences for minor behaviour breaches.
- 14.2.26 A minor behaviour breach is defined to include a breach that is not of a serious or persistent nature; does not involve a serious risk to the health or safety of someone else; and does not involve a serious risk, or serious or persistent disruption, to the security or good order at a detention place. Section 298 provides that the following are consequences that may be imposed under the behaviour management framework for such minor breaches:
- A fine, not exceeding \$25;
 - A withdrawal of privileges, for not longer than six days;
 - A requirement to make an apology to a person affected by the behaviour breach;
 - A requirement to perform extra chores, for not longer than two hours.

Disciplinary charges

- 14.2.27 Rather than deciding to impose a minor behaviour breach consequence on the young person, an Administrator may elect instead to formally impose a disciplinary charge. The Administrator, or subsequent review officer, may, on considering a disciplinary charge, warn or reprimand the young person, or impose a behaviour management consequence. In deciding whether to impose a behaviour management consequence, the relevant presiding officer must consider the age, developmental capacity, rehabilitation needs and any known history of the young detainee.
- 14.2.28 The consequences for a formal disciplinary charge are more severe, and can include:
- A fine, not exceeding \$250;
 - A withdrawal of privileges, for not longer than 60 days;
 - A requirement to make an apology to a person affected by the behaviour breach; or
 - A requirement to perform extra chores, for not longer than 20 hours.
- 14.2.29 A young person can choose to accept the disciplinary charge and subsequent consequence, or they can choose to seek a review. The conduct of a review must be consistent with the rules of natural justice, and the young person should be given the opportunity to make submissions in a form acceptable to the reviewer. A hearing may be held, but the emphasis should be on making it as informal as possible. A range of sections of the CYP Act provide generally that the rules of natural justice apply to the conduct of that hearing.

¹² See s.141 of the CYP Act

- 14.2.30 The first step in a review is undertaken by an internal reviewer, other than the Administrator. That review officer must give the young person the reasons for their decision. The young person can seek further review of the decision, which must be undertaken by a Magistrate appointed under the CYP Act for that purpose. At all stages of review, the young person should be given the option to contact support people. These provisions are supported by the *Children and Young People (Discipline) Policy and Procedures 2008* (Disciplinary Policy), which essentially 'operationalise' the relevant sections of the CYP Act. The Disciplinary Policy seeks to put negative behaviour of young people in context, noting that it may be the product of a negative background and therefore any response must be individualised to the young detainee.

Encouraging positive behaviour

- 14.2.31 The new behaviour management system under the *Children and Young People (Behaviour Management Framework) Policy and Procedures 2008* (BMS Policy) provides rewards through an incentive points system. This policy also seeks to deal with minor behaviour breaches. The behaviour of a young detainee is assessed on a five point scale (0 to 4) against the following nine domains:
- Nightshift behaviour in room;
 - Personal hygiene;
 - Respect for others and centre property;
 - Attitude/cooperation with directions;
 - Centre movements;
 - Cabin standards;
 - Chores and tasks;
 - Participating in centre activities; and
 - Extra initiative.
- 14.2.32 Young people are rewarded for good behaviour and can 'cash points in' for items such as food. The purpose of this behaviour management system is to:
- Promote self-understanding, self-esteem, emotional regulation and positive and pro-social behaviours by young detainees;
 - Provide an environment that promotes social and emotional development and psychological resilience in young detainees; and
 - Respond to negative or challenging behaviour displayed by young detainees, including behaviour that constitutes a minor behaviour breach or behaviour breach.
- 14.2.33 The emphasis of the policy is to implement proactive or preventative strategies within Bimberi that focus on the relationship between staff and young detainees and promote positive and pro-social behaviours by young detainees. These include environmental strategies and reinforcement strategies. The policy suggests that the effective use of proactive strategies in working with young detainees will result in less reliance on reactive strategies, which are designed as a response to negative behaviour.
- 14.2.34 Environmental strategies emphasise a normalised environment in which there is predictability, consistency and boundaries for young detainees. Reinforcement strategies include the use of incentives and rewards to recognise and affirm socially acceptable behaviour by young detainees.
- 14.2.35 Reactive strategies may be implemented to respond to negative behaviour by young detainees, including behaviour that constitutes a minor behaviour breach or behaviour breach. Reactive strategies include the development of a behaviour management plan, de-escalation practices, and the use of force as a last resort. The policy puts an emphasis on dealing with behaviour through communication and relationship building, ie pro-social modelling.
- 14.2.36 Under the policy, the senior manager is responsible for ensuring staff receive training in the following areas relevant to working with children, young people and young adults in custody:
- Understanding the needs of children, young people and young adults in custody;
 - Cultural awareness;
 - Adolescent development and behaviour;
 - Communication and relationship building;
 - Behaviour management strategies;
 - Pro-social modelling;
 - Conflict resolution; and
 - Giving feedback.

- 14.2.37 The policy contemplates behaviour management plans being developed for individual young people, which will provide the structure in which that young person's negative or challenging behaviour in custody will be responded to and managed. A behaviour management plan does not have the objective of addressing the young person's assessed needs related to the reason for their detention and will not be required for all young detainees. The BMS Policy emphasises that a behaviour management plan developed for a young person must always be subordinate to, and consistent with, the overall case plan for the young detainee. However, the Commission has identified several issues in the application of this policy
- 14.2.38 The Commission supports the BMS Policy's emphasis on de-escalation and individualisation of responses to young people. It is clearly based on human rights principles, and its approach is consistent with best practice.

Application of the BMS Policy

Views of staff

- 14.2.39 During interviews and in written surveys, staff reported that the BMS Policy was complex and difficult to understand. At times, they found it hard to give consistent decisions and were sometimes unsure about how the points system worked. Staff also reported that implementing the BMS Policy, particularly around positive interventions, was difficult during periods of staff shortages. This often resulted in youth workers not being able to properly explain outcomes to young people. The Commission supports the intention of the system, but we can see value in reviewing it in consultation with youth workers and young people, given they have now worked with it for two years.
- 14.2.40 The Commission was also concerned that it appeared that, contrary to the policy, case managers had no input into behaviour management plans

Charge form

- 14.2.41 The Commission also has concerns with the paperwork supporting the BMS and Disciplinary Policies. The current disciplinary charge form does not specifically detail how a young person can contact the Public Advocate or another support person. The only option for further information suggested is a youth worker. We suggest that other alternatives should be provided. On the files surveyed there were very few instances of signatures of young people, suggesting that the requirements of record keeping were not being followed.

Recommendation 14.1: The Community Services Directorate review the *Children and Young People (Behaviour Management Framework) Policy and Procedures 2008* in consultation with youth workers and young people.

Views of young people

- 14.2.42 During interviews and in written surveys, young people reported that they were generally unhappy with the behaviour management system at the Centre, with the majority believing the incentive and discipline system is unfair. Most young people reported having had their privileges withdrawn, a fine or a warning, and reported that they had sometimes been punished as a whole group for the actions of an individual or a small group and, in informal remarks, said that this was unfair.
- 14.2.43 While the CYP Act and BMS Policy seek to reinforce ideals of natural justice, equality and cultural awareness, the area of concern cited most often by young people was inconsistent treatment. Young people often linked this to gender or race issues, yet the Commission is unable to verify these claims. Young people also reported concerns with staff not adequately responding to taunts from other young people about race or sexuality, yet again, the Commission is unable to verify these claims.

Discrimination: gender, race and sexuality

- 14.2.44 The *Discrimination Act 1991* (Discrimination Act) states it is unlawful for a service provider, in the way in which the provider provides those services, to discriminate against any person because of a protected attribute. These attributes include race, sexuality, disability and sex. Further, the Discrimination Act also makes vilification on the basis of race or sexuality unlawful.
- 14.2.45 Participants reported to the Commission two broad areas of concern regarding discrimination. As already touched on, the first issue concerned the perceived different treatment of young people on the basis of gender or race. Secondly, participants reported concerns with staff not intervening when inappropriate comments were made by other young people on the basis of gender or race.

- 14.2.46 In relation to the first issue, while the BMS Policy seeks to emphasise communication, the Commission believes the young people's perceptions of discrimination on the basis of gender, as discussed above, are generally a result of staff not adequately explaining to young people the reason for their decisions. In examining the issues of different disciplinary consequences, the Commission generally found that staff had appropriately responded to the individual needs of the young person in question. The young person's gender was not a specific consideration. However, this hadn't been adequately explained to young people.
- 14.2.47 As detailed above, staff have identified that communication with young people is very difficult during periods of low staff numbers. That is likely contributing to young people's frustrations regarding this issue. Further, often these complaints from young people appeared to be related to the low level of programs available at the Centre. Exacerbating this, some programs had low resources and could only allow a limited number of young people to participate. The low numbers of young females at Bimberi also mean that they require specific attention at times, which the Commission supports.
- 14.2.48 The Commission believes these issues must be addressed, or else the Centre risks young people losing confidence in the BMS Policy and disciplinary systems. Increasing staffing has already been identified as a key recommendation of this Review at Chapter 5. To that we would add better communication strategies and the need to ensure that all programs are open to all young people. This is discussed further in Chapter 9 (programming) in relation to programming and Chapter 10 (individual needs) in relation to needs of young people with particular characteristics.
- 14.2.49 Finally, it should be noted that s.27 of the Discrimination Act does allow special measures to be taken by service providers, where such positive measures are necessary to overcome systematic discrimination. It may therefore be reasonable for Centre management to provide particular programs for girls, given their traditionally very low numbers, and to particular cultural groups like Aboriginal and Torres Strait Islanders. Needs of particular young people are discussed at Chapter 10 (individual needs).
- 14.2.50 The second discrimination issue raised by participants concerned inappropriate comments by staff or young people not being addressed. The BMS Policy identifies cultural awareness as an area in which youth workers must be provided training. However, the race issues identified in Chapter 5 between staff is mirrored in the feedback from young people on behavioural consequences. This is concerning at the outset, as it may demonstrate that staff are not modelling pro-social behaviour. This is perhaps shown by nearly 50% of young people, or nine of the 19 surveyed, reporting occasions when staff had made insulting remarks about them. Nearly a sixth reported that staff had made insulting remarks about their culture, and two reported remarks had been made about their families. The Commission was unable to verify this, or determine the specific nature of such remarks.
- 14.2.51 Nonetheless, of the 18 staff who participated in our survey, 10 respondents reporting feeling that there were problems with *'racism/racial prejudice amongst the young people at Bimberi'*. One young person in particular reported to the Commission that he felt his violent behaviour towards other young people at the Centre was due to staff not intervening when racial taunts were made to him. Another young person alleged to the Commission that staff refused to intervene when homophobic taunts were made by other young people.
- 'Kids being kids they are going to say stuff. I had patience with them, I could understand it was ignorance, but it got to me that the workers did nothing at all to stop it.'*
- 14.2.52 Young female participants also reported to the Commission that they had been subject to derogatory sexual comments by young male residents at Bimberi, and staff had not intervened. In their joint-submission to the Review, the Women's Centre for Health Matters and ACT Women and Prisons Group suggested *'young women have reported being sexually harassed by young men and are subject to degrading name calling, which goes unpunished.'*
- 14.2.53 As a public authority, Bimberi must also act consistently with the right to equality.¹³ The Commission is concerned that if Bimberi is not adequately responding to taunts about race, gender or sexuality, it may not be discharging these obligations. One critical area to improve this would be to provide discrimination, cultural awareness and equity/diversity training to youth workers. Training for young workers is discussed at Chapter 5 (staffing).

Double jeopardy

- 14.2.54 The CYP Act creates a different regime if a young person engages in alleged criminal behaviour at Bimberi. Rather than being dealt with as an internal disciplinary matter, it can become a criminal investigation. However, under s.290, a young person cannot be punished twice. If a prosecution has commenced, then they cannot be punished within the Centre. Equally, if they have been punished within the Centre, they cannot be prosecuted for an offence.

- 14.2.55 The Commission saw a number of instances where it appeared young people were being ‘punished’ for behaviour that was the subject of criminal investigation and later prosecution. This response was often described as ‘risk management’ and undertaken for the good order of the Centre.
- 14.2.56 CSD suggested in response to this issue that a Behaviour Management Plan may be used in cases in which there is more than one breach during an incident. One example provided by CSD was: a young person assaults a staff member and the breach is referred to ACT Police, then as the young person goes to their cabin, they subsequently smash their phone. CSD suggest this is another breach and could be dealt with by way of a behaviour breach. A Behaviour Management Plan is developed by the case manager and unit manager to address a young person’s behaviour and is reviewed fortnightly.
- 14.2.57 CSD also noted that in relation to young people segregated after a disciplinary incident, that a segregation direction works alone and is implemented to manage the security and good order of the Centre and to manage the safety and health of the young person subject to segregation and all young people within the centre and staff. Segregation directions are discussed at Part 14.4 below.
- 14.2.58 However, in at least one case considered by the Commission, a young person alleged to have assaulted another was allowed to return to all education classes, bar his two favourites. The Commission could see no evidence that these posed any greater risks to the good order of the Centre than his remaining classes, and in particular his alleged victim did not attend these classes. It is our understanding that this response involved only a single disciplinary incident and so would not fall into the category suggested above by CSD. It appeared to the Commission that the clear reason for this exclusion from his favourite classes was to punish the young person for the alleged behaviour.

Recommendation 14.2: The Community Services Directorate develop a transparent process of decision-making for any restrictions on young people’s access to education, vocational classes, mixing or other loss of entitlements on the basis of ‘risk management’, including those referred to police investigation. This should include objective criteria for decision-making, a clear written statement of reasons for the decision and how a young person can regain entitlement(s).

Therapeutic Crisis Intervention (TCI)

- 14.2.59 Finally, the ACT Government submission to this Review (the Government Submission) states that Bimberi staff are receiving training on TCI. However, as this training does not appear to have been contemplated at the time the BMS Policy was designed, we have concerns as to how it sits with the other policies and procedures relevant to behaviour management and uses of force. It is questionable how effective training on TCI will be with a potentially incongruent behaviour management system in place. At a minimum, it is likely to lead to confusion among staff. Further, there have been concerns raised regarding the restraint holds taught in TCI, which are also discussed below.

Recommendation 14.3: If Therapeutic Crisis Intervention (TCI) is to be adopted at Bimberi, the Community Services Directorate review the Behaviour Management Policy to ensure it is consistent with TCI.

14.3 Use of force/restraints

- 14.3.1 The application of physical force on a person in detention is among the most controversial and critical areas of regulating a closed environment. Many human rights standards, legislative provisions, policies, procedures, best practice guidelines and training aim to strike the balance between the security of a facility and the humane treatment of its detainees. Even then, it is an area that requires ongoing and systematic oversight, as even the best policies and training can become lost in the day-to-day practice and culture of an institution.
- 14.3.2 This approach is reflected in the Optional Protocol to the Convention Against Torture, which Australia has signed but is yet to ratify. However, Australia has already ratified the parent instrument, the United Nations Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which defines torture as the deliberate infliction of severe pain or suffering, mental or physical, by a public official for a specific purpose such as to force a confession or punish a person. Other actions or omissions of lesser severity, whether intended or not, may be considered cruel, inhuman or degrading treatment or punishment. The Convention on the Rights of the Child (CROC) also prohibits the use of torture, and cruel, inhuman or degrading treatment or punishment of children, and there are a number of United Nations Rules and standards concerning the detention of children and young people that endorse this prohibition.¹⁴
- 14.3.3 In many ways, this Review demonstrates why ongoing oversight is critical, particularly in relation to the application of force and use of restraints against detainees. Such issues are all the more important when those in detention are young people, rather than adults.
- 14.3.4 In 2006, the Howard League for Penal Reform released a report on the use of physical restraint, segregation and strip searching in UK secure children's facilities (the Carlile Report).¹⁵ It noted that:
- ‘...many of the children and young people detained against their will had chaotic and abusive childhoods and that the lack of clear boundaries and examples of good behaviour meant that they often did not know how to manage their own frustration, sadness, irritation, fear or anger.’¹⁶*
- 14.3.5 The same could be said of the young people at Bimberi. Nonetheless, the Carlile Report recommended that ‘the use of physical violence or intervention by staff should only be required in the most exceptional circumstances.’¹⁷

Human rights standards

- 14.3.6 Generally, the relevant human rights standards state that use of force by youth workers against young people should be a last resort and only the minimum force needed is permissible. Force might be resorted to in order to prevent young people from inflicting self-injury, injuries to others or serious destruction of property. In such instances, a doctor should be consulted.¹⁸ These obligations are also generally dealt with under a range of provisions of the HR Act, including:
- Humane treatment when deprived of liberty;
 - Protection from torture and cruel, inhuman or degrading treatment;
 - Rights of children in the criminal process; and
 - Protection of children.¹⁹
- 14.3.7 Article 19 of CROC also imposes an obligation on the State to protect the ‘child from all forms of physical or mental violence, injury or abuse.’

Case law

- 14.3.8 In 2001, the European Court of Human Rights considered the issue of use of force in detention in *Keenan v United Kingdom*,²⁰ a case that concerned the suicide of a 28-year-old man in a UK prison. The Court stated, in considering the relevant provision of the European Convention dealing with torture or inhumane treatment:
- ‘In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3.’²¹*

14 Rule 67 Protection of Juveniles; Rule 31 SMR; and Principle 6 Body of Principles.

15 The Lord Carlile of Berriew QC, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes* (2006), Howard League for Penal Reform.

16 Ibid, 29.

17 Ibid.

18 Rule 64 of the POJ states that instruments of restraint and force can only be used where all other control methods have been exhausted and failed. See also rules 33, 34 and 54 of SMR.

19 See sections 19, 10, 20 and 11.

20 (2001) ECHR 242

21 Para 112.

- 14.3.9 A number of recent coronial inquests in the UK and the United States have also considered specific uses of force or restraint.²²

Best practice for achieving standards

Safe restraint?

- 14.3.10 The South Australian (SA) Guardian for Children and Young People has found that *'restraining children is a dangerous practice that can cause significant injury and even death to children and young people.'*²³ While several reports and reviews have noted key principles regarding the use of restraint in closed environments, they have also generally noted the lack of evidence base for many techniques, let alone the practice itself. As Smallridge and Williamson noted in their UK review of restraints: *'No restraint is 100% safe...it is an area of controversy and competing claims and there is little consensus among medical experts about the causes of injury and death associated with restraint use or the relative risks associated with alternative methods of restraint.'*²⁴
- 14.3.11 Nonetheless, a range of coronial inquests and reviews, particularly from the UK, have recommended against the following restraints:
- Basket hold – involves a young person's arms being held across their chest. This has been banned from being used in secure training centres in the UK.
 - Double-seated embrace – was used prior to a 2004 death of a young person in the UK. This embrace involves two officers seated either side of the prisoner restraining him or her by holding the arm on the far side and leaning his head forwards while a third monitors the face.²⁵ This has been banned from being used in secure training centres in the UK.
 - Supine restraint – face up on ground. It carries risk of choking on or inhaling vomit.
 - Prone position – involves the young person being face down on the ground. 'Holding Safely', the Scottish Institute for Residential Child Care's Guide for Residential Care, says of the prone position: *'restraining children in a prone position carries a higher risk of serious harm than other holds done correctly, and as such should always be treated as a final option. Restraining children in a prone position is more likely than other forms, such as standing or seated restraints, to be seen by them as a punishment or as abuse.'*
- 14.3.12 The Carlile Report noted that 'physical intervention carries real dangers in any position, should be avoided if possible, should not be prolonged, should be monitored, and no pressure should be applied to neck, thorax, abdomen, back or pelvic area.'²⁶
- 14.3.13 Dr Keith McVilly undertook a review of the use of physical restraints in disability services for the Victorian Senior Practitioner (the McVilly Report).²⁷ While it focused on issues relevant to people with disabilities, it nonetheless reviewed literature and best practice on the use of restraints and segregation in closed environments. Many of the institutions identified in the McVilly Report as minimising the use of restraints were ones that had sought to use a range of daily activities, such as occupational therapy, individualised treatment, exercise, spirituality, physical comforts, education and work throughout the residents' day. This suggests that in many ways the frequency and nature of the use of force and restraints in a closed environment illustrates much of its culture and philosophy.
- 14.3.14 The McVilly Report notes that physical intervention involving restraint has been used by the service system to address issues concerning occupational health and safety for staff. However, the report concludes *'there is little if any research evidence to suggest that such strategies are effective.'*²⁸ The report recommended that the Victorian Senior Practitioner,²⁹ in collaboration with appropriate medical authorities with specialist expertise in the field of developmental disability medicine, publish practice guidelines highlighting the dangers of asphyxia and cardiac complications associated with the use of physical restraint, and in particular the prone position, as well as hobble tying,³⁰ basket holds and mechanical restraint.³¹

22 See for example the Coroners' Inquests into the deaths of Gareth Myatt and Adam Rickwood in the United Kingdom.

23 Andrew Day and Michael Daffern, *Inquiry into Policy and Practice in the Use of Physical Restraint in South Australian Residential Facilities for Children and Young People* (2009), Report for the Guardian for Children and Young People, South Australia, 2. This Report includes a list of deaths in the US linked to use of restraint at pages 6-7.

24 Peter Smallridge and Andrew Williamson, *Independent Review of Restraint In Juvenile Secure Settings* (2008), UK Ministry of Justice, 30.

25 Youth Rights UK, 'The death of Gareth Myatt', http://www.youth-rights-uk.org/briefings/gareth_myatt.doc

26 Carlile, above n15, 42.

27 Keith McVilly, *Physical restraint in disability services* (2009), Victorian Government.

28 Ibid, 17.

29 The Senior Practitioner is an officer of the Victorian Department of Human Services and is generally responsible for ensuring that the rights of people who are subject to restrictive interventions and compulsory treatment are protected, and that appropriate standards are complied with in relation to restrictive interventions and compulsory treatment

30 Hobble tying is the term used to describe the prone positioning of a patient, following which their wrists are secured behind their back, their ankles are tied, and their wrists and ankles are subsequently secured together by pulling the shoulders back and bending the legs towards them. From Horsburgh, D, *How, and when, can I restrain a patient?*, <http://pmj.bmj.com/content/80/939/7.full>

31 McVilly, above n27, 8.

- 14.3.15 Both the Carlile and McVilly reports recommended against pain based restraints. The UK Joint-Committee on Human Rights in their review of restraint similarly stated:

*'There can be no justification for practices which involve the deliberate infliction of pain, such as the so-called distraction techniques, and we therefore recommend their abolition without delay.'*³²

- 14.3.16 Following the Carlile Report, the UK Government commissioned social workers Smallridge and Williamson to undertake a specific independent review of 'Restraint in Juvenile Secure Settings'.³³ Four years on, they similarly found that 'on the evidence available, we have not felt able to state that any one restraint technique would be completely safe to use on everyone in the juvenile secure estate'.³⁴ Instead, they recommended the establishment of a scheme of accreditation for physical restraints for secure juvenile centres, which the UK Government agreed to.

- 14.3.17 Faced with similar issues regarding a clear consensus on safe restraints, the SA Guardian for Children and Young People recommended that the SA Government develop practice guidelines for physical restraint.³⁵ A clear theme of all of these reports is that the prone position, double basket and double-seated embrace restraints should be avoided, and that any physical restraint carries inherent risk of harm, particularly given the lack of evidence base about what techniques are safe. All pain-based restraints should be minimised, or generally not used at all. It does not appear any restraint method can be seen as best practice, although the UK's accreditation scheme, coupled with developments in Victoria and South Australia, may offer a way forward.

Recommendation 14.4: The Community Services Directorate develop Practice Guidelines on Safe Physical Restraint, informed by relevant research.

Avoiding force

- 14.3.18 It seems clear that the best solution of all is to reduce, or avoid the use of restraints. Across the literature reviewed for this Report, we identified the following as factors in reducing the use of restraints:

- An appropriate behaviour management system;³⁶
- Staff resources;³⁷
- Education and training on alternatives and de-escalation;³⁸
- Leadership – '*leaders within a closed environment provide a reference point for the behaviour of all staff and young people within the establishment*';³⁹
- Policy, ethos and cultural considerations;⁴⁰
- Monitoring and review; and⁴¹
- Environment.⁴²

- 14.3.19 The broad range of areas captured in this list demonstrates that use of force and restraint is reduced through a holistic range of measures, many of which may not be directly linked to uses of force. As such, much of this Report has identified a series of recommendations that, if implemented, should reduce the need for force to be used against young people. Clearly, most important are the behaviour management system, staffing resources, training, oversight and overall culture of the Centre. In the remainder of this section, we seek to examine the use of force in isolation, and identify improvements, but do so conscious that many of the other issues already discussed in this Report are the most important factors in reducing use of force.

32 United Kingdom, *The Use of Restraint in Secure Training Centres* (2008), Parliamentary Joint Committee on Human Rights, 28.

33 Smallridge and Williams, above n24.

34 Ibid, 35.

35 Page 22.

36 McVilly, above n27, 38. Smallridge and Williamson, above n24, 80.

37 McVilly, above n27, 38.

38 Ibid, 38. Smallridge and Williamson, above n24, 84

39 Smallridge and Williamson, above n24, 84

40 McVilly, above n27, 38. Smallridge and Williamson, above n24, 82.

41 Ibid.

42 Smallridge and Williamson, above n24, pg 83

Policy, practice and challenges

- 14.3.20 Many reports have identified the definitional issues inherent in assessing and comparing use of force and restraint.⁴³ This can pose difficulties in reporting, oversight and most particularly, assessment from staff, as to when a use of force is occurring.
- 14.3.21 Use of force is specifically governed by Division 6.6.4 of the CYP Act. Use of force is not defined in the Act or in the *Use of Force Policy and Procedure 2008* (the Use of Force Policy). Restraint in the Use of Force Policy is defined as *'body contact or the use of instruments of restraint. Instruments of restraint include restraint belts, flexicuffs, shields, helmets, handcuffs and other approved items.'*
- 14.3.22 Section 278 of the CYP Act states that a youth detention officer may use force that is necessary and reasonable to undertake a search, but that it must be done in accordance with Division 6.6.4. Searching is discussed below at Part 14.5. Division 6.6.4 includes requirements that force should be used as a last resort, in accordance with law, and the individual characteristics of the young person should be taken into account in considering a use of force. Sub-section 223(4) provides that a young detainee injured by a use of force must receive a health assessment after force has been used.
- 14.3.23 However, s.224 of the CYP Act suggests use of force may be used in situations that might, arguably, go beyond 'exceptional circumstances' as required by the relevant human rights standards. Use of force may be used under s.224 of the Act and under the Policy:
- To prevent escape from custody;
 - As a process of self defence;
 - To protect another person including a young detainee, a staff member or any other person visiting a detention place from attack or harm and where no other means are available for their protection;
 - To prevent a young detainee from harming him or herself;
 - To enforce a segregation direction, including to move a young detainee to a safe room, after all reasonable steps have been taken to persuade the young detainee to comply with the direction;
 - To undertake a personal or area search, to seize a prohibited thing or a dangerous or harmful article or substance that is reasonably suspected to be in the possession of a young detainee, or to prevent the loss, destruction or contamination of anything seized during a search.
 - To prevent unlawful damage, destruction or interference with property;
 - To prevent or quell a riot or persistent serious disruption to the good order of a detention place;
 - Where a young detainee refuses to comply with a direction and all other reasonable steps have been taken to persuade the young detainee to comply; or
 - To prevent or stop the commission of an offence or behaviour breach.
- 14.3.24 The Commission has concerns with the last three rationale in particular, as these have the potential to allow uses of force for minor incidents. Smallridge and Williamson further elaborate on these factors by suggesting six principles to inform when force should be used in a juvenile setting. They recommended force should be used only to prevent the risk of harm. This might include risk of harm to a 'safe environment', but they cautioned against this being seen in the same light as 'good order of the establishment', a motivation that had been questioned in previous coronial inquests. They caution against force being used for 'mere compliance' and instead require that the safety of the establishment is under real threat.⁴⁴ Similarly, the UK Parliamentary Joint Human Rights Committee criticised amendments to UK law allowing force to be used in secure training centres for the good order and discipline of the centre.⁴⁵ Further, the Carlile Report recommended that 'restraint should never be used primarily to secure compliance'.
- 'We were concerned that in some cases there appeared to be a culture where dissent was not tolerated and that physical restraint was used to secure conformity. While firm boundaries and consistency of response by adults in authority are essential, it has to be balanced against a tolerance and appreciation that normal teenage behaviour is testing. Over-reaction, especially if capricious and sudden, can be counter-productive and even dangerous.'*⁴⁶
- 14.3.25 Similarly, the SA Guardian for Children and Young People recommended after her review into physical restraints in residential facilities that the relevant SA law be amended *'such that use of force is not permitted to ensure that the resident complies with a reasonable direction given by an employee of the centre.'*⁴⁷

43 See for example Day and Daffern, above n.23, 8.

44 Paras 12.23 to 12.41

45 Parliamentary Joint Committee on Human Rights, above n.32, 25.

46 Carlile, above n.15, 29

47 Day and Daffern, above n.23, 4.

14.3.26 The Commission found information to suggest that force was being used in Bimberi to achieve compliance, to maintain 'good order' or in responding to minor behaviour breaches. A review of critical incident reports by the Commission found staff using force on young people after asking them to follow directions regarding minor issues, such as:

- To stop swearing; or
- To clean up mess; or
- Not to walk on the grass; or
- After a soccer ball was kicked on the roof.

14.3.27 Often staff justified the use of force because they had given the young person 'three warnings'. In our view, simply repeating an instruction three times does not justify the use of force. These reports suggest staff are not properly utilising de-escalation techniques and that minor behaviour breaches, or disruption to good order, or failure to comply with a direction, are being unreasonably used as rationale to use force.

Promising Practice: Staff and management appear to take their use-of-force reporting seriously, and based on our review of the registers are attempting to record uses of force accurately and promptly.

14.3.28 We are nonetheless acutely aware of the challenging role youth workers have. Young people's behaviour at Bimberi can be at times extremely challenging. However, the literature is clear that improving de-escalation techniques and staff resources will lead to a reduction in the use force, and correspondingly make the work of staff easier. Our aim is for staff to work in an environment in which they have time and space to talk to young people and find out what they're thinking. De-escalation strategies should be accepted as part of the primary role of youth workers, informed by thorough and regular training and debriefing to empower them to do what is expected of them.

Recommendation 14.5: The ACT Government amend the *Children and Young People Act 2008* and *Use of Force Policy and Procedure 2008* to define 'use of force' and remove references to use of force being used to maintain good order, to achieve compliance with a direction, and to prevent a behaviour breach.

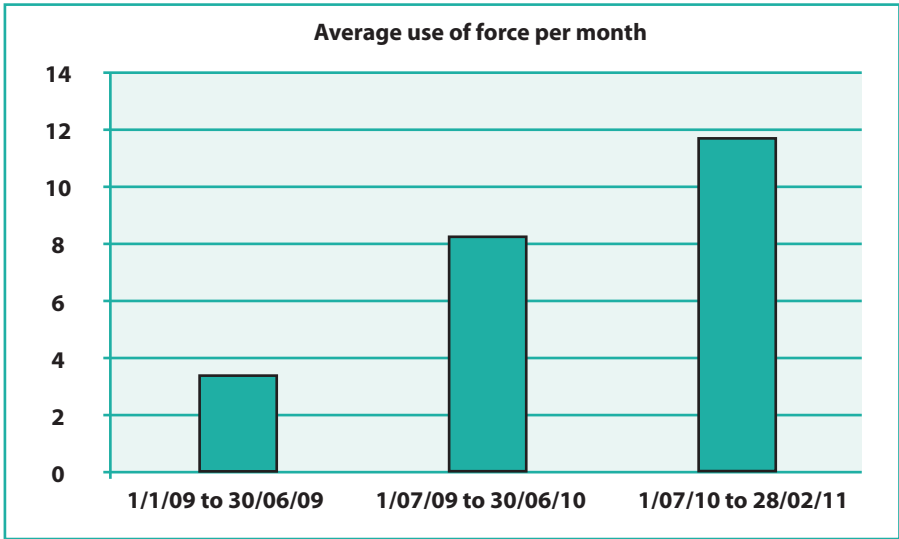
Prevalence

14.3.29 There are two categories of Reportable Incidents under the *Children and Young People (Records and Reporting) Policy and Procedures 2008*. Category One incidents oblige the Senior Manager to notify the Director immediately, while Category Two requires notification following the completion of a report within five working days. Use of force is a Category Two incident. Data provided to the Review by CSD (Figure 14.1) shows that:

- From 1 January 2009 until 30 June 2009, there was one Category One incident and 50 Category Two incidents. Of these, 20 were uses of force.
- From 1 July 2009 to 30 June 2010, there were no Category One incidents and 170 Category Two incidents. Of these, 99 were uses of force.
- From 1 July 2010 to 28 February 2011 there were five Category One incidents and 139 Category Two incidents. Of these, 93 were uses of force.

14.3.30 The average use of force per month has continued to increase, however these figures need to be compared against the number of residents before any firm conclusions can be drawn. During the Review, the Commission asked CSD to provide staff:resident ratio data, either by day, week or month, yet CSD was unable to do so.

Figure 14.1: Average use of force per month



14.3.31 Increased uses of force also correspond, at least anecdotally, with the period when staffing numbers were at their lowest. For example, the use of force register reveals multiple uses of force on single days during September 2010, however, again this data needs to be considered against the number of young people in detention.

Views of young people

- 14.3.32 Over half of the young people reported that they had been placed in handcuffs, a restraint belt, or another restraint device while in Bimberi (n=10). Forty-two percent reported that they were physically restrained by staff ‘sometimes’, and just under 40% of young people reported an injury that was a result of a staff restraint (n=7).
- 14.3.33 The Commission cites these figures with caution, and we do not draw any conclusions from them. We are unable to ascertain the veracity of these claims or the extent of such injuries, and we note the inherent limitations of this data given it is unclear how respondents might define ‘restraint’ or ‘injury’. However, such verification would have been possible, if Bimberi’s policy had been to notify a nurse or doctor every time a use of force was used. We discuss health checks and uses of force further below, including to recommend such a change be made to the Policy so in future claims of this nature can be verified.

Views of staff

- 14.3.34 In the Commission’s survey with current and former staff, seven of 13 respondents that answered the question reported that they thought that restraints (such as handcuffs) were ‘used reasonably’. Six respondents reported that they thought that restraints were used ‘about the right amount, and five respondents reported that they thought that restraints were ‘not being used reasonably’. As one respondent stated:
- ‘Totally appropriate and necessary. If one detainee was to run off or climb on a roof, others may join in and we would have a total loss of control and a riot on our hands. Dangerous to detainees and staff.’*
- 14.3.35 However, more than a third of the respondents felt restraints weren’t being used reasonably (n=5), and some staff felt restraints were being used inappropriately:
- ‘Staff have not had sufficient training on when and how to apply restraints.’*
- 14.3.36 One staff member who participated in a verbal interview described particular concerns during the worst of the staff shortages, when staff felt isolated with a large group of young people. This participant suggested that staff would ‘rush’ to use force to restrain a young person, so they could quickly deal with the other young people in their care. They suggested that force might have later been used inevitably, but that staff rushed to use it first. Another experienced staff participant noted a definite change from the use of force at Quamby to Bimberi, particularly during the transitional period, which was coupled with a lack of policies and procedures and a lack of training on new legislation. This could have led to restraints being used prematurely:
- ‘We were all really tired and didn’t have time to work on their behaviours. We were in crisis the whole time.’*

Specific incidents

- 14.3.37 A number of serious allegations were reported in the Legislative Assembly and media before and during the course of this Review, including allegations regarding use of force. The Commission was also informed of these and other allegations from participants in this Review. CSD provided the Commission with details of the background and subsequent investigations of critical incidents, including whether they were subject to external scrutiny. In the most part, the Commission was satisfied with the level of scrutiny provided by other external agencies to these incidents. However, they do highlight some issues of concern that we believe warrant changes to policy and practice, and which are discussed in the report.
- 14.3.38 In a report obtained by the Commission, one external reviewer questioned if force had been used as a last resort in accordance with the relevant policy, as not all alternative strategies listed had been attempted. Withdrawal from the situation was highlighted as one strategy that should have been attempted and was not.
- 14.3.39 The McVilly Report in Victoria noted that staffing factors have been identified as critical to use of force, though there is a lack of consensus in the literature as to how best to determine optimum staffing numbers. The report notes that while higher staffing levels can correspond to higher uses of force, lower staffing levels can also contribute to staff feeling anxious and consequently more likely to deploy restrictive practices earlier than they might otherwise had they the support (reassurance and security) of other staff close by who could offer assistance if required.⁴⁸
- 14.3.40 Information considered by the Commission in this Report suggests that lower staffing levels have led to an increase in the use of force and restraints at Bimberi. Incident reports, interview responses and survey responses suggest that this is due to staff feeling anxious about being isolated. For example, in at least three incident reports, staff explicitly refer to lack of staff resources as a factor. It does not appear CSD was monitoring any trends in use of force data, and so did not respond directly to what is a concerning spike in use of force numbers. Better record keeping and trend analysis is discussed at Chapter 15 (management and oversight).
- 14.3.41 This lack of monitoring is illustrated by a specific example, in which a young person was allegedly injured after a use of force. We note that Centre management made reports to ACT Policing and Care and Protection Services on the day of the incident. The Care and Protection unit within CSD formally reported the incident to the Public Advocate three weeks later. CSD responded to concerns about this incident by requesting an internal review of the incident. That report, viewed by the Commission, suggests staff shortages were a factor in the incident. On the day, there was only one team leader and four youth worker staff available (in addition, there were two unit managers on duty). One of these youth workers was in the control room. The report suggests that at least one of the unit managers was supervising a wing of young people, due to a lack of staff. Nonetheless, this suggests as little as five staff may have been 'on the floor' for 26 young people resident at the Centre, with at least one unit manager away from their usual work to directly supervise young people. This further supports the Commission's concerns that staff shortages led to increased uses of force.

Recommendation 14.6: The Community Services Directorate track use of force statistics at Bimberi more closely to monitor trends, particularly increases in incidents and uses of force, and respond appropriately.

- 14.3.42 The internal review of this particular incident also raised issues about whether force was used as a last resort, and whether use of force was reasonable in situations involving a failure to comply with a direction or minor behaviour breach.
- 14.3.43 The investigation report made no recommendations for broader actions, such as considering whether other staff might also benefit from greater de-escalation training or if it is appropriate for force to be used for minor behaviour breaches. In the Commission's view, such considerations should be paramount in the mind of independent reviews, and this reinforces our concerns that all incidents of this kind be subject to external review. We would therefore recommend a shorter delay than three weeks in future to notify the Public Advocate of such matters. For example, the Carlile Report recommended that:
*'There should be some immediate external and independent scrutiny of every incident of restraint. An incident of physical restraint should be seen as such a serious breakdown that it should be immediately reported and scrutinised by an appropriate independent child care agency.'*⁴⁹
- 14.3.44 Extending the breadth of notifications to the Public Advocate is discussed further at Chapter 15 (management and oversight).

⁴⁸ McVilly, above n.27, 35.

⁴⁹ Carlile, above n15, 12.

- 14.3.45 Additional incidents also came to light which indicate to the Commission suggested changes are needed to policies and procedures regarding use of force. These include:
- An incident report describes a young person being restrained on the ground for ten minutes. This was apparently because he continued to make threats, but a restraint of this length of time raises issues for the young person's safety;
 - A number of incident reports discuss young people being surrounded by four or five staff. On one occasion a young person was surrounded by eight staff. These practices are inconsistent with good de-escalation techniques; and
 - Several respondents reported to the Commission an allegation that a young person confronted a staff member about a use of force, and subsequently was taken by that staff member into a room without CCTV and verbally threatened. The Commission reported these allegations to CSD. Even the threat of use of force can have a substantial impact on the emotional well-being of young people. This incident and subsequent concern reinforced the need for proper debriefing and independent oversight following uses of force. This is discussed further below. We are particularly concerned by the use of a room without a camera by a staff member alone with a young person.

Recommendation 14.7: The Community Services Directorate consider if there are additional areas of Bimberi that should be recorded by CCTV cameras, taking into account the privacy of young people and staff.

- 14.3.46 We are also concerned that several of the incident reports suggest that prone restraint may have been used, with some referring to the 'approved prone restraint'. As detailed above, this has been identified as a dangerous restraint in other jurisdictions. This is discussed further below in relation to training.

Mechanical restraints

- 14.3.47 The Use of Force Policy provides in s.3.2 that 'for the purposes of this policy and procedure, use of force includes body contact and the use of instruments of restraint (restraint belt, flexicuffs, shields, helmets, handcuffs and other approved items)'. The CYP Act does not otherwise refer to the use of restraints, and does not include the use of restraints as a behaviour management consequence for a behaviour breach. Nonetheless, the Commission received information of restraints being used as standard practice for certain young people under 'special management directions'.
- 14.3.48 The use of restraints is adverted to in the Children and Young People (Admission and Classification) Policy and Procedures 2008 (the Admission Policy), which states:
- '6.74. Following a young detainee's admission, each young detainee must be placed in a room with a camera and be subject to 5 minute observations.'*
- '6.75. If a youth detention officer identifies a need for special management directions (eg. use of non rippable linen and/or clothing), the officer must contact the Manager to seek authorisation for any of the following special management directions:*
- *any other special management directions (such as restrictions on contact or the use of restraints).'*
- 14.3.49 The CYP Act does not specifically refer to 'special management directions'. However, it appears that the use of restraints considered in this policy relates to the use of restraints to prevent an immediate risk of self harm based on observations on admission, which is likely to be consistent with the use of restraints as a use of force under s.224(b)(5).
- 14.3.50 Dr Watchirs, ACT Human Rights and Discrimination Commissioner, visited Bimberi on 18 March 2010, and subsequently wrote on 7 April 2010 to the Chief Executive of CSD raising concerns with the use of restraints within Bimberi:
- 'I am concerned at the distinction made in practice between use of restraints in a crisis situation, where it is treated as a statutory use of force, and in contrast the 'voluntary' acceptance of restraints within the centre by detainees as part of an ongoing behaviour management plan in the aftermath of these [roof] incidents. In the latter case, the strict criteria regarding the criteria and conditions for use of force are not applied. In my view it is not clear that this distinction is authorised under the Children and Young People Act 2008 (CYP Act), and it may result in the use of instruments of restraint against young detainees in circumstances where this imposes a disproportionate limitation on their rights under the Human Rights Act 2004 (HR Act).'*
- 14.3.51 The Government Submission suggests this practice stopped immediately, and CSD suggested to the Commission that manager's directions are only used if staff need to be aware of certain issues relevant to a young person, and are not a disciplinary measure rather an instruction on how to effectively manage the young person in question. However, we reiterate that 'special management directions' are not a valid justification of a routine use of force. We continue to have concerns as the term 'special management direction' still seems to be used in the Centre as a reason or record of restraint.
- 14.3.52 Another aspect of this issue that was repeatedly articulated by participants during this Review was the idea that if a young person was voluntarily consenting to the use of restraints, such restraint was not a use of force. In fact, the Government Submission also suggests that *'young people willingly acceded to the application of flexicuffs for the purpose of escorting from or within the centre. In these instances there is a 'technical' use of force only'.*

- 14.3.53 In the Commission's view, consistent with the relevant human rights standards, legislative provisions and policies, this is not a valid consideration. In a closed environment such as Bimberi any use of restraints should be treated and recorded as a use of force. Further, even if this behaviour was properly recorded as a use of force, its status as reasonable and proportionate remains at question, particularly inside as opposed to outside Bimberi. The Carlile report suggests:

'The Inquiry considers that the use of handcuffs on children in secure institutions is inappropriate.'

- 14.3.54 The Commission has serious concerns with the suggestion that a young person must be routinely restrained every time they leave a unit at Bimberi. They remain secure within the Centre and are accompanied by youth workers. Their risk of escape seems very low, and suggestions that they are complicit in their restraint adds weight to the argument that such a use of force cannot be categorised as being of last resort. We are also concerned about reports that young people have been left in flexicuffs in their room. At least one incident report confirms this. To restrain a young person while they are alone in their room is clearly a disproportionate and unreasonable limitation on their liberty.
- 14.3.55 CSD suggested during the Review that based on the advice of the Commissioner, all restraints are now recorded as uses of force.

Recommendation 14.8: The Community Services Directorate:

- Record all uses of restraints, no matter how planned or authorised, in the use of force register
- Ensure that young people not be routinely restrained when they leave units (as opposed to Bimberi itself)
- Consider if mechanical restraints are needed at all within the Centre, where risk of escape is low
- Ensure that all mechanical restraints are removed as soon as practical, when a young person is in their room.

Chemical restraint

- 14.3.56 Chemical restraint, or restraining a person in detention through the use of medication, is a concern in any closed environment. The McVilly Report defines chemical restraint as *'the use of a chemical substance to control or subdue a person's behaviour, but which excludes any drug prescribed by a registered medical practitioner for the sole purpose of treating a diagnosed physical illness or condition, or by a psychiatrist for the sole purpose of treating a diagnosed mental illness'*.⁵⁰ Rule 55 of the POJ states that 'Medicines should not be administered as a punishment or as a means of restraint'. The Commission received no evidence that chemical restraint was occurring at Bimberi. We have discussed issues concerning consent to health treatment generally in Chapter 13 (health).

Training

- 14.3.57 Rule 54 of the SMR requires that officers be given special physical training to enable them to restrain aggressive prisoners. In addition, Recommendation 2.4(b) from the 2005 Quamby HR Audit was that all staff attend training in de-escalation techniques. The Commissioner recommended that such training should be mandatory before new staff are allowed on the floor, because of the potential for a situation requiring the use of force to result in serious consequences. In addition, the Commissioner recommended refresher courses on this training should be offered at regular intervals to all staff who are in daily contact with the detainees.
- 14.3.58 The Government Submission advises that 'a new de-escalation training manual entitled 'Respond to Critical Situations' commenced in 2008 and is currently being used at Bimberi. Staff undertake four days of structured training in responding to challenging behaviours, critical situations and the use of force (including the use of restraints) and post incident management. The training has a strong emphasis on the importance of de-escalation and resolving conflict and negotiation rather than using force.'
- 14.3.59 On the basis of the current practice of use of force we continue to have concerns with use of force training at Bimberi. The trends and issues of concern detailed already point to a continued lack of use of de-escalation techniques among staff. They also suggest that dangerous techniques, such as the prone restraint, are being used. All restraints carry inherent risks. As such, Smallridge and Williamson recommended that all youth detention staff have consistent and comprehensive training in the awareness of risk factors in restraint, the monitoring of warning signs in young people and the need to take action quickly.⁵¹ They suggested that all training must include:

⁵⁰ McVilly, above n.27, 6.

⁵¹ Smallridge and Williamson, above n24, 8.

- Risk assessment;
- Recognition of distress or deterioration in physical condition while restraint is being carried out;
- An understanding of the basic physiology of breathing;
- Training in basic resuscitation and airway management; and
- An understanding of psychological/medical conditions which increase the risk of an adverse outcome.

14.3.60 The McVilly report in Victoria recommended that training on use of force include personal accounts of those that have been restrained, concerning their experience of restraint and seclusion.⁵² We see merit in a similar approach being taken for young people. Many of the reviews cited in this part of our Report recount such stories. They also, as discussed below cite the trauma that a use of force can cause to a young person.

Recommendation 14.9: The Community Services Directorate:

- Train youth workers on identifying risk factors in uses of force, including assessing deterioration in physical condition, as well as first aid and resuscitation. There must be a renewed emphasis on de-escalation techniques.
- Amend the *Use of Force Policy and Procedure 2008* and supporting training, to prevent the use of restraint in the prone position, double basket or the double-seated embrace
- Consider including de-identified stories or personal accounts of young people's experiences of being restrained as part of training.

Therapeutic crisis intervention (TCI)

14.3.61 The Government Submission included a reference to Bimberi staff receiving 'Therapeutic Crisis Intervention training'. As detailed above, this package has an emphasis on de-escalation techniques. However, the McVilly Report describes TCI in the following way:

*'Concerns have been raised with respect to the Therapeutic Crisis Intervention (TCI) model developed at Cornell University, New York. This curriculum includes instruction in the use of prone restraints and basket holds, known to contribute to injury of clients and staff... A further criticism is that this curriculum places emphasis on teaching staff the techniques of physical restraint and the use of reactive strategies, with only secondary emphasis on preventative strategies. For these reasons, this programme and others like it could not be considered contemporary in terms of the legal and ethical imperatives guiding support services for people with disability.'*⁵³

14.3.62 Nonetheless, Smallridge and Williamson recommended TCI be introduced further into the secure environments in the UK; although, in doing so, they noted concerns with the inclusion of prone restraints in this package. They therefore recommended that if the UK Government introduce TCI:

*'It need not introduce TCI's stand-alone physical restraint system, which uses prone restraint. Units in the secure estate which use TCI have dispensed with its physical system in favour of their own methods.'*⁵⁴

14.3.63 In addition, the Commission also received information that TCI training has not been provided to Bimberi staff in its entirety, and is concerned that TCI is being implemented in ways that do not reflect the original nature, intent or practice of the program. In particular, Cornell University does not endorse the use of force for moving young people, nor for it to be implemented except where young people are at risk of being harmed or at risk of harming others, and provides that it should only be conducted when it is followed by a therapeutic conversation. Questions were also raised about the accreditation of the trainers being utilised.

14.3.64 Finally, participants reported that for some time three different sets of trainers were teaching use of force, de-escalation and TCI training. Such fragmented delivery of different techniques is likely to lead to confusion.

⁵² McVilly, above n27, 7.

⁵³ Ibid. 48.

⁵⁴ Smallridge and Williamson, above n24, 81.

Recommendation 14.10: The Community Services Directorate, if it continues to use Therapeutic Crisis Intervention, ensure that:

- Any elements which utilise the prone restraint are removed from the program
- The program's non-restraint elements are taught in their entirety
- The training is delivered by an accredited trainer.

Debriefing

- 14.3.65 Smallridge and Williamson note that 'experience of restraint can be emotionally traumatic for both young people and staff. Children and young people can suffer from nightmares and intrusive thoughts arising from their restraint, which may persist for many years. In some cases, just experiencing restraint can cause real harm'.⁵⁵ The Carlile Report noted the potentially negative impact a use of force or restraint can have on a young person's emotional well-being. It cited studies from residential care and mental health care which showed victims reporting feelings of violation and abuse following restraint. Those with a history of abuse would also relate restraint to previous traumas. The report also noted that 'observing a child being restrained can be traumatic and lead to divisive 'them and us' relationships between staff and children'.⁵⁶
- 14.3.66 Most reports reviewed for this Report recommended a form of debriefing after incidents. Smallridge and Williamson recommend the most detailed system of debriefing, which encompasses:
- A formal debriefing with every young person subject to restraint within 48 hours of the incident, with a written record of conclusions and actions taken. The debrief should be done by a member of staff who was not involved in the incident;
 - If the young person wishes it, an independent advocate should be present at the child's formal debrief;
 - To help this, establishments must notify an independent advocate of every restraint within 24 hours of the incident, which should then determine whether the young person wishes an advocate to be present at the debrief;
 - Independent advocates should keep confidential records of its debrief interviews with young people and should use them to report on an establishment's use of restraint annually; and
 - All staff in the secure estate must have the opportunity after a restraint incident to debrief with their manager.⁵⁷
- 14.3.67 The Commission believes greater emphasis on debriefing should be incorporated into the use of force policy and procedures at Bimberi. While the Use of Force Policy refers to debriefing being offered as soon as possible after the incident has occurred, information considered in this Review suggests this is not occurring.

Recommendation 14.11: The Community Services Directorate mandate specific debriefing procedures after a use of force with the young person concerned. Such debriefing should include an independent advocate, if the young person wishes, and be documented by appropriate record-keeping.

Health check

- 14.3.68 Currently the Use of Force Policy gives a young person the option to see a doctor or nurse after a use of force. In contrast, Smallridge and Williamson recommend that it should be a requirement that any restrained young person is seen by a health care professional for examination within 30 minutes of an incident. This is consistent with the relevant human rights standards.⁵⁸ The Commission believes this approach (in addition to the young person retaining the option) would be preferable, given the vulnerability of the young person in such a situation. If the doctor or nurse attempted to see the young person, and the young person refused treatment, then that would be a question of their ability to consent (or not) to treatment. Issues of consent and capacity are discussed in relation to the provision of health care in Chapter 13. We are concerned that on at least one occasion, an incident report refers to a staff member instructing a young person they would only call the doctor if the young person first 'calmed down'.

⁵⁵ Ibid, 40.

⁵⁶ Carlile, above n15, Para 127

⁵⁷ Smallridge and Williamson, above n24, 12.

⁵⁸ Ibid, 91. In particular, this conforms with rule 64 of POJ, which requires the centre director to consult medical and other relevant personnel after a use of force.

Recommendation 14.12: The ACT Government amend the *Children and Young People Act 2008* and *Use of Force Policy and Procedure 2008* to require that a doctor or nurse is notified every time a use of force is used, rather than relying on a young person to request their attendance.

Hospital Transfers

- 14.3.69 As detailed in Chapter 13 (health), the Commission has concerns with the use of restraints as a standard practice when remandees leave the Centre for health appointments. This is discussed further in that section.

14.4 Segregation

- 14.4.1 The use of isolation or segregation in detention has been described as creating a 'prison within a prison',⁵⁹ which can exacerbate the negative effects of the detention environment for young people and undermine progress toward rehabilitation. While in some situations it may be necessary to separate a young person to reduce the risk of harm to that young person or others, there is significant evidence to suggest that segregation itself carries a risk of psychological damage, depending on the extent and duration of the isolation and the individual characteristics of the young person.⁶⁰ Young people who have a history of abuse or trauma are especially vulnerable in segregation, as this isolation can trigger responses to previous traumatic experiences.⁶¹ Young people may also associate segregation with rejection and abandonment, and it can reinforce social anxiety and institutionalisation.⁶² The Royal Commission on Aboriginal Deaths in Custody (RCADIC) warned of the particular risks of solitary confinement for Aboriginal and Torres Strait Islander people in increasing deaths in custody, and recommended that, as a general principle, Aboriginal and Torres Strait Islander detainees should not be confined alone in cells.
- 14.4.2 Although a number of staff participants have asserted that segregation can be used effectively to modify behaviour, evidence suggests that it has no therapeutic benefit, and research has found increases in withdrawal, hostility, aggression, rage and irresistible impulses among those held in disciplinary segregation. These findings have led researchers to conclude that '*there may be a level of restriction that, instead of solving administrative problems, becomes both a mental health issue and a further problem for the prison administration*'.⁶³
- 14.4.3 Other studies have found links between staffing issues and increased use of segregation in the context of adolescents in mental health facilities, with higher rates of segregation linked to low morale, staff conflict or disruption, lack of support from or changes in administration. Links have also been made to staff perception of lack of safety and poor communication across disciplinary and team boundaries. When these issues were addressed, there were substantial decreases in the use of seclusion.⁶⁴ It is likely that at Bimberi the improvement of safety and working conditions for staff may also reduce the perceived need for extended periods of segregation as a tool for managing behaviour.
- 14.4.4 Because of the serious nature of segregation, it is critical that the circumstances in which segregation may be used, the manner in which it is implemented, and the mechanisms for review of decisions are clearly delineated and that safeguards are robust and strictly followed. As discussed below, the Commission has real concerns that many practices at Bimberi amount to segregation, but are not being recorded as such, and have not been subject to the safeguards under the CYP Act.

59 Independent Monitoring Board, *A Prison within a Prison' Summary of the conditions reported in Segregation Units in Prisons in England and Wales* (2009).

60 Victorian Quality Council & Chief Psychiatrist's Quality Assurance Committee, *Seclusion Practice: A Review of the Literature and an Examination of Current Concerns* V (2007); WT Garrison, 'Aggressive behaviour, seclusion and physical restraint in an inpatient child population', *Journal of the American Academy of Child and Adolescent Psychiatry* 23 (1984), 448-452

61 Ibid, 29.

62 Howard Bath, 'The physical restraint of children: Is it therapeutic?', *American Journal of Orthopsychiatry* 64 (1994), 40-49.

63 Holly Miller and Glenn Young, 'Prison Segregation: Administrative Detention Remedy or Mental Health Problem?', 7 *Criminal Behaviour and Mental Health* 85 (1997)

64 Michelle A. Fryer, Michael Beech, Gerard J. A. Byrne, 'Seclusion use with children and adolescents: an Australian experience' (2004) *Australian and New Zealand Journal of Psychiatry*, 26-33.

Human rights standards

- 14.4.5 Rule 67 of the POJ provides that:
'All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.'
- 14.4.6 Segregation seriously limits rights protected under the HR Act including freedom of association,⁶⁵ freedom of movement,⁶⁶ the right to privacy,⁶⁷ right of children to special protection⁶⁸ and may breach the right not to be subject to torture or cruel, inhuman or degrading treatment.⁶⁹
- 14.4.7 International human rights standards prescribe that segregation should not be used as a punishment or disciplinary measure for young people. The 2005 Quamby HR Audit found that:
'the 'segregation' of juveniles involving a significant loss of association with others plus other loss of privileges is a prima facie breach of the prohibition on inhumane treatment under s.19(1) of the HR Act. In the absence of persistent disruption or threats or actual violence against other detainees or staff it will be difficult to justify the use of 'segregation.'
- 14.4.8 The segregation regime in the CYP Act reinforces this requirement, providing in s.209 that *'to remove any doubt, segregation under this division must not be used for punishment or disciplinary purposes.'* Nevertheless, the Act authorises segregation for other purposes, and it is necessary to ensure that the use of segregation can be justified as a proportionate limitation on human rights in these instances.

Definition of segregation

- 14.4.9 In practice, segregation can range from a few minutes alone in a cabin to weeks or months of separation in a unit without proper access to education or programs. The CYP Act has a broad definition:
*'Segregation of a young detainee means 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 young detainees. It may include separate confinement.'*⁷⁰
- 14.4.10 Solitary confinement of a young person in the padded 'safe room' at Bimberi clearly amounts to segregation. However, segregation also includes the restriction of young people to their cabin or unit, or their confinement to the holding cells in the Coree Unit. As discussed below, there is also a practice of using 'time out' to isolate a young person in their cabin for short periods for minor behavioural breaches, which also amounts to segregation.
- 14.4.11 In addition, young people may be locked down in their cabin during the day in response to emergency situations in the Centre, or due to staffing shortages. We note that all young people at Bimberi are routinely secured in their cabins alone each evening for 13 hours, from 7.30pm until they are released at around 8.30am the following morning. As discussed in Chapter 10 (individual needs) the Commission is not aware of any occasion on which the doors between conjoining rooms have been opened to allow Aboriginal and Torres Strait Islander young people to have ongoing contact during the evening. This routine isolation overnight is not considered by staff or management to be segregation, but technically appears to fall within the above definition.

Current practice

Legislation and policy

- 14.4.12 Division 6.6.3 of the CYP Act sets out a regime for segregation of young people in detention. The *Children and Young People (Segregation) Policy 2008* (Segregation Policy) outlines this regime, but does not add to it in substance.
- 14.4.13 The CYP Act authorises the following types of segregation, subject to strict criteria:
- Safe room segregation;
 - Segregation for safety or security;

⁶⁵ HR Act s. 15

⁶⁶ HR Act s. 13

⁶⁷ HR Act s. 12 protects the right to privacy, family, home and correspondence, which is in similar terms to Article 8 of the European Convention on Human Rights. In *BP, R (on the application of) v Secretary of State for the Home Department*, the Court warned that 'there are clear dangers in placing young people in segregation units in relation to their rights enshrined in Article 8.'

⁶⁸ HR Act s. 11

⁶⁹ HR Act s. 19

⁷⁰ CYP Act s. 204

- Protective segregation;
- Segregation for health reasons; and
- Segregation pursuant to an interstate segregation order.⁷¹

14.4.14 In each case, the Chief Executive must make a 'segregation direction' and issue a written notice setting out the direction, the reason for it, when it commences and expires and how it may be reviewed or revoked. The notice must be given to the young person, their parent or nominated person (if over 18 years of age) and the Public Advocate, as soon as practicable. A register of all segregation directions is required to be kept at the Centre, and must be available for inspection by the Commission and other oversight bodies.⁷² All segregation directions are required to be reviewed by the Chief Executive at specified intervals, and a young person subject to a segregation direction can seek external review of the direction by a Magistrate at any time.⁷³

Segregation register

14.4.15 In examining segregation practices at Bimberi, the Commission requested and was given access to the segregation register. However, the Commission notes that the 'register' containing segregation directions is a file folder created on 3 May 2010, and contains printed segregation directions dating back only as far as 9 June 2009, which, in some cases, are not in chronological order. It is not clear to the Commission whether any formal segregation directions were issued between Bimberi becoming operational in December 2008 and the first recorded direction in June 2009, as the Government Submission only reports figures from August 2009. As detailed below, the Commission has formed the view that there were a number of instances of segregation both before and after June 2009 that should have been the subject of segregation directions, and that have not been properly recorded.

14.4.16 The Commission notes that the reasons provided in notices of segregation directions often do not contain any detail of the factual situation leading up to the direction (which is usually contained in a separate incident report), but simply re-state the legislative criteria for making a direction. This practice limits the ability of oversight agencies to make an independent assessment of the justification for the direction. Some segregation direction notices do not clearly record the date or time of the commencement of segregation, and these details are only found in records of subsequent reviews of the directions. The Commission has made recommendations for the improvement of reporting and record keeping in Chapter 15 (management and oversight) In the case of segregation directions, it is critical that they are made and recorded in accordance with the CYP Act, to enable oversight bodies to properly monitor the use of these restrictive powers.

Safe room segregation

14.4.17 Solitary confinement in a 'safe room' or padded cell is the most extreme form of segregation authorised under the CYP Act. In a report on humane cell design prepared for the RCADIC it was noted that padded cells '*can act as a sensory deprivation chamber, and can markedly increase distress, reactance and experienced isolation*'.⁷⁴ As is appropriate for such a method of segregation, there are a high level of safeguards regarding the use of the safe room. The CYP Act allows for solitary confinement of a young person in a designated safe room only where the Chief Executive believes on reasonable grounds that this is necessary to prevent an imminent risk of self-harm. The Chief Executive must have tried or considered less restrictive ways to prevent this risk before making a safe room segregation direction, and must take into account the young person's age, sex, maturity, cultural identity, physical and mental health and any history of abuse.

14.4.18 Once the direction is made, the Chief Executive must revoke it as soon as there is no longer an imminent risk of self-harm, and must review the direction within two hours. When the direction is reviewed the Chief Executive must seek the advice of a health professional and have regard to that advice. Although there is no upper time limit specified on the use of the safe room, the directions must continue to be reviewed, and medical advice sought, every two hours. Where the self-harm crisis continues, as an alternative to making further safe room segregation directions, the Chief Executive may make a direction under s.109 that the young detainee be transferred to a health facility.

14.4.19 A safe room has been designated in the Coree Unit at Bimberi.⁷⁵ The safe room is a padded cell with no furniture, and has camera monitoring and provision for communication with staff and health professionals. The Government Submission reports, and the segregation register confirms, that the safe room has been used only once between August 2009 and February 2011, in a serious case where it appears that self-harming behaviour could not otherwise be contained. The Commission has no evidence to suggest that the safe room has been used on any other occasion.

⁷¹ See ss. 209-215.

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⁷⁴ Commissioner Elliott Johnston, QC, *Royal Commission into Aboriginal Deaths in Custody* (1991), Volume 3, para 24.3.103

⁷⁵ Children and Young People (Designation of Safe Rooms) Declaration 2008 (No 1)

Other segregation directions

- 14.4.20 While safe room segregation is tightly controlled, the criteria and safeguards for other segregation directions under the CYP Act are less robust, and segregation is only required to be reviewed after intervals of weeks rather than hours. Young people may be held in segregation under these segregation directions for up to 90 days, and successive orders may be made.⁷⁶

Segregation for health reasons

- 14.4.21 A segregation direction may be made for health reasons where the Chief Executive believes on reasonable grounds that it is necessary or prudent to assess the young detainee's physical or mental health, to protect anyone (including the young detainee) from harm because of the young detainee's physical or mental health, or to prevent the spread of disease. The Chief Executive is required to have regard to the advice of the young person's treating doctor in deciding whether to make such a direction, and in subsequent reviews of the direction. According to the Government Submission, and the segregation register, there was only one segregation direction for health reasons (to prevent transmission of an infectious illness) in the period between August 2009 and February 2011.

Protective custody segregation

- 14.4.22 A segregation direction may be made for protective custody where the Chief Executive believes on reasonable grounds that the segregation is necessary or prudent to protect the young detainee's safety. There have been no reported segregation directions made for protection reasons at Bimberi.

Segregation for safety or security

- 14.4.23 A segregation direction may be made for safety or security where the Chief Executive believes on reasonable grounds that the segregation is necessary or prudent to ensure the safety of anyone else at Bimberi, or security or good order at the Centre. When making a direction under this section the Chief Executive must have regard to any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young person. There have been seven reported segregation directions for safety or security reasons between August 2009 and February 2011. Generally, these segregation directions have been made following a serious incident at Bimberi.

Review and extension of segregation directions

- 14.4.24 Where a segregation direction is made for safety and good order, or for protective custody or health reasons a review must be conducted within seven days, and then again within the next seven days. After that, the direction must be reviewed each fortnight. A segregation direction expires after 28 days, but successive further segregation directions may be made which last for 90 days.
- 14.4.25 In the case of segregation on health grounds, the Chief Executive must have regard to the advice of a health professional in reviewing the direction. However, for segregation for protective custody, or of safety and security, there is no requirement to involve a health professional in the decision-making process regarding the order or its review.
- 14.4.26 In practice, the review documentation in the segregation register suggests that a review involves the management team making what appear to be fairly subjective judgements about the progress or attitude of a young person while in segregation. In one case the review form noted a high level of initial progress and compliance by a young person, but that this had deteriorated by the end of seven days, and so it was decided to continue the segregation until behaviour improved. From these records it appears that there has been no involvement of mental health professionals regarding the effect of continued segregation on mental health.
- 14.4.27 The Review Team spoke to a number of young people who had been subject to segregation directions, and a key concern raised was the uncertainty of the duration of the segregation, and the lack of transparency in the process of reviewing the directions, which led to frustration. One young person noted that they were *'disillusioned with the review process, they don't follow through on what they say will happen'*. Another review form reported that a young person was *'fixated on the segregation direction being a punishment for a breach of behaviour and not a way of managing the risk he posed to others'*.
- 14.4.28 Research suggests that uncertainty as to the duration of segregation 'promotes a sense of helplessness' and is a critical factor leading detainees to react to segregation with hostility and aggression. Shalev concludes that *'knowing how long the experience is to last is therefore a clear mitigating factor available to those responsible for placing a prisoner in segregation.'*⁷⁷

76 CYP Act s.218

77 Sharon Shalev, *A Sourcebook on Solitary Confinement* (2008), Mannheim Centre for Criminology.

- 14.4.29 The Commission considers that the review process for safety or security segregation directions is insufficiently transparent and rigorous. Reviews should seek to objectively assess the continuing risk posed by the young person, acknowledging that Bimberi has a responsibility to help the young person return to the general population as soon as possible, rather than rewarding or punishing attitudinal change. It needs to be understood that segregation by itself is not a useful tool for rehabilitating young people, and is more likely to engender further hostility and anti-social behaviour, particularly if it is seen as open-ended. Mental health professionals should be involved in each review to assess the effects of ongoing segregation on a young person's mental health.

Recommendation 14.13: The Community Services Directorate develop a procedure setting out a structured and transparent process for the review of segregation directions, focusing on objective risk rather than attitude while in segregation. Mental health professionals should be involved in each review to assess the effects of ongoing segregation on young people.

Continuing segregation conditions after orders have been revoked

- 14.4.30 A concerning anomaly that came to light in reviewing the segregation register is that the period of segregation recorded in the segregation register is in several cases less than the periods of time in which those young people have been subjected to some form of segregation. In early instances this is based on the accounts of young people and other participants, and is difficult to verify. However, the Commission observed first-hand the inconsistency in relation to two segregation directions made in 2011. The segregation register records that segregation directions were made in respect of two young people, that these were reviewed once and revoked at the end of a two week period. However, the Review Team had ongoing contact with those young people during the period of the Review, and observed that both remained in the Coree Unit and did not eat with or interact with other young people or attend education or programs (as discussed below) for at least four weeks, and that one young person remained on these restrictions for over eight weeks.
- 14.4.31 This alleged under-reporting of periods of segregation is of great concern because it presents a misleading picture to the Public Advocate and other oversight bodies who review the register, and removes one of the accountability mechanisms for segregation.
- 14.4.32 From the Commission's observations, there was a practice at Bimberi to segregate young people in their units where necessary. However, in recent times, the Coree Unit has taken on the function of a behaviour management unit where young people are segregated, but is also being used as a residential unit for young people seen to be of higher risk. While placement is an issue for management to determine, it creates confusion when a young person is segregated in Coree for the period of the segregation direction, but remains there as a placement decision after the segregation direction is revoked. In these cases the Commission considers that the segregation continues (and must be properly authorised and recorded in accordance with the CYP Act) as long as the young person is restricted in accessing other areas of the Centre and attending education and programs with other young people.

Recommendation 14.14: The Community Services Directorate cease segregating a young person after a segregation direction is revoked. The segregation register must accurately reflect the full duration of any segregation restrictions imposed on young people at Bimberi.

External review

- 14.4.33 Where a segregation direction is made in relation to a young person, the young person can apply to a Magistrate (appointed under s.309 as an external reviewer), for a review of the direction. The Magistrate may reject or hear the application, and may confirm, vary or revoke the direction. The provision for external review is an important safeguard against arbitrary decision making. Nevertheless, in practice a young person in segregation is unlikely to challenge a direction without proactive support and legal assistance. As discussed below at Part 14.13, apart from representation in ongoing criminal matters, legal assistance for young people in Bimberi is very limited, and there is no regular visiting service to assist young people with human rights issues arising in detention. We are not aware of any applications for external review of segregation directions at Bimberi. Recommendations regarding legal services are made at Part 14.13 below.

Conditions of segregation: Access to Education

- 14.4.34 The CYP Act does not regulate the conditions of segregation, apart from requiring that the minimum living conditions

set out in s.141 are maintained, albeit applied as necessary and reasonable for the purpose of the segregation.⁷⁸ The Commission has grave concerns about the lack of education and programs provided to young people while on segregation.

14.4.35 The Government Submission states that:

'In managing young people who are subject to a segregation direction, staff ensure that minimum living conditions are not affected, in particular food, telephone, mail, visitation, clothing, health and hygiene, education and programming and access to cultural and spiritual observance. In addition, every attempt is made to ensure the child or young person continues to have access to as many opportunities within the centre as possible.'

14.4.36 To the extent that the Government Submission suggests that young people subject to a segregation order do attend education or programs, or receive appropriate education while in segregation, this is quite simply untrue. The Review Team spoke to young people who had been segregated this year, who had not attended education for several weeks. One young person stated that: *'There's no education in Coree, it's not fair. Nothing to do, didn't get even a magazine to read until after a week, couldn't go to school just had work brought in after a while.'*

14.4.37 Teachers reported that they had never met these young people. After some weeks teachers were asked to provide some written school work, but could only provide generic materials, having no sense of the young people's literacy or background. As discussed in Chapter 12 (education), on average young people at Bimberi have low levels of literacy and face a range of obstacles in engaging with education. They require significant support with education and being given a bundle of written work is not an adequate substitute for face-to-face teaching.

14.4.38 The Commission considers that the lack of education and other programs exacerbates the dangers of segregation for young people and is likely to slow their progress towards reintegration. As Shalev notes in relation to adult prisoners:

*'Research also strongly suggests that access to programmes in prison positively affects behaviour, whereas the lack of things to do may result in increased violent behaviour. ... programme provision is crucial for prisoners who are isolated for longer periods of time, as they enjoy little or no social contact, experience substantially reduced sensory stimulation, and have very few means to occupy themselves inside their solitary cells.'*⁷⁹

14.4.39 As one young person told us:

'Back in the day [at Quamby] if you lost privileges you still got to go to education and to get out, you just didn't have tv and stuff, now you just stay in your cell. Imagine a month without telly staying in your cell, you just go crazy in that little box.'

14.4.40 Another explained:

'It's like if there is a young boy who hasn't had many visits or phone calls, then gets locked down a lot and doesn't get any exercise, he might just snap and hit a worker, then he is just punished more and led around in chains, it just leads to a cycle of him sitting there in his cell by himself thinking 'fuck this' 'fuck this'. He's going to think the system is just there to hurt him more not to help him.'

14.4.41 The *Education Act 2004* provides that the parents of young people under 17 years of age must ensure that they attend school on every day, and during the times on every day, when the school is open for attendance; and attend every activity of the school (including attendance at an approved educational course) that the school requires the young person to attend. In the Commission's view, CSD, having day-to-day parental responsibilities for the young people in its care, must ensure that young people at Bimberi are able to attend school and programs, even while in segregation. This may require negotiation with the Murrumbidgee Education and Training Centre (METC) and Department of Education (DET) to provide individualised teaching for young people who cannot attend with other students, and must ensure the safety of teachers and other staff. This is discussed further at Chapter 10 (education).

Time Out

14.4.42 Although there is no specific authorisation for the practice of 'time out' in the CYP Act or policies, young people at Bimberi are regularly secured in their cabin for time out for minor behavioural breaches. The Minister reported that:

*'It is my understanding that young residents there sometimes used lockdown, are put in isolation in their rooms as a matter of risk management. There are sometimes operational prompts to do that. It is for poor management and non-compliance... On occasions individual young detainees are separated and confined to their cabins for short periods due to behaviour issues including conflict with other young detainees.'*⁸⁰

⁷⁸ CYP Act, s. 206.

⁷⁹ Ibid.

⁸⁰ ACT, *Parliamentary Debates*, Legislative Assembly, 30 March 2011, 1059 (Joy Burch MLA)

- 14.4.43 It is clear that segregation directions are not being issued for time out, and that no records are being kept of its use. It appears that time out is used both for risk management and for disciplinary reasons. The Commission understands that time out may be a useful tool for behaviour management, and to separate young people after a violent incident or verbal conflict. It would not be appropriate or practicable for a formal written notice to be given on these occasions. The short periods for which time out is used, and the fact that a young person is secured in their own cabin significantly reduces the risk of psychological harm to young people, so it is not comparable to longer periods of segregation, or the use of a padded cell.
- 14.4.44 However, we are concerned that this practice sits outside the CYP Act regime for behaviour management and segregation, and is not specifically authorised, monitored or regulated. It appears from the incident reports that directing a young person to go to time out is often the beginning of an escalating conflict that ends in the use of force against that young person to compel their segregation. This may be justified to ensure safety of other young people or staff, but is unnecessary as a penalty for a minor infraction that could be better dealt with through warnings or loss of incentive points.

Recommendation 14.15: The ACT Government amend the *Children and Young People Act 2008* to authorise the use of 'time out' in a controlled way, where de-escalation techniques and voluntary time out are used first where possible, and the period of time out is strictly limited. A policy and procedure for the use of time out should also be developed as soon as possible.

Use of Segregation where a young person refuses education

- 14.4.45 Another informal segregation practice used at Bimberi is segregation in the Coree Unit for young people who refuse to attend a class or misbehave and have to be removed from class. The Commission has been informed by many participants that in such cases a young person is taken to Coree and placed in a bare holding cell, sometimes without a mattress on the bed, to sit until the end of the school day. Although a young person might wish to go back to school to attend other classes, this is not permitted. The rationale of this practice is to seek to ensure that young people attend all classes during the day, rather than refusing or misbehaving in classes they find difficult or challenging, and 'picking and choosing' those they enjoy.
- 14.4.46 Again, while the Commission is sympathetic to the motivation behind this practice, this is clearly a use of segregation, and does not comply with the CYP Act requirements unless a segregation direction is issued. It is distinguishable from the practice of time out, as in this case segregation is being used to punish a young person and serve as a deterrent, rather than to manage any risk. Further, the time period is longer and the environment more sterile and punitive, which increases the risk of harm for vulnerable young people. In the Commission's view, the desire of young people to pick and choose their classes indicates a need to more effectively structure the education curriculum to build in incentives for participation and to enrich the teaching environment so that young people are more engaged in and motivated by class. This may also require more one-on-one tutoring in challenging areas such as literacy. These issues are discussed further in Chapter 10 (education).

Recommendation 14.16: The Community Services Directorate cease the practice of segregating young people all day in Coree for school refusal as it is not authorised by the *Children and Young People Act 2008*.

'Operational' lockdowns and securing young people overnight

- 14.4.47 As discussed in Chapter 5 (staffing) the doubling in numbers of young people at Bimberi over 2010, in conjunction with an inadequate staffing model and staffing budget, led to significant shortages of staff available to supervise young people. The Government Submission reports that in response to staffing shortages management resorted to '*utilisation of a limited number of operational 'lockdowns' as a last resort to facilitate safe management of the centre. All occasions of lockdown aim to minimise the number of young people involved and the shortest period of time.*'
- 14.4.48 Although management did not regard such operational lockdowns as segregation, the isolation of young people in their cabins for periods of hours during the day falls within the definition of segregation in the CYP Act as a '*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 young detainees.*'
- 14.4.49 It appears that during periods of staff shortages such lockdowns may well have been unavoidable to ensure the good order and safety of staff and young people at Bimberi. In the Commission's view, lockdowns should be recorded as instances of segregation in the segregation register to ensure transparency and accountability for the use of operational lockdowns.

The CYP Act and Segregation Policy should be amended to provide criteria and record keeping obligations for the use of operational lockdowns.

Recommendation 14.17: The ACT Government amend the *Children and Young People Act 2008* and *Children and Young People (Segregation) Policy 2008* to provide criteria for the use of operational lockdowns, and to require that details of the duration of and reason for operational lockdowns be recorded in the segregation register.

- 14.4.50 Securing young people in their cabins each evening also amounts to a technical segregation under the CYP Act, even though this is part of the daily routine for all young people at Bimberi. A number of young people expressed frustration at being secured at 7.30pm each evening, and having to occupy themselves in their cabins for 13 hours until they are released at 8.30am the following morning. This curfew is imposed to allow staff on 12-hour shifts to change shifts at 8pm. One interview participant commented that young people were not secured so early at Quamby, noting that *'under the 8 hour shift you had more flexibility, the unit manager didn't leave until 10 so you could let them stay up and watch State of Origin as a treat'*. The Commission considers that the period for which young people are isolated in their cabins each evening is excessive, particularly if conjoining cabins are not being used (with conjoining doors opened) for Aboriginal and Torres Strait Islander young people (see below for further discussion of this issue). This issue should be reviewed as part of the review of youth worker shifts recommended in Chapter 5 (staffing).

Recommendation 14.18: The Community Services Directorate consider the duration of the period that young people are isolated in their cabin over the evening as a relevant factor in the review of youth worker shifts already recommended.

14.5 Searching

- 14.5.1 Tensions between young people's right to privacy and a detention centre's desire for security and safety are at the highest in relation to searches. Generally, detention centres will seek to search both the individual and their room and belongings for contraband such as drugs and weapons. The motivations for such actions are sound. Management has a duty of care to keep its staff safe and protect young people from hurting themselves or others. Management must also protect the human rights of staff, most particularly their right to life.⁸¹ Human rights standards apply to all searches, and there are specific rules around the most invasive, such as strip and body cavity searches.

Human rights standards

- 14.5.2 Article 16 of CROC states that no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation. The European Committee for the Prevention of Torture's Standards further state that:

*'...persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender.'*⁸²

- 14.5.3 Searching, particularly strip searching, potentially engages the following principles of the HR Act:

- Prohibition against inhuman or degrading treatment;⁸³ and
- Humane treatment while in detention; and ⁸⁴
- Privacy.⁸⁵

81 S. 8 of the HR Act

82 CTP Standards, Para 23.

83 S.10(1)(b)

84 S.19

85 S.12

- 14.5.4 Generally, treatment is degrading when it arouses feelings of fear, anguish or inferiority or is debasing, regardless of the intention of the policy or the conduct of the individual officer.⁸⁶ It must attain a minimum level of severity before a breach arises, but the assessment of this minimum is relative and depends on all the circumstances of the case, including the sex, age and state of physical and mental health of the person.
- 14.5.5 Courts have held that strip searching by government officials of adults will not *per se* be a violation of the right to privacy and the prohibition on inhuman or degrading treatment.⁸⁷ However, the conduct of the search can become a violation if, for example, a person is not given the opportunity to remove his or own clothing or the search was carried out in a manner that may have jeopardised a person's health and safety.⁸⁸
- 14.5.6 Similarly, the courts have held that a detention facility is a unique place fraught with serious security dangers and, balancing the significant and legitimate security interests of the institution against the private interests of the inmates, the practice of conducting strip searches of inmates upon reasonable suspicion does not *per se* constitute an unreasonable search.⁸⁹ However, to subject an adult to routine strip searches for general security purposes, has been held to be a violation of the prohibition on inhuman or degrading treatment.⁹⁰ Obviously, such action against young people is even more likely to be a violation of this right.
- 14.5.7 The US Supreme Court recently ruled that the strip searching of a 13-year-old girl by a male vice-principal and a female nurse was a breach of her Constitutional rights, because '*the content of the suspicion failed to match the degree of intrusion*.'⁹¹
- 14.5.8 In relation to room searches, case law establishes that generally detainees should be present during cell searches in low- to medium-security facilities, but may be absent in high security facilities.⁹² In the latter case, cell searches may be conducted in detainees' absence due to intimidation of staff by the detainees, and in the interest of preventing detainees from becoming knowledgeable about general and individual search techniques.⁹³ On this basis, we would submit that young people should be present for searches in Bimberi.
- 14.5.9 The 2005 Quamby HR Audit noted that generally a strip search would automatically follow from a room search, if contraband was found. The 2005 Quamby HR Audit recommended that there should be a clear policy regarding the searching of detainees' cells. If contraband is found, it should be a matter of a structured discretion whether detainees, being either the detainee in whose cell contraband was found, or any other detainee, are strip searched. This should be on the basis of the type of contraband found and reasonable suspicion that the detainee or other detainee(s) may have contraband on their person. Only female staff should search female detainees' cells.

Best practice for achieving standards

- 14.5.10 The Carlile Report considered the practice of searching young people, particularly strip searching. It recommended that strip searching not be used for good order and safety. The Carlile report was particularly concerned about the background to the young people who are held in detention.
- 'The Inquiry was also cognizant [sic] of the sensitive issues surrounding adults in positions of authority compelling a child to remove his or her clothes so as to render them wholly or partially naked. Many of the children sent to penal institutions have been sexually abused, often by adults, in their past.'*
- 14.5.11 The report cited a best practice process including:
- A young person being taken to a private area;
 - A staff member explaining what was going to happen, with no time limit to this;
 - There being a shower room attached to the area, and when the young person is ready, their being invited to go into the shower area and take off their outer clothes, leaving their underwear on and a robe was available to wear;
 - Young people being given a pat down search by a staff member of the same gender and a wand search for metal; and
 - Their clothes being searched.
- 14.5.12 The report went on to note that a manager told the inquiry that if a child refused to be searched, the staff would just sit it out until the child consented. The longest time he could remember was nine hours. No child was ever coerced.

86 European Court of Human Rights in *Ireland v UK* (1978) 2 EHRR 25 para 162; *Soering v UK* (1989) 11 EHRR 439 para 100.

87 See for example Canadian case of *R. v. Kitaitchik* 2002 CarswellOnt 1994 at para 31.

88 Canadian case of *R. v. Golden* [2001] 3 SCR 679, 2000 SCC 83.

89 *Maltby et al. v. A.G. Saskatchewan et al.* (1982), 2 C.C.C. (3d) 153 (Sask. Q.B.); appeal dismissed (1984), 10 D.L.R. (4th) 745 (Sask. C.A.).

90 *Van der Ven v the Netherlands* (2004) 38 EHRR 46 & *Lorse v the Netherlands* (2004) 37 EHRR 3.

91 *Safford Unified School District v. Redding*, 129 S.Ct. 2633 at 2639

92 See *R(Daly) v Secretary of State for the Home Department* [2001] 2 AC 532, at 541-2 and 544-5.

93 *Ibid.*, at 542.

- 14.5.13 The Carlile Report found no evidence that those institutions that utilised the above method had greater problems with security or contraband than those establishments that relied on strip searches.
- 14.5.14 The 2005 Quamby HR Audit recommended that strip searches should only be conducted when there is reasonable suspicion that the detainee may have in their possession a thing that may cause serious damage or threaten the detainee or another person's life. The Audit also recommended that there should be an explicit requirement to take into account the characteristics of the individual concerned to prevent violations of the physical and mental integrity of the person.

Current practice

Searches of the person

- 14.5.15 Changes to the CYP Act and policies reflect the recommendations of the 2005 Quamby HR Audit. Section 252 of the Act contemplates a scanning search, frisk search or ordinary search of a young detainee occurring only if the search is prudent to ensure security or good order at a detention place, or if a youth detention officer suspects on reasonable grounds that the young detainee is carrying a prohibited thing or a weapon.
- 14.5.16 The Children and Young People (Search and Seizure) Policy and Procedures 2008 (the Search Policy) defines the searches in the following way:
- **Body search** is a search conducted by a non-treating doctor of a young detainee's body, including an examination of an orifice or cavity of the young detainee's body;
 - **Frisk search** is a search of a young detainee or other person conducted by quickly running the hands over the young detainee or other person's outer clothing and an examination of anything worn or carried by the young detainee;
 - **Ordinary search** is a search of a young detainee or other person, or of anything in the young detainee or other person's possession, and may include requiring a young detainee or person to remove only the young detainee's overcoat, coat, jacket or a similar article of clothing and any footwear, gloves or headwear, and an examination of anything removed. It also includes asking a young detainee or other person to empty their pockets;
 - **Scanning search** is a search of a young detainee or other person by electronic or other means that does not require the young detainee or other person to remove clothing or be touched by someone else; and
 - **Strip search** is a search of a young detainee, or of anything in the young detainee's possession, and includes requiring the young detainee to remove part or all of the young detainee's clothing (but only either those covering the young detainee's upper or lower half of the body at any given time) and a visual inspection of the young detainee's body and clothing. A strip search does not include examination of the young detainee's body orifices or cavities, with the exception of visual inspection of ears, nose and mouth, which does not involve touching the young detainee.
- 14.5.17 Consistent with the recommendations of the 2005 Quamby HR Audit, s. 248 of the CYP Act states that searches are to be the least intrusive possible. Sections 253 and 261 of the Act require that frisk searches be conducted by a staff member of the same gender. However, a member of a different gender may be present if:
- There is an imminent and serious threat to the personal safety of the young detainee or someone else; and
 - Compliance with the need to have a same sex person present would exacerbate the threat.
- 14.5.18 Sections 261 and 262 further require that strip searches must be conducted in a way that:
- Provides reasonable privacy for the young detainee;
 - Is appropriate, having regard to the young detainee's sexuality and any known impairment, condition or history;
 - Is conducted as quickly as practicable;
 - Is conducted in a private area or an area that provides reasonable privacy for the young detainee;
 - Minimises touching or visual inspection of sensitive areas such as genitals;
 - Is in the presence of someone of the opposite sex to the young detainee, other than;
 - a person with daily care responsibility or a support person; or
 - another youth detention officer present under the general exception concerning imminent and serious threat to personal safety.
- 14.5.19 The Search Policy further requires that a strip search has to be conducted by a minimum of two youth detention officers: the searching officer, who conducts the search, and the observing officer, who observes the searching officer (and not the young person). The searching officer, observing officer and any other youth detention officer who is present for the search must be the same sex as the young person unless the decision-maker for the search reasonably believes that there is an imminent and serious threat to the personal safety of the young detainee and compliance with this requirement would

increase this threat. If a strip search is deemed necessary but is not possible, for example if the young detainee is violent, delaying or ceasing a strip search may be considered. If this occurs, the young detainee must be placed in a sterile location and be appropriately observed, with their contact and movement restricted.

- 14.5.20 Section 251 of the CYP Act requires that if a strip search or body search is to be conducted on a young person, then as far as practicable a person who has daily care responsibility or long-term care responsibility for the young detainee (other than the Chief Executive) must be told about the search:
- Before the search is conducted; or
 - If it is impracticable to tell the person before the search—as soon as practicable after the search.
- 14.5.21 If Bimberi management do believe that a support person is needed, and one cannot be located, or the young person does not consent to their presence, s.255 requires that the strip search be conducted in the presence of another support person, provided the young person agrees they should be present at the search.
- 14.5.22 The Search and Admissions Policies both contemplate a strip search occurring at Admission if there are reasonable grounds, having regard to the young detainee's age, maturity, developmental capacity and known history. The Search Policy further requires that a strip search of a young detainee may occur if:
- The decision-maker reasonably suspects that the young detainee has something concealed on them that is a prohibited thing or may be used by the young detainee in a way that may involve an offence, a behaviour breach, a risk to the safety of a person or a risk to security or good order at a detention place; and
 - A scanning, frisk or ordinary search of the young detainee has been undertaken and has failed to detect the item suspected to be concealed.
- 14.5.23 Section 255 only allows body searches to be undertaken by a doctor in certain, rare situations.

Promising Practice: Analysis of the number of strip searches conducted between Quamby and Bimberi highlights a considerable reduction in the utilisation of the practice of strip searches. During the last six months of operation at Quamby, 858 strip searches were conducted. In the first six months of operation at Bimberi, only 95 strip searches were conducted, an 89% reduction. While the population has increased, strip searching has not returned to the levels seen at Quamby.

Room searches

- 14.5.24 Section 275 of the CYP Act allows management to search any part of a detention place including with the assistance of an electronic device or a search dog. However, under s.277, if it is likely a young person's room has privileged material, then unless urgent circumstances exist regarding a risk of injury, the cell may only be searched in their presence. Privileged material is defined in the Search Policy as information to which client legal privilege attaches, such as confidential information provided by a young detainee to their legal representative, or by a young detainee's legal representative to a young detainee, or between two or more legal representatives.
- 14.5.25 Section 276 provides that if it is known a room does have privileged material, a room search may only take place in the absence of the young person if the young detainee removes the privileged material from the cell; or the privileged material is securely stored.
- 14.5.26 While certain items may be seized during a search, under s.280(5), protected material must be returned to the young person immediately. This includes mail from, or to, a lawyer, Official Visitor or the Commission. Further, a written notice must be given to the person about the items seized, within seven days.

Views of young people

- 14.5.27 Nearly all young people surveyed by the Commission reported having been frisk-searched and strip searched while at Bimberi (n=18). Most young people reported frisk-searches as happening 'often', and strip searches happening 'sometimes'. No young people reported receiving a body cavity search, or being searched using a sniffer dog. Seventy percent of young people reported that staff of the opposite sex were never present (n=13) during a strip-search, with four of the remaining young people reporting that staff of the opposite sex were rarely present. All young people reported being searched when they first arrived at the Centre, with 70% reporting that they were searched with their clothes on.
- 14.5.28 Just under 50% of the young people who answered the question reported that they were present when their room was searched, and two young people reported that legal documents had been removed from their room during a search and were not returned.
- 14.5.29 While the Commission is unable to verify the above claims the data does raise issues for further consideration.

Views of staff

- 14.5.30 In the Commission's survey of current and former staff, ten of all 18 respondents reported that they thought that searching, including strip searching, was *'generally used reasonably at Bimberi'*. Five respondents reported that they thought that strip searches were used *'about the right amount'*, and three reported that they thought that strip searches *'should be used more'*.
- 14.5.31 Most respondents reported that they don't like doing strip searches, but that *'they are necessary due to the amount of contraband'*.
- 14.5.32 One respondent reported:
'People like to hide anything they can on / in their body or in / within their clothing. Searching is a MUST it is there for the workers safety as well as other residents.'
- 14.5.33 One other respondent reported:
'I wonder what is more important - finding a missing pen (often taken for fun by new remand students for a bit of fun and kudos in a boring place) - or the pride and dignity of vulnerable teenagers. Lets think about these incidents strategically and make balanced decisions depending on circumstance and risk - students who have been subjected to sexual assault or other violence may find a strip search incredibly demeaning and do more damage than a little graffiti - why are we here - to keep the walls pristine?'

Challenges

- 14.5.34 We welcome the ACT Government's response to the 2005 Quamby HR Audit recommendations on searching, and in particular the new CYP Act and accompanying policies, which seek to ensure strip searching is only conducted in reasonable circumstances. There has also clearly been a reduction in strip searching when compared to Quamby. Nonetheless, we have identified practice issues during our Review.

Personal searches

- 14.5.35 During this Review, the Commission identified a number of systematic issues in the practice of strip searching. Members of the Review Team audited the search register for four months of each of 2010 and 2011. There were a total of 136 entries for these eight months. We identified several issues:
- There was information in the Register, confirmed verbally by staff, that young people were routinely strip searched on their way to, and from, court. Rarely was anything found. The Commission heard that the vehicles used for transfers were not routinely searched for contraband.
 - We also saw breaches of the Search Policy, most particularly regarding the presence of a member of the opposite sex. Due to staff shortages, either a member of the opposite sex observed the strip search, or the CCTV camera was relied upon. A member of the opposite sex was present in 43% of the entries audited by the Commission, with this number rising to 46% where the gender of the control room officer was unknown.
 - In 15% of audited records, it does not appear the staff involved considered whether a support person should be present, or sought the young person's consent to a support person being present. This part of the form was blank. When those that at least identified that the support was not called, but nonetheless offered no explanation for this, are included the number rises to 59% of audited records.
 - In only 1% of the strip searches audited was any contraband registered as being found. These items were tobacco residue, pens, playing cards and a hair band. All were found in clothing.
 - The same young person was strip searched on five occasions over the period of two weeks. On a number of occasions staff identified that a support person is needed, but none is called or an alternative sought. No contraband was found. This is concerning given the impact strip searching can have on young people, particularly those with a history of trauma and sexual abuse.
 - Some practice raises questions as to whether youth workers have formed reasonable suspicion to strip search, and whether the specific characteristics of young people are being considered prior to forming such suspicion. For example, strip searches often followed automatically from room searches, and in such cases all young people in the wing or unit are strip searched. In June 2010, nine young people were strip searched one after another on the basis of 'suspicion of contraband'.
 - On one occasion, five workers were present in a room during a strip search.
 - Several forms audited by the Commission were undated.
 - Senior staff in the Community Services Directorate see copies of all incident reports and, in doing so, can provide comment to Bimberi management. We support this accountability measure. On four occasions, the Commission saw incident reports to which a CSD senior manager responded by directing Bimberi staff to search more. We can

understand why the senior manager may have had concerns about contraband, but are concerned that such a direction would be given prior to consultation with Bimberi management, particularly as this may be interpreted as lowering the threshold before searches are undertaken. We would prefer to see such items being flagged for discussion between senior Directorate and Bimberi staff.

- Auditing of reports is at times difficult, particularly as the search register forms provide very little details of the reasons for searches. Most of the reports say 'suspicion of contraband' or similar, which gives no description of the reason for the suspicion. In some cases, the Commission was able to find more information in the incident forms relating to the search, but they are not stored together, and so could not easily be compared. Further, the inspection rights for the Public Advocate and Commission do not extend to incident reports, so external scrutiny is hampered.

14.5.36 In addition, the nature of the forms made recording searches difficult for staff. Different forms appear to have been used over time, with some placing the tick boxes for the different searches in different places. Some sought to combine 'use of force' and search on the same form, further complicating our audit. On some occasions, the 'body search' box is ticked because the form didn't provide for a strip search box. In reading the remainder of the entry it was clear that a strip search occurred, and Bimberi management confirmed there has never been a body search. Confusion over forms also resulted in registers being incorrectly filed, for example search entries being filed in the use of force register.

14.5.37 Finally, we are also concerned by reports that young people are being told they cannot have a contact visit with family or friends unless they first submit to a strip search. It was unclear what risk assessment or reasonable suspicion is being considered before that choice is put to a young person.

Recommendation 14.19: The Community Services Directorate direct staff to:

- Cease conducting strip searching as a matter of routine including when young people go to court
- Record further details about the evidence that lead to the reasonable suspicion for strip searching
- Cease relying on members of the opposite sex to the young person, or CCTV observations, to conduct strip searches
- Give proper consideration to whether a support person should be present or notified prior to a strip search.

Recommendation 14.20: The ACT Government remove 'good order' as a rationale for strip searching under the *Children and Young People Act 2008*.

Is strip searching necessary?

14.5.38 The Carlile Report noted that the outcomes of strip searching in the UK '*tended to be tobacco rather than weapons or drugs*'.⁹⁴ For the eight months of strip searching data we considered, our observations would be the same. While at times items might be found during room searches, the most serious we observed being cannabis, the vast majority of strip searches identified no contraband items at all. Even when they did, these tended to be only playing cards or pens.

14.5.39 All young people are vulnerable and are entitled to special protection because of their age. The group of young people at Bimberi are particularly so, given their likely backgrounds and experience of a closed environment. Strip searching such young people is a highly invasive measure and one that is likely to make some relive traumatic experiences. As one former resident suggested:

'Kids go in at 14 for the first time and are told they have to be strip searched on admission. There should be questions asked about it. We don't allow kids to have sex at 14 but we allow them to be strip searched by adults. They lose their dignity and then they think that if it is ok for people in authority to do that to them, to make them strip, then they aren't worth anything, and they might as well use their sexuality.'

14.5.40 Commission staff heard worrying reports about the impact of strip searching. One participant defended the practice by suggesting that some young people '*get used to it, like going to the doctor*'. In one register entry, after being asked to undertake a strip search, a young person removed all her clothes at once and said 'you love looking at my body, don't ya.' The workers asked her to put her clothes back on and remove them one half at a time.

14.5.41 These observations lead us to question if the current strip searching practice should continue in its current form. The Search Policy broadly accords with the best practice elements set out in the Carlile Report: a young person is taken to a private area, a staff member must explain what is going to happen and the young person is invited, when ready, to remove their clothes.

94 Carlile, above n15, 58.

A fundamental difference is that under the Carlile model, the staff member undertakes a frisk search while the young person wears a robe. That is followed by a metal wand check and their clothes are then searched.

- 14.5.42 We question what a 'strip search' would achieve additional to the Carlile Report's endorsed method. The audit undertaken by the Commission found that contraband was only identified in 1% of searches, and in both cases, this was found in the young person's clothes. It does not appear that any legislative reform would be needed to adopt this method, as the CYP Act already provides that an electronic device may be used to assist in a search.

Recommendation 14.21: The Community Services Directorate consider whether the best practice search method described in the Carlile Report be adopted rather than the current strip searching method at Bimberi.

- 14.5.43 Further, issues were raised with the Commission regarding alleged coercion. One young person in particular reported to the Commission that when they requested a support person be present, they were told they would have to wait in one of the Coree cells, which had no television or mattress, until the person arrived. This is not consistent with the Search Policy. Such action may be appropriate when a young person is too upset or violent for a search, but not in circumstances where they have requested a support person.

Recommendation 14.22: The Community Services Directorate require staff to wait with a young person while a support person is called for a strip search.

Unit searches

- 14.5.44 A number of issues were raised by young people in relation to room searches. Some suggested they were done routinely, often with no suspicion. Towards the end of the Review, participants also reported to the Commission that room searches were becoming more common. In particular, it was reported that there had been two room searches in a week with nothing found. It was reported that these searches resulted in lengthy lockdowns, with young people not receiving breakfast until 11am to midday.
- 14.5.45 One young person reported to the Commission that after they returned from a period of segregation in the Coree Unit to their residential unit, they discovered that some personal items including medical cream and correspondence from a lawyer were no longer in their room. Other young people in his unit reported to the young person that staff had come in when they weren't there and had removed items. The young person reported this, and these items were eventually returned, but almost a week later. This appeared to be a clear breach of the Search Policy.

Recommendation 14.23: The Community Services Directorate remind Bimberi management and staff of the obligations of the *Children and Young People (Search and Seizure) Policy and Procedures 2008*, that a young person must be present during a room search if privileged material is likely to be present, and any privileged material found must be immediately returned to the young person. Items seized should be documented and this information provided to the young person.

Soter scanner

- 14.5.46 The Alexander Maconochie Centre (AMC) currently utilises a Soter RS low dosage x-ray machine designed to identify contraband secreted under clothes or within the human body. It was subject to appraisal by the ACT Radiation Council, and was approved for use in ACT Corrective Services in October 2009. This approval limits the use of the Soter RS to no more than 83 scans per detainee per year. Only detainees are to be scanned.
- 14.5.47 A number of staff participants expressed support for the introduction of a Soter scanner at Bimberi, noting that '*anything has got to be better than strip searching*'. CSD confirmed to the Commission that the Directorate is not going to introduce a scanner at Bimberi, as the Radiation Council would likely not approve its use in Bimberi because of concerns about young people's exposure to low-dose radiation.

Use of sniffer dogs

- 14.5.48 Bimberi management also suggested that the use of sniffer dogs is being contemplated at the Centre. The CYP Act allows this currently, but management also identified there may be issues with using such dogs with children and young people. While the Commission can see that such dogs may negate the need for strip searching, we are mindful that such dogs should not be used routinely.

Recommendation 14.24: The Community Services Directorate consult the Commission and other stakeholders prior to any introduction of sniffer dogs.

14.6 Participation

Human rights standards

- 14.6.1 Protection of children and freedom of expression are both rights enshrined in the HR Act.⁹⁵ Articles 12 and 13 of CROC require that a child capable of forming his or her own views should be given the right to express those views freely in matters affecting the child and this should include those children being heard in any judicial or administrative proceeding affecting them. Similarly, children should have freedom of expression.

Current practice

- 14.6.2 Of the nineteen young people who completed written surveys for the Review, 60% reported that they had little say on the way things were run at Bimberi with most asking for more input into recreational activities, education programs, mixing practices, rewards systems, searches, phone calls and visits and preparation for return to the community.

Promising Practice: The Commission understands that Bimberi has begun holding monthly unit meetings between unit managers and young people to discuss matters of concern.

- 14.6.3 We note that monthly meetings have begun between unit managers and young people. While these meetings are welcome, the Commission believes more must be done to engage young people on the range of matters which affect them in the Centre.
- 14.6.4 We note that the AMC uses a delegate system, with various areas of the detainee population represented by elected peers at monthly meetings. The Commission believes that Bimberi needs to develop a similar system, but with the much lower numbers, we suggest that this could occur with all residents present.

14.7 Food

- 14.7.1 The employment of chefs to prepare meals on site at Bimberi appears to have resulted in a very significant improvement in the quality and freshness of food provided to young people in detention since the 2005 Quamby HR Audit, where poor food quality was of great concern to young people. Around 90% of young people surveyed by the Commission reported that the food at Bimberi was 'good' or 'very good' when cooked by the chefs at the Centre. The only concerns raised with the Commission have been about the quality of catered food when the chefs are on leave, and the need for a further chef position to avoid isolation and allow chefs to take leave entitlements.

Human rights standards

- 14.7.2 International human rights standards provide that the right to adequate food is fundamental and unconditional, and that food should be suitably prepared and presented at normal meal times and be of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. The reduction of diet should not be used as a disciplinary measure, as it could constitute inhuman or degrading treatment in breach of s.10(1)(b) of the HR Act.

95 See sections 10 and 14

Current practice

- 14.7.3 Section 141 of the CYP Act provides that it is a minimum living condition that young people in detention must have access to sufficient nutritional food and drink to avoid hunger and poor nourishment.
- 14.7.4 Young people at Bimberi get their own breakfast of cereal in their Unit in the morning. Lunch and dinner are provided by chefs in the on-site kitchen and eaten in a cafeteria-style dining area, usually in Unit groups. In 2011, barbecue lunches have been held for all young people and staff on Fridays, and young people are involved in preparing and serving the barbecue and accompanying dishes.

Promising Practice: Young people now prepare a barbeque lunch for staff, young residents and visitors on Friday lunchtimes. Commission staff frequently attended such barbeques and found them an excellent opportunity for staff, young people and others to mix in a more relaxed environment.

- 14.7.5 As noted above, around 90% of young people surveyed by the Commission reported that the food at Bimberi was 'good' or 'very good' when cooked by the chefs at the Centre.
- 14.7.6 We understand that there are currently 1.5 FTE chefs employed at Bimberi over a seven day period. For the most part, there is little handover time between the full-time and part-time chef, and for the rest of the week they work in relative isolation preparing and serving food, and having little contact with other staff at Bimberi. We understand that even when there are occasions such as Friday barbecues where staff get together, chefs are serving food rather than participating in these activities. These staffing arrangements do not allow chefs to take leave without disruption to the Centre or calling upon the other chef to work overtime.
- 14.7.7 Young people and staff consistently reported dissatisfaction about the quality of the catered food provided to young people when chefs are away. A number of young people commented on this in the survey, eg 'Food is good except when the chef is on leave, food brought in packaged is not edible.' We understand that an arrangement was in place with a large institutional caterer which could supply meals at very short notice if the chef was unavailable, but that current management are no longer satisfied with this caterer and have tried alternative options, including getting takeaway and getting youth workers to prepare meals.
- 14.7.8 In the longer term, a better solution may be to increase the FTE hours and employ another chef or cook who could cover leave. With more resources in the kitchen it may be possible to design a program to allow young people to assist the chef and learn vocational skills as cooks or kitchenhands.

Promising Practice: The majority of young people reported that the food prepared by Bimberi chefs was of high quality.

- 14.7.9 We note that the Commission has not sought to review the nutritional value of the food provided at Bimberi, apart from noting the high level of satisfaction of young people with the quality of food prepared on site by the chefs. The CYP Act provides that a policy or operating procedure may include provision for nutritional standards, nutritional advice, or the appointment of a nutritionist.⁹⁶ We consider that it would be useful to seek the advice of a nutritionist (as occurs at AMC) regarding the food offered to young people, where the nutritionist could work with the chefs to ensure that menus offered are providing appropriate nutritional value for young people.

Recommendation 14.25: The Community Services Directorate:

- Consider providing sufficient chef resources to cover leave periods and provide opportunities to offer programs for young people in the kitchen
- Seek the advice of a nutritionist regarding the food provided at Bimberi.

14.8 Classification

- 14.8.1 The reception and treatment of young people when they first arrive in detention is critical, as they are likely to be particularly vulnerable and frightened, and will need assistance in understanding their rights and responsibilities within the Centre, as well as meeting welfare needs. It is also a time when decisions are made regarding risk assessment, classification and placement of a young person, which directly impact on the wellbeing and safety of newly admitted young people and others at Bimberi.
- 14.8.2 One of the driving factors in the decision to build a new youth justice centre was the need to ensure appropriate placement of young people in detention on the basis of gender, age and remand or committal status, in accordance with human rights standards. The 2005 Quamby HR Audit recommended that there should be a separate accommodation unit for new inductees, separate sleeping arrangements for female detainees and appropriate separation of detainees on the basis of age group (those under and over 18 years) and status (remand or under sentence). The ability to separate groups of young people was limited at the Quamby facility, and females and younger males were commonly accommodated together through necessity, as were remanded and sentenced young people.
- 14.8.3 The Bimberi facility has been designed with more residential units with wings that can be managed as self-contained cottages, to maximise flexibility in accommodating different groups of detainees. Nevertheless there have been challenges in managing a larger number of groups with limited staff numbers, and in striking the right balance in risk assessment to allow young people to have opportunities for rehabilitation while maintaining safety and security at the Centre.

Human rights standards

- 14.8.4 Under the HR Act young people on remand or committal are entitled to:
- Special protection because of their vulnerability as a child;⁹⁷
 - Treatment that is appropriate to their age and their status;⁹⁸ and
 - Segregation of accused from convicted persons, except in exceptional circumstances.⁹⁹
- 14.8.5 The POJ sets out a number of requirements for admission, classification and placement of young people, summarised below:
- Young people should not be received without a valid commitment order;¹⁰⁰
 - Parents or guardians must be notified immediately on admission and placement;¹⁰¹
 - On admission young people should be given a copy of the rules of the Centre and a written description of rights and obligations, complaints mechanisms and legal assistance. For young people who cannot read or understand this written material, the information should be conveyed in a way that they can fully comprehend;¹⁰²
 - All young people should be helped to understand the rules, the goals and methodology of the care provided, the behaviour management system, ways to seek information and make complaints and all matters necessary to fully understand their rights and obligations;¹⁰³
 - Classification and placement should take account of the particular needs, status and special requirements of the young person according to their age, personality, sex and type of offence, as well as mental and physical health, and ensure their protection from harmful influences and risk situations. 'The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and wellbeing';¹⁰⁴ and
 - Young people have the right to have personal effects within the centre, and property that cannot be admitted must be properly stored and kept for the young person.¹⁰⁵

97 ss. 11(2) and 20

98 ss. 11(2) and 20(2) and (4)

99 s. 19(2).

100 Rule 20.

101 Rule 22.

102 Rule 24.

103 Rule 25.

104 Rule 28.

105 Rule 35.

Current practice

- 14.8.6 The admission, classification and placement of young people to/in Bimberi is governed by Part 6.4 of the CYP Act and the detailed procedures in the Admission Policy. The Act and Policy are informed by and are generally consistent with the human rights obligations described above.

Admission

- 14.8.7 The Admission Policy notes that the objectives of admission procedures are 'to establish rapport with the young detainee, minimise the young detainee's anxiety or distress and provide relevant information to the young detainee to assist their transition into custody.'
- 14.8.8 The procedure requires staff to thoroughly check legal authorisation for detention, and all staff we spoke to were cognisant of this obligation. The steps involved in admission are:
- Welcoming the young person and providing initial information about the Centre;
 - Conducting an induction interview to seek information from the young person about their needs;
 - Collecting personal property, allowing a young person to shower and change into detention clothing;
 - Searching (including strip searching);
 - Notifying parent or carer and allowing a young person to make a telephone call;
 - Arranging an initial health and mental health assessment for the young person; and
 - Recording relevant information in the register.
- 14.8.9 Eight young people reported being treated well on admission to Bimberi, and eight reported that they were treated badly, or neither well nor badly. Most young people (n=14) reported feeling safe on their first night at Bimberi. All young people reported being searched when they first arrived at the Centre, with 70% reporting that they were searched with their clothes on.
- 14.8.10 Most young people reported that they were offered a medical check up on admission and were asked about any health issues that they might have. Almost 90% reported that they saw a doctor or nurse within a day of their admission. Two-thirds reported being offered a shower on admission, and 50% reported being offered a phone call.
- 14.8.11 Most young people reported that issues they presented with on admission (such as letting family know where they were, or feeling upset) were addressed on admission. Twenty percent of young people who identified as having alcohol or other drug issues reported being offered support on admission, and 10% of young people who smoked reported being offered assistance.
- 14.8.12 Most young people reported that they were not informed about issues, supports, or their rights when first admitted, with only one of the young people reporting having received a resident's handbook (after requesting one). Less than a third of young people reported that they had been told about where in the Centre they were allowed to go. Only 22% (n=4) of young people reported that they understood all of the information given to them on admission.
- 14.8.13 Once a young person is admitted, they are held in the admission cells in Coree and observed every five minutes until they have been fully assessed and given a security classification. The Commission is concerned that the admission cells appear to be very bleak and intimidating, and have no television or other comforts for young people adjusting to detention. One young person described their experience in admissions as follows:
- 'The mattress in admissions is really uncomfortable like it has slats underneath. They give you other residents' old clothes and shoes to wear before you get your own, the shoes had holes in the bottom. The admission cells are freezing and you are right there under the camera even when you go to the toilet. Those cells are filthy. Residents are meant to clean them as punishment, but I think staff should clean them up. After that Coree is the first place you go. It is clean, because that is all you can do there is cleaning, but it is intimidating, not welcoming... They don't tell you anything about how it works when you arrive. There is a book in the library you can read about Bimberi, but most kids don't read it, some of them can't even read well.'*
- 14.8.14 Other residents however reported no such concerns.
- 14.8.15 Although the policy and procedures attempt to make the admission experience less intimidating for young people through building rapport and reducing anxiety, the environment of the admission cells is unnecessarily stark and devoid of stimulus, and is likely to reinforce anxiety. It is also unclear why there are no televisions in other cells in Coree, which are used for young people on short-term remand as well as for behaviour management.

- 14.8.16 The Commission considers that as part of the cabin refittings currently scheduled in other Units, the holding/admission cells and the residential cells in Coree should be fitted with televisions that are secured and do not pose a risk of self harm. Televisions in the admissions cells could be used to provide information about the Centre in an accessible format, such as a DVD slideshow with voiceover, as well as being used for entertainment, to assist young people to transition to detention.

Recommendation 14.26: The Community Services Directorate refit the cells in Coree with televisions that are secured and do not pose a risk of self-harm.

Placement

- 14.8.17 The issue of placement and inappropriate mixing of different categories of young people due to the limitations of the Quamby facility was a significant concern raised in the 2005 Quamby HR Audit. This concern was addressed in the drafting of the CYP Act, which provides in s.166 that:
- '(2) In placing a young detainee, the Chief Executive must ensure that—
 - (a) young remandees are segregated from other young detainees;
 - (b) male young detainees are segregated from female young detainees; and
 - (c) a young detainee who is under 18 years old is not placed with an adult.
 - (3) Subsection (2) does not apply if the Chief Executive believes on reasonable grounds that another placement will be in the best interests of all affected detainees.'
- 14.8.18 When deciding whether another placement would be in the best interests of all affected young people, the Chief Executive must consider the needs and special requirements of the young person because of the young person's age, sex, emotional or psychological state, physical health, cultural background, vulnerability or any other relevant matter; whether the isolation is in the best interests of the young detainee; the desirability of care being suited to the particular needs of the young detainee in order to protect the young detainee's physical and emotional wellbeing; and that it is in the best interests of young detainees to be separated from co-offenders. Security classification is also deemed to be relevant to this consideration.
- 14.8.19 The Government Submission states that:
- 'A fundamental human rights principle applied in a youth justice setting is the separation of different population groups, including separation based on gender, age, remand and sentenced status. Further separation may be required to address high risk, vulnerable children and young people, victims and perpetrators and requirements from the court or police to separate co-offenders to prevent collusion. The design of Bimberi achieves separation objectives by having separate rooms; separated wings in residential buildings with central staff points that allow both observation and management; and the capacity to open up and close down areas to accommodate changes in population.*
- Following early discussions with the Human Rights Commission there was agreement that while the mixing of different cohorts of young detainees in residential units, programs and activities is a prima facie breach of human rights standards, it was conceded that Bimberi would comply with human rights standards if this process is conducted to best meet the needs of individuals.'*
- 14.8.20 The mixing of different young people at Bimberi is particularly challenging, given the mix of gender and classification in a single Centre is a unique issue for the ACT. From the Commission's observations at Bimberi, the criteria for placement in residential units generally appear to be applied appropriately and consistently with human rights standards. Young people of different legal status, gender and age are generally separated into different residential units, although the small number of young women means that young women of all ages and status are accommodated together, which may be unavoidable to prevent isolation. During the day young people from different groups sometimes mix for education, programs and recreation, which is managed appropriately. Importantly, young people who are admitted on remand for short periods are kept separate from the main population until a bail decision is made by the Court to avoid them becoming further entrenched in the detention environment.
- 14.8.21 However, the Commission is concerned that the criteria for separation do not appear to be applied so strictly in the Coree Unit, which is currently being used both for an admissions unit and a de facto behaviour management unit. Remandees and sentenced young people are co-located in this Unit, and there have been occasions when male and female young people have been placed together in this Unit. The Commission is concerned that newly admitted young people who are particularly vulnerable may be mixed with young people who are in the unit for behavioural reasons, including violent behaviour. A preferable course would be to use a separate wing of a residential unit for segregation purposes where possible and to manage other behavioural issues without transferring a young person to another unit.

Recommendation 14.27: The Community Services Directorate segregate young people in a residential unit other than Coree where practicable (other than a direction for safe room segregation), and that young people who are not on a segregation direction be managed within their residential unit as far as practicable.

- 14.8.22 While the Bimberi facility provides greater flexibility in the separation of different categories of young people in residential units, it is clear that the move to smaller group sizes and a new staffing model has caused significant problems with staff isolation and safety. Staff participants reported a common view that staff were left alone with young people as a result of human rights obligations. The Commission rejects the contention that isolation of staff is a necessary result of human rights requirements. In the Commission's view, as discussed in Chapter 5 (staffing), it was the inadequacy of the budget and staffing model rather than human rights considerations that led to staff safety being compromised. The rights of young people and staff should both be prioritised.
- 14.8.23 In the Commission's survey of young people the majority (90%) reported a desire for more mixing between Units, and people reported feeling safe in mixing with young people either 'all the time' (12 of 18 participants) or 'most of the time' (6 of 18 participants). Some young people reported that being confined to a small group all the time was frustrating and that it could exacerbate tensions between units as *'people talk behind each other's backs and that's how fights start'*.
- 14.8.24 Restrictions regarding attending programs and mixing during the day often appear to relate to issues of security classification, discussed below, rather than human rights concerns. Provided that the safety and wellbeing of young people is carefully monitored the Commission supports initiatives such as the Friday barbecue and touch football games where young people from different units are brought together to enjoy communal activities.

Classification

- 14.8.25 The CYP Act requires the Chief Executive to give each young person a security classification as soon as possible after admission, and in determining classification the Chief Executive must consider:
- The reason for the detention, including the nature of any offence for which the young person is detained;
 - The risks posed by the young person if the young person were to escape;
 - The risk of the young person escaping;
 - The risks posed by the young person while at a detention place; and
 - The risks to the young person of being accommodated with particular young people or in particular areas at Bimberi.¹⁰⁶
- 14.8.26 In assessing these risks management has regard to information from the young person's health and mental health assessments and a range of other sources including case managers.
- 14.8.27 The security classification assigned to a young person can significantly limit opportunities for participation in programs and in obtaining leave from the centre to attend important family events or for work or training reasons as part of their rehabilitation. Security Classification is based on status (sentenced or remand), level of risk (low, medium, high) and particular risk alert relating to being 'at risk' (A), having health issues (H), risk to security (S), or having escaped or attempted to escape from custody (E). See Table 14.1 below:

Table 14.1: Security classification based on status

Status	Risk	Risk Alerts
Remand (R)	1 (Low)	A, H, S, E
Remand (R)	2 (Medium)	A, H, S, E
Remand (R)	3 (High)	A, H, S, E
Sentence (S)	1 (Low)	A, H, S, E
Sentence (S)	2 (Medium)	A, H, S, E
Sentence (S)	3 (High)	A, H, S, E

- 14.8.28 Thus the policy and procedure states that a young remandee displaying non-compliant behaviour and a history of a prior escape from custody may be classified as R/3/E, while a sentenced young detainee nearing completion of their sentence who has a record of positive behaviour and progress in custody may be classified as S/1.
- 14.8.29 The Commission is concerned that young people on remand are often denied opportunities for both programs and leave based on their security classification. The Commission has been informed that in practice remandees are automatically classified as high risk upon admission, and are required to 'work their way down' the classification ladder before they can have access to many opportunities. In discussion with Bimberi management, it was asserted that it would almost never be appropriate to grant a remandee leave to participate in work or education outside the Centre, regardless of the individual circumstances of that young person.
- 14.8.30 Treating remandees less favourably than sentenced young people is inconsistent with the stipulation in the CYP Act that 'the young remandee must be presumed innocent of any offence for which the young remandee is remanded in custody; and the detention is not imposed as punishment of the young remandee.' Similarly, the *Children and Young People (Treatment of Convicted and Non-Convicted Young Detainees) Policy and Procedures 2008* requires that 'every effort should be made to ensure that a non-convicted young detainee's family and community relationships are supported and promoted and that the young detainee's education, employment, housing and other social integration needs are not detrimentally affected by the period of detention.'

Recommendation 14.28: The Community Services Directorate classify remandees on objective considerations of individual risk. Young people on remand should be given access to programs and opportunities for leave on at least an equivalent basis to sentenced young people.

- 14.8.31 Another concern raised by a number of participants is that security classifications have been infrequently reviewed, and that it takes an inordinately long time for all young people to progress in their classification and gain access to many programs. One young person who had been transferred from Bimberi to AMC noted that re-classification occurred much more quickly at AMC: *'There is more trust. It only takes three weeks to get to minimum security here if you behave well.'*
- 14.8.32 The Commission notes the statement in the Government Submission that as part of the change management program at Bimberi 'The classification processes for young people [have] also been revised to enhance holistic risk assessments within a multi-disciplinary framework to facilitate greater participation in skills programs by young people.' In practice we understand that classifications are now being reviewed more regularly, with input from case managers, key workers and health professionals. Programs are also being reviewed to develop modified versions of activities such as woodwork and metal work that can be made accessible to young people with higher security classifications.
- 14.8.33 Finally, the RCADIC recommended that a preference be given to providing Aboriginal and Torres Strait Islander detainees adjoining cells. Section 183 of the CYP Act states that decisions about young detainees should be taken in a way that takes into consideration the young detainee's cultural practices. The *Children and Young People (Aboriginal and Torres Strait Islander Young Detainees) Policy and Procedures 2008* states that the placement of Aboriginal and Torres Strait Islander residents in adjoining rooms must be positively considered. We understand the inclusion of such rooms at Bimberi was the direct result of the Aboriginal and Torres Strait Islander community being consulted on the design, and in response to the recommendations of the 2005 Quamby HR Audit. However, the Commission is very concerned of reports by participants that despite the high numbers of Aboriginal and Torres Strait Islander residents, these rooms were not being utilised for such purposes, and the doors between adjoining rooms are routinely locked. We believe this is inconsistent with the Royal Commission's findings, and the CYP Act, and must be addressed.

Recommendation 14.29: The Community Services Directorate:

- Continue recent initiatives to review classifications more regularly, to facilitate greater access of young people to a full range of programs
- Implement the *Children and Young People (Aboriginal and Torres Strait Islander Young Detainees) Policy and Procedures 2008* in relation to the use of adjoining rooms for Aboriginal and Torres Strait Islander young people where possible.

14.9 Communication

- 14.9.1 The ability to maintain contact with the outside world is critically important for young people detained at Bimberi.

Human rights standards

- 14.9.2 Article 14 of CROC states that '*no child shall be subjected to arbitrary or unlawful interference with his or her correspondence*'. Rule 59 of POJ states that young people should be allowed to communicate with their families, friends and other persons or representatives of reputable outside organisations. In relation to specific communication, Principle 18 of the United Nations *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (BOP) gives special protection for detained or imprisoned persons to communicate, without delay or censorship and in full confidentiality, with legal counsel, and such communication may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order. Rule 78 further provides protection for young people to contact family members, legal counsellors, humanitarian groups or others where possible in order to make a complaint.
- 14.9.3 The searching or monitoring of young people's communication also engages the right to privacy and protection of family in the HR Act.¹⁰⁷

Correspondence

- 14.9.4 The 2005 Quamby HR Audit noted that some measure of control over detainees' correspondence is not of itself incompatible with international standards, as long as it is reasonable and proportionate in the circumstances.¹⁰⁸ Grounds for censorship of detainees' correspondence must be sufficiently defined, so as to protect individual detainees from arbitrary or abusive interference in their relations with others. There should be individualised justification for each item of correspondence that is censored.¹⁰⁹
- 14.9.5 The Audit recommended that a clear policy be developed on the searching of correspondence. It should be clear what content is inappropriate to justify a letter not being forwarded to a detainee. This should include forwarding letters to detainees even if sections with inappropriate content are deleted, unless the letter is offensive in its entirety.

Phone calls

- 14.9.6 The 2005 Quamby HR Audit recommended that there needed to be greater flexibility and transparency in considering requests for telephone contacts with friends, and other members of the community. The Audit recommended that a telephone system be installed that would allow detainees longer and more outgoing calls on their designated days. The Audit also recommended improvements should be made for protecting privacy when detainees are making or receiving telephone calls. Protections were also missing when detainees made or received welfare or legal telephone calls.

Current practice

- 14.9.7 The 2005 Quamby HR Audit recommendations are now included in the new CYP Act and corresponding policies. Minimum living conditions are set down in s.141 and include reasonable access to telephone, mail and other facilities for communicating with people in the community, and reasonable opportunities to contact a lawyer.
- 14.9.8 Section 197 explicitly requires CSD to balance the needs of security of the centre with the privacy of young people. The Act differentiates between ordinary communication and protected communications. Phone calls and correspondence other than with certain legal bodies, such as lawyers and the Commission, may be monitored, provided that the parties are informed.¹¹⁰ Ordinary mail may be opened, but only if management suspects it may:
- Undermine security or good order at a detention place;
 - Revictimise a victim;
 - Circumvent any process for investigating complaints or reviewing decisions under this Act; or
 - Not be in the best interests of the young detainee.

¹⁰⁷ Sections 11 and 12.

¹⁰⁸ *Silver v UK* (1983) 5 EHRR 137 (para. 45).

¹⁰⁹ *Demirtepe v France*, App. No.34821/97; (2001) 31 EHRR 28, holding censorship of prisoners' letters to be not in accordance with the law where it fell outside the scope of the regulation.

¹¹⁰ See sections 199, 200.

- 14.9.9 Communication with legal entities is described as protected. Bimberi management may only open protected mail if they reasonably suspect that the mail contains something that may physically harm the young person, or a prohibited thing, and then they must do so in the presence of the young person.¹¹¹
- 14.9.10 Young people are able to make phone calls directly from their units. There is now also a *Children and Young People (Visits, Phone Calls and Correspondence) Policy and Procedures 2008* (Visits, Phone Calls and Correspondence Policy). It provides that young people can have a minimum of one phone call at admission, and four phone calls a week to family. These entitlements must not be affected by action taken under the Behaviour Management or Discipline Policies and Procedures and may only be restricted or limited in accordance with the criteria in those policies and procedures.

Views of young people

- 14.9.11 Telephone and hard copy mail was not a typical area of concern for young people. Nonetheless, only half of those surveyed reported being offered a phone call on admission. This was also an issue during the 2005 Quamby HR Audit. More positively, ongoing connections were generally seen as being reasonable.
- 14.9.12 Over 40% of young people surveyed by the Commission reported that they had had restrictions placed on both phone calls and visits with their families, with all of these young people reporting that they believed this was unfair. In some cases, these restrictions were because young people had already reached their four free phone call limit for the week, but in other cases, young people reported that it was because they were segregated or subject to another disciplinary matter.
- 14.9.13 The other major challenge identified by the Commission was that the free call phone available for young people to call the Commission was malfunctioning for the initial period of the Review. This was restored, but several weeks after being notified to Bimberi, and only when a key staff member returned to work.

Recommendation 14.30: The Community Services Directorate:

- Remind Bimberi staff that all young people should be offered a phone call at admission, and that young people must receive their minimum entitlements to call family, even when subject to disciplinary action or segregation
- Regularly test young people's phones to ensure outgoing calls are operating correctly, and ensure a number of staff across all shifts are trained in using the phone system.

- 14.9.14 The Commission also shares concerns put by oversight agencies to this Review that while young people can call them, it is difficult for agencies (and others) to call young people back. This is further discussed at Chapter 15 (management and oversight).

Email and internet access

- 14.9.15 The 2005 Quamby HR Audit recommended that young people have access to email, with suitable protections in place. Since then, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, has noted '*the unique and transformative nature of the Internet not only to enable individuals to exercise their right to freedom of opinion and expression, but also a range of other human rights, and to promote the progress of society as a whole.*'¹¹² The right to freedom of expression, is enshrined in s.16 of the ACT HR Act.
- 14.9.16 The Commission notes that limited email and internet access is available to detainees at the AMC. It is unclear why a similar level of monitored email and internet access is not available to the young people at Bimberi. While AMC has had some problems with internet and email access, this has generally been related to detainees accessing staff logins. Clearly, young people should not be given unfettered access to the internet, given the potential for inappropriate content to be accessed. However, these considerations apply equally to adults at AMC, and we understand have been largely overcome by the use of a 'white list' of sites. Ensuring witnesses are not intimidated is also crucial, but the AMC policy and procedure also seeks to address this.
- 14.9.17 Such access would be consistent with young people's right to freedom of expression, and access to information and news, discussed further below. It would also assist in their education needs, as discussed at Chapter 12 (education).

¹¹¹ See s.202

¹¹² Frank La Rue, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression', *United Nations General Assembly Human Rights Council, Seventeenth session: Agenda item 3* (2011), 1.

Recommendation 14.31: The Community Services Directorate consider providing properly monitored and supervised email and Internet access to young people at Bimberi.

14.10 Clothing

Human rights standards

- 14.10.1 The CYP Act requires the Chief Executive to ensure that young people are provided with sufficient suitable clothing, which must not be likely to degrade or humiliate them and must as far as practicable be clean and hygienic.¹¹³ In addition, human rights standards prescribe that when detainees are removed from or leaving Bimberi for any purpose, they should be allowed to wear their own clothing or other inconspicuous clothing.¹¹⁴

Current practice

- 14.10.2 The Admission Policy provides that all young detainees will be issued with a set of clothing and personal hygiene items upon admission. Young men and women are issued with tracksuit style clothing and t-shirts which are in different colours for young people on remand and those sentenced.
- 14.10.3 In the Commission's survey, most young people reported that they were allowed to wear their own clothes when leaving the Centre or going to court. Of 18 who responded, 12 (two thirds) reported that they 'always wore their own clothes' when taken outside the Centre, and 6 (one third) reported that they 'sometimes wore their own clothes'. Over 80% of young people reported being unhappy about the quality of their footwear (n=15), and 43% felt that their clothes were 'bad'. Given the level of dissatisfaction with the shoes provided to young people, it would be useful to obtain the advice of a podiatrist on the suitability of these shoes for young people at Bimberi.
- 14.10.4 One young person complained that the cold weather clothing (zip jacket over short sleeved top) was not sufficiently warm outside during Canberra winter, and requested that young people be issued with warm gloves. This is a reasonable request, in the Commission's view, as we understand that young people may spend extended periods outside during the day.
- 14.10.5 Of particular concern were the reports we heard from a number of sources that young people coming in on admissions were being allocated second hand shoes worn by other detainees. One survey participant reported that *'When you come in you get other people's clothes and shoes and hats. If you don't want to wear used clothes or shoes they just say too bad.'* A parent noted that on admission her child was offered either a pair of shoes of mismatched size, or a pair in the right size with the bottom torn open. Staff participants suggested that the use of second hand shoes was a reflection of budgetary constraints, and the lengthy approval procedures for obtaining supplies. After an initial delay a young person would be issued with their own new pair of shoes, but would have to wear second hand shoes in the interim. We understand that this issue has recently been resolved, with supplies being increased to ensure that there are sizes available at admission.
- 14.10.6 The Commission considers that it is unacceptable and not fulfilling the requirement that clothing be clean and hygienic to issue detainees with shoes that have been worn by other detainees. Training shoes cannot be effectively washed and sterilised like hats and clothing. Where it is not possible to issue a young person with new shoes in the correct size immediately, the young person should be allowed to wear their own footwear until new shoes can be obtained for them.

Recommendation 14.32: The Community Services Directorate:

- Issue all young people upon admission with new footwear in their size. If this is not practicable young people must be allowed to wear their own footwear until new footwear can be obtained for them
- Seek advice from a podiatrist on the quality of footwear supplied to young people at Bimberi
- Review the adequacy of winter clothing for young people and consider supplying gloves to young people during the colder months.

¹¹³ s.168

¹¹⁴ Rule 36 Protection of Juveniles and Rule 17 SMR.

14.11 Visits

- 14.11.1 It is an essential part of both private life and the rehabilitation of young people in detention that their contact with the outside world be maintained as far as practicable by allowing friends and family to visit them in detention.¹¹⁵ As noted in the Visits, Phone Calls and Correspondence Policy and Procedures, *'[c]ontact and support from family members and significant people can help support young detainees during their period at a detention place and also contribute to young detainees' rehabilitation and successful reintegration into the community following their release from custody.'*

Human rights standards

- 14.11.2 International human rights standards provide that detainees have the right to receive regular and frequent visits, not less than once a month and to communicate in writing or by telephone at least twice a week, unless legally restricted.¹¹⁶ This is a minimum standard, and more frequent visits should be provided wherever possible. The CYP Act provides a higher minimum entitlement that one family member or significant person may visit a young detainee for at least 1 hour each week.

Current practice

- 14.11.3 We understand approved visitors are able to visit young people at Bimberi by pre-arrangement every afternoon/evening except Wednesday. Parents have reported that it can be difficult to get to visits on time after work during the week but were appreciative of a new visiting time on Saturday morning that is now being offered, in addition to the evening visits on weekends. One parent noted that 'the visiting hours now strike a fair balance for families.'
- 14.11.4 The visiting area is a large open space with café-style tables and an outdoor play area for young children. The visiting area also contains a secure visiting area for non-contact or 'boxed' visits and a barbeque facility. Although the Government Submission reports that the *'barbeque can be used by families to celebrate special occasions with residents,'* young people noted that this requires them saving a considerable number of incentive points, and one stated that *'it is so hard that you would be released by the time you got enough points.'* A young person told us that their family was not able to bring in a birthday cake on a visit, and that at that time no celebration was organised by staff. We understand that efforts are now being made to recognise young people's birthdays at Bimberi.
- 14.11.5 Visits in the main visiting area are voice recorded, but the private visits area for legal visits is not subject to recording. The relevant human rights standards do contemplate confidential visits subject to reasonable conditions for the security of the centre.¹¹⁷ One parent reported her concerns about being recorded talking to her child, as she felt that her child was less able to speak freely about problems experienced in detention knowing that management could be listening: *'I would like more confidentiality in speaking to my child.'* The Commission understands that there needs to be a level of security around visits, but it may be appropriate to allow parents to use the private visit area on request where there are no security concerns in relation to that visit.
- 14.11.6 Young people surveyed reported that their visitors are generally treated 'well' (8 of 18 responses) or 'ok' (9 of 18 responses), but the majority noted that visits only 'sometimes' started on time (12 of 18 responses). Family members we spoke to had mixed views of reception staff at Bimberi, some had been treated respectfully, but others, particularly younger visitors, considered that reception staff were not welcoming towards them. One young woman noted that she was not able to take a bottle in for her baby during a visit with a family member.

¹¹⁵ *X v UK*, App.No.054/80; 30 DR 113 and Rule 59 Protection of Juveniles.

¹¹⁶ See Rules 59-61 Protection of Juveniles, Rule 26.5 Beijing Rules, Rule 37 SMR, Rule 20 Vienna Guidelines, articles 9(3) and 16 CRC.

¹¹⁷ See Principle 29 of the BOP for example 'detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment subject to reasonable conditions to ensure security and good order in such places'

- 14.11.7 It is clear that staffing shortages affected visits, with a number of participants reporting that visits were cancelled due to lack of staff, particularly during 2010. Both family members and young people reported frustration and disappointment when booked visits were cancelled without warning. The Commission understands that this issue has now been resolved with the recruitment of more staff.
- 14.11.8 Overall the Commission is satisfied that Bimberi management take the obligation to facilitate visits for young people seriously and that the Centre provides appropriate opportunities for family and friends to visit young people in conditions that are generally welcoming to visitors. The Commission is, however, surprised that the Centre's front desk continues to be staffed by an MSS contractor. The Commission generally found these staff to be friendly, courteous and helpful. However, it is unclear why the position which is the first contact members of the community have with Bimberi, and is in many ways the public face of the Centre, is staffed by a contractor. We would see merit in this position being staffed by an experienced CSD employee, familiar with all aspects of the Centre's operation.

Recommendation 14.33: The Community Services Directorate consider placing a permanent employee in the position of front desk attendant at Bimberi.

- 14.11.9 One key obstacle for families and friends visiting young people at Bimberi is the difficulty of accessing the Centre by public transport. Only one ACTION bus route goes to Bimberi, with only one bus service (no 82) scheduled each afternoon, which does not coincide with visiting times. To catch this bus a visitor would be left waiting for an hour before and after the visit. One family member reported having to walk with her young child from Flemington Road, a distance of approximately one kilometre, along Morisset Road, which is a narrow potholed road without a pedestrian footpath. The Commission considers that it is vital that ACTION work with Bimberi management to provide a useful public transport service to the Centre that is effectively co-ordinated with visiting times during the week and on weekends.

Recommendation 14.34: The Territory and Municipal Services Directorate work with Community Services Directorate to provide a public transport service to Bimberi that is co-ordinated with visiting times during the week and on weekends.

14.12 Access to information and news

Human rights standards

- 14.12.1 Human Rights standards require that young people should have the opportunity to keep themselves informed regularly of the news.¹¹⁸ Related to this, Rule 25 of the POJ provides that young people should be helped to understand the regulations governing the closed facility.¹¹⁹ If they have low literacy skills, information should be conveyed in another manner to enable full comprehension.¹²⁰
- 14.12.2 The 2005 Quamby HR Audit generally found that Quamby's practices regarding access to news accorded with these obligations, but recommended that weekend newspapers be delivered. However, in relation to the provision of information on rights and responsibilities, the Audit found that the communication to young people about their rights was inconsistent and many did not have a copy of the resident's handbook. The Audit recommended that young people be informed of their rights and obligations, as well as the operating rules.

Current practice

- 14.12.3 Much of the 2005 Quamby HR Audit recommendations are reflected in the CYP Act and Policies. Section 141 of the CYP Act states that minimum living conditions at Bimberi include '*reasonable access to news and education services and facilities to maintain contact with society*'. Section 176 further obliges Bimberi management to provide reasonable access to '*newspapers, radio and television broadcasts and other mass media (including the internet) for news and information*'. However, this latter access is not a minimum living condition, and therefore can be taken away in disciplinary proceedings.

¹¹⁸ See in particular Rule 62 of the POJ

¹¹⁹ See also Rule 41, Principle 28 of the Body of Principles, Rule 40 SMR, and art. 17 CRC.

¹²⁰ Rule 24 Protection of Juveniles and Rule 35 SMR

- 14.12.4 The Admission Policy states that on admission, all young people are to be given 'initial information about the detention place (including the young detainee's rights and obligations) and the young detainee's legal circumstances.'
- 14.12.5 In the Commission's survey, most young people reported that they were not informed about issues, supports, or their rights when first admitted, with only one of the young people reporting having received a resident's handbook (after requesting one). Management informed us that this was because the sturdy paper on which the resident's handbook is printed can pose a risk of self harm, so cannot be left with young people, and noted that many young people have difficulty comprehending the written material in any case.
- 14.12.6 Less than a third of young people reported that they had been told about where in the Centre they were allowed to go. Only 22% (n=4) of young people reported that they understood all of the information given to them on admission. Most young people reported, however, that they were often told by their case manager about what services were available, and how to stay in contact with family and friends using the phone system. Over half of the young people reported that felt informed about the Official Visitor and her role.
- 14.12.7 When consulted previously about the development of policies at Bimberi, the Commission recommended that CSD develop a DVD summarising the resident's handbook, to be shown at admission. We continue to believe this is the optimal approach. Admission is a traumatic time for a young person, and they may not comprehend completely what they are told and what is provided to them. Literacy is also an issue for some young people. A DVD shown at admission would address some of these issues, and we would encourage the video to be shown regularly throughout the Centre as a form of refresher information session.

Recommendation 14.35: The Community Services Directorate take further measures to properly inform young people at Bimberi of their rights and obligations at the Centre. This could include the development of a DVD to be shown at admission and at regular intervals during a young person's time at the Centre.

- 14.12.8 More positively, young people felt that they had reasonable access to news media, with more than half of the young people reporting that they were able to read the paper or watch the news each day. However, all young people reported that they were never able to access internet, with most believing that they were unable to use computers. As detailed above, consistent with their right to external news and information and the CYP Act, the Commission believes that young people should be given limited internet access.

14.13 Access to lawyers

- 14.13.1 Young people in Bimberi have a range of legal needs which extend beyond the obvious requirements for legal representation in relation to criminal charges, bail hearings and appeals. Young people have legal rights in relation to the conditions of their detention under both the HR Act and the CYP Act, but they require legal advice and representation to be able to effectively enforce these rights, for example to seek external review of disciplinary breaches and segregation directions. In addition, young people in detention have a range of unmet legal needs for advice and assistance with civil and administrative matters which may play an important role in their rehabilitation. For example, young people in detention are often victims of crime as well as offenders, and may have entitlements to victims compensation that they are unaware of. Young people often need assistance with accrued fines, and consumer contract issues, and may need advice regarding their rights in mental health proceedings, or as parents in care and protection proceedings.
- 14.13.2 In many jurisdictions, such as NSW and Victoria, there are specialist children's legal services within the Legal Aid Commissions who visit all young people in custody regularly to assist them with their legal needs. In these jurisdictions, Legal Aid often takes an active role in advocating for law reform for young people in custody and pursuing test case litigation to challenge conditions of detention. In the ACT, however, it appears that the provision of legal services to young people in custody is more reactive and focuses primarily on the provision of representation in criminal proceedings.

Human rights standards

- 14.13.3 International human rights standards for juveniles focus on ensuring that young people in detention receive appropriate legal representation and are able to communicate confidentially with their lawyers regarding their criminal matters. The POJ states in rule 18 that:
- 'Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications.'*

Current practice

- 14.13.4 Young people on remand in Bimberi may be represented in their criminal matters by ACT Legal Aid or Aboriginal Legal Service (NSW/ACT) (ALS). These services are generally provided free of charge. Alternatively, young people and their families may obtain their own private legal representation. Solicitors may visit young people at Bimberi by appointment at any suitable time, and are not restricted to public visiting hours. The Commission has been informed that staffing shortages during 2010 and early 2011 also affected legal visits, and that some legal visits were cancelled at short notice, affecting the ability of solicitors to effectively represent their clients. The Commission understands that this issue has now been resolved with the recruitment of new staff at Bimberi.
- 14.13.5 Solicitors may speak confidentially with clients in the private visitors rooms at Bimberi. However, on some occasions the Commission has observed a solicitor speaking to clients in the main visiting area, which is subject to voice recording. The Commission notes from the survey results there was some confusion among young people surveyed as to their rights to communicate confidentially with their lawyer. Although the majority knew of this right, five out of 16 young people reported a belief that it was not possible to speak to a lawyer in private, and one did not know whether this was possible.
- 14.13.6 There is currently no general visiting legal service for young people at Bimberi, and young people who do not have active representation would need to contact Legal Aid or ALS to make an appointment for a solicitor to attend the Centre.
- 14.13.7 Although the legal services provided to young people at Bimberi appear to comply with minimum human rights standards, and provide effective representation in criminal matters, the Commission considers that a regular visiting legal service would better meet the legal needs of young people at Bimberi. A visiting solicitor could seek to speak to all young people held in segregation, or who have been given a disciplinary notice to advise on rights of external review. By engaging proactively with young people, it is likely that a visiting legal service would uncover a range of unmet needs for legal assistance. Legal assistance could be included in a case management plan where a young person has significant legal issues to be resolved while in detention.

Recommendation 14.36: The Community Services Directorate fund Legal Aid ACT or a Community Legal Centre to provide legal advice and minor assistance to young people in Bimberi in relation to internal applications and appeals.

14.14 Transfers to Alexander Maconochie Centre

- 14.14.1 One of the major changes to the ACT justice system since the 2005 Quamby HR Audit has been the construction of the AMC. For the first time, the ACT now has its own adult prison. The Commission observed that this has led to a change in policy in the youth justice system, as it is now easier for young people who turn 18 years of age to be transferred from Bimberi to AMC. We have noted a clear preference from Bimberi management to transfer many young adults.

Human rights standards

- 14.14.2 In relation to young people's rights, CROC states that a child capable of forming his or her own views should be given the right to express those views freely in matters affecting the child and this should include those children being heard in any judicial or administrative proceeding affecting them. Similarly, children should have freedom of expression.¹²¹
- 14.14.3 These rights are not lost as adults. The right to fair trial and freedom of expression are both enshrined in the International Covenant on Civil and Political Rights (ICCPR).¹²² The right to fair trial requires that a person have procedural fairness and natural justice. Freedom of expression includes the freedom to impart and receive information and ideas of all kinds, whether orally, in writing, in print, through art or another medium. These rights are also legally enforceable under the HR Act.¹²³ These rights would be engaged by a decision to transfer a young person to AMC.

121 Article 12 and 13

122 Articles 14 and

123 See sections 16 (Freedom of Expression) and 21 (Fair Trial)


- 14.14.4 A transfer to AMC without proper process might engage other rights. Depending on the circumstances, such a transfer could be a further imposition on a detainee's right to liberty. This is on the basis that the conditions of detention at AMC are likely to be stricter than those at Bimberi. Generally, any impact on this right must also accord with the rules of procedural fairness.¹²⁴
- 14.14.5 The Commission has observed that such transfers have also been based on the behaviour of the young person, and so could be interpreted as disciplinary action. Article 30 of the BOP states that '*a detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He or she must also have the right to bring such action to higher authorities for review*'.
- 14.14.6 In contrast, the Commission is mindful that there are also various human rights mandating that children and adults be separated while in detention. This is discussed at Part 14.8 in relation to classification and mixing of young people at Bimberi. On some occasions, transferring a resident from Bimberi to the AMC may be necessary for these purposes.
- 14.14.7 Issues concerning the treatment of those young people who commit crimes when under 18 years of age, but become adults in Bimberi, are complex. Nonetheless, it seems clear that residents at Bimberi should at least be given the opportunity to be heard on such transfers prior to their imposition.

Current practice

- 14.14.8 Section 111 of the CYP Act provides that CSD may transfer a young detainee aged between 18 and 21 years of age at Bimberi to AMC, but in doing so, must consider:
- The young detainee's views and wishes;
 - The young detainee's maturity and any known history;
 - The young detainee's developmental capacity;
 - If the young detainee is serving a sentence—the time remaining to be served by the young detainee;
 - The behaviour of the young detainee, particularly if it presents a risk to the safety of other young detainees or staff at the detention place;
 - Whether the young detainee is likely to be vulnerable in a correctional centre;
 - The availability of services or programs appropriate for the young detainee at the correctional centre;
 - Whether the young detainee is more likely to be rehabilitated in the detention place or correctional centre.
- 14.14.9 These requirements are reflected in the *Children and Young People (Transfers) Policy and Procedures 2008*. This Policy refers generally to decisions at Bimberi being reviewable and such information being provided to young people and parents. However, a specific review process for transfers to an adult correctional facility are not contemplated.¹²⁵
- 14.14.10 The Commission interviewed a number of young people who were either approaching 18 years, or had turned 18 years of age. All were anxious about the prospect of being transferred to AMC and all were confused about the rationale for a decision being made by CSD to make such a transfer.
- 14.14.11 The Commission also interviewed detainees at AMC who had been subject to such a transfer upon turning 18 years of age. All were confused about the reasons for their transfer and generally felt the decision-making process had not been fair. In one case, a young person was involved in a fight after turning 18 years of age, and was put in segregation overnight. In the morning, he asked if he would be transferred to AMC. He alleges that no information on this was provided to him, despite several requests. Convinced he would be sent to AMC, and therefore with nothing to lose, he decided to break further rules and began attempting to climb onto the roof. Management later confirmed that it was not planned that he be sent to AMC, but that his attempts to climb on the roof precipitated the Centre management's decision, and a transfer ensued.
- 14.14.12 These transfers are generally done on very short notice and can be completed within hours. The Commission saw little information that the factors identified in the CYP Act were taken into consideration in any detail, and in particular there appeared to be very little opportunity for residents to be heard on whether they should stay.
- 14.14.13 More concerning, the Commission also heard many reports from staff and young people of residents over 18 years being threatened with a transfer to AMC if they did not do what was asked. As one staff member reported:
'We need staff to stop telling them they're going to AMC and using it as a threat for everything they do.'

¹²⁴ The 2005 Quamby HR Audit noted that the increase in the number of days in detention caused by disciplinary proceedings would engage the right to liberty and attracts the minimum guarantees for a fair trial citing *Re Fulton's Application for Judicial Review* [2001] H.R.L.R. 11

¹²⁵ As an administrative decision, it might be that a review is possible under the *Administrative Decisions (Judicial Review) Act 1989*. However, this is not an easily accessible avenue for a young person in Bimberi.



14.14.14 The Commission also noted very little transfer of information or transition planning around such transfers. Young people alleged that staff at AMC knew virtually nothing about them on arrival. The Commission believes that young people subject to potential transfer to AMC deserve procedural fairness and natural justice. There should be greater clarity around the process of determining a transfer, and young people should be given a meaningful opportunity to put their views, and if unhappy with the process, they should have clear rights of internal and external review. These could be based on the existing provisions regarding segregation and disciplinary decisions. No transfer should take place until review rights are exhausted. If a young person chooses, an advocate should be available to assist them to present their views.

Recommendation 14.37: The ACT Government amend the *Children and Young People Act 2008* and *Children and Young People (Transfers) Policy and Procedures 2008* in regards to transfers to adult correctional facilities to provide:

- For a resident to put their views meaningfully, with the aid of an advocate if they choose
- That the Public Advocate must be notified prior to a decision being made
- Clearer review rights for the resident based on the existing behaviour management or segregation review process, which includes ultimately appealing to the Childrens Court
- Clear transition planning with information provided to Alexander Maconochie Centre including case plan and health information.

Chapter 15: Management And Oversight

A Quality Youth Justice System Is Well Managed And Operated

Relevant Human Rights Standards

- Regular Oversight by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the facility (OPCAT, SMR rr.14, 72, 77, POJ rr.36, 55, BOP r.29, CROC art 14, RCIADC r.176)
- Freedom from Torture, and Humane Treatment whilst in Detention (HR Act ss.10, 19)
- Freedom of Expression (HR Act s.16)

15.1 Introduction

- 15.1.1 This chapter concludes the Report by discussing issues of management and oversight.
- 15.1.2 The first part discusses the youth justice system as a whole. There are a range of stakeholders across the youth justice system, many of whom are independent from Government. It is essential that these stakeholders are involved in discussions about systemic issues, and the Commission makes several recommendations to encourage ongoing collaboration and coordination.
- 15.1.3 The second part of this chapter focuses on management of Bimberi, oversight of Bimberi by the Community Services Directorate (CSD), and oversight by external agencies including the Official Visitor (OV), Public Advocate (PA) and Human Rights Commission (the Commission). The Commission makes several recommendations to improve management and oversight of Bimberi.
- 15.1.4 The third part of this chapter examines complaints handling processes at Bimberi. The Commission recommends the complaints mechanisms be strengthened, to contribute to ongoing review and improvement at the Centre.

15.2 Management and operation of the youth justice system in the ACT

- 15.2.1 The 'youth justice system' is less a coherent entity than a series of complex interactions between young people and organisations, and between organisations themselves. The youth justice system in the ACT comprises a wide range of stakeholders, including:
- Children and young people;
 - Families;
 - ACT Policing;
 - Childrens Court;
 - Supreme Court;
 - Restorative Justice Unit (RJU);
 - Director of Public Prosecutions (DPP);
 - Legal Aid ACT;
 - Solicitors;
 - Community Youth Justice (CYJ);
 - Bimberi Youth Justice Centre;
 - Other government service providers, including the Education and Training Directorate and the Health Directorate; and
 - Community service providers.

- 15.2.2 Each of the above-listed agencies has different authority, functions and accountability structures. Some organisations operate under a legislative framework that guides their decision-making, and most possess statutory or institutional independence from Government. It is important to measure and describe the impact of agencies' actions on young people in the youth justice system.
- 15.2.3 Due to time and resource constraints this Review was not able to examine some fundamental aspects of the youth justice system in the ACT, which may have a significant impact on rehabilitation outcomes, including:
- Young people's access to legal advice and representation;
 - ACT Policing practice in relation to caution, bail, arrest, and charging;
 - Operation of the *Bail Act 1992* in relation to young people;
 - DPP practice in relation to prosecution decisions, and recommendations for bail and sentencing;
 - Childrens Court procedures and facilities;
 - The impact of the transition of sentencing provisions in the Childrens Court from the *Children and Young People Act 1999* to the *Crimes (Sentencing Administration) Act 2005*;
 - The impact of Magistrates' approaches to bail and sentencing decisions;
 - The operation of formal diversionary programs, such as RJU;
 - The operation of Ngambra Circle Sentencing Court;
 - The operation of informal diversionary practices, by ACT Policing, DPP, CYJ and the Childrens Court; and
 - Media representations of children, young people, and young people involved in the youth justice system.
- 15.2.4 The Commission suggests that these issues be examined in future legislative reform, review, research and/or policy work by the ACT Government. In the meantime, the Commission proposes action in three areas to contribute towards a more integrated youth justice system, and improved outcomes for young people:
- The Legislative Assembly Standing Committee should invite independent agencies in the youth justice system to provide advice on systemic issues
 - Relationship building between agencies in the youth justice system; and
 - An annual youth justice forum.

Legislative Assembly Standing Committee should invite independent agencies in the youth justice system to provide advice on systemic issues

- 15.2.5 The ACT Government is only one of several institutional stakeholders in the youth justice system. Independent agencies, including ACT Policing, the DPP, the Childrens Court, Legal Aid ACT and community organisations, have detailed and specialist knowledge about the operation of the youth justice system. The Commission encourages these agencies to participate in public discussion where appropriate.

Recommendation 15.1: The Legislative Assembly Standing Committee responsible for youth justice annually invite ACT Policing, the Director of Public Prosecutions, the Childrens Court, Legal Aid ACT and peak bodies in the community sector to raise issues of interest or concern about the youth justice system.

Relationship building between organisations

- 15.2.6 Organisations in the youth justice system interact daily in relation to individual casework. However, the Commission recommends that they also develop opportunities to meet and discuss systemic issues.
- 15.2.7 It is vital that that legislators and policy makers learn from the experience of young people, police, solicitors, prosecutors, court officials, magistrates, detention centre staff, and other support workers. Stakeholders in the youth justice system need to be provided with the time and resources to meet and articulate their case-work knowledge, and translate it into systemic knowledge.

Recommendation 15.2: ACT Policing, the Director of Public Prosecutions, the Childrens Court and Legal Aid ACT continue to develop partnerships to:

- Collect data and measure outcomes of the youth justice system
- Review practices across the youth justice system
- Review the legislative framework for the ACT youth justice system
- Identify and advocate for systemic improvements to the youth justice system.

15.2.8 The ACT Government should identify strategic opportunities to facilitate or assist these efforts.

Annual Youth Justice Forum

15.2.9 One way to bring stakeholders together is to convene an annual public forum on youth justice issues in the ACT. To assist organisations to build relationships and share knowledge, beginning in late 2011 the Human Rights Commission will coordinate an annual event, in partnership with other stakeholders in the youth justice system. The forum will:

- Address a specific issue or question in youth justice each year;
- Invite expert speakers to present new research and evidence;
- Invite stakeholders to participate in a facilitated panel discussion;
- Allow audience members to ask questions and propose solutions to problems; and
- Provide an opportunity for stakeholders to meet and discuss systemic issues.

Recommendation 15.3: The Human Rights Commission convene an annual Youth Justice Forum, in partnership with other stakeholders in the youth justice system

15.3 Management and operation of Bimberi

15.3.1 A large part of this Report has addressed the management and operation of Bimberi. The problems with staff shortages, staff training and support, program delivery, behaviour management and record keeping that are described in this report reflect the management and operation of Bimberi.

15.3.2 All workers at Bimberi are involved in management of young people and operations. However, the senior managers have primary responsibility for management decisions which impact on well being of staff and young people. The management structure at Bimberi is presented in Figure 15.1. This figure does not include the full accountability structure of Bimberi, in that it does not include the executive positions with ultimate responsibility for Bimberi. A diagram displaying the oversight structure for Bimberi within the CSD is presented in Figure 15.2, in section 15.4.

15.3.3 During the Review it has become clear that there are opportunities for improvement in the management of Bimberi in five areas:

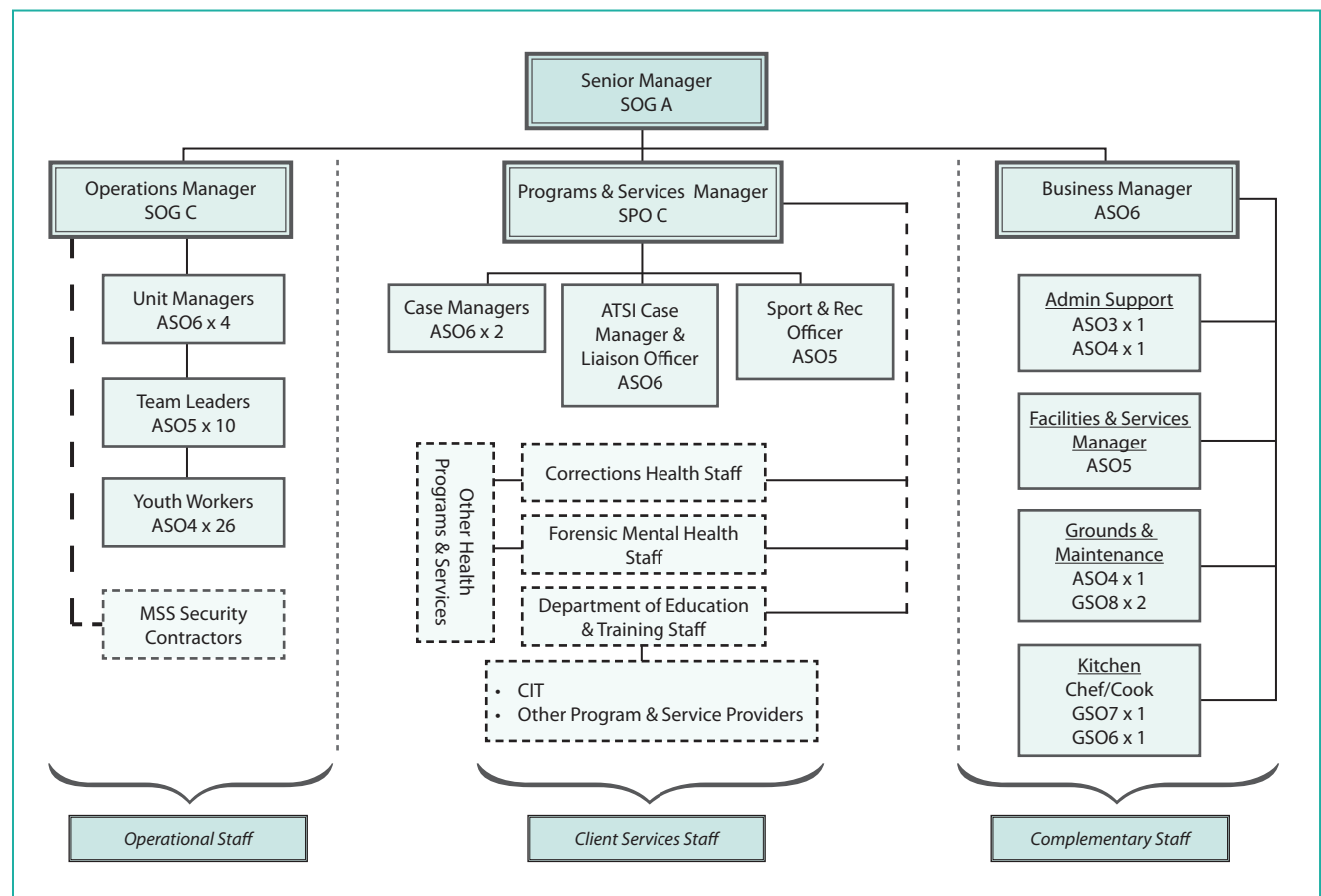
- Leadership and communication with staff and young people;
- Design, communication and review of operational procedures;
- Management of the facility and equipment;
- Ensuring appropriate action following incidents; and
- Transparent and evidence based decision-making.

15.3.4 Many of these issues are discussed in more detail in other chapters, but are summarised here to highlight underlying themes relating to management.

Leadership and communication with staff and young people

15.3.5 As discussed in Chapter 4, the management team plays a critical role in shaping organisational culture.

Figure 15.1: Bimberi Youth Justice Centre organisational chart



- 15.3.6 As was noted in the Knowledge Consulting report in respect of the Alexander Maconochie Centre:
- 'The leaders are the custodian of the organisation's vision. The manner in which leaders communicate the vision and demonstrate their commitment to the vision through their actions in the work place is the most significant driving force in achieving alignment of staff with the direction of the organisation and commitment to the vision... Experience has shown that it is absolutely essential in the lead up to opening and in the six months post opening for the correctional centre Superintendent and the management team to be totally focused on leading and mentoring their staff and on monitoring operational performance and its impact on detainees. If they are distracted from this role the risk of serious incidents occurring increases significantly.'*
- 15.3.7 However, it is not clear that management at Bimberi fully appreciated the importance of regular communication with staff on the ground to shape the desired culture at Bimberi, and instead prioritised communication with external stakeholders. We understand that new management has been assisted by two new positions being created to allow for more consultation and communication with all stakeholders.
- 15.3.8 Rule 84 of the Rules for the Protection of Juveniles Deprived of their Liberty provides that:
- 'The administration should introduce forms of organisation and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.'*¹
- 15.3.9 As described in Chapter 5 (staffing), historically the communication between Bimberi management and the operational staff (youth workers, team leaders and unit managers) may have been less than ideal. As one group of participants noted 'We only saw them when things went wrong'. The same group of participants felt that the visibility of management had improved with the change of management. The Commission notes that the reported improvement in visibility coincided with an increase in the resources available at Bimberi, and may have been a contributing factor.
- 15.3.10 The Commission welcomes the range of initiatives recently introduced in the CSD 'Change Management Plan', including a daily briefing for youth workers, weekly staff newsletter, and weekly all-staff meetings. Many workers told the Review that the current management team has greater interaction with operational staff, and they expressed approval at this change.

1 Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre*, ACT Corrective Services (2011), 104.

15.3.11 Another challenge for Bimberi management is to facilitate communication between different staff groups. The different staff groups include:

- Youth workers, team leaders and unit managers;
- Teachers at Murrumbidgee Education and Training Centre;
- Health professionals employed by ACT Health;
- Corporate or administration staff;
- Facilities and grounds maintenance staff;
- Sport and recreation officer;
- Chefs;
- MSS security guards; and
- Visiting community service providers.

15.3.12 Due to their different roles, a 24-hour roster and a security system which restricts movement in the Centre, some staff inevitably become isolated in their roles, and disconnected from the people working around them. These issues are discussed in more detail in Chapter 5 (staffing), and the Commission makes several recommendations relating to staff communication and staff support. Communication between management and staff, and between staff groups, is a priority at Bimberi, and there are indications that current management is taking action in this area.

15.3.13 A third area of communication that requires attention is between Bimberi management and young people. This issue is discussed in further detail in later in this chapter, in the section on complaints. The Commission recommends that Bimberi put renewed effort into providing accurate and timely information to young people about issues to do with their care, explaining reasons for decisions, listening to young people's concerns, and involving them in decision-making wherever possible.

Design, communication and review of operational procedures

15.3.14 All the policies required by legislation were in place before Bimberi opened. These policies specifically acknowledge human rights standards and attempt to ensure compliance with human rights. However, despite formal legislative compliance, there are some serious shortcomings with the operational procedures at Bimberi.

- The policy documents are written at a high level and do not generally provide detailed operational or practical guidance for staff when interacting with young people;
- There are significant gaps in the procedures created to operationalise these policies. For example, the use of force policy and the behaviour management policy provide a good framework for the people writing procedures or designing training programs, but they do not provide enough operational guidance for youth workers on appropriate strategies to work with and communicate with young people;
- Staff report that policies and procedures are out of date, not regularly reviewed, and do not match practice on the ground. When gaps in procedures were recognised, procedures seemed to be established on the run, and without formal processes of transparency or accountability. In the past 'local operating procedures' and 'special management directions' were created to manage new or difficult situations. Youth workers have developed a practice of writing 'case notes' and circulating them to colleagues by email to advise youth workers how to respond to particular young people or units;
- Some regular practices are not documented in procedures at all. In particular 'time out' (or locking young people in their rooms) is regularly used by staff as a punishment for behaviour, a risk management strategy to separate young people, and/or to cope with staff shortages, however this is done without guidance or authorisation of formal procedures;
- Procedures are not fully integrated into induction training or ongoing staff training, with staff not being systematically informed and reminded of procedures. CSD informed the Commission that: *'Staff were provided training in policies and procedures at transition from Quamby to Bimberi. Staff are provided training in policies and procedures at induction. Staff have been re-issued with full pack of policies and procedures. Work is underway as part of the Bimberi Change Management and Implementation Strategy to provide plain English versions of policies and procedures.'* However, the Commission distinguishes between statements of 'policy', and operational 'procedures' which provide detailed or practical guidance for staff. We also distinguish between providing information about the content of policy documents, and providing comprehensive practical training on operational procedures.
- Incident reports indicate that some unit managers review practices with their staff following an incident, however this process could be more systematic and comprehensive, and be integrated with formal reviews of procedures.

Recommendation 15.4: The Community Services Directorate review and document all Bimberi operating procedures as a matter of urgency, and ensure staff are fully trained in procedures.

Ensuring appropriate action following incidents

- 15.3.15 One of the key functions of Bimberi management is to identify and respond to incidents when they occur, and assess the underlying causes of the incident to identify preventive measures that may avoid similar occurrences in future.
- 15.3.16 Best practice standards require Bimberi management and CSD to analyse incident reports to identify and understand patterns and trends.² The Commission recommends that Bimberi management and CSD adopt the practice of regular and frequent analysis of patterns and trends in incidents, to identify areas for preventive action and avoid similar incidents occurring again. Such analysis should examine:
- ‘the total number of incidents, type of incident, whether incidents involve a range of children and young people or a small number, the location of incidents, the range of staff involved, and the injuries sustained’³*
- 15.3.17 The analysis should also include an examination of environmental factors, including staff resources.
- 15.3.18 For example, the Commission has reviewed all incident reports, and all available search registers and use of force reports created at Bimberi between September 2008 and December 2010. We identified 13 incidents that, according to witnesses’ description of events, were directly caused by staff shortages. (This number does not include a wider range of incidents that may have been avoided or managed differently with increased staff resources.)
- 15.3.19 Unless senior managers happened to be present at the time of an incident, they are heavily reliant on the initial investigation by the unit manager to interpret events, and the way the unit manager gathers and reports evidence will inevitably characterise events in a certain way. Therefore, senior managers need to support unit managers to strengthen practice at this level.

Recommendation 15.5: The Community Services Directorate require Bimberi management to put renewed effort into analysing and responding to incidents, and:

- Ensure that unit managers conduct a thorough and impartial investigation of incidents, and provide all relevant information for review by senior management
- Analyse the wider background factors contributing to an incident, including staff shortages, staff fatigue at the end of a 12 hour shift, and environmental factors
- Analyse staff actions to ensure proper conduct, including fulfilling all legislative requirements before undertaking a search or use of force
- Make appropriate reports, including police reports or mandatory child protection report in cases of inappropriate use of force or other situations of assault by staff
- Engage young people in appropriate therapeutic services or support programs if there is concern that they are displaying self harming behaviour, or have difficulty managing emotions or interacting with other people
- Review policies, procedures and staff training in the light of particular incidents, to ensure staff have the skills, guidance and support they need to work with young people effectively.

Management of the facility and equipment

- 15.3.20 The built design of the Bimberi facility is a significant improvement over the former facility at Quamby and has been designed to reflect a normalised campus environment, which minimises the appearance of security features. The Government Submission to the Review sets out the design philosophy and features of the Centre.
- 15.3.21 However, since its opening, a number of operational issues have emerged in relation to the design of Bimberi. For example, the intention that the young people have relative freedom of movement within a secure perimeter has not been achieved.

2 Her Majesty’s Inspectorate of Prisons, *Criteria for assessing the treatment and conditions for children and young people held in prison custody* (2009) section 6.19 and 6.22.

3 Ibid, section 6.22.

The perceived risks involved in allowing most young people to move freely in a large open space with many bushes and trees have been regarded as too high, and so young people are routinely escorted around the facility. Several young people who remembered Quamby said they preferred Quamby to Bimberi, and one of the factors informing this view was the ability to move more freely within the grounds at Quamby. The Commission suggests this issue be examined, and that consideration be given to allow young people greater freedom of movement within the grounds at Bimberi. The future development of a transition unit might be one setting in which this could take place.

15.3.22 Other issues include:

- The space between buildings in the Centre increases staff isolation and the time taken for other staff to assist where there is an emergency;
- The design of cabins has not allowed an adequate view of young people while sleeping, which limits the effectiveness of observations in ensuring the safety of young people;
- Use of aluminium doorframes in the units which are not sufficiently strong and trigger alarms through shaking; and
- The roof is insufficiently secure and climbing points have been identified allowing young people to climb onto the roof.

15.3.23 Participants reported raising these issues with Bimberi management, and feeling concerned that insufficient action was taken to address these problems. We understand that funding has now been allocated to change the orientation of beds within cabins to improve observations, and to add further security to the roof.

15.3.24 In addition to these identified design issues, many participants raised concerns about the technical and security systems within the Centre. Knowledge about technical and security systems was limited to a small group of staff named the 'Sierra' team. Participants reported that this caused difficulties and delays when Sierra staff were not available to assist with matters such as putting credit into young people's accounts or registering approved phone numbers so a young person could make calls to friends and family. Participants also reported security concerns because of this limited knowledge, for example that a control room worker was once locked inside the control room alone, and did not have the knowledge to unlock the door.

15.3.25 Other reported concerns with security systems and equipment include:

- Faulty radios and duress alarms, which were reported as a serious safety concern by a number of staff in the staff survey. While observing night shift in the control room, the Review Team observed the testing of duress alarms which found that at least one was faulty and gave misleading information to control staff. It appeared that this was not regarded as unusual;
- Cameras allegedly not working in cabins or other areas and not being repaired promptly. One staff survey respondent claimed that in the admissions unit cameras *'freeze up or go down at least once a week. This is dangerous for new detainees or those in a fragile state. It is essential that these cameras are working and can be fixed immediately if needed. This does not happen'*;
- Lack of cameras in particular locations, such as the laundry and program rooms within units, which are reported by staff and young people to be unsafe spaces where incidents are more likely to occur;
- A perimeter alarm system that is activated too easily, including by passing cloud shadows. There is a concern that staff can become complacent about alarms because there are so many false alarms;
- Screening technology and procedures at reception are inadequate to prevent the introduction of contraband. Staff identified particular gaps around the screening of night shift staff, screening of staff bags and inadequacies of the screening technology; and
- MSS staff not being given the same access to cabin keys as other night shift staff, and thus being unable to provide immediate assistance to a young person in the event of an emergency, which was a critical omission identified in the Inquest into the death of a young person at Quamby in 1996.⁴

4 The Coroners Court in the ACT, *Inquest into the Manner and Cause of Death of Mark Robert Watson* (1996).

- 15.3.26 While it is to be expected that some operational issues will emerge with a new facility and technology systems, it is important that such issues are addressed promptly when legitimate concerns are raised by staff and others. Documentary evidence and verbal reports from a range of participants suggests that there were a number of ongoing concerns that have not been addressed adequately and are yet to be resolved. It appears that the ongoing costs of maintaining the security systems had not been included in the operating budget for Bimberi, and that budgetary constraints may have limited the ability of management to effectively resolve these issues.⁵
- 15.3.27 The Government Submission states that a Queensland-based risk management expert from Your Enterprise Solutions Pty Ltd, has been engaged to undertake a Risk and Compliance Framework Gap Analysis at Bimberi. It is hoped that this analysis will more clearly identify and address issues with the facility and security systems, and that CSD will respond appropriately to any recommendations arising from the analysis.

Transparent and evidence based decision-making

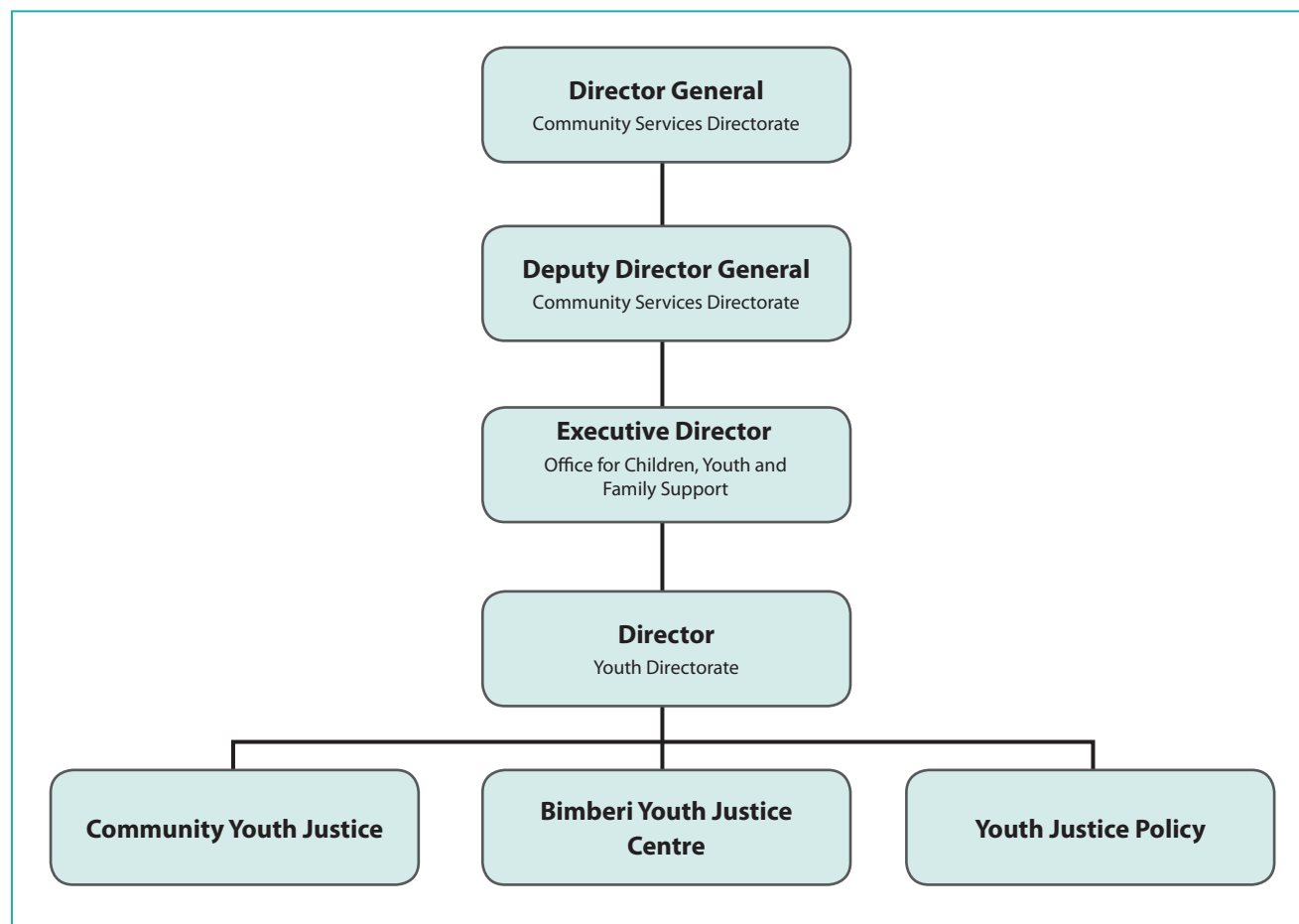
- 15.3.28 Bimberi management have significant control of young people's lives when they are in detention. Young people must make an application to have phone contact with their parents, to write letters to their friends, and even to attend the funeral of a sibling. Young people are classified into a particular category of 'risk', which determines the education and recreation activities they are able to participate in. If a worker views a young person's behaviour as inappropriate, they may undergo a series of disciplinary processes. Every day Bimberi staff make decisions which affect the lives of the young people living in the Centre.
- 15.3.29 It is clear to the Commission that young people do not always have full information about the criteria for decisions made at Bimberi; young people need decisions to be explained in an accessible way; and young people are not always aware of what they can do if they disagree with a decision. During the Review young people approached Commission staff to discuss concerns they had about decisions made by Bimberi staff. Some of the complaints raised with us included claims of:
- Refusal to grant leave to attend a friend's funeral;
 - Ongoing placement in segregation for a period of more than two months;
 - Inability to access education while in segregation;
 - Being required to participate in a particular education program;
 - Being denied access to music classes as a punishment for an incident that occurred outside school; and
 - Threats of transfer to the Alexander Maconochie Centre.
- 15.3.30 In Chapter 14 (conditions of detention) the Commission recommends that young people be provided access to an independent legal advice service to help them understand decisions, examine the legality of decisions, and provide assistance to appeal decisions. The ACT Government could fund one of the local Community Legal Centres or Legal Aid ACT to provide legal advice and minor assistance to young people at Bimberi. Legal Aid currently provides advice and representation to young people in Bimberi in the context of court proceedings, however, young people also need advice and assistance to appeal administrative decisions. Solicitors and paralegals could provide phone advice and a weekly visiting service, to help young people access information, and assist young people with applications and appeals in relation to classification, segregation, disciplinary processes, day leave, visits, phone contact or mail contact.

15.4 Directorate oversight of Bimberi

- 15.4.1 The executive and senior management of CSD has responsibility to provide support and accountability to Bimberi management. The current organisational structure is illustrated in Figure 2, overleaf.
- 15.4.2 The oversight of Bimberi by CSD Executives and Directors is a difficult task. They need to identify when it is appropriate to become involved, and to do so in a way which does not undermine the authority of Bimberi management.
- 15.4.3 The Commission suggests there are five areas where CSD Directors and Executives need to ensure they are informed, increase their involvement, and provide support for Bimberi management:
- Developing and reviewing operational procedures;
 - Budgetary decisions;
 - Scrutiny of incident reports;
 - Scrutiny of complaints from staff, young people and families; and
 - Independent advisory committee to assist Bimberi management.

5 Oakton consultants, *Bimberi Operations and Financial Performance Audit*, December 2009

Figure 15.2: CSD oversight of the Bimberi Youth Justice Centre.



Developing and reviewing operational procedures

- 15.4.4 Before the opening of Bimberi, the Youth Justice Policy unit of CSD drafted the youth justice provisions of the new *Children and Young People Act 2008* (CYP Act) and the policy documents in the form of regulations which governed the new detention centre.
- 15.4.5 The new legislation meant that, for the first time, the operation of the youth detention centre in the ACT was formalised under legislation, and there was a rapid increase in accountability and transparency. Drafting the legislation and policies was a significant amount of work, and the implementation of the new CYP Act should have been staged with the move from Quamby to Bimberi. Staff have expressed the view that the speed and breadth of the legislative change, combined with the move to a new facility, placed both policy and operational staff under significant stress. The Review was told that the Youth Justice Policy unit was under pressure to have all the policy documents prepared on time, and the timing was so tight that the first group of staff to go on the floor at Bimberi was not trained in the new legislation or policies.

Promising practice: It was a significant achievement to draft the new CYP Act and the policy documents governing the operation of Bimberi before the opening of the Centre in 2008.

- 15.4.6 However, once the policy documents were finalised and Bimberi opened there seems to have been a failure to:
- Design and institute the next layer of operational procedure documents underlying the policy documents, to provide practical guidance to staff;
 - Review the policy documents after a period of operation; and
 - Provide systematic quality assurance such as internal audits of the implementation of policies at Bimberi.

- 15.4.7 The Commission has been told it was the responsibility of Bimberi management to design procedure documents and communicate them to youth workers before the opening of Bimberi. The absence of comprehensive procedures, and the limited awareness of procedures by staff, has led to a series of problematic incidents at Bimberi, as discussed throughout this Report. It is unfortunate that CSD management did not provide sufficient oversight and direction in this context, and allocate additional resources if Bimberi management needed them to complete the task. As discussed above in the section on Bimberi management, the Commission recommends that procedures at Bimberi be reviewed, documented and properly communicated as a matter of urgency.

Budgetary decisions

- 15.4.8 CSD management has a significant role in determining the resources allocated to Bimberi. The Commission is concerned that the budgetary implications of a larger more complex facility were not adequately anticipated by CSD, and that management was expected to run Bimberi on a Quamby budget. As one participant said, *'the Government built a facility they could not afford to run'*.
- 15.4.9 The December 2009 audit of operations and financial performance of Bimberi by Oakton consultants found that: *'[o]perating and facilities costs have more than doubled when compared to Quamby. However, when you consider that the Bimberi facility is approximately four times the size of Quamby, this doubling in cost is not unreasonable.'*
- 15.4.10 Oakton notes that a significant annual maintenance fee for the security system at Bimberi was not budgeted for. It reported that management was taking a number of steps to reduce costs through limiting and monitoring consumables within units and using in-house maintenance personnel. The report concluded that *'CSD does not have sufficient funds allocated for ongoing operations of Bimberi, particularly if there is a significant increase in resident numbers.'* As discussed in Chapter 5 (staffing), Oakton also warned that Bimberi did not have sufficient permanent and casual staff to deal with an increase in residents.
- 15.4.11 There is some uncertainty about the extent to which the budgetary constraints that the Centre operated under were enforced by CSD, or whether Bimberi management did not actively seek additional funding. However, following the Oakton audit it would have been clear to CSD management that more funding was required for the operational and staffing budget. From July 2010 further funding was allocated for staffing at Bimberi and a policy of over-recruitment has now been adopted. For further discussion of these issues see Chapter 5 (staffing).

Scrutiny of incident reports

- 15.4.12 CSD management oversees incident reports and provides input to Bimberi management in relation to particular incidents. Incident reports are prepared by frontline staff, then submitted to the relevant unit manager who conducts an investigation into the incident and prepares a brief for senior management. The report and brief are then submitted to the programs manager at Bimberi, the senior manager at Bimberi, and the Director, Youth Directorate. Each of these senior managers has the opportunity to comment, and their comments are returned to Bimberi management. Youth workers may be verbally informed of the Director's comments 'if necessary'. This process is discussed further in the sections on Bimberi management and record keeping. It is a very important mechanism to ensure transparency at Bimberi. However, the Commission suggests that the Director be conscious of the fact that the incident reports only present the view of Bimberi workers, not young people who were involved in or witnessed incidents. The Commission makes several recommendations about incident reports in the section on record keeping.

Scrutiny of complaints from young people, staff and families

- 15.4.13 There is a complaints policy at Bimberi, which is discussed in further detail in the section on complaints. The Commission makes several recommendations in that section of the report, including that record keeping and oversight of complaints be improved. The Director, Youth Directorate, should request a monthly report of complaints by young people, staff and families at Bimberi, including the issues raised in complaints, the process used to manage complaints, and the response provided to complainants. This information will assist the Director to understand the views of people outside senior management.

Independent advisory panel to assist Bimberi management

- 15.4.14 Bimberi management are called upon to make difficult decisions every day about the young people in their care. For example, if a young person has an altercation, or is upset, or withdrawn, they need to assess the needs of the young person, and the group as a whole, to determine an appropriate response. Bimberi management need expert advice to conduct such assessments and provide a response. The Director and other senior executives in CSD have a difficult role in knowing how and when to intervene or to provide direction or support to Bimberi management. One mechanism that may assist Bimberi management and CSD is a panel of independent advisors.

- 15.4.15 The panel might comprise experts or service providers in specialist areas, such as behaviour management, mental health, disability, and alcohol and drug counselling. Members of the panel might be called upon to assist Bimberi and CSD to establish effective procedures, design services, or create risk management processes. They might also provide individual advice to inform the response to particular incidents.
- 15.4.16 The Commission is concerned that currently Bimberi senior managers make decisions about risk management and service delivery without specialist advice, and behaviour management decisions are made without proper documentation and review. The Commission suggests Bimberi management obtain assistance from experts in mental health, behaviour management and drug and alcohol treatment when creating operational procedures. This issue is discussed further in Chapter 6 (evidence based).

15.5 External oversight of Bimberi

- 15.5.1 The people who live and work in detention centres are particularly vulnerable to mistreatment and violations of their human rights. Detention centres are closed residential institutions with restrictions on the people, material and information permitted to enter and leave. Some barrier to external involvement in Bimberi is appropriate and expected. However, throughout history we have seen that without robust mechanisms for transparency and accountability, closed residential institutions can become harmful and abusive.
- 15.5.2 There are several ways in which outsiders can enter Bimberi and gain some understanding of the centre. Judges, Magistrates and Members of the Legislative Assembly may enter and inspect Bimberi at any reasonable time.⁶ A lawyer representing a young person may visit them in Bimberi.⁷ Family members and friends can request permission to visit young people in Bimberi. Community or government service providers can request permission to visit young people in Bimberi. Investigative authorities may assist young people or staff at Bimberi in relation to specific complaints, for example the Ombudsman can receive complaints under public interest disclosure legislation, and the Victim of Crime Commissioner can assist young people who have been victims of crime.
- 15.5.3 The primary agencies with formal powers of oversight and inspection at Bimberi are the OV, the PA, and the Commission.
- 15.5.4 Under the CYP Act the OV, the PA, and the Commission may:
- Enter and inspect Bimberi at any reasonable time;⁸
 - Inspect the register of searches and use of force; and⁹
 - Inspect the register of segregation directions.¹⁰
- 15.5.5 The OV, the PA and the Commission also exercise additional functions provided to them under other legislation, as described below.

Official Visitor

- 15.5.6 The role of the OV in the youth justice system is established under the CYP Act. The functions of the OV are:
- To inspect:
 - detention places and places outside detention places where detainees are, or have been, directed to work or participate in an activity, and
 - therapeutic protection places, and
 - places of care (a residential care service approved under s.525 of the CYP Act);
 - To report to the Minister and the Chief Executive;
 - To receive and consider complaints from 'entitled children and young people', and others on their behalf; and
 - To be available to talk with 'entitled children and young people'.¹¹
- 15.5.7 'Entitled children and young people' are those who are detained in a detention place, confined at a therapeutic protection place, or accommodated in a place of care.¹²

⁶ Section 153, *Children and Young People Act 2008*.

⁷ Section 178, *Children and Young People Act 2008*.

⁸ Section 153, *Children and Young People Act 2008*.

⁹ Section 195, *Children and Young People Act 2008*.

¹⁰ Section 222, *Children and Young People Act 2008*.

¹¹ Section 39, *Children and Young People Act 2008*; *Children and Young People (Official Visitor Complaint) Guidelines 2009* (No 1).

¹² Section 37, *Children and Young People Act 2008*.

- 15.5.8 The OV must, if practicable, visit Bimberi at least once each fortnight. The OV may enter Bimberi at any reasonable time. Bimberi management must give the OV any reasonable assistance to exercise his/her functions.¹³
- 15.5.9 A child or young person in Bimberi (or someone on their behalf) may complain to the OV about any aspect of the child's or young person's detention, including the conditions of detention, the care provided to them, or the operation of the Centre. The child or young person may make the complaint to the OV personally or through someone else.¹⁴
- 15.5.10 If the OV receives a complaint about Bimberi, he/she must tell the Chief Executive in writing.¹⁵ The OV must try to resolve the complaint with Bimberi management. In doing so he/she may make enquiries about any matter raised in the complaint, make a recommendation about the complaint to Bimberi management, and give a report to the Chief Executive or Minister about the complaint.¹⁶
- 15.5.11 The OV must provide the Minister and the Chief Executive with a written report each month, summarising the number and kinds of complaints received, action taken on complaints received, and any matters referred to the OV by an investigative entity (such as the police, the PA or the Commission).¹⁷
- 15.5.12 The OV currently visits young people in Bimberi every second Tuesday. She speaks with all the young people present, as well as staff and Bimberi management. Young people can also contact the OV directly by phone from Bimberi.
- 15.5.13 There is currently one OV, but the legislation provides for more than one OV to be appointed, and in past years there have been two people exercising the role at one time.¹⁸

Public Advocate of the ACT

- 15.5.14 The PA is established under the *Public Advocate Act 2005*. The PA has a range of statutory functions in relation to children and young people, as well as adults with a mental illness or impaired decision-making ability who require protection from abuse, exploitation or neglect.
- 15.5.15 In the context of the youth justice system, the functions of the PA are to:
- Act as an advocate for the rights of children and young people and, in doing so;
 - foster the provision of services and facilities for children and young people,
 - support the establishment of organisations that support children and young people, and
 - promote the protection of children and young people from abuse and exploitation.
 - Monitor the provision of services for the protection of children and young people; and
 - Deal, on behalf of people with a disability and children and young people, with entities providing services.¹⁹
- The PA may:
- Listen to concerns from children and young people about the provision of services for the protection of children and young people, and investigate those concerns; or
 - Investigate complaints and allegations about matters in relation to which the PA has a function.²⁰
- 15.5.16 The PA visits young people on remand and committal in Bimberi each month and also on request. Young people are also able to contact the PA directly by phone from Bimberi.
- 15.5.17 The PA must inspect the register of searches and use of force at Bimberi at least once every three months.²¹
- 15.5.18 If a young person in Bimberi is placed in segregation, a copy of the segregation notice must be given to the PA as soon as practicable.²²

13 Section 39, *Children and Young People Act 2008*.

14 Section 44, *Children and Young People Act 2008*.

15 Section 46, *Children and Young People Act 2008*.

16 Section 47, *Children and Young People Act 2008*.

17 Section 58, *Children and Young People Act 2008*.

18 Section 38, *Children and Young People Act 2008*.

19 Section 10, *Public Advocate Act 2005*.

20 Section 11, *Public Advocate Act 2005*.

21 Section 195, *Children and Young People Act 2008*.

22 Section 207, *Children and Young People Act 2008*.

Human Rights Commission

- 15.5.19 The Commission is an independent statutory agency and was established in November 2006 to promote and protect the rights and well being of all people living in the ACT. The Commission is established under the *Human Rights Commission Act 2005* (HRC Act).
- 15.5.20 There are three separate Commissioners with different functions and areas of responsibility:
- Children & Young People Commissioner (CYPC);
 - Health Services Commissioner and Disability & Community Services Commissioner; and
 - Human Rights & Discrimination Commissioner.
- 15.5.21 The full role of the Commission is described in the introduction to this Report. In relation to the youth justice system in the ACT, the Commission's functions are to:
- Investigate complaints about a service for children and young people, a health service, or a disability service;
 - Investigate complaints of discrimination in designated areas of public life;
 - Provide training and community education in human rights, discrimination and related topics;
 - Promote improvements in services for children and young people;
 - Consult with children and young people about issues that affect their lives; and
 - Provide advice to government and non-government agencies about laws, policies, and practices affecting children and young people.²³
- 15.5.22 There are six types of complaints that may be made under the HRC Act, many of which are relevant to the youth justice context:
- Services for children and young people;
 - Disability services;
 - Health services;
 - Services for older people (not relevant in the context of the youth justice system); and
 - Acts of discrimination.
- 15.5.23 Depending on the type of complaint, different people are eligible to make complaints, complaints can be made about different people/organisations, and complaints can be made for different reasons (see Table 1, below, for further information).

Table 15.1: Complaints framework established under the *Human Rights Commission Act 2005*

Type of complaint	Who may make a complaint	When someone may complain	Who may be complained about
Children and young people service complaint Considered by the Children & Young People Commissioner	A child, a young person, their parent/carer, or someone acting as their agent.	If the service is not being provided appropriately; if the service has acted inconsistently with required standards; or if the service is not being provided.	A service provided in the ACT specifically for children, young people, both children and young people, or their carers. Some examples: care, respite care, transport, assessment or referral of support needs, education, training and skill development, information services, coordination, food services, case management and brokerage, recreation, advocacy, community access, accommodation support, rehabilitation, employment services, a service provided in relation to the use of premises for the care, treatment or accommodation of children, young people or their carers, or a service provided in relation to a detention place, therapeutic protection place or place of care under the <i>Children & Young People Act 2008</i> .

23 *Human Rights Commission Act 2005*.

Table 15.1: Complaints framework established under the *Human Rights Commission Act 2005*, continued

Type of complaint	Who may make a complaint	When someone may complain	Who may be complained about
Disability service complaint Considered by the Disability & Community Services Commissioner	Anyone	If the service is not being provided appropriately; if the service has acted inconsistently with required standards; or if the service is not being provided.	A service provided in the ACT specifically for people with a disability or their carers. Some examples: home help, personal care, home maintenance or modification, food services, respite care, transport, assessment or referral of support needs, education, training and skill development, information services, coordination, case management and brokerage, recreation, advocacy, community access, accommodation support, rehabilitation, employment services, or a service provided in association with the use of premises for the care, treatment or accommodation of people with a disability.
Health service complaint Considered by the Health Services Commissioner	Anyone	If the service is not being provided appropriately; if the service has acted inconsistently with required standards; or if the service is not being provided.	A service provided in the ACT for: assessing, recording, maintaining or improving the physical, mental or emotional health comfort or well being; or for diagnosing or treating an illness, disability, disorder or condition. Also, a service provided specifically for carers.
Discrimination complaint Considered by the Human Rights & Discrimination Commissioner	The aggrieved person or someone acting as their agent	Unfavourable treatment on the basis of certain personal attributes: Sex, sexuality, gender identity, relationship status, status as parent/carer, pregnancy, breastfeeding, race, religious or political conviction, disability, industrial activity, age, profession, trade, occupation or calling, spent conviction, or association with a person with one of these attributes.	People or organisations acting in certain areas of public life: Employment, education, access to premises, goods, services and facilities, accommodation, clubs.
Other complaints	<p>Sexual Harassment – sexual harassment is unwanted conduct of a sexual nature which reasonably makes another person feel offended, intimidated or humiliated.</p> <p>Vilification – vilification is a public act that incites hatred, serious contempt or severe ridicule of a person or group of people because of their race, sexuality, gender identity or HIV/AIDS status.</p> <p>Health records privacy or access – breach of privacy or failure to allow access to health records under the <i>Health Records (Privacy and Access) Act</i>.</p>		

- 15.5.24 In general, a complaint made under the HRC Act must be in writing. However, a complaint may be made orally if the Commission is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint. In most circumstances a complaint must include the name and address of the person making the complaint. However, in some circumstances the Commission may consider a matter on its own initiative.
- 15.5.25 There is currently no authority for the Commission to investigate complaints about breaches of civil and political rights under the *Human Rights Act 2004* (HR Act), although many complaints relating to human rights issues are made to the Commission in the form of a complaint about a service for a child or young person, a disability service, a health service, or a discrimination complaint.
- 15.5.26 Young people are also able to contact the Commission directly by phone from Bimberi. The Commission has visited Bimberi periodically since its opening in September 2008, but has not previously established a schedule of regular visits to Bimberi.

Coordination of external oversight agencies

- 15.5.27 The roles and functions of the OV, the PA and the CYPC intersect, and it is difficult to describe the difference between the agencies in a way that is meaningful for young people. There seems to be significant confusion among young people; sometimes they think different workers are from the same organisation, or they are unsure which agency they have previously spoken with.

- 15.5.28 The similarities between the agencies are fairly apparent. They each provide external oversight and raise concerns about Bimberi, and do so with small staff teams and limited resources. The CYPC comprises the Commissioner and two part time advisers (or 1 FTE position). The office of the PA comprises the Public Advocate, a principal advocate, and a senior advocate. As mentioned above there is currently one person appointed as OV.
- 15.5.29 The differences between the agencies are not always obvious to young people, but they are fundamental. They:
- *Engage with different groups of young people.* The OV works with young people in detention at Bimberi and Marlow Cottage; the PA works with young people in contact with the child protection, youth justice and mental health systems; the CYPC works with all young people in the ACT;
 - *Have different role when working with young people.* The PA has an advocacy role, and acts in the best interest of the child or young person. The CYPC has an impartial role; providing assistance to young people who wish to make a complaint, while remaining impartial when investigating and conciliating complaints. The OV has a more mixed role, raising concerns with Bimberi management, the Director-General and the Minister on behalf of young people, but also seeking information from Bimberi management and forming an assessment about the complaint; and
 - *Have different power to obtain information from Bimberi.* The Commission can compel information, while the PA and OV can only request information.
- 15.5.30 Due to the intersection between the agencies, it is particularly important that they have a collaborative approach to complaints at Bimberi. Young people are less interested in the jurisdictional boundaries between the agencies than in receiving responses to their concerns.
- 15.5.31 The Commission recommends that the OV, the PA and the Commission adopt a 'first door is the right door' approach, and negotiate procedures for 'warm transfer' to the relevant agency when a young person's complaint falls outside the receiving agency's jurisdiction, or could be better handled by another agency.

Recommendation 15.6: The Official Visitor, the Public Advocate and the Human Rights Commission ensure they practice a 'first door is the right door' approach when speaking with young people in Bimberi, and negotiate procedures for effective referrals to the relevant agency when a young person's complaint falls outside the receiving agency's jurisdiction.

- 15.5.32 Complaints made to the OV, the PA or the Commission are confidential. However, in certain circumstances the agencies have authority to communicate with each other in relation to individual complaints or concerns, and to refer matters when appropriate.
- If the OV receives a complaint, and believes it would be better dealt with by an investigative entity they may refer the complaint to that entity.²⁴ If the OV becomes aware of a matter that may be the subject of a complaint to an OV, but no complaint is made, the OV may tell the Director-General and/or refer the matter to an investigative entity;²⁵
 - The PA must refer systemic matters relating to children and young people to the Commission for consideration;²⁶ and
 - If the Commission receives a complaint relating to a child or young person, and the Director-General has parental responsibility for the child or young person, the Commission may refer the complaint (or part of the complaint) to the PA for advocacy if it is in the best interests of the child or young person.²⁷ If the Commission considers that the act or service to which a complaint relates is a matter that could have been complained about to another statutory office holder, the Commission may refer the complaint.²⁸
- 15.5.33 In practice, the three agencies refer matters between them as appropriate. A complaint made to the CYPC about a service for children or young people may also include an issue that requires advocacy, and the CYPC will obtain the young person's consent to inform the PA. If the OV is not satisfied with the response from Bimberi management to a young person's concern, she will inform the PA, and they work on some issues together to avoid duplication. The OV provides a copy of her monthly report to the CYPC. The PA refers matters to the CYPC for investigation if they are outside their jurisdiction.

²⁴ Section 49, *Children and Young People Act 2008*.

²⁵ Section 57, *Children and Young People Act 2008*.

²⁶ Section 11, *Public Advocate Act 2005*.

²⁷ Section 51A, *Human Rights Commission Act 2005*.

²⁸ Section 52A, *Human Rights Commission Act 2005*.

- 15.5.34 During the Review, some people within CSD management expressed the view that external oversight agencies are unhelpful, and should be advocating for systemic improvement across the youth justice system:
- 'External oversight bodies were regarded as appropriate and necessary to ensure [government] agencies, including the youth detention centre, were accountable and open to scrutiny. However most of the managers who took part in these consultations expressed a view that, in spite of the relatively large number of oversight bodies in Canberra, there was a lack of advocacy for system wide change including the need for whole of government, whole of community approaches to improving life outcomes for these children.'*
- 'There tends to be a focus on things like haircuts, newspapers and visitors.'*
- 15.5.35 *'Our focus has been on complying with human rights without concern for what happens when they come out. Human rights should be business as usual.'*
- 15.5.36 *'Oversight bodies have not tended to see advocacy for wider systemic change as their role such as the need for more diversionary processes. Rather there is a tendency to focus on complaints and to give feedback about what the department is doing wrong. We have been frustrated by a lack of willingness to go beyond the responsibilities of this department to deal with issues.'*²⁹
- 15.5.37 The OV, the PA and the Commission have statutory obligations to respond to individual complaints, and it is expected that these three agencies will continue to communicate in relation to individual complaints when appropriate. However, the Commission recommends that, in addition, the OV, the PA and the Commission establish a regular meeting schedule to discuss systemic issues at Bimberi and more widely across the youth justice system. We also recommend that the OV, the PA and the Commission schedule joint meetings with Bimberi management at least twice a year to discuss systemic issues. Following these meetings the agencies could provide a report to the Minister if there is a particular issue that needs to be addressed.

Recommendation 15.7: The Official Visitor, the Public Advocate and the Human Rights Commission:

- Establish a regular meeting schedule to discuss systemic issues at Bimberi and more widely across the youth justice system
- Periodically schedule joint meetings with Bimberi senior management to discuss systemic issues.

- 15.5.38 While the Commission does not have a formal schedule of oversight visits within Bimberi, during 2010 the CYPC visited Bimberi on a number of occasions to undertake consultation and community engagement activities with the residents, as well as to meet with individual young people to discuss issues of concern. In doing so, the CYPC heard reports of incidents and negative developments at Bimberi. The CYPC raised these concerns with CSD executives, including the Director-General, during meetings and phone calls. The Commission is aware of a number of steps taken by the Director-General, and other executives, to address issues of individual and systemic concern. These processes were beginning to result in visible improved outcomes for young people and staff by the time this Review commenced in late 2010.
- 15.5.39 In March 2010, the Human Rights & Discrimination Commissioner visited Bimberi and met with Bimberi management and the Director-General of CSD. She also wrote to the Director-General outlining her concerns about staff shortages, and the unlawful use of mechanical restraints on young people in Bimberi. The Director-General responded in writing, advising that the unlawful use of mechanical restraints had ceased.
- 15.5.40 In November 2010, both Commissioners wrote to the Minister for Children and Young People raising a number of issues, including on-going concerns about staff shortages. In January 2011, the Minister responded in writing advising of a number of current and proposed initiatives to address the Commissioners' concerns.
- 15.5.41 The OV and the PA have held regular meetings with Bimberi management and CSD management.

A way forward: improving external oversight of Bimberi

Inspection of 'search register' and 'use of force register'

- 15.5.42 As mentioned above, the OV, the PA and the Commission have authority to inspect a limited range of documents at Bimberi; the segregation register, use of force register, and search register. However in conducting this Review, the Commission has found that the information provided in these registers is inadequate and does not facilitate proper external oversight.

29 Gail Winkworth and Michael White, 'Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice' (2011); see Appendix B.

This view was informed by accessing a wider range of documents, including incident reports and several investigation reports. Due to shortcomings with the design of the registers, and the record keeping practices of Bimberi staff, any descriptive background information about a search or use of force is contained in the 'incident report', but not the 'use of force register' or 'search register' that relate to the same incident.

- 15.5.43 In particular, the registers do not give adequate explanation of:
- the reason for the search or use of force;
 - the circumstances leading to the search or use of force;
 - the justification for the decision to undertake a search or use of force; and
 - the manner in which the search or use of force was carried out, and the actions taken by staff to fulfil their statutory obligations during a search or use of force (such as whether they offered a young person the opportunity to have a support person present, and what steps they took to avoid the use of force).
- 15.5.44 Therefore the registers cannot be properly audited without reference to the incident reports. The Commission has serious concerns about the record keeping systems and practices at Bimberi, and further discussion and recommendations on this topic are contained in the section on record keeping.

Recommendation 15.8: The ACT Government amend the *Children and Young People Act 2008* to grant the Official Visitor, the Public Advocate and the Human Rights Commission legislative authority to inspect Bimberi incident reports when inspecting the other registers, and to require that the Public Advocate receive a copy of all incident reports as soon as practicable. The Public Advocate should receive additional resources from the ACT Government to enable them to monitor incident reports.

Notification of abuse of young people in Bimberi

- 15.5.45 Under the CYP Act the Director-General of CSD must inform the PA of any appraised reports of abuse of children or young people in out of home care.
- 15.5.46 The provisions refer to narrow circumstances where:
- The child or young person is under daily care responsibility of the Director-General;
 - The child or young person is living in out of home care (ie. foster care, kinship care, or residential care);
 - A child protection report is made in relation to the carer's treatment of the child or young person; and
 - The allegation is sufficiently serious that Care and Protection Services carry out a child protection appraisal.
- 15.5.47 In this situation the Chief Executive must give the PA a report about the incident and what action (if any) the Director-General has taken as result of the appraisal.³⁰ The PA has expressed the view to the Director-General that they should also receive such reports in relation to young people at Bimberi. Young people living in Bimberi are also in the care of the Director-General, even if this is so under the youth justice provisions of the CYP Act, rather than the care and protection provisions. Currently CSD only notifies the PA of incidents of abuse in Bimberi when the young person also happens to be subject to a care order. The Commission agrees that the PA, as the independent advocate for young people in Bimberi, should be informed if there is an allegation of abuse of a young person in Bimberi.

Recommendation 15.9: The ACT Government amend the *Children and Young People Act 2008* to extend the provisions of s.507 to include young people placed in Bimberi, and require the Public Advocate be informed as soon as practicable if there is an allegation of abuse of a young person in Bimberi. The Public Advocate should receive additional resources from the ACT Government to enable them to monitor allegations of abuse in Bimberi.

Inadequate notification of significant incidents

- 15.5.48 The PA is the independent advocate for young people in detention in the ACT. As mentioned above, the legislative authority granted to the PA to access information relating to children and young people in Bimberi is restricted to immediate

³⁰ Section 507, *Children and Young People Act 2008*.

- notification when young people are placed in segregation, and access to the search register and use of force register every three months.
- 15.5.49 This is not comparable with the child protection context, where legislation requires that the Director-General provide the PA with copies of:
- Application for appraisal order; (ss.377, 379)
 - Application for extension of appraisal order; (s.386)
 - Application for family group conference agreement; (s.390)
 - Notice of registered family group conference agreement (s.392)
 - Notice of emergency action; (s.408)
 - Application for emergency application release order; (s.419)
 - Application for care and protection order; (s.427)
 - Application to revoke or amend interim care and protection order; (s.435)
 - Application for assessment order; (s.445)
 - Application for extension of assessment order; (s.452)
 - Application for extension amendment or revocation of care and protection order; (s.469)
 - Annual review report for a care and protection order; (s.497)
 - Information relating to abuse of young people in care; (s.507)
 - Application for therapeutic protection order; (s.541)
 - Review of therapeutic protection order; (s.556)
 - Extension application for therapeutic protection order; (s.560)
 - Application for amendment or revocation of therapeutic protection order; (s.567)
 - Application for transfer of child welfare order to another State or Territory; (s.648)
 - Notice of transfer of a child welfare order to another State or Territory; (s.646)
 - Application for transfer of child welfare proceedings to another State or Territory; (s.658)
 - Application for removal of a party to child protection proceedings; and (s.706)
 - Order made under care and protection chapter in CYP Act. (s.720)
- 15.5.50 In addition under the CYP Act the PA:
- May request copy of a therapeutic protection plan; and (s.631)
 - Has access to inspect therapeutic protection register (s.634) and must inspect the therapeutic protection register every three months (s.635)
- 15.5.51 Without access to equivalent information in the youth justice context, PA cannot properly assess the treatment of young people in Bimberi, or advocate for their best interests. During 2010 there were several serious incidents at Bimberi that affected the well being of young people, but which were not documented in the segregation register, use of force register, or search register. These include:
- Some young people were routinely placed in hand cuffs and ankle cuffs to move between buildings inside the grounds at Bimberi;³¹
 - Two young people accessed medication that was not prescribed to them; and
 - One young person attempted suicide.
- 15.5.52 These incidents clearly affect the safety and wellbeing of young people in Bimberi, and the PA should be informed of such incidents as soon as practicable after the time they occur. However, currently Bimberi is not required to provide this information under the CYP Act.
- 15.5.53 As discussed above, the Commission also recommends that the OV, the PA and the Commission be granted authority to inspect incident reports, in order to ensure serious incidents are transparent. The Commission also recommends that copies of certain other documents be provided to the PA as independent advocate for young people in Bimberi.

31 Since mid 2010, on advice from the Human Rights Commission, Bimberi have changed their procedure and now record the use of mechanical restraints on the use of force register.

Recommendation 15.10: The ACT Government amend the *Children and Young People Act 2008* (CYP) to require that the Public Advocate, as the independent advocate for young people in detention, receive copies of the following documents as soon as practicable. The Public Advocate should receive additional resources to enable them to monitor these documents.

- Incident reports at Bimberi
- Classification decisions and reviews of classification decisions under s.190 of the CYP Act
- Behaviour management plans made under Children and Young People (Behaviour Management Framework) Policy and Procedures 2008 (No 1)
- Charge notice of behaviour breach issued under s.296 of the CYP Act
- Matters referred to the AFP or DPP for criminal investigation (including copies of the allegation report and any reports the administrator has of investigations already made about the alleged behaviour breach) under s.295(4)(d) and s.295(6) of the CYP Act
- Disciplinary action taken under s.302 of the CYP Act
- Behaviour management consequence imposed under s.317 of the CYP Act
- Notice of disciplinary review under s.324 of the CYP Act
- Record of proceedings of disciplinary review under s.329 of the CYP Act
- Notice of disciplinary hearing under s.330 of the CYP Act.

Location of the Official Visitor

- 15.5.54 In 2004 the ACT Government reviewed and amended the system of statutory oversight agencies, complaint handling agencies, and advocacy agencies.³² As a result of this process the CYPC was established, and the Commission was created. One of the recommendations from this process that is yet to be enacted is for the OV to be co-located with the PA. The ACT Government publicly announced the decision that:

*'The ACT Public Advocate will also assume responsibility for Official Visitors. It is considered that the similarity of functions and availability of collegiate support provide advantages to locating Official Visitors within the office of the ACT Public Advocate.'*³³

- 15.5.55 The role of the OV is a difficult one to perform, particularly when only one person is appointed to the position. Structurally the OV should be placed in an agency which is independent from CSD, and where they can receive professional support and administrative support.
- 15.5.56 The Commission recommends that the commitment made by the ACT Government in 2004 following the review of the system of statutory oversight authorities be fulfilled, and that the OV be placed administratively with the PA.

Recommendation 15.11: The ACT Government fulfil the commitment made in 2004 following the review of the system of statutory oversight authorities, and place the Official Visitors for children and young people, mental health and corrections administratively with the Public Advocate.

Aboriginal or Torres Strait Islander Official Visitor

- 15.5.57 In previous years there have been two people appointed to the position of OV. In light of the fact that a high proportion of young people in Bimberi are Aboriginal or Torres Strait Islander, the Commission recommends that the CYP Act be amended to require the Director-General to appoint at least two people to the position of OV, at least one of whom is Aboriginal or Torres Strait Islander.

³² ACT Government, *The Right System for Rights Protection: An ACT Government Position Paper on the System of Statutory Oversight in the ACT* (2004).

³³ Ibid, 18.

Recommendation 15.12: The ACT Government amend the *Children and Young People Act 2008* to provide for an Aboriginal or Torres Strait Islander Official Visitor at Bimberi.

Phone contact with young people in Bimberi

- 15.5.58 As mentioned above, young people have access to a restricted phone system in their rooms and certain common areas of Bimberi. The phone allows them to contact a limited range of people, including their solicitor, support worker, a parent or family member, and the OV, the PA and the Commission. Therefore young people are able to contact external oversight agencies if they wish.
- 15.5.59 However, external agencies are not able to contact young people using the same phone system. The agencies must call Bimberi administration and leave a message for the young person. It would be preferable if the external oversight agencies, and other authorised persons such as the young person's solicitor, could call Bimberi and be transferred to speak with the young person by phone, to enable them to communicate between face to face visits.

Recommendation 15.13: The Community Services Directorate upgrade the Starnet phone system to allow external oversight agencies and a young person's solicitor to call Bimberi and be connected to speak with a young person.

15.6 Human Rights Act 2004

- 15.6.1 The ACT was the first jurisdiction in Australia to enact a Human Rights Act, which provides a statutory basis for respecting, protecting and promoting civil and political rights.
- 15.6.2 The following rights are protected under the HR Act, and they reflect Australia's international human rights obligations under the International Covenant on Civil and Political Rights.
- Recognition and equality before the law;
 - The right to life;
 - The right not to be subject to torture and cruel, inhuman or degrading treatment;
 - The right not to be subject to medical treatment or experimentation without consent;
 - The right to privacy and reputation;
 - Rights of the family and children;
 - Freedom of movement;
 - Freedom of thought, conscience and religious belief;
 - Freedom of peaceful assembly and association
 - Freedom of expression;
 - The right to participate in public life;
 - The right to a fair trial and rights in criminal proceedings;
 - Right to compensation for wrongful conviction;
 - Protection against double jeopardy;
 - Protection against retrospective criminal laws;
 - Freedom from forced work; and
 - Rights of minorities to enjoy their culture.
- 15.6.3 Under the HR Act, Public Authorities in the ACT are obliged to act compatibly with human rights, and give proper consideration to relevant human rights when making decisions.³⁴ A Public Authority is generally an ACT government agency or an agency performing ACT government functions. In some circumstances, this might include a private or community sector organisation, funded by the ACT Government.
- 15.6.4 The legislation, standing orders and policy documents applying to Bimberi were created in compliance with the HR Act. On its website and in policy documents CSD frequently claims that Bimberi is a 'human rights compliant' detention centre.

³⁴ Section 40B, *Human Rights Act 2004*.

- 15.6.5 However, during the Review it has become apparent that attention is needed to a wider range of issues than just the legislation and policies to ensure human rights compliance. As discussed in the section on management and operations, the operational practices at Bimberi do not consistently conform to policy and procedure documents. Indeed, some practices have become widespread, but there is no formal procedure governing their use, such as use of 'time out' in response to non-compliance by young people. Operational practices have a significant impact on the rights and well being of both young people and staff. Further, human rights compliance is not something that is achieved once and for all; it requires an ongoing process of review and improvement. Regular reviews of policies, procedures and practices at Bimberi will help ensure ongoing compliance with human rights standards.

15.7 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

- 15.7.1 The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international agreement which builds on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It was adopted by the international community in 2002 and entered into force in 2006. The aim of OPCAT is to prevent the mistreatment of people in detention. Places of detention include prisons, youth detention centres, immigration detention centres, and other places where people are deprived of their liberty, such as mental health facilities and dementia units in aged care facilities.
- 15.7.2 Australia is a party to CAT. The Australian Government signed OPCAT on 19 May 2009, but has not yet ratified the agreement. A proposal for ratifying OPCAT is under consideration by the Australian Government. By signing OPCAT, Australia has agreed to allow inspections of places of detention by:
- An international body, the United Nations Subcommittee on the Prevention of Torture;
 - A national independent authority, to be called a National Prevention Mechanism (NPM); and
 - Local independent authorities based in each State and Territory, in association with the NPM.
- 15.7.3 The Commission welcomes the Australian Government's commitment to establish greater oversight and inspection of places of detention. Once the Australian Government ratifies OPCAT, the ACT Government will be required to participate in regular annual inspections or audits of Bimberi. The Commission recommends that CSD adopt a practice of scheduling regular internal and external audits of Bimberi, to develop good practice in preparation for the future ratification of OPCAT. The Western Australian Office of the Inspector of Custodial Services has created a Code of Inspection Standards which is compliant with OPCAT, which may assist CSD in developing audit standards for use at Bimberi.

Recommendation 15.14: The Community Services Directorate adopt a practice of scheduling regular internal and external audits of Bimberi, to develop good practice in preparation for the future ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- 15.7.4 As detailed throughout this Report, the Commission is mindful that ongoing human rights compliance is not a static state, a fact reflected by OPCAT's requirement for on-going monitoring. If the ACT Government wishes to achieve such a state, it must provide adequate resources for the Commission to periodically audit closed environments against human rights standards. Many of the issues identified by this Review could have been mitigated if the Commission had the resources, and Government support, to audit Bimberi more frequently.

Recommendation 15.15: The ACT Government fund an independent statutory agency to undertake periodic human rights audits of closed environments.

15.8 Complaints handling system at Bimberi

- 15.8.1 Complaints processes are an important part of any organisation. They provide an opportunity to obtain feedback, and identify areas for improvement. A detention centre is a particularly important place in which to have a robust complaints process. Bimberi should welcome comments, questions and complaints from young people, staff, families and external workers who attend the Centre.

Bimberi complaints handling policy

- 15.8.2 The complaints handling system at Bimberi is established in the regulations to the CYP Act. It is a two-tier process, where in the first instance a complainant may speak with a staff member, and if their concerns are not resolved, they may make a formal written complaint for investigation by the Programs Manager.

'Complaints by a Young detainee, Family Member, Significant Person or Visitor (Level 1 Complaint)

The complaint handling stages are:

1. *a young detainee or a family member, significant person or visitor makes contact with a staff member; the staff member will address general concerns – the young detainee, family member, significant person or visitor indicate they are satisfied;*
2. *if the young detainee, family member, significant person or visitor are not satisfied, a staff member will assist and support the young detainee or family member to complete a complaint form. This form is located on the Department's Intranet;*
3. *the young detainee or the other complainant will be kept informed of the progress of their complaint and will be advised of the process to be followed and by whom and when they can expect a response;*
4. *the Program and Services Manager is responsible for maintaining a Level 1 complaint data base and must give every completed complaint form a reference number;*
5. *the Program and Services Manager assesses the complaint, taking into account any indication by the complainant of the outcomes sought by the complaint. These may include: an explanation, a wish to express their concern, seeking an apology, changes to decisions taken, including any view expressed about what the decision should have been. If the Program and Services Manager considers it is more appropriate for the Operations Manager to undertake these tasks, the Program and Services Manager must refer the complaint to the Operations Manager;*
6. *all level 1 complaints are to be acknowledged formally within 3 working days of receipt of the complaint and a response provided within 5 working days;*
7. *feedback will be provided to the complainant on the progress and outcome of their complaint;*
8. *the review will be a staged process, with the appropriate manager reviewing the process and response, seeking approval of both by the Senior Manager and giving feedback to the young detainee/family or visitor as approved by the Senior Manager;*
9. *the young detainee /family/visitor indicate that they are satisfied;*
10. *if the young detainee/family/visitor are not satisfied the matter will be referred to the Director for review as a Level 2 complaint; and*
11. *the manager will ensure that the young detainee, family and visitors are treated with respect and sensitivity and that the complainant is not stigmatised during this process. Decision-making will be fair and consistent with relevant legislation, policy and procedures.³⁵*

- 15.8.3 Unlike other policy documents in the regulations there is no template complaint form attached in a schedule to this policy, therefore it is unclear whether and how staff and young people are able to access it.

Problems with the complaints handling system at Bimberi

- 15.8.4 During the Review the Commission requested access to inspect all records of complaints made in the last 12 months by young people and staff at Bimberi. In response we received several untitled spreadsheets. We used this information, and the comments of young people, staff and families, when examining the complaints handling system at Bimberi.
- 15.8.5 In England and Wales, the independent agency responsible for inspection of prisons, HMIP, has developed eight criteria for assessing the responsiveness of detention centres to complaints by young people, based on international and UK human rights standards.³⁶ These standards view 'complaints' in the same context as 'applications' and 'appeals against decisions'. They also require that detention centres establish mechanisms to communicate with young people and respond to their views and requests.

35 Bimberi Youth Justice Centre 'Provision of Information, Review of Decisions and Complaints Policy and Procedures' (2008).

36 Her Majesty's Inspectorate of Prisons, *Criteria for assessing the treatment and conditions for children and young people held in prison custody* (2009).

- 15.8.6 At Bimberi, young people currently make application for phone contact with family members or friends, visits from family members or friends, purchasing certain items using incentive points, and day leave to attend an important event in the community. There are also processes for young people to appeal decisions about classification, segregation, behaviour breaches, and disciplinary processes.
- 15.8.7 The Commission used the eight human rights standards as articulated by HMIP to assess the complaints systems at Bimberi and identify areas for improvement.

Information about applications and complaints is reinforced through age appropriate notices and posters that are easy to read and that are produced both in English and other languages and displayed across the establishment.

- 15.8.8 The Commission reviewed documents, spoke with staff and young people, and conducted physical observations onsite, all of which indicated that information about complaints, applications and appeals was not readily accessible to young people. There were no posters in the centre on these topics. An admission handbook was designed for young people, but only one of the young people interviewed during the Review recalled receiving the handbook. Further, it is doubtful that a handbook in itself would provide accessible information to this group of young people; staff should be available to explain the information contained in the handbook, perhaps repeatedly throughout the young person's detention. Young people are more likely to absorb information at a time when it is directly relevant to them. We hope that workers inform young people of their appeal rights when explaining reasons for decisions, however, there is no quality assurance process to ensure that this happens.

All applications and complaints, whether formal or informal, are dealt with fairly and promptly. Responses are written in an understandable and respectful manner and clearly address the issues raised with either a resolution or a comprehensive explanation of future action. There is a quality assurance system in place to monitor responses to complaints.

- 15.8.9 Best practice requires agencies to document the complaints received, and the response provided to complaints.³⁷ On this standard, the record keeping system for complaints is inadequate. The Commission requested access to all complaints made at Bimberi, and we received no documentation to indicate that Bimberi management routinely collate all verbal and written complaints in a register or centralised database. According to the information provided to the Commission, most complaints relating to Bimberi were made to the Director's office, not through the internal Bimberi complaints process. Therefore, it seems likely that verbal complaints made onsite at Bimberi are not recorded.
- 15.8.10 CSD were able to provide records of the responses made by the Director to complaints submitted to that office. However, they were unable to provide information to indicate how Bimberi management respond to complaints received onsite. Therefore, we cannot be confident that all complaints were responded to adequately. Indeed, it is most concerning that several people claimed that some records of complaints 'were destroyed', 'were not investigated' or 'went missing'. While these allegations are not corroborated by independent information, we note that a strong record keeping system for complaints at Bimberi would enable CSD to dispute any accusations of complaints going missing.
- 15.8.11 A poorly designed complaints process, and poor record keeping prevent the Commission from properly evaluating the effectiveness of the complaints system at Bimberi. However we can report the perceptions of young people and staff on this question. Many young people told us that making a complaint was not easy, and that when complaints were made they were not dealt with fairly. The staff survey asked respondents for their opinion as to whether 'complaints from staff were generally treated seriously by management at Bimberi', and most respondents stated they believed they were not (see Appendix 5).

Children and young people are encouraged and helped to solve areas of dispute informally, although they are not deterred from making formal complaints, and advocates are available to assist.

- 15.8.12 The majority of people who responded to the staff survey felt that young people are encouraged to make a complaint if they are unhappy with their treatment at Bimberi. During the Review many young people seemed willing to voice their concerns, both to the Commission and to staff members that they trust. Some young people told the Commission that there were certain staff members that they trusted to assist them. However some young people also said they would not bother putting their complaint in writing using the formal complaint process, because they did not believe anything would happen. According to the records provided to the Commission, most complaints at Bimberi were submitted by staff not young people. The Community and Public Sector Union submitted a number of complaints to the Director on behalf of staff, so it appears that workers have access to advocates to assist them if needed.

37 Commonwealth Ombudsman, *Better Practice Guide to Complaints Handling* (2010).

Consultative committees or equivalent consultation processes are held at least monthly when children and young people are able and encouraged to present any areas of grievance or dissatisfaction directly to senior members of staff.

- 15.8.13 This is a fundamental absence, and it is an area in which the Commission recommends urgent action. There could be significant improvement to the communication channels between Bimberi management and young people, staff and families. This issue is discussed further below.

Children and young people can and do access and submit application and complaint forms easily and in confidence and without fear of punishment or recrimination.

- 15.8.14 Both young people and staff reported fear of recrimination if they made a complaint. Young people told the Commission they do not bother making a formal written complaint because nothing will happen or they will get treated badly. Workers reported feeling harassed by management for making complaints. Some reported that they felt there was a culture of 'we don't complain'. According to the interviews and survey conducted by the Commission, there is also a perception or feeling among some staff that those who make complaints are not promoted.
- 15.8.15 The Commission does not have sufficient information to assess the accuracy of the above perceptions, however we note that the existence of such perceptions (even if inaccurate) would undermine the effectiveness of the complaint handling system.
- 15.8.16 It is not clear to the Commission that young people have access to the complaint form mentioned in the complaints policy. The summary of complaints provided by CSD did not include a copy of the Bimberi complaint form. The Commission has only seen one copy of a complaint form, and this was found in a young person's administration file, in the behaviour management section. This complaint was not included in the list sent to us by CSD, which indicates either poor record keeping or failure to acknowledge and respond to this complaint at all.

Children and young people know how to appeal against decisions and appeals are dealt with fairly and responded to within seven days.

- 15.8.17 The complaints process intersects closely with administrative decision making processes conducted within Bimberi. If a young person wishes to make a complaint, it may relate to the outcome of a decision made by Bimberi staff. During the Review young people approached Commission staff to discuss concerns they had about decisions made by Bimberi staff. Some of the complaints raised included claims of:
- Refusal to grant leave to attend a friend's funeral;
 - Ongoing placement in segregation for a period of more than two months;
 - Inability to access education while in segregation;
 - Being forced to participate in a particular education program;
 - Being denied access to music classes as a punishment for an incident that occurred outside school; and
 - Threats of transfer to Alexander Maconochie Centre.
- 15.8.18 From the Commission's review of documents, and interviews with young people, it is not clear that young people are aware of how they might appeal decisions relating to segregation, classification, day leave, behaviour management or phone/email contact. It is also not clear that appeal processes are designed in a way that is accessible to young people. The Commission has concerns about the transparency of the processes used to make some decisions affecting young people. Further discussion about transparent and evidence based decision making is contained earlier in this chapter, and in Chapter 14 (condition of detention). In Chapter 14 the Commission recommends that Legal Aid ACT or a Community Legal Centre be funded to provide legal advice and minor assistance to young people in Bimberi in relation to internal applications and appeals.

All children and young people know how to contact the Official Visitor, Public Advocate, Human Rights Commission, or their solicitor, and are helped to pursue any grievances with the help of senior managers within and outside the centre.

- 15.8.19 Young people are able to use the Starnet phone system to call the OV, the PA and the Commission from their room without charge. The OV visits every second Tuesday and makes herself available to every young person in Bimberi. The PA also visits monthly. The Commission viewed documents, and heard reports from young people, which indicate that at least some staff are willing and able to assist young people to make contact with external complaints and advocacy agencies.

There is a monthly analysis of complaints (both formal and informal, upheld and not upheld) for patterns or trends, paying particular attention to potential discrimination. This management information is used appropriately to identify areas for improvement.

- 15.8.20 Another fundamental shortcoming of the complaint system at Bimberi appears to be a failure to conduct systemic analysis of complaints. As discussed above, poor recordkeeping and lack of accountability systems mean CSD was unable to provide the Commission with precise or detailed information about how many complaints have been made at Bimberi, and whether they have been responded to adequately. The Commission requested access to all records relating to complaints at Bimberi, and we did not see any documentation to indicate that Bimberi management or CSD analyse complaints for the purpose of systemic improvement.

A way forward: improving responses to complaints

- 15.8.21 The Commission recommends improvement to the complaints handling system at Bimberi in five areas:

- Create a culture of listening to young people, workers and families;
- Pre-empt complaints by establishing communication channels;
- Review and improve the design of the complaints process;
- Record and analyse complaints; and
- Identify common themes in complaints and address systemic problems.

Create a culture of listening to young people, workers and families

- 15.8.22 Bimberi and CSD should regularly 'ask themselves if there are barriers to complaining that need to be dealt with'.³⁸ Bimberi management should take steps to create a culture of positive attitude towards complaints, and promote the message that complaints and feedback are welcome. Bimberi management should demonstrate positive attitude when responding to complaints, and encourage staff to emulate this practice. Management can create a culture in which complaints are valued, and give reassurance that there will be no adverse repercussions for people who come forward.
- 15.8.23 Under the HRC Act Bimberi must display accessible information for young people and their families about their right to make a complaint, and how feedback may be given to Bimberi management.³⁹ Posters and flyers are one way to fulfil this obligation. It may be helpful to design similar visual messages for staff.
- 15.8.24 During individual conversations when young people express concerns or complaints, staff should explain their options for making a complaint, and what will happen in response. To do this effectively, staff will require training in responding to complaints.

Pre-empt complaints by establishing communication channels

- 15.8.25 By informing staff and young people about centre operations and the reasons for decisions, and providing them opportunity to comment, Bimberi could address concerns early and reduce the need for complaints.
- 15.8.26 Three circumstances in which a young person is more likely to make a complaint are following an incident, disciplinary action, or application. When unit managers conduct their investigation into incidents, they should invite young people to provide witness statements, or describe their recollection of the incident, in the same way staff are able to record their version of events. When responding to applications (for day leave, visits, mail or phone contact) or implementing decisions about segregation, classification, behaviour breach or disciplinary charges, it is both a legal requirement and good practice to fully explain decisions, answer questions, and provide support if a young person wants to appeal a decision.
- 15.8.27 The Commission recommends Bimberi put renewed effort into providing information to young people, explaining reasons for decisions, listening to young people's concerns, and involving them in decision-making wherever possible. When young people were surveyed during the Review, 60% reported that they had little say on the way things were run at Bimberi, and most asked for more input into recreational activities, education programs, mixing practices, rewards systems, searches, phone calls and visits and preparation for return to the community.

38 Commonwealth Ombudsman, *Better practice guide to complaint handling* (2010), 12.

39 Section 95, *Human Rights Commission Act 2005*.

- 15.8.28 The Commission recommends Bimberi begin to hold regular meetings with young people to listen to their concerns and their suggestions. Staff could conduct weekly unit meetings, to facilitate a conversation about what young people are concerned about. They could write down young people's concerns and questions, to follow up and report back the next week. In doing so they should maintain a log book of comments/questions and the response provided. By engaging with the young people as a group to listen or provide information, Bimberi could minimise young people's frustration, and contribute to a more settled environment.
- 15.8.29 Similar efforts need to be made to communicate with staff. For further discussion of this issue see the sections on staff communication and Bimberi management.
- 15.8.30 In Chapter 3 the Commission recommends Bimberi strengthen communication with family members of young people. It might be helpful to nominate one or two youth workers in each unit as family liaison officers, whom parents can call if they have questions or concerns. A unit manager could be placed on duty in the reception building during peak visiting times (after school and on weekends) to greet parents, and answer questions. There should be posters and flyers available in the reception area to provide basic information and answer frequently asked questions.

Recommendation 15.16: The Community Services Directorate require Bimberi management and staff to:

- Put renewed effort into providing information to young people, explaining reasons for decisions, listening to young people's concerns, and involving them in decision-making wherever possible
- Hold regular meetings with young people to listen to their concerns and suggestions.

Review and improve the design of the complaints process

- 15.8.31 There are several manuals and guidelines which outline good practice in complaints handling. In the Australian context these include the NSW Ombudsman's *Effective Complaint Handling*, and *Guidelines for dealing with youth complaints*, and the Commonwealth Ombudsman's *Better practice guide to complaint handling*.⁴⁰ The Commission recommends that CSD and Bimberi management review the complaints handling policy, design more detailed complaints handling procedures, and institute suitable record keeping systems, using these manuals as a guide.
- 15.8.32 Overall the current two-tiered structure for responding to complaints is suitable; young people or parents can discuss their concerns verbally with a youth worker in the first instance, then make a formal written complaint if their concerns are not resolved. It is likely that many young people and family members will be more comfortable raising their concerns verbally rather than in writing, so a formal written process should not be the first response to complaints in Bimberi. However, there needs to be changes to the design of the two-tier process to ensure quality control.

Recommendation 15.17: The Community Services Directorate, in consultation with Bimberi residents and staff, review the complaints handling policy and design more detailed complaints handling procedures using the manuals and guidelines provided by the Commonwealth Ombudsman and NSW Ombudsman.

First response to complaints: frontline responsive problem solving

- 15.8.33 *Complaints from young people.* Bimberi policy should specify that a complaint may be disclosed to a youth worker, case manager, or health professional at Bimberi, and all staff have responsibility to listen to young people if they have a concern. The worker should attempt to resolve the issue informally, or connect the young person with a worker who can. The worker should record the complaint in writing, to ensure the matter will be followed up, and invite the young person to confirm the written record by adding their signature. When complaints are made to staff in the residential units, there could be a log book in which complaints, questions or concerns can be recorded. At weekly unit meetings workers could examine the log book to ensure a response has been provided to the young person.

40 NSW Ombudsman, *Effective Complaint Handling* (2011); NSW Ombudsman, *Guidelines for dealing with youth complaints* (2008); and Commonwealth Ombudsman, above n 33.

15.8.34 *Complaints from workers.* Several current and former staff told the Commission that in the past they were not comfortable raising concerns with Bimberi management. The Commission suggests CSD ensure staff are aware of the range of options available to them if they have a complaint at work, including raising the matter with the Director of the Office for Children, Youth and Family Support, contacting the union, approaching the human resources unit within CSD, approaching the Consumer Quality and Advocacy Service within CSD, or approaching the Senior Manager responsible for business integrity, management and risk under the *Public Sector Management Act 1994*.

15.8.35 *Complaints from families.* As discussed in Chapter 8 (case management), a unit manager on duty in the reception area during peak visiting times (after school and weekends), could be available to build relationships with family members and discuss any concerns.

Second response to complaints: formal investigation

15.8.36 The Bimberi complaints policy needs to provide more detailed guidance on the second stage of the complaint process. As mentioned above, various guidelines and manuals offer a structured framework to ensure good practice, and Bimberi can review the current policy using these resources. Once the formal investigation process is designed, it needs to be better communicated to young people, workers and families, both verbally and in writing.

Record and analyse complaints

15.8.37 Even if a complaint is provided verbally it needs to be documented. Staff should be trained and provided with a simple efficient process for recording basic information in a complaints database, including:

- Date;
- Name of the person making the complaint (complainant);
- Complainant's position (young person, staff member, family member);
- Complainant's contact details;
- Complainant's preferred method of contact;
- The issues raised in the complaint;
- Complainant's desired outcome;
- The name of the staff member who received the complaint;
- The name of the staff member with responsibility for responding to the complaint;
- The date a response was provided to the complainant;
- The nature of the response;
- Complainant's level of satisfaction with the complaint process; and
- Complainant's level of satisfaction with the complaint outcome.

15.8.38 Bimberi should be provided with a formal electronic database for registering complaints, from which information cannot be deleted. Records of complaints should not be stored on staff email accounts or their personal computer drive where they are inaccessible to others. The database should provide Bimberi management with the capacity to track and monitor the progress of complaints and to analyse complaint data. Bimberi management should monitor complaints to ensure responses are provided in a timely way.

15.8.39 Bimberi management should set both qualitative and quantitative measures for assessing their complaint handling systems. For example, they might report on the length of time taken to respond to complaints, and the reported level of satisfaction by the complainant.

- 15.8.40 CSD management should request a monthly report of complaints by young people, staff and families at Bimberi, including the issues raised in complaints, the process used to manage complaints, and the response provided to complainants.

Recommendation 15.18: The Community Services Directorate provide training to Bimberi management and staff on responding to complaints and improved record keeping for complaints.

Identify common themes in complaints and address systemic problems

- 15.8.41 Complaints provide an opportunity for Bimberi management to identify areas for improvement in centre operations. They should monitor the narrative of each complaint to identify systemic problems and underlying causes of complaints. They should also monitor trends in complaints across time. Above all, CSD and Bimberi management need to demonstrate willingness to improve Bimberi and make changes. The Commission has been told that CSD commenced a 'change management program' at Bimberi during 2011. However despite requests for further information, we have not received details of any changes that have taken place under the program.

Recommendation 15.19: The Community Services Directorate analyse complaints data to identify areas for improvement in the operation of Bimberi and Community Youth Justice.

Recommendation 15.20: The Executive of the Community Services Directorate be provided with a monthly report of the issues raised in complaints relating to Bimberi and Community Youth Justice, the process used to manage complaints, and the response provided to complainants.

Glossary

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ACT Health	Now known as the ACT Health Directorate, or ACT Health
AIC	Australian Institute of Criminology
AIHW	Australian Institute of Health & Welfare
AJJA	Australian Juvenile Justice Administrators
AOD	Alcohol & Other Drug
Bimberi	Bimberi Youth Justice Centre
BOP	UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
BR	UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)
BTP	UN Basic Principles for the Treatment of Prisoners
CAMHS	Child & Adolescent Mental Health Services
CAT	United Nations Convention against Torture & other Cruel, Inhuman or Degrading Treatment or Punishment
CHART	Changing Habits & Reaching Targets
Child	A person aged under the age of 12.
CMD	ACT Chief Minister's Department (now known as Chief Minister's Directorate, or CMD)
CROC	United Nations Convention on the Rights of the Child
CSD	ACT Community Services Directorate (formerly the ACT Department of Disability, Housing & Community Services, or DHCS)
CYJ	Community Youth Justice
CYP Act	<i>Children and Young People Act 2008</i>
DET	The former ACT Department of Education & Training (now known as the ACT Education & Training Directorate, or ETD)
DHCS	The former ACT Department of Disability, Housing & Community Services (now known as the ACT Community Services Directorate, or CSD)
ETD	ACT Education & Training Directorate (formerly the ACT Department of Education & Training, or DET)
FMH	Forensic Mental Health
HR Act	<i>ACT Human Rights Act 2004</i>
HRC	ACT Human Rights Commission
HRC Act	<i>Human Rights Commission Act 2005</i>
ILP	Individual Learning Plan
JACS	The former ACT Department of Justice & Community Services (now known as the ACT Justice & Community Services Directorate, or CJD)

METC	Murrumbidgee Education & Training Centre (METC)
MHACT	Mental Health ACT
OCYFS	Office for Children, Youth & Family Support
OPCAT	Optional Protocol to the Convention Against Torture
OV	Official Visitor under the <i>Children and Young People Act 2008</i>
PA	Public Advocate of the ACT
PA Act	<i>Public Advocate Act 2005</i>
POJ	United Nations Rules for the Protection of Juveniles Deprived of their Liberty
RCIADC	Royal Commission Into Aboriginal Deaths in Custody
SMR	United Nations Standard Minimum Rules for the Treatment of Prisoners
YLS/CMI	Youth Level of Service/Case Management Inventory
Young person	There are varying definitions in ACT legislation for a child or young person. The UN Convention on the Rights of the Child defines a child as being up to the age of 18, and this is reflected in many ACT laws. For the purposes of this Report, a young person is someone age up to 21 years, based on the provisions of the CYP Act relating to young people who may be resident at Bimberi.
YSP	Youth Services Program



Australian Government
Australian Institute of Criminology

Juveniles' contact with the criminal justice system in the ACT: An overview

Kelly Richards
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Executive summary

This report provides an overview of data on juveniles' contact with the criminal justice system in the ACT. In addition, it discusses best practice principles in relation to the measurement of juvenile recidivism, and outlines current practice in the ACT for measuring juvenile recidivism. Finally, it outlines data gaps in relation to juveniles' contact with the criminal justice system in the ACT.

Juveniles' contact with the police in the ACT

- During 2008-09, 2,851 charges were laid against juveniles in the ACT;
- Most (53.3%) charges related to offences against property;
- The most common charges were in relation to offences against justice procedures (13.5% of all charges), shop stealing (13%) and other theft (13%);
- Three-quarters of charges against juveniles were laid against males; similarly, three-quarters of charges were laid against older juveniles (ie those aged 15 to 17 years);
- Twelve percent of charges were laid against Indigenous juveniles. As Indigenous juveniles comprise only three percent of the juvenile population of the ACT, this reflects a substantial over-representation;
- Charges against juveniles most commonly resulted in a police caution (29.7%), followed by arrest (29.0%), summons (20.6%), and transfer to the Children's Court (17.4%). Only small proportions of juveniles were diverted via a restorative justice conference (2.4%), a drug diversion (0.7%) or a Simple Cannabis Offence Notice (SCON) (0.3%).

Juveniles' contact with the Children's Court in the ACT

- 485 defendants were finalised in the ACT Children's Court during 2008-09;
- Approximately three-quarters of defendants were male;
- Most defendants were adjudicated, although nearly one-third had their case withdrawn. Nationally, only 10 percent of Children's Courts defendants had their cases withdrawn during 2008-09;
- Of those adjudicated, most (87.0%) defendants were proven guilty;
- The most common principal offences adjudicated in the ACT Children's Court during 2008-09 were assault (21.7%), unlawful entry with intent (13.7%), other theft (13.7%) and regulatory driving offences (13.4%);
- Almost all (95.7%) of defendants found guilty in the Children's Court were sentenced to a non-custodial order;
- Of those sentenced to a custodial order, all received either a fully suspended sentence or a sentence of custody in the community.

Juveniles' contact with correctional agencies in the ACT

- Most juveniles under supervision in the ACT were under community-based supervision during 2008-09;
- In total, there were 200 juveniles under community-based supervision during this time;
- Most (81%) of those under community-based supervision were male;
- On an average day during 2008-09, there were 77 juveniles under community-based supervision in the ACT;
- Only a small number of juveniles were detained in the ACT during 2008-09. At 30 June 2009, there were nine juveniles (6 males and 3 females) in detention in the ACT;
- The over-representation of Indigenous juveniles has fluctuated substantially in the ACT, due to its small juvenile detention population;
- At 30 June 2009, Indigenous juveniles were 15.6 times as likely to be detained as non-Indigenous juveniles, compared with 22.7 nationally;
- Two-thirds of juvenile detainees (n = 6) were on remand on 30 June 2009. This proportion closely reflects the proportion of juvenile detainees that is remanded rather than sentenced nationally.

Juvenile recidivism in the ACT

- Juvenile recidivism in the ACT is measured as a 'return to service' – that is, the return of a juvenile to a new custodial order (for juveniles currently serving a custodial order) or the return of a juvenile to a new community-based order (for juveniles currently serving a community-based order);
- The ACT Department of Disability, Housing and Community Services reported a rate of zero percent recidivism of sentenced young people in custody and a rate of 33 percent recidivism of young people on community-based orders for the 2008-09 period.

Data gaps in relation to juveniles' contact with the criminal justice system in the ACT

- As is the case in all jurisdictions, a range of data gaps exist in the ACT that could be addressed to provide a richer understanding of juveniles' contact with the criminal justice system.

Introduction and context

This report to the ACT Human Rights Commission provides an overview of data on juveniles' contact with the criminal justice system in the Australian Capital Territory (ACT). Specifically, the report covers:

- Juveniles' contact with police in the ACT;
- Juveniles' contact with the ACT Children's Court;
- Juveniles' contact with correctional agencies in the ACT;
- Best practice principles for the measurement of juvenile recidivism;
- The measurement of juvenile recidivism in the ACT; and
- Data gaps in relation to juveniles' contact with the criminal justice system in the ACT.

The purpose of this report is to contribute towards the inquiry into the ACT youth justice system by the Children & Young People Commissioner, and the human rights audit of Bimberi Youth Justice Centre by the Human Rights & Discrimination Commissioner.

Methodology

The methodology for this report involved:

- Analysing publicly available data on juveniles' contact with the police, courts and correctional agencies in the ACT;
- Analysing data on juveniles' contact with the police in the ACT provided to the Australian Institute of Criminology (AIC) by ACT Policing for the AIC's *Juveniles' contact with the criminal justice system in Australia* national monitoring data set (permission has been obtained from ACT Policing to use these data for the current report);
- Analysing data from the AIC's *Juveniles in detention in Australia* national monitoring data set;
- Conducting a consultation with staff of the ACT Department of Disability, Housing and Community Services (DHCS) about the measurement of juvenile recidivism in the ACT; and
- Providing an overview of previous AIC work on best practice principles for the measurement of juvenile recidivism.

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the AIC with access to the Juvenile Justice National Minimum Data Set for the purpose of the AIC's Juveniles in detention in Australia monitoring program; ACT Policing for providing access to data on juveniles' contact with police in the ACT for the period 2008-2009; and, staff at the ACT Office for Children, Youth and Family Services who were consulted for this report about the measurement of juvenile recidivism in the ACT

Juveniles’ contact with the police in the ACT

For this report, data on juveniles’ contact with police in the ACT have been taken from two sources:

- Data provided to the AIC by ACT Policing; and
- *ACT Policing Annual report* (Australian Federal Police [AFP] 2009).

An overview of publicly available data sources on juveniles’ contact with the criminal justice system in the ACT is at Table 1.

Table 1. Sources of publicly available data on juveniles’ contact with the criminal justice system in the ACT	
Policing	Australian Federal Police <i>ACT Policing annual report</i>
Children’s Court	Australian Bureau of Statistics <i>Criminal courts Australia</i> ACT Department of Justice and Community Safety <i>Statistical profile</i>
Corrections	Australian Institute of Criminology <i>Juveniles in detention in Australia</i> annual monitoring report Australian Institute of Health and Welfare <i>Juvenile justice in Australia</i> annual report

How many juveniles come into contact with the police in the ACT?

According to the AFP (2009), 605 juveniles (that is, young people aged 10 to 17 years) were taken into police custody during 2008-09 (see Table 2). Of these, the majority (91%) were arrested. As Table 2 indicates, approximately four times as many male juveniles were taken into police custody as female juveniles. Approximately four times as many non-Indigenous juveniles as Indigenous juveniles were taken into police custody during this time. Indigenous juveniles were heavily over-represented among juveniles taken into police custody. During 2008-09, 18 percent of juveniles taken into police custody were Indigenous, although Indigenous juveniles comprised only 2.9 percent of the ACT’s juvenile population (ABS 2010a).

Table 2. Juveniles taken into police custody in the ACT, 2008-09

	Juveniles arrested			Juveniles taken into protective custody for intoxication			Total in custody		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Indigenous	80	24	104	11	3	14	91	27	118
Non-Indigenous	362	84	446	31	10	41	393	94	487
Total	442	108	550	42	13	55	484	121	605

Source: Adapted from Australian Federal Police (2009)

Also during the 2008-09 period, 57 juveniles were referred by ACT Policing to diversionary programs (AFP 2009).

These figures varied only marginally in 2009-10. During 2009-10, 607 juveniles were taken into custody by police. Ninety-two percent of these were arrested. As Table 3 shows, approximately four times as many male as female juveniles, and over three times as many non-Indigenous as Indigenous juveniles were taken into police custody during 2009-10 (AFP 2010). Seventy-six juveniles were referred to a diversionary program during this time (AFP 2010).

Table 3. Juveniles taken into police custody in the ACT, 2009-10

	Juveniles arrested			Juveniles taken into protective custody for intoxication			Total in custody		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Indigenous	100	31	131	7	3	10	107	34	141
Non-Indigenous	342	85	427	31	8	39	373	93	466
Total	442	116	558	38	11	49	480	127	607

Source: Adapted from Australian Federal Police (2010)

Data provided to the AIC by ACT Policing are far more detailed than those publicly available. Data provided by ACT Policing indicate that during 2008-09, police laid 2,851 charges against juveniles in the ACT (see Table 4). Of these, 11.6 percent were laid against Indigenous juveniles; the remaining 88.4% were laid against non-Indigenous juveniles. As might be expected, males comprised over three-quarters (76.3%) of all juveniles against whom the charges were laid, and older juveniles (those aged 15 to 17 years) comprised three-quarters of all juveniles against whom charges were laid.

For which offences do juveniles come into contact with the police in the ACT?

As indicated by Table 4, juveniles were primarily charged with offences against property (53.3%) during the 2008-09 period, followed by other offences (37.1%) and offences against the person (9.6%). Juveniles were most commonly charged with offences against justice procedures (13.5% of all charges), shop stealing (13% of all charges) and other theft (also 13% of all charges). It should be noted that in the ACT, failing to appear on bail is an offence. This may impact on the number of juveniles apprehended by police in relation to offences against justice procedures. As Table 6 below indicates, a high proportion (40.9%) of arrests of juveniles are in relation to offences against justice procedures.

Table 4. Charges against juveniles in the ACT, 2008-09, by sex, Indigenous status and offence type (number)

	Males		Females		Total
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	
Conspiracy to murder	0	2	0	0	2
Assault causing GBH	0	6	0	0	6
Assault causing ABH	4	34	0	9	47
Assault (other)	15	119	4	59	197
Sexual offences	0	13	0	0	13
Kidnapping and abduction	0	2	0	0	2
Other offences against the person	0	4	0	2	6
<u>Offences against the person</u>	19	180	4	70	273
Armed robbery	4	8	1	7	20
Other robbery	10	38	0	4	52
Burglary (dwellings)	32	169	1	24	226
Burglary (shops)	0	15	0	4	19
Burglary (other)	2	64	0	5	71
Fraud	0	6	2	3	11
Receiving/handling proceeds of crime	0	7	0	5	12
Unlawful possession	6	34	1	14	55
Motor vehicle theft	28	69	3	10	110
Bicycle theft	0	1	0	2	3
Other theft	30	264	3	73	370
Shop stealing	10	148	15	197	370
Arson	0	6	0	1	7
Other property damage	15	148	6	25	194
<u>Offences against property</u>	137	977	32	374	1,520
Government/security operations	0	8	0	1	9
Justice procedures	67	246	22	51	386
Firearms and weapons	4	45	0	8	57
Other offences against good order	9	159	4	85	257
Possess and use drugs	9	35	0	7	51
Deal and supply drugs	0	4	0	0	4
Other offences nec	21	254	2	17	294
<u>Other offences</u>	110	751	28	169	1,058
<u>Total</u>	266	1,908	64	613	2,851

Source: ACT Policing [computer file]

What are the outcomes of juveniles' contact with the police in the ACT?

Charges against juveniles resulted most commonly in a police caution (29.7%), followed by arrest (29.0%), summons (20.6%), and a transfer to the Children's Court (17.4%). Small proportions of juveniles were diverted via a restorative justice conference (2.4%), a drug diversion (0.7%) or a Simple Cannabis Offence Notice (SCON) (0.3%) (see Table 5).

Table 5. Outcomes of charges against juveniles in the ACT, 2008-09, by sex and Indigenous status (number)

	Males		Females		Total
	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	
Arrest	131	565	31	99	826
Caution	20	479	24	323	846
Court	68	356	5	67	496
Conference	4	47	1	15	67
Drug diversion	2	13	0	5	20
SCON	0	7	0	1	8
Summons	41	441	3	103	588
Total	266	1,908	64	613	2,851

Source: ACT Policing [computer file]

Offence type and offence seriousness are key factors that influences police decision-making about how juveniles are dealt with in the criminal justice system. Tables 6 to 12, which contain data on outcome by offence type for juveniles in the ACT for the 2008-09 financial year, provide some insight into the relationship between offence type and seriousness and the outcomes of juveniles' contact with the police. As indicated by these Tables, the most common offences for which juveniles were **arrested** during 2008-09 were offences against justice procedures (40.9%), other offences not elsewhere classified (11.7%) and assault (other) (6.8%). The most common offences for which juveniles were **cautioned** by police were shop stealing (31.1%), other offences against good order (23.8%) and other theft (12.1%). For juveniles referred by police to the **court**, the most common offences were other theft (25.4%), burglary (dwellings) (22.0%) and shop stealing (7.7%). Juveniles referred by police to a **conference** were most commonly apprehended in relation to other theft (23.9%), other property damage (23.9%) and shop stealing (10.4%). As is to be expected, 100 percent of juveniles diverted via a **drug diversion** or given a **SCON** were apprehended in relation to possess and use drugs offences. The most common offences for which juveniles were given a **summons** by police were other offences not elsewhere classified (26.2%), other theft (13.8%) and assault (other) (11.6%).

Table 6. Charges against juveniles in the ACT, 2008-09, resulting in arrest (number)

	Females		Males		Total
	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous	
Conspiracy to murder	0	0	0	0	0
Assault causing GBH	0	0	2	0	2
Assault causing ABH	3	0	11	2	16
Assault (other)	12	1	36	7	56
Sexual offences	0	0	4	0	4
Kidnapping and abduction	0	0	2	0	2
Other offences against the person	1	0	2	0	3
Offences against the person	16	1	57	9	83
Armed robbery	7	0	7	4	18
Other robbery	2	0	18	4	24
Burglary (dwellings)	4	1	30	4	39
Burglary (shops)	0	0	4	0	4
Burglary (other)	0	0	10	1	11
Fraud	0	0	1	0	1
Receiving/handling proceeds of crime	0	0	0	0	0
Unlawful possession	2	0	6	5	13
Motor vehicle theft	1	2	14	8	25
Bicycle theft	0	0	0	0	0
Other theft	10	2	30	3	45
Shop stealing	0	1	11	0	12
Arson	1	0	3	0	4
Other property damage	6	3	30	7	46
Offences against property	33	9	164	36	242
Government/security operations	0	0	4	0	4
Justice procedures	42	18	218	60	338
Firearms and weapons	3	0	18	2	23
Other offences against good order	4	2	15	4	25
Possess and use drugs	0	0	7	5	12
Deal and supply drugs	0	0	2	0	2
Other offences nec	1	1	80	15	97
Other offences	50	21	344	86	501
Total	99	31	565	131	826

Source: ACT Policing [computer file]

Table 7. Charges against juveniles in the ACT, 2008-09, resulting in a police caution (number)

	Females		Males		Total
	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous	
Conspiracy to murder	0	0	0	0	0
Assault causing GBH	0	0	0	0	0
Assault causing ABH	2	0	3	0	5
Assault (other)	13	2	23	2	40
Sexual offences	0	0	0	0	0
Kidnapping and abduction	0	0	0	0	0
Other offences against the person	0	0	2	0	2
<u>Offences against the person</u>	<u>15</u>	<u>2</u>	<u>28</u>	<u>2</u>	<u>47</u>
Armed robbery	0	0	0	0	0
Other robbery	0	0	2	0	2
Burglary (dwellings)	8	0	15	1	24
Burglary (shops)	3	0	1	0	4
Burglary (other)	0	0	19	0	19
Fraud	3	2	0	0	5
Receiving/handling proceeds of crime	4	0	5	0	9
Unlawful possession	8	0	11	0	19
Motor vehicle theft	5	0	12	1	18
Bicycle theft	2	0	0	0	2
Other theft	33	1	67	1	102
Shop stealing	144	12	101	6	263
Arson	0	0	1	0	1
Other property damage	9	3	42	2	56
<u>Offences against property</u>	<u>219</u>	<u>18</u>	<u>276</u>	<u>11</u>	<u>524</u>
Government/security operations	1	0	1	0	2
Justice procedures	3	2	11	0	16
Firearms and weapons	4	0	22	2	28
Other offences against good order	75	2	122	2	201
Possess and use drugs	1	0	4	1	6
Deal and supply drugs	0	0	0	0	0
Other offences nec	5	0	15	2	22
<u>Other offences</u>	<u>89</u>	<u>4</u>	<u>175</u>	<u>7</u>	<u>275</u>
<u>Total</u>	<u>323</u>	<u>24</u>	<u>479</u>	<u>20</u>	<u>846</u>

Source: ACT Policing [computer file]

Table 8. Charges against juveniles in the ACT, 2008-09, resulting in a charge before court (number)

	Females		Males		Total
	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous	
Conspiracy to murder	0	0	2	0	2
Assault causing GBH	0	0	3	0	3
Assault causing ABH	1	0	8	1	10
Assault (other)	10	0	15	3	28
Sexual offences	0	0	1	0	1
Kidnapping and abduction	0	0	0	0	0
Other offences against the person	1	0	0	0	1
<u>Offences against the person</u>	<u>12</u>	<u>0</u>	<u>29</u>	<u>4</u>	<u>45</u>
Armed robbery	0	1	0	0	1
Other robbery	0	0	12	6	18
Burglary (dwellings)	1	0	89	19	109
Burglary (shops)	0	0	2	0	2
Burglary (other)	3	0	15	0	18
Fraud	0	0	2	0	2
Receiving/handling proceeds of crime	1	0	0	0	1
Unlawful possession	3	0	6	1	10
Motor vehicle theft	2	1	18	7	28
Bicycle theft	0	0	1	0	1
Other theft	5	0	102	19	126
Shop stealing	29	1	6	2	38
Arson	0	0	0	0	0
Other property damage	3	0	27	2	32
<u>Offences against property</u>	<u>47</u>	<u>3</u>	<u>280</u>	<u>56</u>	<u>386</u>
Government/security operations	0	0	3	0	3
Justice procedures	5	2	16	4	27
Firearms and weapons	0	0	1	0	1
Other offences against good order	2	0	6	3	11
Possess and use drugs	0	0	1	1	2
Deal and supply drugs	0	0	0	0	0
Other offences nec	1	0	20	0	21
<u>Other offences</u>	<u>8</u>	<u>2</u>	<u>47</u>	<u>8</u>	<u>65</u>
<u>Total</u>	<u>67</u>	<u>5</u>	<u>356</u>	<u>68</u>	<u>496</u>

Source: ACT Policing [computer file]

Table 9. Charges against juveniles in the ACT, 2008-09, resulting in a diversionary conference (number)

	Females		Males		Total
	Non-Indigenous	Indigenous	Non-Indigenous	Non-Indigenous	
Conspiracy to murder	0	0	0	0	0
Assault causing GBH	0	0	0	0	0
Assault causing ABH	0	0	1	0	1
Assault (other)	3	0	2	0	5
Sexual offences	0	0	0	0	0
Kidnapping and abduction	0	0	0	0	0
Other offences against the person	0	0	0	0	0
<u>Offences against the person</u>	<u>3</u>	<u>0</u>	<u>3</u>	<u>0</u>	<u>6</u>
Armed robbery	0	0	0	0	0
Other robbery	0	0	0	0	0
Burglary (dwellings)	0	0	4	0	4
Burglary (shops)	0	0	0	0	0
Burglary (other)	0	0	4	1	5
Fraud	0	0	1	0	1
Receiving/handling proceeds of crime	0	0	0	0	0
Unlawful possession	0	0	2	0	2
Motor vehicle theft	0	0	3	1	4
Bicycle theft	0	0	0	0	0
Other theft	7	0	8	1	16
Shop stealing	4	1	2	0	7
Arson	0	0	2	0	2
Other property damage	1	0	14	1	16
<u>Offences against property</u>	<u>12</u>	<u>1</u>	<u>40</u>	<u>4</u>	<u>57</u>
Government/security operations	0	0	0	0	0
Justice procedures	0	0	0	0	0
Firearms and weapons	0	0	1	0	1
Other offences against good order	0	0	3	0	3
Possess and use drugs	0	0	0	0	0
Deal and supply drugs	0	0	0	0	0
Other offences nec	0	0	0	0	0
<u>Other offences</u>	<u>0</u>	<u>0</u>	<u>4</u>	<u>0</u>	<u>4</u>
<u>Total</u>	<u>15</u>	<u>1</u>	<u>47</u>	<u>4</u>	<u>67</u>

Source: ACT Policing [computer file]

Table 10. Charges against juveniles in the ACT, 2008-09, resulting in a drug diversion (number)

	Females		Males		Total
	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous	
Conspiracy to murder	0	0	0	0	0
Assault causing GBH	0	0	0	0	0
Assault causing ABH	0	0	0	0	0
Assault (other)	0	0	0	0	0
Sexual offences	0	0	0	0	0
Kidnapping and abduction	0	0	0	0	0
Other offences against the person	0	0	0	0	0
<u>Offences against the person</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Armed robbery	0	0	0	0	0
Other robbery	0	0	0	0	0
Burglary (dwellings)	0	0	0	0	0
Burglary (shops)	0	0	0	0	0
Burglary (other)	0	0	0	0	0
Fraud	0	0	0	0	0
Receiving/handling proceeds of crime	0	0	0	0	0
Unlawful possession	0	0	0	0	0
Motor vehicle theft	0	0	0	0	0
Bicycle theft	0	0	0	0	0
Other theft	0	0	0	0	0
Shop stealing	0	0	0	0	0
Arson	0	0	0	0	0
Other property damage	0	0	0	0	0
<u>Offences against property</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Government/security operations	0	0	0	0	0
Justice procedures	0	0	0	0	0
Firearms and weapons	0	0	0	0	0
Other offences against good order	0	0	0	0	0
Possess and use drugs	5	0	13	2	20
Deal and supply drugs	0	0	0	0	0
Other offences nec	0	0	0	0	0
<u>Other offences</u>	<u>5</u>	<u>0</u>	<u>13</u>	<u>2</u>	<u>20</u>
<u>Total</u>	<u>5</u>	<u>0</u>	<u>13</u>	<u>2</u>	<u>20</u>

Source: ACT Policing [computer file]

Table 11. Charges against juveniles in the ACT, 2008-09, resulting in a SCON (number)

	Females		Males		Total
	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous	
Conspiracy to murder	0	0	0	0	0
Assault causing GBH	0	0	0	0	0
Assault causing ABH	0	0	0	0	0
Assault (other)	0	0	0	0	0
Sexual offences	0	0	0	0	0
Kidnapping and abduction	0	0	0	0	0
Other offences against the person	0	0	0	0	0
<u>Offences against the person</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Armed robbery	0	0	0	0	0
Other robbery	0	0	0	0	0
Burglary (dwellings)	0	0	0	0	0
Burglary (shops)	0	0	0	0	0
Burglary (other)	0	0	0	0	0
Fraud	0	0	0	0	0
Receiving/handling proceeds of crime	0	0	0	0	0
Unlawful possession	0	0	0	0	0
Motor vehicle theft	0	0	0	0	0
Bicycle theft	0	0	0	0	0
Other theft	0	0	0	0	0
Shop stealing	0	0	0	0	0
Arson	0	0	0	0	0
Other property damage	0	0	0	0	0
<u>Offences against property</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Government/security operations	0	0	0	0	0
Justice procedures	0	0	0	0	0
Firearms and weapons	0	0	0	0	0
Other offences against good order	0	0	0	0	0
Possess and use drugs	1	0	7	0	8
Deal and supply drugs	0	0	0	0	0
Other offences nec	0	0	0	0	0
<u>Other offences</u>	<u>1</u>	<u>0</u>	<u>7</u>	<u>0</u>	<u>8</u>
<u>Total</u>	<u>1</u>	<u>0</u>	<u>7</u>	<u>0</u>	<u>8</u>

Source: ACT Policing [computer file]

Table 12. Charges against juveniles in the ACT, 2008-09, resulting in a summons (number)

	Females		Males		Total
	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous	
Conspiracy to murder	0	0	0	0	0
Assault causing GBH	0	0	1	0	1
Assault causing ABH	3	0	11	1	15
Assault (other)	21	1	43	3	68
Sexual offences	0	0	8	0	8
Kidnapping and abduction	0	0	0	0	0
Other offences against the person	0	0	0	0	0
<u>Offences against the person</u>	<u>24</u>	<u>1</u>	<u>63</u>	<u>4</u>	<u>92</u>
Armed robbery	0	0	1	0	1
Other robbery	2	0	6	0	8
Burglary (dwellings)	11	0	31	8	50
Burglary (shops)	1	0	8	0	9
Burglary (other)	2	0	16	0	18
Fraud	0	0	2	0	2
Receiving/handling proceeds of crime	0	0	2	0	2
Unlawful possession	1	1	9	0	11
Motor vehicle theft	2	0	22	11	35
Bicycle theft	0	0	0	0	0
Other theft	18	0	57	6	81
Shop stealing	20	0	28	2	50
Arson	0	0	0	0	0
Other property damage	6	0	35	3	44
<u>Offences against property</u>	<u>63</u>	<u>1</u>	<u>217</u>	<u>30</u>	<u>311</u>
Government/security operations	0	0	0	0	0
Justice procedures	1	0	1	3	5
Firearms and weapons	1	0	3	0	4
Other offences against good order	4	0	13	0	17
Possess and use drugs	0	0	3	0	3
Deal and supply drugs	0	0	2	0	2
Other offences nec	10	1	139	4	154
<u>Other offences</u>	<u>16</u>	<u>1</u>	<u>161</u>	<u>7</u>	<u>185</u>
<u>Total</u>	<u>103</u>	<u>3</u>	<u>441</u>	<u>41</u>	<u>588</u>

Source: ACT Policing [computer file]

Juveniles' contact with the Children's Court in the ACT

There were 485 defendants finalised in the ACT Children's Court during the 2008-09 period (see Table 13). The majority of defendants during 2008-09 were male (74.2%). Over one-quarter (26.6%) of juvenile defendants finalised were aged 17 years (26.6%).

The most common method of finalisation was for the defendant to be adjudicated (ie acquitted or proven guilty) (322 instances). Most of these adjudications found the defendant to be guilty (87.0%). A high proportion of defendants also had their cases withdrawn (153 or 31.5% of cases). This represents a much higher proportion of Children's Courts defendants than is the case nationally (10.3%). Only a small number of defendants were acquitted (42 or 8.7%) (see Table 13).

Table 13. Defendants finalised in the ACT Children's Court, selected characteristics, 2008-09

		2008-09	
		ACT	Aust.
Finalised defendants	n	485	42,198
Males	%	74.2	79.6
Females	%	25.8	20.2
Aged 17 years	%	26.6	26.5
Acquitted	n	42	1,636
	%	8.7	3.9
Proven guilty	n	280	32,556
	%	57.7	77.2
Transfer to other courts	n	6	1,463
	%	1.2	3.5
Withdrawn	n	153	4,334
	%	31.5	10.3
Other	n	4	2,209
	%	0.8	5.2

Source: Adapted from ABS (2010b)

For what offences are juveniles most commonly adjudicated in the ACT Children's Court?

As Table 14 shows, the number of juvenile defendants being adjudicated in 2008-09 was less than that for the two previous financial years in the ACT. The three most common principal offences for which juvenile defendants were adjudicated during the 2008-09 period were acts

intended to cause injury, theft and related offences, and traffic and vehicle regulatory offences (21.7%, 20.2% and 19.3% respectively). Despite some fluctuation in the proportion of adjudications for these offences for the three most recent financial years, they have, for the most part, consistently been the most common. In general, they would also appear to be the most common principal offences across Australia.

Table 14. Defendants adjudicated in the ACT Children's Court, by principal offence, 2006-07, 2007-08 and 2008-09

	2006-07		2007-08		2008-09	
	ACT	Aust.	ACT	Aust.	ACT	Aust.
	n		n		n	
Defendants adjudicated	336	34,270	364	31,986	322	34,192
	%		%		%	
Acts intended to cause injury	17.0	13.5	20.1	15.6	21.7	18.4
Dangerous or negligent acts endangering persons	2.7	5.1	17.6 ^a	6.0	4.0	5.5
Unlawful entry with intent	5.7	11.6	4.9	12.4	13.7	12.3
Theft and related offences	26.2	13.2	19.5	14.0	20.2	20.2
Property damage and environmental pollution	4.5	6.3	6.9	6.5	1.9	7.1
Public order offences	1.8	8.8	0.8	9.3	2.5	9.9
Traffic and vehicle regulatory offences	17.3	9.3	6.6 ^a	11.1	19.3	12.9
Other^b	12.5	16.0	24.0	24.6	16.8	13.7
Total^c	100.0	100.0	100.0	100.0	100.0	100.0

Source: Adapted from ABS (2010b)

a: Dangerous or negligent acts endangering persons are overstated and traffic and vehicle regulatory offences are understated for 2007-08

b: Includes: homicide and related offences; sexual assault and related offences; abduction, harassment and other offences against the person; fraud, deception, and related offences; illicit drug offences; prohibited and regulated weapons and explosives offences; offences against government procedures, government security and government operations; and miscellaneous offences

c: Includes defendants for whom offence data are missing or a principal offence could not be determined

More specifically, however, the most common offence adjudicated in the ACT Children's Court during 2008-09 was assault (70 adjudications or 21.7%). A high proportion of adjudications also related to unlawful entry with intent, other theft, and regulatory driving offences (accounting for 13.7%, 13.7% and 13.4% of all adjudications respectively) (see Tables 15 and 16).

Table 15. Defendants adjudicated in the Children's Court, principal offence by jurisdiction (number)

	NSW	Vic.	QLD	SA	WA	Tas.	NT	ACT	Aust.
Homicide and related offences	3	0	0	0	3	0	0	0	6
Acts intended to cause injury									
Assault	2,366	1,378	708	412	772	265	136	70	6,107
Stalking	142	9	4	0	0	0	0	0	155
Sexual assault and related offences	103	94	58	29	69	6	10	5	374
Dangerous or negligent acts endangering persons	218	322	154	423	605	72	60	13	1,867
Abduction, harassment and other offences against the person	72	45	10	9	44	0	0	0	180
Robbery, extortion and related offences	658	207	87	45	164	11	5	6	1,183
Unlawful entry with intent	1,153	597	1,063	263	759	166	145	44	4,190
Theft and related offences									
Theft/illegal use of a motor vehicle^b	338	254	288	49	170	54	38	21	1,212
Other^c	1,097	2,287	1,314	275	501	162	7	44	5,687
Fraud, deception and related offences	84	116	57	5	34	8	3	18	325
Illicit drug offences	238	81	153	35	194	40	11	3	755
Prohibited and regulated weapons and explosives offences	59	201	111	91	39	17	17	12	547
Property damage and environmental pollution									
Property damage by fire or explosion	66	72	33	13	48	27	0	0	259
Graffiti	29	17	78	52	40	0	3	0	219
Other^d	591	392	365	136	352	76	21	6	1,939
Public order offences									
Regulated public order offences	23	300	86	30	49	16	0	3	507
Other^e	752	474	984	171	398	72	32	6	2,889
Traffic and vehicle regulatory offences									
Driver licence offences	200	360	425	342	1,239	67	89	19	2,741
Regulatory driving offences	89	152	224	129	602	45	78	43	1,362
Offences against justice procedures, govt security and operations	242	75	283	84	200	69	7	5	965
Miscellaneous offences	75	235	9	6	17	14	0	4	360
Total^f	8,639	7,698	6,506	2,780	6,359	1,190	699	322	34,193

Source: Adapted from ABS (2010b)

Note: 0 refers to a nil or rounder number (including null cells)

a: Refers to finalised appearances rather than finalised defendants in the Children's Courts, resulting in potentially higher population counts

b: Includes theft of a motor vehicle and illegal use of a motor vehicle

c: Includes theft except motor vehicles (including theft from a person (except force), theft of intellectual property, theft from retail premises, and other non-classified theft excluding motor vehicle), receive or handle proceeds of crime, illegal use of property (except motor vehicles), and theft of motor vehicle parts or contents

d: Includes environmental pollution (including air pollution offences, water pollution offences, noise pollution offences, soil pollution offences, and other non-classified environmental offences, and other non-classified property damage

e: Includes trespass, and riot and affray

f: Includes defendants for whom offence data are missing or a principal offence could not be determined

Table 16. Defendants adjudicated in the Children's Court, principal offence by jurisdiction (percent)

	NSW ^a	Vic.	QLD	SA	WA	Tas.	NT	ACT	Aust.
Homicide and related offences	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Assault	27.4	17.9	10.9	14.8	12.1	22.3	19.5	21.7	17.9
Stalking	1.6	0.1	0.1	0.0	0.0	0.0	0.0	0.0	0.5
Sexual assault and related offences	1.2	1.2	0.9	1.0	1.1	0.5	1.4	1.6	1.1
Dangerous or negligent acts endangering persons	2.5	4.2	2.4	15.2	9.5	6.1	8.6	4.0	5.5
Abduction, harassment and other offences against the person	0.8	0.6	0.2	0.3	0.7	0.0	0.0	0.0	0.5
Robbery, extortion and related offences	7.6	2.7	1.3	1.6	2.6	0.9	0.7	1.9	3.5
Unlawful entry with intent	13.3	7.8	16.3	9.5	11.9	13.9	20.7	13.7	12.3
Theft/illegal use of a motor vehicle	3.9	3.3	4.4	1.8	2.7	4.5	5.4	6.5	3.5
Other	12.7	29.7	20.2	9.9	7.9	13.6	1.0	13.7	16.6
Fraud, deception and related offences	1.0	1.5	0.9	0.2	0.5	0.7	0.4	5.6	1.0
Illicit drug offences	2.8	1.1	2.4	1.3	3.1	3.4	1.6	0.9	2.2
Prohibited and regulated weapons and explosives offences	0.7	2.6	1.7	3.3	0.6	1.4	2.4	3.7	1.6
Property damage by fire or explosion	0.8	0.9	0.5	0.5	0.8	2.3	0.0	0.0	0.8
Graffiti	0.3	0.2	1.2	1.9	0.6	0.0	0.4	0.0	0.6
Other	6.8	5.1	5.6	4.9	5.5	6.4	3.0	1.9	5.7
Public order offences									
Regulated public order offences	0.3	3.9	1.3	1.1	0.8	1.3	0.0	0.9	1.5
Other	8.7	6.2	15.1	6.2	6.3	6.1	4.6	1.9	8.4
Driver licence offences	2.3	4.7	6.5	12.3	19.5	5.6	12.7	5.9	8.0
Regulatory driving offences	1.0	2.0	3.4	4.6	9.5	3.8	11.2	13.4	4.0
Offences against justice procedures, gov't security and operations	2.8	1.0	4.3	3.0	3.1	5.8	1.0	1.6	2.8
Miscellaneous offences	0.9	3.1	0.1	0.2	0.3	1.2	0.0	1.2	1.1
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Adapted from ABS (2010b)

Note: 0 refers to a nil or rounder number (including null cells)

- a: Refers to finalised appearances rather than finalised defendants in the Children's Courts, resulting in potentially higher population counts
- b: Includes theft of a motor vehicle and illegal use of a motor vehicle
- c: Includes theft except motor vehicles (including theft from a person (except force), theft of intellectual property, theft from retail premises, and other non-classified theft excluding motor vehicle), receive or handle proceeds of crime, illegal use of property (except motor vehicles), and theft of motor vehicle parts or contents
- d: Includes environmental pollution (including air pollution offences, water pollution offences, noise pollution offences, soil pollution offences, and other non-classified environmental offences, and other non-classified property damage
- e: Includes trespass, and riot and affray
- f: Includes defendants for whom offence data are missing or a principal offence could not be determined

What are the outcomes of adjudications in the ACT Children's Court?

Almost all juvenile defendants in 2008-09 who were found guilty in the ACT Children's Court were placed on a non-custodial order (95.7%) (see Table 17). The most common order was a good behaviour bond (45.7%). This varies from previous periods (2006-07 and 2007-08), during which most non-custodial sentences were community supervision/work orders. It also varies from what is occurring nationally. Across Australia, the proportion of non-custodial sentences is relatively evenly distributed across community supervision/work orders, monetary orders, good behaviour bonds, and other types of non-custodial orders (see Table 17).

A small proportion of defendants found guilty in the ACT Children's Court received a custodial order in the ACT during 2008-09, compared with nationally (3.9% and 9.3% respectively). The most common type of custodial order in the ACT (custody in the community) was the least common for the nation as a whole.

Table 17. Defendants proven guilty in the ACT Children's Court, by principal sentence, 2006-07 to 2008-09

	2006-07		2007-08		2008-09	
	ACT	Aust.	ACT	Aust.	ACT	Aust.
Defendants proven guilty	325	32,811	326	30,735	280	32,556
Custodial orders						
Custody in a correctional institution	3.7	5.1	5.5	5.7	0.0	5.6
Custody in the community	6.8	1.2	4.6	1.3	2.5	1.7
Fully suspended sentence	0.0	1.3	0.0	1.6	1.4	2.0
Non-custodial orders						
Community supervision/work orders	36.9	22.1	37.1	24.2	20.0	25.8
Monetary orders	11.1	35.9	13.2	29.1	16.8	22.8
Good behaviour bond	21.8	18.6	31.6	20.0	45.7	21.6
Other^a	19.7	15.5	8.0	18.0	13.2	19.9
Total	100.0	100.0	100.00	100.00	100.0	100.0

Source: Adapted from ABS (2010b)

Note: 0 refers to a nil or rounder number (including null cells)

a: Includes license disqualifications/suspensions/ amendments, forfeiture of property orders and nominal penalties

During the most recent period for which data are available (the quarter ending September 2008), there were 216 pleas in the ACT Children's Court (see Table 18). The most common plea was a plea of guilty; about half (74) of these convictions were recorded and about half (76) were not recorded. Around one-quarter of pleas were pleas of not guilty, with conviction not being recorded (50 instances). Overall, as Table 18 shows, the majority of pleas related to other assault (28 instances, or 13.0%). Other common offences were offences against justice

procedures and the government, other theft, property damage and environmental offences, and traffic offences (11.1%, 9.7%, 9.3%, and 8.8% respectively).

Table 18. Charge-plea indications in the ACT Children's Court, by charge, September 2008 quarter (number)

	Plea of Guilty, Conviction Recorded	Plea of Guilty, Conviction not Recorded	Plea of Not Guilty, Conviction Recorded	Plea of Not Guilty, Conviction not Recorded	Plea of Not Guilty, Acquittal	Not indicated (ex parte etc)	Total
Homicide and related offences	0	0	0	0	0	0	0
Acts intended to cause injury	0	0	0	0	0	0	0
Assault (grievous bodily harm)	0	0	0	1	0	0	1
Assault (actual bodily harm)	4	3	1	3	0	0	11
Other assault	6	8	0	13	0	1	28
Sexual assault & related offences	0	0	0	0	0	0	0
Sexual assault	0	0	1	0	0	0	1
Sexual offences	0	0	2	0	0	0	2
Other sexual offences	1	0	0	0	0	0	1
Abduction & related offences	0	0	0	0	0	0	0
Kidnapping/abduction	2	0	0	0	0	0	2
Robbery, extortion and related offences	0	0	0	0	0	0	0
Armed robbery	1	0	0	0	0	0	1
Other robbery	1	0	0	0	0	0	1
Burglary and related offences	0	0	0	0	0	0	0
Stealing	9	3	0	1	0	0	13
Break and enter	1	0	0	0	0	0	1
Deception & related offences	0	0	0	0	0	0	0
Fraud and forgery	1	1	0	0	0	0	2
Unlawful possession	0	0	0	1	0	0	1
Theft	0	3	1	3	0	0	7
Stealing from the person	2	0	0	0	0	0	2
Other theft	7	7	0	5	0	2	21
Property damage & environmental offences	4	11	2	3	0	0	20
Other property damage	0	0	0	0	0	0	0
Offences against justice procedures and the government	8	6	1	9	0	0	24
Corruption	0	0	0	0	0	0	0
Breach other probation	0	1	0	0	0	0	1
Resist/hinder police	3	3	0	4	0	0	10
Conspiracy	0	0	1	0	0	0	1

Weapons & explosives offences	0	0	0	0	0	0	0
Firearms	0	1	0	0	0	0	1
Possess/use weapons	0	2	0	0	0	0	2
Public order offences	0	0	0	0	0	0	0
Trespass and vagrancy	1	1	0	2	0	0	4
Offences against good order	0	3	0	0	0	0	3
Illicit drug offences	0	0	0	0	0	0	0
Drugs	0	0	1	0	0	0	1
Possess/use cannabis	0	0	0	0	0	0	0
Dangerous/negligent acts endangering the person	0	0	0	0	0	0	0
Drink driving	0	6	0	1	0	0	7
Dangerous driving	0	2	0	0	0	0	2
Negligent driving	1	1	1	1	0	0	4
Road traffic and motor vehicle registry offences	0	0	0	0	0	0	0
Drive while cancelled	1	0	0	1	0	0	2
Drive without a licence	7	2	0	0	0	0	9
Other licence offenders	2	2	0	0	0	0	4
Traffic offences	8	7	2	2	0	0	19
Registration offences	3	0	0	0	0	0	3
Other	0	0	0	0	0	0	0
Offence against government - education	1	0	0	0	0	0	1
Dangerous drugs	0	1	0	0	0	0	1
Other offences	0	2	0	0	0	0	2
Total	74	76	13	50	0	3	216

Source: ACT Department of Justice and Community Safety (2009)

How long do adjudications take to be completed in the ACT Children's Court?

Of the 186 cases completed in the ACT Children's Court during the September 2008 quarter, over one-third were completed in under four weeks (70 cases, or 37.6%) (see Table 19). More than half of all cases were completed within 12 weeks of the case first being listed (107 cases, or 57.5%).

Table 19. Weeks between first listing and completion in the Children's Jurisdiction of the ACT Magistrates Court, for the September 2008 quarter

	Number	Proportion (%)
Under 4	70	37.6
4 to under 8	16	8.6
8 to under 12	21	11.3
12 to under 16	15	8.1
16 to under 20	13	7.0
20 to under 24	8	4.3
24 to under 28	9	4.8
28 to under 32	5	2.7
32 to under 36	7	3.8
36 to under 40	3	1.6
40 to under 44	5	2.7
44 to under 48	3	1.6
48 to under 52	2	1.1
52 weeks or more	9	4.8
Total	186	100.0

Source: Adapted from ACT Department of Justice and Community Safety (2009)

Juveniles' contact with correctional agencies in the ACT

Juveniles under community-based supervision in the ACT

There were 200 juveniles under community-based supervision during 2008-09 (see Table 20). Most of these were males (162, compared with 38 females). There were also more non-Indigenous than Indigenous juveniles (165 and 35 respectively) (see Table 20).

Table 20. Juveniles under community-based supervision in the ACT and Australia, by sex and Indigenous status, 2008-09

	ACT	Aust excl WA and NT ^(a)	ACT	Aust excl WA and NT
	Number of young people—during the year		Proportion (%) of young people—during the year	
			Males	
Indigenous	30	2,207	18.5	30.7
Non-Indigenous	132	4,641	81.5	64.5
Total	162	7,195	100.0	100.0
			Female	
Indigenous	5	602	13.2	38.9
Non-Indigenous	33	861	86.8	55.7
Total	38	1,547	100.0	100.0
			All young people	
Indigenous	35	2,809	17.5	32.1
Non-Indigenous	165	5,505	82.5	62.9
Total ^(b)	200	8,746	100.0	100.0

Source: Adapted from AIHW (2011)

a: Western Australia and Northern Territory did not supply data for this report for the 2008-09 period

b: Totals include juveniles of unknown sex and/or Indigenous status

The greatest proportion of juveniles was aged 14-17 years when they were first placed on a community-based supervision order (76.1%, or 178 juveniles) (see Table 21). Very few were aged 18 years or older (1.7%, or 4 juveniles).

Table 21. Young people under community-based supervision by age^(a) at first supervision, ACT and Australia, 2008–09 (number and percent)

ACT		Aust excl WA & NT ^(b)
		Number
10–13	52	2,298
14–17	178	7,756
18+	4	778
Total	234	10,835
		Proportion (%)
10–13	22.2	21.2
14–17	76.1	71.6
18+	1.7	7.2
Total^(c)	100.0	100.0

Source: Adapted from AIHW (2011)

a: Age calculated as at date of start of first supervision period

b: Western Australia and Northern Territory did not supply data for this report for the 2008–09 period.

c: Totals includes young people with unknown date of first supervision

As Table 22 indicates, there were more sentenced than unsentenced juveniles under community-based supervision in the ACT on an average day during 2008–09 (70 compared with 49). This is evident for both Indigenous and non-Indigenous juveniles. This has remained relatively stable since 2005–06 (see Table 22).

Table 22. Young people under community-based supervision on an average day^(a) by Indigenous status and legal status, ACT and Australia, 2005–06 to 2008–09 (number)

	ACT	Aust excl WA & NT ^(b)	ACT	Aust excl WA & NT	ACT	Aust excl WA & NT
		Indigenous		Non-Indigenous		All young people ^(c)
				Unsentenced		
2005–06	8	153	28	270	36	438
2006–07	8	161	30	340	38	518
2007–08	8	159	27	377	37	541
2008–09	10	147	38	434	49	594
Total	34	620	123	1,421	160	2,091
				Sentenced		
2005–06	13	1,320	58	2,456	71	3,953
2006–07	16	1,384	67	2,640	83	4,170
2007–08	17	1,532	64	2,868	82	4,569
2008–09	14	1,511	56	3,085	70	4,812
Total	60	5,747	245	11,049	306	17,504
				Total		
2005–06	17	1,410	72	2,683	88	4,280
2006–07	18	1,486	81	2,928	99	4,577
2007–08	21	1,629	73	3,182	96	4,985
2008–09	21	1,611	88	3,445	109	5,283
Total ^(d)	77	6,136	314	12,238	392	19,125

Source: Adapted from AIHW (2011)

a: Number of young people on an average day may not sum to total due to rounding

b: Western Australia and Northern Territory did not supply data for this report for the 2008–09 period

c: 'All young people' includes young people with an order type of 'other'

d: Totals includes young people unknown Indigenous status

Juveniles under custodial supervision in the ACT

The AIC's Juveniles in detention monitoring program

The AIC reports annually on juveniles in detention in Australia, with data covering the 1981 to 2009 period (see Richards & Lyneham 2010). Statistics are derived from the AIC's *Juveniles in detention monitoring program* dataset. Data are sourced from the Juvenile Justice National Minimum Data Set (JJNMDS) which the Australian Institute of Health and Welfare (AIHW) administers and maintains. The data cover the number of young people detained in a juvenile correctional facility on the last day of each quarter of the year; that is, 31 March, 30 June, 30 September and 31 December. A census count is taken in each juvenile correctional facility on each of these dates; data therefore reflect only the number of young people in juvenile detention in each jurisdiction at that time. These data are not necessarily representative of the daily average of juvenile detainees in each state or territory or across Australia as a whole, since daily averages may vary substantially.

In jurisdictions with small populations, such as the ACT, small changes in the number of juveniles in detention may produce large fluctuations in proportions and rates. For example, an increase of two juveniles in detention on an existing population of four juveniles would be reported as an increase of 50 percent. This should be considered when interpreting the data presented below.

The quarterly data on juveniles in detention presented below provide aggregate information on the number of young people detained in juvenile correctional facilities according to six variables:

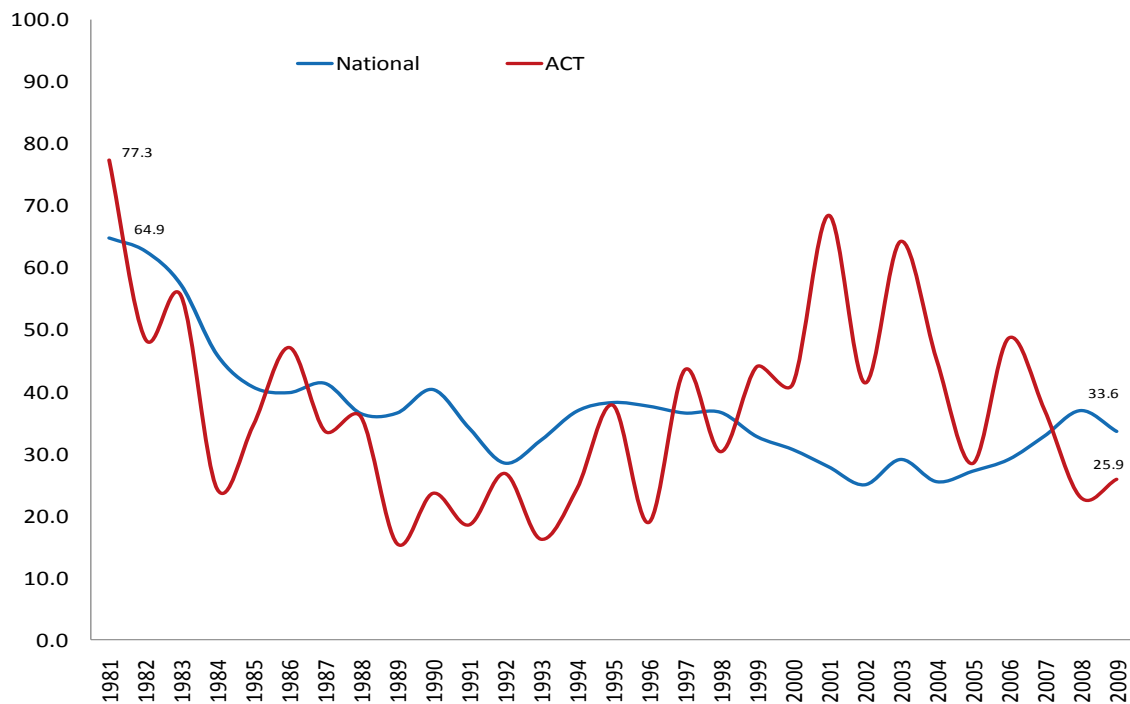
- sex;
- age;
- Indigenous status;
- legal status (remanded or sentenced);
- jurisdiction; and
- quarterly census date.

The data reflect the total number of juveniles in detention and the number of Indigenous juveniles in detention. The number of non-Indigenous juveniles in detention is assumed to be the difference between the two. In some cases, however, the Indigenous status of juveniles is unknown. These young people are classified as non-Indigenous, which means that the proportion of Indigenous juveniles in detention is likely to be underestimated.

Number and rate of juveniles in detention, by sex

Figure 1 shows the trend in rates per 100,000 juveniles in detention since 1981 for the ACT and Australia as a whole. Numbers and rates per 100,000 juveniles in detention have declined substantially since 1981. As Figure 1 shows, rates have varied considerably in the ACT, which is to be expected in a small jurisdiction. In the ACT, rates have decreased from 77.3 per 100,000 in 1981 to 25.9 per 100,000 in 2009.

Figure 1. Rates of juvenile detention per 100,000 10-17 year olds at 30 June 1981-2009, ACT and Australia



Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

Tables 23, 24 and 25 show the number and rate per 100,000 male juveniles in detention, female juveniles in detention and total juveniles in detention respectively. On 30 June 2009, there were nine juveniles in detention in the ACT (6 males and 3 females). Rates per 100,000 juveniles in detention have fluctuated considerably since 1981.

Table 23. Males aged 10 to 17 in juvenile detention at 30 June 1981-2009 (number and rate per 100,000 relevant population)

	NSW ^(a)	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1981	521	253	89	145	71	26	1	13	1,119
1982	551	232	94	138	67	17	8	13	1,120
1983	518	224	103	88	55	25	14	16	1,043
1984	378	209	85	69	37	20	15	6	819
1984	248	218	114	96	40	16	23	10	765
1986	257	204	78	93	38	20	26	17	733
1987	357	156	83	79	40	18	24	11	768
1988	249	164	89	76	42	14	37	12	683
1989	249	136	73	124	30	14	39	6	671
1990	325	127	100	114	36	9	27	9	747
1991	311	65	70	111	43	17	30	6	653
1992	250	47	71	84	50	5	25	9	541
1993	292	49	83	97	56	9	20	5	610
1994	352	61	90	119	56	9	13	8	708
1995	374	72	127	95	37	10	15	13	743
1996	319	68	128	94	71	23	13	6	722
1997	331	64	89	100	71	20 ^(b)	21	14	710 ^(b)
1998	321	62	116	123	46	18	25	10	721
1999	252	57	127	112	29	30	12	12	631
2000	251	43	93	103	49	34	15	14	602
2001	210	59	78	81	49	36	6	22	541
2002	187	53	82	71	40	25	21	12	491
2003	206	71	90	95	61	17	23	20	583
2004	185	57	87	102	47	18	10	15	521
2005	206(23)	52	92	91	52	32	17	8	550
2006	244(20)	31	125	98	39	27	24	13	601
2007	256(22)	47	136	123	54	14	32	11	677
2008	343(28)	73	110	142	46	25	22	7	768
2009	317(22)	62	105	126	42	18	27	6	703
Rate per 100,000 relevant population									
1981	145.9	88.6	51.8	149.8	75.4	81.9	10.8	75.8	105.2
1982	152.8	80.8	52.8	139.0	71.4	53.9	79.1	72.6	103.9
1983	142.6	77.6	56.5	87.5	58.8	79.6	130.7	87.0	95.8
1984	103.5	72.1	45.9	68.3	39.9	63.2	134.6	31.8	74.7
1984	67.6	75.5	60.9	94.7	43.4	50.8	199.5	52.1	69.6
1986	70.0	71.2	41.3	91.2	41.8	63.8	222.2	87.4	66.8
1987	97.5	55.5	44.1	77.3	44.9	58.7	203.4	56.0	70.5
1988	68.4	59.3	47.3	73.8	48.2	46.6	316.2	60.5	63.2
1989	69.8	50.3	38.7	120.8	35.3	47.5	337.8	30.4	63.0
1990	92.9	47.9	53.1	111.8	43.3	30.7	237.5	46.3	71.2
1991	89.6	24.9	37.0	108.5	52.3	58.2	265.4	31.1	62.7
1992	72.4	18.2	37.4	81.5	61.1	17.2	218.2	47.4	52.1
1993	84.7	19.1	43.1	93.3	68.8	30.9	172.5	26.4	58.7
1994	101.7	23.9	45.9	113.3	68.6	31.1	111.3	42.2	67.9
1995	107.2	28.2	63.7	89.2	45.3	34.4	127.9	68.7	70.7

1996	90.3	26.6	63.0	87.1	86.3	78.8	108.5	31.8	67.9
1997	93.3	25.1	43.5	91.5	86.2	69.1	171.3	74.7	64.2
1998	89.9	24.2	56.2	110.9	55.7	63.0	200.8	53.9	67.2
1999	70.1	22.1	60.9	99.8	34.9	105.5	95.4	64.8	58.3
2000	69.0	16.4	44.0	90.7	58.7	120.1	118.1	75.4	53.3
2001	56.9	22.2	36.3	70.5	58.6	127.6	46.4	118.2	48.8
2002	50.3	19.8	37.5	61.6	48.0	89.1	160.9	65.1	44.0
2003	55.1	26.3	40.3	81.8	73.2	60.7	177.9	109.3	51.8
2004	49.5	21	38.3	87.5	56.5	63.7	76.6	82.8	46.0
2005	55.0	19	39.8	77.9	62.4	113	128.1	44.4	48.3
2006	65.0	11.3	53.1	83.2	46.6	95.5	179.6	72.5	52.4
2007	68.0	16.8	56.4	101.6	64.0	50.0	261.2	61.4	58.2
2008	91.2	26.0	45.0	116.0	54.6	89.0	166.0	39.4	65.8
2009	84.4	22.0	42.5	101.4	50.0	64.3	194.2	34.0	60.0

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

a: Number in parentheses is number of males in detention at 30 June 2008 at Kariiong Juvenile Correctional Centre in New South Wales. Totals for New South Wales and Australia and rates are inclusive of this number

b: One male aged 16 years who was detained in a juvenile detention facility without being sentenced or remanded has been included

Table 24. Females aged 10 to 17 years in juvenile detention at 30 June 1981-2009 (number and rate per 100,000 relevant population)

	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1981	90	81	22	14	5	8	0	13	233
1982	95	67	13	13	4	6	3	4	205
1983	83	58	11	8	5	8	1	4	178
1984	48	72	20	12	3	7	2	3	167
1984	30	51	11	14	2	1	0	3	112
1986	33	56	17	5	4	2	4	1	122
1987	37	44	13	5	1	4	7	2	113
1988	23	34	10	5	3	7	3	2	87
1989	30	31	8	9	0	3	7	0	88
1990	29	24	9	11	1	1	3	0	78
1991	15	5	6	5	3	0	6	1	41
1992	12	5	3	9	3	0	3	1	36
1993	20	2	2	7	5	1	3	1	41
1994	18	3	5	12	2	1	0	1	42
1995	20	2	9	7	2	0	2	1	43
1996	21	2	8	12	12	3	0	1	59
1997	26	7	11	11	6	3	0	2	66
1998	15	5	10	13	4	1	0	1	49
1999	25	3	10	13	5	1	2	4	63
2000	23	9	9	12	10	3	0	1	67
2001	22	7	7	16	7	1	0	3	63
2002	16	4	15	8	7	1	0	3	54
2003	16	5	11	10	10	2	0	3	57
2004	13	5	4	16	4	0	0	1	43
2005	11	11	6	15	7	3	0	2	55
2006	12	7	12	9	2	3	1	4	50
2007	23	2	16	16	6	2	2	2	69

2008	25	5	16	15	7	1	1	1	71
2009	24	6	13	9	8	0	2	3	65
Rate per 100,000 relevant population									
1981	26.4	29.5	13.3	15.2	5.6	25.9	0.0	78.9	22.9
1982	27.6	24.2	7.6	13.8	4.5	19.6	31.4	23.3	19.8
1983	23.9	20.9	6.3	8.4	5.6	26.1	9.9	22.6	17.1
1984	13.7	25.9	11.3	12.5	3.4	22.9	19.2	16.6	15.9
1984	8.6	18.4	6.1	14.6	2.3	3.3	0.0	16.2	10.7
1986	9.4	20.5	9.5	5.2	4.7	6.6	36.4	5.3	11.7
1987	10.6	16.4	7.2	5.2	1.2	13.6	63.4	10.5	10.9
1988	6.6	12.9	5.6	5.2	3.7	24.2	27.7	10.4	8.5
1989	8.8	12.1	4.5	9.3	0.0	10.6	66.6	0.0	8.7
1990	8.7	9.6	5.0	11.4	1.3	3.6	28.9	0.0	7.8
1991	4.6	2.0	3.4	5.2	3.9	0.0	57.9	5.4	4.2
1992	3.7	2.0	1.7	9.3	3.9	0.0	28.4	5.5	3.7
1993	6.1	0.8	1.1	7.2	6.5	3.6	27.8	5.5	4.2
1994	5.5	1.2	2.7	12.2	2.6	3.6	0.0	5.5	4.2
1995	6.0	0.8	4.8	7.0	2.6	0.0	18.2	5.5	4.3
1996	6.2	0.8	4.2	11.7	15.3	10.7	0.0	5.5	5.8
1997	7.7	2.9	5.7	10.6	7.6	10.8	0.0	11.1	6.5
1998	4.4	2.0	5.1	12.4	5.1	3.6	0.0	5.6	4.8
1999	7.3	1.2	5.0	12.2	6.3	3.6	16.9	22.4	6.1
2000	6.6	3.6	4.5	11.1	12.6	11.1	0.0	5.6	6.4
2001	6.3	2.7	3.4	14.6	8.8	3.7	0.0	16.7	6.0
2002	4.5	1.6	7.2	7.3	8.8	3.7	0.0	16.8	5.1
2003	4.5	1.9	5.2	9.1	12.6	7.4	0.0	17.1	5.3
2004	3.7	1.9	1.9	14.4	5.1	0.0	0.0	5.8	4.0
2005	3.1	4.2	2.7	13.5	8.9	11.2	0.0	11.6	5.1
2006	3.4	2.7	5.4	8.0	2.5	11.2	8.2	23.5	4.6
2007	6.4	0.8	7.0	14.2	7.5	7.5	15.6	11.6	6.3
2008	7.0	1.9	6.9	13.2	8.7	3.8	7.8	5.9	6.4
2009	6.7	2.3	5.5	7.8	10.0	0.0	15.6	17.5	5.8

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

Table 25. Persons aged 10 to 17 years in juvenile detention at 30 June 1981-2009 (number and rate per 100,000 relevant population)

	NSW^(a)	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1981	611	334	111	159	76	34	1	26	1,352
1982	646	299	107	151	71	23	11	17	1,325
1983	601	282	114	96	60	33	15	20	1,221
1984	426	281	105	81	40	27	17	9	986
1984	278	269	125	110	42	17	23	13	877
1986	290	260	95	98	42	22	30	18	855
1987	394	200	96	84	41	22	31	13	881
1988	272	198	99	81	45	21	40	14	770
1989	279	167	81	133	30	17	46	6	759
1990	354	151	109	125	37	10	30	9	825
1991	326	70	76	116	46	17	36	7	694

1992	262	52	74	93	53	5	28	10	577
1993	312	51	85	104	61	9	23	6	651
1994	370	64	95	131	58	10	13	9	750
1995	394	74	136	102	39	10	17	14	786
1996	340	70	136	106	83	26	13	7	781
1997	357	71	100	111	77	23 ^(b)	21	16	776 ^(b)
1998	336	67	126	136	50	19	25	11	770
1999	277	60	137	125	34	31	14	16	694
2000	274	52	102	115	59	37	15	15	669
2001	232	66	85	97	56	37	6	25	604
2002	203	57	97	79	47	26	21	15	545
2003	222	76	101	105	71	19	23	23	640
2004	198	62	91	118	51	18	10	16	564
2005	217(23)	63	98	106	59	35	17	10	605
2006	256(20)	38	137	107	41	30	25	17	651
2007	279(22)	49	152	139	60	16	38	13	746
2008	368(28)	78	126	157	54 ^(c)	26	24	8	841
2009	341(22)	68	118	135	50	18	29	9	768

Rate per 100,000 relevant population

1981	87.6	59.6	32.9	84.3	41.3	54.3	5.5	77.3	64.9
1982	91.6	53.0	30.7	78.1	38.8	37.0	55.9	48.5	62.8
1983	84.6	49.8	31.9	49.0	32.9	53.2	72.1	55.4	57.3
1984	59.6	49.5	29.0	41.2	22.1	43.4	78.9	24.3	46.0
1984	38.8	47.6	34.1	55.7	23.4	27.4	103.3	34.5	40.8
1986	40.4	46.4	25.8	49.3	23.8	35.7	132.2	47.1	39.9
1987	55.1	36.4	26.1	42.2	23.7	36.6	135.7	33.6	41.4
1988	38.2	36.6	26.9	40.5	26.6	35.6	177.5	35.9	36.5
1989	40.0	31.7	22.0	66.6	18.2	29.4	208.6	15.5	36.6
1990	51.8	29.3	29.7	63.0	22.9	17.5	138.0	23.6	40.4
1991	48.2	13.7	20.7	58.3	28.7	29.9	166.2	18.5	34.2
1992	38.9	10.3	20.1	46.5	33.3	8.8	127.1	26.8	28.5
1993	46.4	10.2	22.7	51.6	38.5	15.8	102.7	16.2	32.2
1994	54.8	12.9	24.9	64.3	36.4	17.6	57.5	24.3	36.9
1995	57.8	14.9	35.1	49.3	24.4	17.5	74.8	37.8	38.3
1996	49.3	14.0	34.4	50.4	51.6	45.4	56.1	18.9	37.7
1997	51.5	14.2	25.1	52.2	47.8	24.1	88.2	43.5	36.6
1998	48.2	13.3	31.3	63.0	31.0	33.8	103.0	30.3	36.7
1999	39.4	11.8	33.7	57.1	20.9	55.5	57.3	44.0	32.8
2000	38.5	10.1	24.7	51.9	36.2	40.5	49.5	41.2	30.7
2001	32.2	12.7	20.3	43.3	34.4	67.0	24.0	68.4	27.9
2002	28.0	10.9	22.7	35.1	28.9	47.3	83.8	41.4	25.0
2003	30.5	14.4	23.2	46.3	43.7	34.6	92.1	64.2	29.1
2004	27.2	11.7	20.6	51.9	31.5	32.7	39.8	45.1	25.5
2005	29.7	11.8	21.7	46.5	36.4	63.5	66.8	28.4	27.2
2006	35.0	7.1	29.9	46.6	25.2	54.6	97.5	48.6	29.1
2007	38.0	9.0	32.3	59.4	36.5	29.1	143.0	37.0	32.9
2008	50.1	14.3	26.4	66.4	32.9	47.6	90.0	22.9	37.0
2009	46.5	12.4	24.5	56.2	30.5	33.1	108.4	25.9	33.6

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

a: Number in parentheses is number of males in detention at 30 June 2008 at Kariiong Juvenile Correctional Centre in New South Wales. Totals for New South Wales and Australia and rates are inclusive of this number

b: One male aged 16 years who was detained in a juvenile detention facility without being sentenced or remanded has been included.

c: Includes one Indigenous juvenile aged 16 years of age whose gender was unknown.

Table 26 shows the proportion of all juveniles in detention that is comprised of females. In the ACT, this proportion has varied from 0.0 percent in 1989 and 1990 to 50 percent in 1981. At 30 June 2009, 8.5 percent of juveniles in detention nationally were female, compared with 33.3 percent in the ACT. This variance is to be expected in a small jurisdiction.

Table 26. Females aged 10 to 17 years in juvenile detention at 30 June 1981-2009 (percentage of total detainees)

	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1981	14.7	24.3	19.8	8.8	6.6	23.5	0.0	50.0	17.2
1982	14.7	22.4	12.1	8.6	5.6	26.1	27.3	23.5	15.5
1983	13.8	20.6	9.6	8.3	8.3	24.2	6.7	20.0	14.6
1984	11.3	25.6	19	14.8	7.5	25.9	11.8	33.3	16.9
1984	10.8	19.0	8.8	12.7	4.8	5.9	0.0	23.1	12.8
1986	11.4	21.5	17.9	5.1	9.5	9.1	13.3	5.6	14.3
1987	9.4	22.0	13.5	6.0	2.4	18.2	22.6	15.4	12.8
1988	8.5	17.2	10.1	6.2	6.7	33.3	7.5	14.3	11.3
1989	10.8	18.6	9.9	6.8	0.0	17.6	15.2	0.0	11.6
1990	8.2	15.9	8.3	8.8	2.7	10	10	0.0	9.5
1991	4.6	7.1	7.9	4.3	6.5	0.0	16.7	14.3	5.9
1992	4.6	9.6	4.1	9.7	5.7	0.0	10.7	10.0	6.2
1993	6.4	3.9	2.4	6.7	8.2	11.1	13	16.7	6.3
1994	4.9	4.7	5.3	9.2	3.4	10.0	0.0	11.1	5.6
1995	5.1	2.7	6.6	6.9	5.1	0.0	11.8	7.1	5.5
1996	6.2	2.9	5.9	11.3	14.5	11.5	0.0	14.3	7.6
1997	7.3	9.9	11	9.9	7.8	13.0	0.0	12.5	8.5
1998	4.5	7.5	7.9	9.6	8.0	5.3	0.0	9.1	6.4
1999	9.0	5.0	7.3	10.4	14.7	3.2	14.3	25.0	9.1
2000	8.4	17.3	8.8	10.4	16.9	8.1	0.0	6.7	10.0
2001	9.5	10.6	8.2	16.5	12.5	2.7	0.0	12.0	10.4
2002	7.9	7.0	15.5	10.1	14.9	3.8	0.0	20.0	9.9
2003	7.2	6.6	10.9	9.5	14.1	10.5	0.0	13.0	8.9
2004	6.6	8.1	4.4	13.6	7.8	0.0	0.0	6.3	7.6
2005	5.1	17.5	6.1	14.2	11.9	8.6	0.0	20.0	9.1
2006	4.7	18.4	8.8	8.4	4.9	10.0	4.0	23.5	7.7
2007	8.2	4.1	10.5	11.5	10.0	12.5	5.3	15.4	9.2
2008	6.8	6.4	12.7	9.6	13.0	3.8	4.2	12.5	8.4
2009	7.0	8.8	11.0	6.7	16.0	0.0	6.9	33.3	8.5

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

Age of juveniles in detention

Most juveniles in detention in Australia, and in the ACT, are aged 15 to 17 years; only a small proportion are aged 10 to 14 years (see Tables 27 and 28).

Table 27. Persons aged 10 to 14 years in juvenile detention at 30 June 1994-2009 (number)

	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
Indigenous									
1994	27	0	6	18	0	0	1	0	52
1995	22	3	14	10	0	0	4	0	53
1996	20	0	13	7	0	3	1	0	44
1997	25	2	11	13	4	na	2	0	57 ^(a)
1998	14	1	19	22	2	na	5	0	63 ^(a)
1999	15	1	10	14	0	na	4	2	46 ^(a)
2000	19	0	15	15	3	na	6	0	58 ^(a)
2001	21	1	11	23	1	na	0	1	58 ^(a)
2002	13	1	12	13	3	na	0	0	42 ^(a)
2003	19	1	6	14	6	1	0	0	47
2004	20	0	10	8	4	1	0	1	44
2005	28	0	18	17	4	2	3	0	72
2006	21	0	22	15	4	2	3	1	68
2007	23	2	32	26	4	2	4	3	96
2008	37	2	28	29	2	1	2	1	102
2009	27	1	14	16	6	0	6	2	72
Non-Indigenous									
1994	30	6	2	8	7	2	1	1	57
1995	37	5	9	3	4	4	0	0	62
1996	25	7	30	2	12	6	1	0	83
1997	31	7	9	5	11	na	1	3	67 ^(a)
1998	29	10	4	6	4	na	4	3	60 ^(a)
1999	22	2	8	3	3	na	0	4	42 ^(a)
2000	12	3	4	4	8	na	0	3	34 ^(a)
2001	15	4	5	2	6	na	0	4	36 ^(a)
2002	11	5	6	0	3	na	1	3	29 ^(a)
2003	14	2	3	2	6	5	0	6	38
2004	5	5	8	3	3	1	0	1	26
2005	7	2	5	3	10	4	0	0	31
2006	13	2	14	3	6	3	0	1	42
2007	15	5	7	4	10	1	0	1	43
2008	13	10	8	1	6	5	0	0	43
2009	19	7	9	4	4	3	0	3	49
Total									
1994	57	6	8	26	7	2	2	1	109
1995	59	8	23	13	4	4	4	0	115
1996	45	7	43	9	12	9	2	0	127
1997	56	9	20	18	15	7	3	3	131 ^(b)
1998	43	11	23	28	6	3	9	3	126 ^(b)

1999	37	3	18	17	3	8	4	6	96 ^(b)
2000	31	3	19	19	11	4	6	3	96 ^(b)
2001	36	5	16	25	7	6	0	5	100 ^(b)
2002	24	6	18	13	6	6	1	3	77 ^(b)
2003	33	3	9	16	12	6	0	6	85
2004	25	5	18	11	7	2	0	2	70
2005	35	2	23	20	14	6	3	0	103
2006	34	2	36	18	10	5	3	2	110
2007	38	7	39	30	14	3	4	4	139
2008	50	12	36	30	8	6	2	1	145
2009	46	8	23	20	10	3	6	5	121

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

a: Between 1997 and 2002, Tasmania was unable to provide data disaggregated by Indigenous status. Australian totals therefore exclude Tasmania

b: Totals include Tasmania

na = not available

Table 28. Persons aged 15 to 17 years in juvenile detention at 30 June 1994-2009 (number)

	NSW ^(a)	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
Indigenous									
1994	88	5	44	58	16	1	7	0	219
1995	79	8	62	44	6	1	6	1	207
1996	82	4	70	54	18	3	8	1	240
1997	107	6	44	57	13	na	18	3	248 ^(b)
1998	89	10	57	65	16	na	16	3	256 ^(b)
1999	78	9	66	72	10	na	6	0	241 ^(b)
2000	90	4	45	60	12	na	5	2	218 ^(b)
2001	77	8	45	55	7	na	6	5	203 ^(b)
2002	71	6	46	43	17	na	15	3	201 ^(b)
2003	77	9	56	64	26	4	16	3	255
2004	90	12	45	83	17	3	8	4	262
2005	84(13)	20	36	62	22	6	12	3	245
2006	109(11)	5	49	58	9	6	21	5	262
2007	130(10)	8	65	77	26	4	29	1	340
2008	154(16)	10	53	89	19	8	21	4	358
2009	137(6)	7	62	88	15	3	20	1	333
Non-Indigenous									
1994	225	53	43	47	35	7	4	8	422
1995	256	58	51	45	29	5	7	13	464
1996	213	59	23	43	53	14	3	6	414
1997	194	56	36	36	49	na	0	10	381 ^(b)
1998	204	46	46	43	28	na	0	5	372 ^(b)
1999	162	48	53	36	21	na	4	10	334 ^(b)
2000	153	45	38	36	36	na	4	10	322 ^(b)
2001	119	53	24	17	42	na	0	15	270 ^(b)
2002	108	45	33	23	24	na	5	9	247 ^(b)
2003	112	64	36	25	33	9	7	14	300
2004	83	45	28	24	27	13	2	10	232

2005	98(10)	41	39	24	23	23	2	7	257
2006	113(9)	31	52	31	22	19	1	10	279
2007	111((12)	34	48	32	20	9	5	8	267
2008	164(9)	56	37	38	27	12	1	3	305
2009	146(11)	53	32	27	25	12	3	3	301
Total									
1994	313	58	87	105	51	8	11	8	641
1995	335	66	113	89	35	6	13	14	671
1996	295	63	93	97	71	17	11	7	654
1997	301	62	80	93	62	16	18	13	645 ^(c)
1998	293	56	103	108	44	16	16	8	644 ^(c)
1999	240	57	119	108	31	23	10	10	598 ^(c)
2000	243	49	83	96	48	33	9	12	573 ^(c)
2001	196	61	69	72	49	31	6	20	504 ^(c)
2002	179	51	79	66	41	20	20	12	468 ^(c)
2003	189	73	92	89	59	13	23	17	555
2004	173	57	73	107	44	16	10	14	494
2005	182(23)	61	75	86	45	29	14	10	502
2006	222(20)	36	101	89	31	25	22	15	319
2007	241(22)	42	113	109	46	13	34	9	607
2008	318(28)	66	90	127	46	20	22	7	696
2009	288(22)	60	94	115	4	15	23	4	639

a: Number in parentheses is number of males in detention at 30 June 2008 at Kariiong Juvenile Correctional Centre in New South Wales.
Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

Totals for New South Wales and Australia and rates are inclusive of this number

b: Between 1997 and 2002, Tasmania was unable to provide data disaggregated by Indigenous status. Australian totals therefore exclude Tasmania

c: Totals include Tasmania

na = not available

Number and rate of juveniles in detention, by Indigenous status

Tables 29 and 30 show the number and rate per 100,000 respectively of Indigenous juveniles in detention. In the ACT, while only a small number of Indigenous juveniles are detained, rates per 100,000 have fluctuated substantially. Again, this is to be expected in a small jurisdiction.

Table 29. Indigenous persons aged 10 to 17 years in juvenile detention, 1994-2009 (number)										
		NSW ^(a)	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1994	31-Mar	90	5	49	76	25	3	9	0	257
	30-Jun	115	5	50	76	16	1	8	0	271
	30-Sep	96	5	59	60	15	3	10	0	248
	31-Dec	83	7	69	56	14	7	13	0	249
1995	31-Mar	115	10	84	69	9	3	17	2	309
	30-Jun	101	11	76	54	6	1	10	1	260
	30-Sep	105	9	61	58	24	3	13	1	274
	31-Dec	92	11	64	56	17	2	8	4	254
1996	31-Mar	91	5	84	64	18	4	7	3	276
	30-Jun	102	4	83	61	18	6	9	1	284
	30-Sep	109	10	77	56	18	na	6	4	280 ^(b)
	31-Dec	92	12	78	43	19	na	11	1	256 ^(b)

1997	31-Mar	127	18	76	67	26	na	15	3	332 ^(b)
	30-Jun	132	8	55	70	17	na	20	3	305 ^(b)
	30-Sep	125	12	65	88	19	na	17	0	326 ^(b)
	31-Dec	103	14	92	62	10	na	15	3	299 ^(b)
1998	31-Mar	109	9	87	70	16	na	20	5	316 ^(b)
	30-Jun	103	11	76	87	18	na	21	3	319 ^(b)
	30-Sep	97	6	78	84	15	na	23	2	305 ^(b)
	31-Dec	101	9	70	63	17	na	13	1	274 ^(b)
1999	31-Mar	93	10	85	86	15	na	22	2	313 ^(b)
	30-Jun	93	10	76	86	10	na	10	2	287 ^(b)
	30-Sep	83	9	54	68	17	na	10	3	244 ^(b)
	31-Dec	77	11	54	80	10	na	12	2	246 ^(b)
2000	31-Mar	95	9	71	86	9	na	6	2	278 ^(b)
	30-Jun	109	4	60	75	15	na	11	2	276 ^(b)
	30-Sep	81	7	53	69	15	na	10	2	237 ^(b)
	31-Dec	77	6	43	63	17	na	20	6	232 ^(b)
2001	31-Mar	86	6	60	75	12	na	13	2	254 ^(b)
	30-Jun	98	9	56	78	8	na	6	6	261 ^(b)
	30-Sep	105	11	46	78	14	na	6	6	266 ^(b)
	31-Dec	89	4	46	78	20	na	14	5	256 ^(b)
2002	31-Mar	89	7	63	71	23	na	14	4	271 ^(b)
	30-Jun	84	7	58	56	20	na	15	3	243 ^(b)
	30-Sep	88	12	51	68	24	na	20	7	270 ^(b)
	31-Dec	93	5	45	75	29	na	21	0	268 ^(b)
2003	31-Mar	114	13	58	100	26	7	19	4	341
	30-Jun	96	10	62	78	32	5	16	3	302
	30-Sep	89	13	51	92	17	2	17	5	286
	31-Dec	90	13	49	88	12	11	12	2	277
2004	31-Mar	104	18	62	97	21	7	9	4	322
	30-Jun	110	12	55	91	21	4	8	5	306
	30-Sep	117	12	48	79	22	5	14	9	306
	31-Dec	101	8	54	80	29	9	27	4	312
2005	31-Mar	114(2)	6	56	109	34	6	20	7	352
	30-Jun	112(13)	20	54	79	26	8	15	3	317
	30-Sep	132(15)	15	54	77	15	7	8	1	309
	31-Dec	115(13)	9	70	92	17	4	15	7	329
2006	31-Mar	131(13)	16	95	86	12	4	18	7	369
	30-Jun	130(11)	5	71	73	13	8	24	6	330
	30-Sep	154(11)	9	59	80	13	8	24	4	351
	31-Dec	138(10)	12	86	89	16	6	19	6	372
2007	31-Mar	143(7)	8	128	116	24	5	24	5	453
	30-Jun	153(10)	10	97	103	30	6	33	4	436
	30-Sep	171(8)	15	82	102	24	12	25	7	438
	31-Dec	164(9)	12	87	124	25	11	18	9	450
2008	31-Mar	207(11)	13	103	133	28	11	24	11	530
	30-Jun	191(9)	12	81	118	21	9	23	5	460
	30-Sep	186(7)	12	75	94	19	13	17	7	425
	31-Dec	175(11)	8	74	84	18	10	23	7	399

2009	31-Mar	172(10)	11	81	101	22	14	24	4	429
	30-Jun	164(6)	8	76	104	21	3	26	3	405

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

a: Number in parentheses is number of males in detention at 30 June 2008 at Kariiong Juvenile Correctional Centre in New South Wales. Totals for New South Wales and Australia and rates are inclusive of this number

b: Between 1997 and 2002, Tasmania was unable to provide data disaggregated by Indigenous status. Australian totals therefore exclude Tasmania

na = not available

Table 30. Indigenous persons aged 10 to 17 years in juvenile detention, 1994-2009 (rate)

		NSW ^(a)	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1994	31-Mar	491.7	140.2	273.3	798.3	692.2	105.2	98.8	0.0	392.5
	30-Jun	628.3	140.2	278.9	798.3	443	35.1	87.8	0.0	413.9
	30-Sep	524.5	140.2	329.1	630.2	415.3	105.2	109.8	0.0	378.8
	31-Dec	453.5	196.2	384.9	588.2	387.6	245.5	142.7	0.0	380.3
1995	31-Mar	613.3	275.6	460.2	710.8	244.5	101.8	185.5	367.5	463.2
	30-Jun	538.6	303.1	416.3	556.3	163.0	33.9	109.1	183.8	389.7
	30-Sep	560.0	248.0	334.2	597.15	651.9	101.8	141.8	183.8	410.7
	31-Dec	490.6	303.1	350.6	576.9	461.7	67.8	87.3	735.0	380.8
1996	31-Mar	459.9	132.6	439.1	629.2	467.9	123.5	74.9	537.6	394.9
	30-Jun	515.5	106.1	433.9	599.7	467.9	185.2	96.3	179.2	406.4
	30-Sep	550.8	265.2	402.5	550.6	467.9	na	64.2	716.8	420.1 ^(b)
	31-Dec	464.9	318.2	407.8	422.8	493.9	na	117.17	179.2	384.1 ^(b)
1997	31-Mar	588.3	455.6	375.2	621.3	626.4	na	157.1	467.3	467.9 ^(b)
	30-Jun	611.5	202.5	271.5	649.2	409.5	na	209.5	467.3	429.9 ^(b)
	30-Sep	579.1	303.7	320.9	816.1	457.7	na	178	0.0	459.5 ^(b)
	31-Dec	477.1	354.3	454.2	575.0	240.9	na	157.1	467.3	421.4 ^(b)
1998	31-Mar	464.7	214.4	404.5	610.5	362.0	na	205.8	701.3	418.5 ^(b)
	30-Jun	439.1	262.0	353.4	758.8	407.2	na	216.1	420.8	422.5 ^(b)
	30-Sep	413.6	142.9	362.7	732.6	339.4	na	236.7	280.5	403.9 ^(b)
	31-Dec	430.6	214.4	325.5	549.5	384.6	na	133.8	140.3	362.9 ^(b)
1999	31-Mar	365.6	255.0	369.6	714.3	320.9	na	222.4	261.8	389.9 ^(b)
	30-Jun	365.6	255.0	330.5	714.3	213.9	na	101.1	261.8	357.5 ^(b)
	30-Sep	326.2	202.5	234.8	564.8	363.6	na	101.1	392.7	303.9 ^(b)
	31-Dec	302.7	247.5	234.8	664.5	213.9	na	121.3	261.8	306.4 ^(b)
2000	31-Mar	347.0	192.2	289.2	676.9	182.7	na	59.3	241.0	326.3 ^(b)
	30-Jun	398.1	85.4	244.4	590.3	304.5	na	108.8	241.0	323.9 ^(b)
	30-Sep	295.8	149.5	215.9	543.1	304.5	na	98.9	241.0	278.1 ^(b)
	31-Dec	281.2	128.2	175.2	495.9	345.1	na	197.8	722.9	272.3 ^(b)
2001	31-Mar	337.8	116.7	257.4	599.2	248.3	na	129.2	283.7	309.5 ^(b)
	30-Jun	384.9	175.0	240.2	623.2	165.6	na	59.6	851.1	318.1 ^(b)
	30-Sep	412.4	213.9	197.3	623.2	289.7	na	59.6	851.1	324.2 ^(b)
	31-Dec	349.6	77.8	197.3	623.2	413.9	na	139.2	709.2	312.0 ^(b)
2002	31-Mar	331.0	125.8	254.9	545.6	454.2	na	135.5	535.5	313.8 ^(b)
	30-Jun	312.4	125.8	234.7	430.3	394.9	na	145.2	401.6	281.4 ^(b)
	30-Sep	327.2	215.6	206.4	522.6	473.9	na	193.6	937.1	312.7 ^(b)
	31-Dec	345.8	89.8	182.1	576.3	572.7	na	203.3	0.0	310.4 ^(b)
2003	31-Mar	402.8	219.8	222.1	741.6	495.6	186.5	181.1	512.8	362.3
	30-Jun	339.2	169.1	237.4	578.4	610.0	133.2	152.5	384.6	320.9

2004	30-Sep	314.5	219.8	195.3	682.2	324.1	53.2	162.0	541.0	303.9
	31-Dec	318.0	219.8	187.6	652.6	228.7	293.0	114.4	256.4	294.3
	31-Mar	352.2	290.5	226.5	697.8	390.0	183.5	83.6	495.7	329.2
	30-Jun	372.5	193.7	200.9	654.6	390.0	74.3	74.3	619.6	312.9
2005	30-Sep	396.2	193.7	175.4	568.3	408.6	130.1	130.1	1115.2	312.9
	31-Dec	342.0	129.1	197.3	575.5	538.6	250.8	250.8	495.7	319
	31-Mar	371.1	91.1	195.1	766.2	615.4	182.1	182.1	823.5	346.8
	30-Jun	364.6	303.8	188.1	555.3	470.6	136.6	136.6	352.9	312.3
2006	30-Sep	429.7	227.8	188.1	541.3	271.5	72.9	72.9	117.6	304.5
	31-Dec	374.4	136.7	243.9	646.7	307.7	136.6	136.6	823.5	324.2
	31-Mar	411.3	234.3	317.1	592.5	213.6	161.1	161	774.3	352.4
	30-Jun	408.1	73.2	237.0	503.0	231.4	214.7	214.7	663.7	315.1
2007	30-Sep	483.5	131.8	196.7	551.2	231.4	214.7	214.7	442.5	335.1
	31-Dec	433.2	175.8	287.1	613.2	284.8	170.0	170.0	663.7	335.1
	31-Mar	436.4	113.6	413.6	791.4	422.3	194.3	212.0	520.8	422.2
	30-Jun	467.0	142.0	313.5	702.7	528.0	256.1	291.5	416.7	406.3
2008	30-Sep	507.6	208.1	259.0	686.3	415.8	161.4	220.9	687.6	400.3
	31-Dec	486.9	166.5	274.8	834.3	433.1	147.9	159.1	884.1	411.2
	31-Mar	614.5	180.3	325.3	753.6	485.1	147.9	212.1	1080.6	484.3
	30-Jun	567.0	166.5	255.8	794.0	363.8	121.0	203.3	491.2	420.4
2009	30-Sep	542.8	163.3	232.3	639.4	327.4	337.5	150.9	649.4	383.1
	31-Dec	510.7	108.8	229.3	559.5	310.2	259.6	204.2	649.4	359.6
	31-Mar	501.9	149.7	250.9	672.7	379.1	363.4	213.1	371.1	386.7
	30-Jun	478.6	108.8	235.4	692.7	361.9	77.9	230.8	278.3	365.0

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

a: Rates are calculated including males in detention at 30 June 2008 at Kariong Juvenile Correctional Centre in New South Wales

b: Between 30 September 1996 and 31 December 2002, Australian rates have been calculated using detainee totals excluding Tasmania and population estimates excluding Tasmania

na = not available

Tables 31 and 32 show the number and rate per 100,000 respectively of non-Indigenous juveniles. Compared with rates per 100,000 Indigenous juveniles, rates of non-Indigenous juveniles in detention have remained stable. At 30 June 2009, there were 17.8 non-Indigenous juveniles in detention per 100,000 in the ACT, compared with 16.1 per 100,000 nationally.

Table 31. Non-Indigenous persons aged 10 to 17 in juvenile detention, 1994-2009 (number)

		NSW ^(a)	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1994	31-Mar	250	63	56	55	73	8	8	12	525
	30-Jun	255	59	45	55	42	9	5	9	479
	30-Sep	231	58	50	58	40	7	5	15	464
	31-Dec	244	44	53	41	36	14	5	25	462
1995	31-Mar	278	65	60	35	40	14	7	10	509
	30-Jun	293	63	60	48	33	9	7	13	526
	30-Sep	276	62	55	39	41	8	6	10	497
	31-Dec	261	57	61	38	43	15	6	10	491
1996	31-Mar	239	53	57	43	49	21	9	7	478
	30-Jun	238	66	53	45	65	20	4	6	497
	30-Sep	230	65	60	57	63	na	2	14	491 ^(b)

1997	31-Dec	227	61	51	30	55	na	4	14	442 ^(b)
	31-Mar	246	66	60	44	74	na	4	16	510 ^(b)
	30-Jun	225	63	45	41	60	na	1	13	448 ^(b)
	30-Sep	177	66	60	45	62	na	6	13	429 ^(b)
1998	31-Dec	160	62	65	35	37	na	0	4	363 ^(b)
	31-Mar	201	66	72	50	35	na	0	9	433 ^(b)
	30-Jun	233	56	50	49	32	na	4	8	432 ^(b)
	30-Sep	206	77	56	46	31	na	7	7	430 ^(b)
1999	31-Dec	174	68	48	47	21	na	7	6	371 ^(b)
	31-Mar	190	57	58	49	33	na	4	2	393 ^(b)
	30-Jun	184	50	61	39	24	na	4	14	376 ^(b)
	30-Sep	167	74	69	42	37	na	6	5	400 ^(b)
2000	31-Dec	151	52	43	34	26	na	6	7	319 ^(b)
	31-Mar	158	46	53	40	31	na	5	10	343 ^(b)
	30-Jun	165	48	42	40	44	na	4	13	356 ^(b)
	30-Sep	149	54	34	46	40	na	6	14	343 ^(b)
2001	31-Dec	144	49	34	34	47	na	6	9	323 ^(b)
	31-Mar	121	59	39	28	50	na	7	10	314 ^(b)
	30-Jun	134	57	29	19	48	na	0	19	306 ^(b)
	30-Sep	149	55	35	35	37	na	2	15	328 ^(b)
2002	31-Dec	112	54	31	52	45	na	3	17	314 ^(b)
	31-Mar	119	61	36	37	36	na	3	7	299 ^(b)
	30-Jun	119	50	39	23	27	na	6	12	276 ^(b)
	30-Sep	130	47	44	23	34	na	4	8	290 ^(b)
2003	31-Dec	117	46	44	26	35	na	4	10	282 ^(b)
	31-Mar	116	56	41	28	42	23	3	14	323
	30-Jun	126	66	39	27	39	14	7	20	338
	30-Sep	134	50	45	29	31	24	2	17	332
2004	31-Dec	114	45	30	33	31	19	3	13	288
	31-Mar	107	45	35	29	35	24	0	14	289
	30-Jun	88	50	36	27	30	14	2	11	258
	30-Sep	99	47	29	19	32	28	3	6	263
2005	31-Dec	110	28	33	20	31	27	2	9	260
	31-Mar	114(22)	46	38	26	24	20	3	13	284
	30-Jun	105(10)	43	44	27	33	27	2	7	288
	30-Sep	110(9)	43	37	26	23	24	1	6	270
2006	31-Dec	100(8)	46	50	31	24	15	1	5	272
	31-Mar	131(14)	43	64	41	24	22	1	8	334
	30-Jun	126(9)	33	66	34	28	22	1	11	321
	30-Sep	126(11)	44	45	38	25	17	0	11	306
2007	31-Dec	121(9)	34	44	29	22	13	3	13	279
	31-Mar	145(12)	36	38	35	25	12	3	5	299
	30-Jun	126(12)	39	55	36	30	10	5	9	184
	30-Sep	134(10)	42	56	33	24	12	1	9	311
2008	31-Dec	148(9)	35	61	30	29	11	2	4	320
	31-Mar	160(13)	57	58	37	36	13	3	5	369
	30-Jun	177(16)	66	45	39	33	17	1	3	381
	30-Sep	175(18)	50	36	34	22	10	1	5	333

	31-Dec	167(14)	52	37	30	30	14	3	6	339
2009	31-Mar	187(11)	59	39	34	26	20	4	6	375
	30-Jun	165(11)	60	41	31	29	15	3	6	350

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

a: Number in parentheses is number of males in detention at 30 June 2008 at Kariang Juvenile Correctional Centre in New South Wales
Totals for New South Wales and Australia and rates are inclusive of this number

b: Between 1997 and 2002, Tasmania was unable to provide data disaggregated by Indigenous status. Australian totals therefore exclude Tasmania

na = not available

Table 32. Non-Indigenous persons aged 10 to 17 years in juvenile detention, 1994-2009 (rate)

		NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1994	31-Mar	38.0	12.8	15.4	28.3	46.9	14.8	59.2	32.8	26.7
	30-Jun	38.8	12.0	12.4	28.3	27.0	16.7	37.0	24.6	24.3
	30-Sep	35.1	11.8	13.8	29.9	25.7	13.0	37.0	41.1	23.6
	31-Dec	37.1	8.9	14.6	21.1	23.1	25.9	37.0	68.4	23.5
1995	31-Mar	42.0	13.2	16.2	17.8	25.7	25.8	51.6	27.4	25.7
	30-Jun	44.2	12.7	16.2	24.4	21.2	16.6	51.6	35.6	26.5
	30-Sep	41.7	12.5	14.9	19.8	26.3	14.8	44.2	27.4	25.1
	31-Dec	39.4	11.5	16.5	19.3	27.6	27.7	44.2	27.4	24.7
1996	31-Mar	35.7	10.7	15.2	21.5	31.2	38.9	65.2	19.2	23.9
	30-Jun	35.5	13.3	14.1	22.5	41.4	37.0	29.0	16.5	24.8
	30-Sep	34.4	13.1	16	28.5	40.2	na	14.5	38.4	25.2 ^(b)
	31-Dec	33.9	12.3	13.6	15.0	35.1	na	29.0	38.4	22.7 ^(b)
1997	31-Mar	36.7	13.3	15.9	21.8	47.2	na	28.0	44.3	26.1 ^(b)
	30-Jun	33.5	12.7	11.9	20.3	38.3	na	7.0	36.0	22.9 ^(b)
	30-Sep	26.4	13.3	15.9	22.3	39.5	na	42.1	36.0	21.9 ^(b)
	31-Dec	23.8	12.5	17.2	17.3	23.6	na	0.0	11.1	18.6 ^(b)
1998	31-Mar	29.8	13.2	18.9	24.5	22.3	na	0.0	25.3	22.0 ^(b)
	30-Jun	34.6	11.2	13.1	24.0	20.4	na	27.5	22.5	22.0 ^(b)
	30-Sep	30.6	15.4	14.7	22.5	19.7	na	48.1	19.7	21.9 ^(b)
	31-Dec	25.8	13.6	12.6	23.0	13.4	na	48.1	16.9	18.9 ^(b)
1999	31-Mar	28.0	11.3	15.1	23.7	20.9	na	27.5	5.6	19.9 ^(b)
	30-Jun	27.2	10.0	15.9	18.9	15.2	na	27.5	39.3	19.0 ^(b)
	30-Sep	24.7	14.7	18.0	20.3	23.5	na	41.3	14.0	20.2 ^(b)
	31-Dec	22.3	10.3	11.2	16.4	16.5	na	41.3	19.6	16.1 ^(b)
2000	31-Mar	23.1	9.0	13.7	19.1	19.6	na	24.7	28.1	17.2 ^(b)
	30-Jun	24.1	9.4	10.8	19.1	27.9	na	19.8	36.5	17.8 ^(b)
	30-Sep	21.8	10.6	8.8	22.0	25.3	na	29.7	39.3	17.2 ^(b)
	31-Dec	21.1	9.6	8.8	16.3	29.8	na	29.7	25.3	16.2 ^(b)
2001	31-Mar	17.4	11.4	9.9	13.2	31.6	na	46.9	27.9	15.5 ^(b)
	30-Jun	19.3	11.1	7.3	9.0	30.4	na	0.0	53.0	15.1 ^(b)
	30-Sep	21.4	10.7	8.9	16.5	23.4	na	13.4	41.9	16.2 ^(b)
	31-Dec	16.1	10.5	7.8	24.6	28.5	na	20.1	47.4	15.5 ^(b)
2002	31-Mar	17.0	11.8	8.9	17.4	22.9	na	20.4	19.7	14.7 ^(b)
	30-Jun	17.0	9.6	9.7	10.8	17.2	na	40.8	33.8	13.5 ^(b)
	30-Sep	18.6	9.1	10.9	10.8	21.6	na	27.2	22.5	14.2 ^(b)
	31-Dec	16.7	8.9	10.9	12.3	22.2	na	27.2	28.2	13.8 ^(b)
2003	31-Mar	16.6	10.7	10.0	13.1	26.7	45.0	20.7	39.9	15.4

2004	30-Jun	18.0	12.6	9.5	12.7	24.8	27.4	48.4	57.1	16.1
	30-Sep	19.2	9.6	11	13.6	19.7	47	13.9	48.5	15.8
	31-Dec	16.3	8.6	7.3	15.5	19.7	37.2	20.8	37.1	13.7
	31-Mar	15.3	8.6	8.4	13.6	22.4	46.8	0.0	40.4	13.7
2005	30-Jun	12.6	9.5	8.7	12.6	19.2	27.3	13.9	31.7	12.2
	30-Sep	14.2	9.0	7.0	8.9	20.5	54.7	21.0	17.3	12.5
	31-Dec	15.8	5.4	7.9	9.4	19.8	52.7	14.0	26.0	12.3
	31-Mar	16.3 ^(a)	8.7	9.0	12.2	15.3	39.0	20.7	37.9	13.4
2006	30-Jun	15.1 ^(a)	8.1	10.4	12.6	21.1	52.7	13.8	20.4	13.6
	30-Sep	15.7 ^(a)	8.2	8.7	12.2	14.7	46.9	6.9	17.5	12.7
	31-Dec	14.3 ^(a)	8.7	11.8	14.5	15.3	29.3	6.9	14.6	12.8
	31-Mar	18.7 ^(a)	8.1	14.9	19.0	15.3	43.0	6.9	23.5	15.7
2007	30-Jun	18.0 ^(a)	6.2	15.4	15.8	17.8	43.0	6.9	32.3	15.1
	30-Sep	18.0 ^(a)	8.2	10.2	17.3	15.7	33.2	0.0	32.2	14.3
	31-Dec	17.3 ^(a)	6.3	10.0	13.2	13.8	25.4	19.7	38.1	13.0
	31-Mar	20.7 ^(a)	6.7	8.6	16.0	15.7	23.5	19.7	14.6	13.8
2008	30-Jun	18.0 ^(a)	7.2	12.5	16.4	18.9	19.6	32.8	26.3	14.4
	30-Sep	19.1 ^(a)	7.8	12.6	14.9	15.1	25.4	6.5	26.6	14.4
	31-Dec	21.1 ^(a)	6.5	13.7	13.5	18.3	23.3	13.0	11.8	14.8
	31-Mar	22.8 ^(a)	10.6	13.0	16.7	22.7	27.5	19.6	14.8	17.0
2009	30-Jun	25.3 ^(a)	12.2	10.1	17.6	20.8	36.0	6.5	8.9	17.6
	30-Sep	25.0	9.2	8.0	15.1	13.9	19.8	6.5	14.8	15.3
	31-Dec	23.9	9.6	8.2	13.3	19.0	27.7	19.4	17.8	15.6
	31-Mar	26.8	10.9	8.7	15.1	16.4	39.5	25.8	17.8	17.3
	30-Jun	23.6	11.1	9.1	13.8	18.3	29.7	19.4	17.8	16.1

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

a: Rates are calculated including males in detention at 30 June 2008 at Kariong Juvenile Correctional Centre in New South Wales

b: Between 30 September 1996 and 31 December 2002, Australian rates have been calculated using detainee totals excluding Tasmania and population estimates excluding Tasmania

na = not available

Indigenous over-representation

Over-representation ratios reflect the rate of Indigenous juveniles in detention relative to the rate of non-Indigenous juveniles in detention. They are calculated by dividing the Indigenous rate of incarceration by the non-Indigenous rate. A high over-representation rate ratio may be due to a high number of Indigenous juveniles in detention relative to non-Indigenous juveniles, or a low number of non-Indigenous juveniles in detention relative to Indigenous juveniles.

Table 33 presents the over-representation rate ratios of juveniles in detention by jurisdiction as at 30 June from 1994 to 2009. Figure 2 illustrates the trend in rate ratios for the ACT.

It should be noted that rates of juvenile detention and the resulting over-representation ratios can be highly variable in jurisdictions with:

- small populations of Indigenous people;
- small juvenile detention populations; and/or
- small numbers of Indigenous people in juvenile detention.

These issues are particularly important to consider in relation to the ACT, because all of these characteristics are present.

At 30 June 2009, Indigenous juveniles were over-represented in detention in all jurisdictions (see Table 33) although the rate of over-representation varied considerably. In the ACT, Indigenous juveniles were 15.6 as times as likely to be detained as non-Indigenous juveniles, compared with 22.7 nationally.

Table 33. Over-representation of Indigenous persons aged 10 to 17 years in juvenile detention at 30 June 1994-2009 (rate ratios)

	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
1994	16.2	11.7	22.5	28.2	16.4	2.1	2.4	0.0	17.0
1995	12.2	23.8	25.7	22.8	7.7	2.0	2.1	5.2	14.7
1996	14.5	8.0	30.8	26.7	11.3	5.0	3.3	10.9	16.4
1997	18.2	15.9	22.8	32.0	10.7	na	29.9	13	18.8 ^(c)
1998	12.7	23.4	27.0	31.6	20.0	na	7.9	18.7	19.2 ^(c)
1999	13.4	22.5	20.8	37.8	14.1	na	3.7	6.7	18.8 ^(c)
2000	16.5	9.1	22.6	30.9	10.9	na	5.5	6.6	18.2 ^(c)
2001	19.9	15.8	32.9	69.2	5.4	na	— ^(b)	16.1	21.1 ^(c)
2002	18.4	13.1	24.2	39.8	23.0	na	3.6	11.9	20.8 ^(c)
2003	18.8	13.3	25.0	45.5	24.6	4.9	3.2	6.7	19.9
2004	29.6	20.4	23.1	51.9	20.3	3.8	5.3	19.5	25.6
2005	24.1 ^(a)	37.4	18.1	44.1	22.3	3.9	9.9	17.3	23.0
2006	22.7 ^(a)	11.8	15.4	31.9	13.0	4.8	31.0	20.6	20.9
2007	25.9 ^(a)	19.7	25.1	42.8	27.9	7.9	8.9	15.8	28.2
2008	22.4 ^(a)	13.6	25.3	45.1	17.5	3.4	31.3	55.2	23.9
2009	20.3 ^(a)	9.8	25.8	50.2	19.8	2.6	11.9	15.6	22.7

Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

a: Includes Kariong Juvenile Correctional Centre in New South Wales

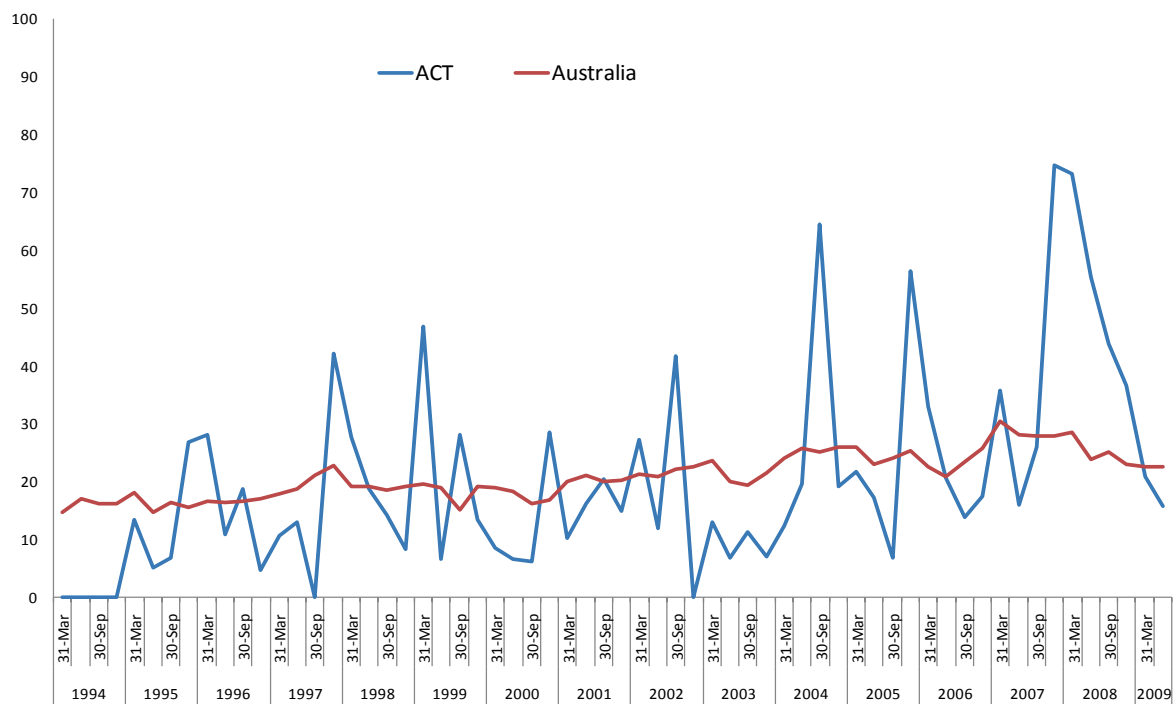
b: Non-Indigenous rate was zero so over-representation ratio could not be calculated

c: Excludes Tasmania

na = not available

As can be seen in Figure 2, the over-representation rate ratio in the ACT has fluctuated more so than is the case nationally, largely due to the factors listed above.

Figure 2. Indigenous over-representation in juvenile detention in the ACT, 1994-2009 (rate ratios)



Source: AIC Juveniles in Detention Monitoring Program 1981-2009 [computer file]

Remanded and sentenced juveniles in detention

At 30 June 2009, two-thirds of juvenile detainees in the ACT ($n = 6$) were on remand rather than sentenced. As Table 34 shows, five of the six male juvenile detainees and one of the three female juvenile detainees were on remand. This closely reflects the national proportion of juveniles that is remanded rather than sentenced.

Nationally, more than half (53%) of remand periods served by juveniles during 2008-09 ended in the juvenile being granted bail; about one-fifth (21%) of remand periods were followed by a period of sentenced detention for the juvenile (AIHW 2011).

The issue of the increased use of remand for juveniles has recently been highlighted as a key priority for future research in the juvenile justice area (see Richards 2011c; Richards & Lyneham 2010).

Table 34. Persons aged 10 to 17 years remanded or sentenced by jurisdiction, 2008-09 (number)

	NSW	Vic.	Qld	WA	SA	Tas.	NT	ACT	Australia
Males									
Remanded									
30 Sept	220	31	60	52	19	15	6	7	410
31 Dec	198	34	68	49	22	13	12	7	403
31 Mar	181	36	90	61	27	16	11	7	429
30 June	179	28	76	51	26	9	13	5	387
Sentenced									
30 Sept	129	26	42	60	17	7	9	3	293
31 Dec	130	23	34	53	16	9	9	2	276
31 Mar	160	27	27	63	17	11	10	1	316
30 June	138	34	41	75	16	9	14	1	328
Females									
Remanded									
30 Sept	19	1	6	10	5	1	3	2	47
31 Dec	22	1	8	10	8	0	3	3	55
31 Mar	19	4	9	8	3	6	4	1	54
30 June	13	2	12	7	5	0	1	1	41
Sentenced									
30 Sept	6	4	3	8	0	1	0	0	22
31 Dec	7	2	4	2	2	2	2	1	22
31 Mar	13	3	3	3	1	1	3	1	28
30 June	11	4	2	2	3	0	1	2	25
Total									
Remanded									
30 Sept	239	32	66	62	24	16	9	9	457
31 Dec	220	35	76	59	30	13	15	10	458
31 Mar	200	40	99	69	30	22	15	8	483
30 June	192	30	88	58	31	9	14	6	428
Sentenced									
30 Sept	135	30	45	68	17	8	9	3	315
31 Dec	137	25	38	55	18	11	11	3	298
31 Mar	173	30	30	66	18	12	13	2	344
30 June	149	38	43	77	19	9	15	3	353
Total detained on 30 June	341	68	131	135	50	18	29	9	781
% remanded at 30 June	56.3	44.1	67.2	43.0	62.0	50.0	48.3	66.7	54.8

Source: AIC Juveniles in Detention Monitoring Program 1981–2009 [computer file]

Measuring juvenile recidivism in the ACT

What is recidivism?

The term 'recidivism' originates from the Latin 'recidere', which means to 'fall back'; the term is often used interchangeably with 'repeat offending' or 'reoffending' (Payne 2007). Maltz (cited in Ellermann, Sullo & Tien 1992: 485) defines recidivism as 'the reversion of an individual to criminal behavior after he or she has been convicted of a prior offense, sentenced, and (presumably) corrected'.

Recidivism is widely acknowledged to be a key indicator of the effectiveness of juvenile justice interventions - 'recidivism, or rather the absence thereof, is readily embraced as a valid and efficient outcome indicator' (Wartna 2009: 175; see also Cunneen & Luke 2007).

The reduction or eradication of juvenile recidivism is therefore a key goal of departments responsible for juvenile justice services in Australia (Cunneen & Luke 2007). In addition, measures of recidivism are often used to determine the 'success' or 'failure' of individual programs within the juvenile justice arena.

Why is measuring recidivism problematic?

It has been widely acknowledged, however, that recidivism is a limited and problematic outcome measure for a variety of reasons, including that:

- Measures of recidivism rely on the accuracy of officially recorded administrative data. The use of recidivism as a measure of a department's success relies on the accurate recording of official data (Friendship, Beech & Browne 2002);
- Official data also substantially underestimate the true extent of recidivism, as only a small proportion of incidents are reported to the police and/or result in charges being laid (Friendship, Beech & Browne 2002; Murphey, Musser & Maton 1998; Victorian Department of Human Services 2001);
- It is impossible to measure recidivism directly. Instead, proxies (such as re-arrests or reconvictions) are used. Each of these proxy measures distorts the true picture of recidivism in some way (Cunneen & Luke 2007; Hedderman 2009);
- Measures and studies of recidivism usually do not involve the use of a control group (Cunneen & Luke 2007);
- Where less rigorous methodological approaches are used to determine levels of recidivism, changes in rates of recidivism may be due to factors unrelated to the intervention being measured;

- Variations in the length of time over which recidivism is measured can result in highly varied levels of recidivism being identified—the longer an individual is observed, the more likely it is that recidivism will be identified (Tresidder, Payne & Homel 2009);
- Levels of recidivism may reflect shifts in criminal justice policy or procedure, rather than actual levels of offending; and
- Counts of recidivism are something of a blunt instrument—the commission of a new offence does not provide information about the reasons a juvenile has reoffended, or an insight into what might have prevented the act of recidivism (Anderegg 2006).

Therefore, as Tresidder, Payne and Homel (2009) argue, a decrease in recorded recidivism might indicate a genuine reduction in offending. Alternatively, it might indicate, among other things, that:

- offenders committed more covert and less detectable offences, so that while their actual offending continued (or even increased), their apprehensions, prosecutions, convictions and/or sentences decreased;
- offenders were subject to alternative processing strategies that influenced the way in which their offending was dealt with and/or recorded by criminal justice personnel; and/or
- criminal justice processing delays were more substantial than in previous years, affecting the proportion of offenders who were officially counted in recidivism estimates.

Measuring *juvenile* recidivism can pose unique challenges, as juveniles have a different offending profile from adults, with offending peaking during late adolescence (see Richards 2011a).

In summary, therefore, data on juvenile recidivism can be limited and/or problematic, and it is important to recognise their limitations. As a small number of recidivist offenders are responsible for a large amount of crime, however, recidivism remains an important outcome indicator for juvenile justice agencies. As Cunneen and Luke (2007: 199) argue, ‘measuring re-offending is important and it needs to be done as effectively as possible. However...it should not stand as a substitute for all other outcome measures’ (see also Thomas 2006).

Best practice in measuring juvenile recidivism

With the support of the Australasian Juvenile Justice Administrators (AJJA), the AIC recently undertook a research project that focused on best practice in measuring juvenile recidivism in Australia (see Richards 2011b). The study sought to explore a range of areas, including:

- how and to what extent juvenile justice services influence levels of recidivism;
- the limitations of recidivism as a measure of performance (particularly in relation to juveniles);
- the factors that may limit the extent of comparability when measuring juvenile recidivism across Australia’s jurisdictions;
- additional or alternative outcome measures that could better assess the effectiveness of juvenile justice services; and

- principles for measuring juvenile recidivism on a comparable basis across Australia's jurisdictions.

To interrogate these research areas, a focused international literature review and a series of consultations with senior juvenile justice staff in each jurisdiction were undertaken.

Best practice principles for measuring juvenile recidivism in Australia

A number of 'best practice' principles on measuring juvenile recidivism emerged from this research (see Richards 2011b), including that:

1. individual juveniles (rather than offences, convictions, or sentences) should be the primary counting unit;
2. juvenile recidivism should be measured prospectively rather than retrospectively;
3. juveniles should be tracked into the adult justice system (ie to assess whether juveniles recidivate after they have attained majority status);
4. minor offences should be excluded from measures of juvenile recidivism;
5. technical breaches of supervised orders should be excluded from measures of juvenile recidivism;
6. restorations of suspended sentences should be excluded from measures of juvenile recidivism;
7. data from specialty courts (eg youth drug and alcohol courts) should be included in measures of juvenile recidivism;
8. pseudo-recidivism should be excluded from measures of juvenile recidivism;
9. the offence date (rather than the conviction or sentencing date) should be used in measures of juvenile recidivism;
10. offences committed while a juvenile is serving a community-based order (but not a detention-based order) should be counted as recidivism; and
11. the frequency and/or severity of offending should be considered in measures of juvenile recidivism.

It is important to note that these principles represent an ideal. They comprise a best practice framework that jurisdictions across Australia are currently unlikely to be able to adhere to in practice. Jurisdictions may, however, adopt these principles to the extent possible and/or strive to become aligned with them in the future. Like all other jurisdictions, the ACT does not currently measure juvenile recidivism in accordance with these principles, but has endorsed the principles as best practice.

The purpose of the following sections, therefore, is not to compare the ACT's current practice unfavourably with the 'best practice' framework, but to provide an insight into how juvenile recidivism is currently measured in the ACT and how current methods could potentially be improved in the future.

Measuring juvenile recidivism in the ACT

A consultation with senior staff from the ACT Office for Children, Youth and Family Services (OCYFS) was undertaken by the AIC on 20 May 2011. The purpose of this consultation was to obtain information on the measurement of juvenile recidivism in the ACT. Specifically, the consultation considered how juvenile recidivism is currently measured; what the data are used for and who the main users of the data are; and the limitations and challenges of current methods of measuring juvenile recidivism in the ACT.

The OCYFS currently reports on juvenile recidivism to the ACT Department of Treasury for the ACT's annual budget papers. The strategic indicator against which the OCYFS reports is 'Provision of services that address the needs of young people involved with Youth Justice Services' (ACT Department of Treasury 2011). As described in detail below, juvenile recidivism is measured retrospectively as a return to custodial supervision (for juveniles on custodial orders) or return to community-based supervision (for juveniles on community-based orders) over a two-year period. Only sentenced juveniles are counted as recidivists (ie those on remand are not counted). That is, the OCYFS measures recidivism by calculating the proportion of all juveniles currently in custody (on sentence) that had served part or all of a different episode of custody¹ following sentence within the previous two years or during the current year, and the proportion of all juveniles currently serving a community-based order that had been subject to a different community-based order within the previous year or during the current year.

The OCYFS also reports on juvenile recidivism in the ACT Department of Disability, Housing and Community Services' annual report. The strategic indicator against which juvenile recidivism is reported is again the 'Provision of services that address the needs of young people involved with Youth Justice Services' (ACT Department of Disability, Housing and Community Services [DHCS] 2010). Table 35 shows both the actual percentage of juvenile recidivists, calculated as described above, and the target with which this is compared.

Table 35. Juvenile recidivism in the ACT, 2008-09 to 2009-10, targets and actual figures (percent)

	Original target 2008-09	Actual result 2008- 09	Original target 2009-10	Actual result 2009- 10
Recidivism of sentenced young people in custody	45	0	45	27
Recidivism of young people on community-based orders	38	33	37	37

Source: Adapted from ACT Department of Disability, Housing and Community Services (2010; 2009)

As noted above, juvenile recidivism in the ACT is measured as a 'return to service' – that is, the return of a juvenile to a new custodial order (for juveniles currently serving a custodial order) or the return of a juvenile to a new community-based order (for juveniles currently serving a community-based order). Recidivism is not counted across these order types; that is, if a juvenile currently serving a custodial order previously served a community order (or vice versa), this would not be counted as recidivism.

¹ Where more than one period of imprisonment is imposed at one or more sentencing occasions, and these are served cumulatively and/or concurrently with an existing sentence, this is counted as one episode of custodial sentence, and excluded from the definition of recidivism. Where more than one supervised community-based sentence is imposed during a single sentencing proceeding, this is also counted once only and not included as recidivism. If a new supervised community-based sentence is imposed while a juvenile is already subject to such an order, however, this is counted as a new sentence and would be counted as recidivism.

As this definition implies, juvenile recidivism is counted *retrospectively* – calculating recidivism requires staff to determine whether a juvenile had been subject to an order within the previous two years. This figure is reported as a percentage of all juveniles who were subject to an order in the current year.

Juveniles are not currently tracked into the adult criminal justice system for the purposes of measuring recidivism. If a young person (aged 18-21 years) is in the custody of, or on supervision by, OCYFS for an offence committed while they were aged under 18 years, however, they would be considered a juvenile and counted as a juvenile recidivist (if they had served an order of the same type within the previous two years). Although tracking juveniles into the adult criminal justice system for the purposes of measuring recidivism is conceivable in the ACT, it is likely to be impractical and resource-intensive.

As Table 36 indicates, the ACT's current approach to measuring juvenile recidivism meets many of the 'best practice' principles outlined in Richards (2011b). Others, however, are not currently feasible.

The aim of the above discussion and Tables 35 and 36 is to provide an insight into how juvenile recidivism is measured in the ACT, and how the figures on juvenile recidivism reported in the ACT budget papers and DHCS' annual reports is calculated.

It should be noted that the principles outlined above provide an ideal framework for the measurement of juvenile recidivism, and that for a variety of reasons some of these principles will be difficult for jurisdictions, including the ACT, to meet in practice.

Table 36. Whether ACT meets best practice principles for measuring juvenile recidivism

Principle	Whether met in the ACT	Comments
Individual juveniles (rather than offences, convictions, or sentences) should be the primary counting unit	Yes	The counting unit used to measure juvenile recidivism is 'juveniles'
Juvenile recidivism should be measured prospectively rather than retrospectively	No	Juvenile recidivism is currently measured retrospectively (ie what proportion of juveniles currently serving an order has previously served an order?) rather than prospectively (ie what proportion of juveniles currently serving an order returns to serve another order?)
Juveniles should be tracked into the adult justice system (ie to assess whether juveniles recidivate after they have attained majority status)	No	Juveniles are not currently tracked into the adult criminal justice system for the purposes of measuring recidivism. If a young person (aged 18-21 years) is sentenced by the Children's Court to the supervision of the OCYFS, however, they would be considered a juvenile and counted as a juvenile recidivist (if they had served an order of the same type within the previous two years)
Minor offences should be excluded from measures of juvenile recidivism	Yes	As only those juveniles who serve community-based or custodial orders are counted as recidivists, minor offences such as traffic and fare evasion offences are automatically excluded from measures of juvenile recidivism
Technical breaches of supervised orders should be excluded from measures of juvenile recidivism	No	In the ACT, failure to appear on bail is considered an offence
Restorations of suspended sentences should be excluded from measures of juvenile recidivism	No	A revocation of a suspended sentence would be counted as recidivism for juveniles serving a custodial order who had previously served a custodial order
Data from specialty courts (eg youth drug and alcohol courts) should be included in measures of juvenile recidivism	Yes	In 2010 Circle Sentencing in the ACT was expanded to include Aboriginal and Torres Strait Islander young offenders. Sentences from this court are included in measures of juvenile recidivism
Pseudo-recidivism should be excluded from measures of juvenile recidivism	No	The ACT currently is unable to exclude pseudo-recidivism from measures of juvenile recidivism
The offence date (rather than the conviction or sentencing date) should be used in measures of juvenile recidivism	No	The ACT does not capture data on offence date or use these data in calculations of juvenile recidivism
Offences committed while a juvenile is serving a community-based order (but not a detention-based order) should be counted as recidivism	Yes	The ACT includes offences committed while a juvenile is serving a community-based order as recidivism, but excludes offences committed while a juvenile is serving a custody-based order (where any new sentence is served concurrently or cumulatively with the existing custody-based order)
The frequency and/or severity of offending should be considered in measures of juvenile recidivism	No	This would pose substantial practical issues for the ACT

Data gaps in relation to juveniles' contact with the criminal justice system in the ACT

There are a number of areas in relation to juveniles' contact with the criminal justice system in the ACT for which data collection could be improved. This section outlines the key areas in relation to juveniles' contact with the police, the Children's Court, corrections, and recidivism. Many of the data gaps in the ACT are also issues in other jurisdictions; these are outlined in more detail in Richards (2009).

In addition to the data gaps described below, a key limitation of data on juvenile justice matters in the ACT (as in other jurisdictions) is that data are not linked across the domains of policing, courts and corrections. It is therefore not possible to gain an insight into the trajectories of individual juveniles through the criminal justice system. In addition, it is difficult to get a sense of the flow of juveniles into and out of the criminal justice system and across these domains.

Police data

In the ACT, like most jurisdictions, data are not published on both alleged juvenile offenders and *distinct* alleged juvenile offenders. Data on both of these variables would provide an insight into the proportion of alleged offenders who commit one offence and/or offences on one occasion only, compared with those who commit multiple offences and/or offences on multiple occasions. It has been well-documented that a small 'core' of juvenile offenders is responsible for a disproportionate amount of crime (Livingstone et al. 2008). Data on *distinct* alleged juvenile offenders would indicate the proportion of juvenile crime that is committed by chronic repeat offenders. Furthermore, disaggregating these data may show variations in offending patterns by age, sex, Indigenous status and/or other demographic characteristics (see Richards 2009).

While police data on alleged juvenile offenders in the ACT captures a range of key characteristics including juveniles' sex, age and Indigenous status, other characteristics, such as country of birth and ethnic background, are not reported. This is the case in most jurisdictions; only Victoria Police publishes such data.

Police in the ACT categorise alleged juvenile offenders as either Indigenous or non-Indigenous. As is the case in other jurisdictions, however, it is unknown how police determine Indigenous status. Future research might explore how police determine Indigenous status in jurisdictions in which this is not based on appearance. It is important to recognise that data relating to the Indigenous status of juveniles may not adequately capture the extent of Indigenous juveniles'

contact with the criminal justice system. Hunter and Ayyar's (2009: 16) research into the quality of data on Indigenous status in administrative data collections argues that

Indigenous involvement in the criminal justice system will be severely underestimated if no attempt is made to establish or estimate the true identity of the large number of people with unknown ATSI [Aboriginal or Torres Strait Islander] status within the criminal justice system.

Qualitative research could also provide an important and complementary insight into juveniles' contact with police in the ACT. For example, police decisions on the processing of juveniles who are diverted from the formal criminal justice system could be explored in more detail. There has been little published on how police make decisions about whether a particular juvenile should be warned, cautioned or referred to a restorative justice conference; qualitative research could provide an insight into this important area.

Children's Court data

Data on juveniles' contact with the ACT Children's Court are not disaggregated by Indigenous status (as is the case in other jurisdictions). It is therefore unclear what proportion of juveniles adjudicated in the Children's Court is Indigenous. In addition, the lack of court data on juveniles' Indigenous status has resulted in limited knowledge on the following issues:

- the offence types for which Indigenous juveniles are adjudicated in court, in comparison with non-Indigenous juveniles;
- sentencing outcomes for Indigenous juveniles compared with non-Indigenous juveniles;
- the age at which Indigenous juveniles first appear before the children's courts, in comparison with non-Indigenous juveniles;
- rates of acquittal and conviction by Indigenous status; and
- the combined influence of age, sex, Indigenous status and offence type on juveniles' court outcomes (Richards 2009).

More detailed analysis of the Indigenous status of juveniles appearing in the children's courts is important given the over-representation of Indigenous juveniles in detention. A closer examination of court data would provide an insight into the stage of the criminal justice system at which the over-representation of Indigenous juveniles becomes entrenched.

A high proportion of adjudications in the ACT Children's Court are withdrawn, in comparison with the national average. As highlighted in this report, nearly one-third of adjudications in the ACT Children's Court are withdrawn, in comparison with the national figure of 10 percent. Further consideration could be given to why this is the case, and any implications of this apparent anomaly.

The ACT is unique in publishing data on how juveniles plead in the Children's Court. The impacts of juveniles' pleading behaviours on sentencing outcomes is an important area that could be explored in more detail.

Corrections data

Like all jurisdictions except the Northern Territory, data on juvenile corrections in the ACT lacks a focus on offence type (see Richards 2009). That is, the offence types for which juveniles are placed under either community- or detention-based supervision are largely unknown. These data, disaggregated by demographic characteristics such as age, sex and Indigenous status, would provide a more detailed picture of juvenile corrections in the ACT. It is important to note, however, that the very small numbers of juveniles in detention in Australia as a whole, and in the ACT in particular, is likely to make the collection of such data difficult, due to the need to maintain juveniles' privacy.

Considering the relationship between offence type and sentencing outcomes is particularly important in relation to understanding rates of over-representation of Indigenous juveniles under community-based and custodial supervision.

Recidivism data

As this report has highlighted, current methods for measuring and reporting on juvenile recidivism in the ACT have a number of limitations, as is the case in all jurisdictions in Australia.

Perhaps the key limitation of the approach taken in the ACT, however, is the current lack of capacity to measure juvenile recidivism across community-based and custodial orders. That is, the current approach only captures juveniles serving a custodial sentence who have previously served a custodial sentence, and juveniles currently serving a community-based sentence who have previously served a community-based sentence. It has been well-documented, however, that juveniles often move between community-based and custodial orders. A key factor in improving data collection on juvenile recidivism in the ACT would therefore be to address this limitation.

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June 2011



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Executive Summary

Following a resolution in the ACT Legislative Assembly, the ACT Government directed the Human Rights Commission¹ (The Commission) to undertake a review of conditions at the Bimberi Detention Centre. As part of their review the Commission engaged two consultants to interview executives of the Community Services Directorate and to advise on organizational processes and structures required to implement reform in Youth Justice. The consultants sought to address the questions:

- How can the Youth Justice system best deliver public value in the future to vulnerable children and young people and the broader ACT community?
- What organisational processes and structures are needed to achieve good outcomes for children and young people in the ACT Youth Justice system?

A brief overview of children and young people in the youth justice system and the articulated goals of the ACT Youth Justice System framed the interviews, analysis and our proposals to the Commission.

The purpose of Youth Justice in the ACT

The ACT Government, in its submission to the Review, articulates four goals for its Juvenile Justice system:

Within a human rights framework and applying the best interests principle, the objectives of the ACT youth justice system are:

- 1) To prevent young people from entering the youth justice system and to divert those young people who do come into contact with the youth justice system at all opportunities
- 2) To support the holistic development and wellbeing of young people in the youth justice system to keep them safe and to maximize their opportunities to achieve positive life outcomes
- 3) To promote young people's rehabilitation and reduce recidivism

¹ The Human Rights Commissioner and the ACT Commissioner for Children were directed to undertake concurrent reviews and to provide a single report



4) To facilitate effective throughcare and transitioning to assist a young person's reintegration into the community²

These goals clearly articulate a rehabilitative approach to Youth Justice. In the Justice literature, theories of rehabilitation acknowledge the importance of earlier experiences and family life of the young person, treatment and other psychologically based strategies to prevent offending behaviour, and taking account of the agency and capacity of the young person for change. The rehabilitative approach which is explicitly stated in the goals of Youth Justice, will focus on encouraging young people to take responsibility for their actions alongside comprehensive efforts to build their capabilities for a positive future.

Young People in Youth Justice Detention

Since 2000 the ACT government has been concerned about the rate of children and young people in the ACT Youth Justice system. Nationally, the ACT is not performing well on three key measures: the rate of young people on remand, the rate who are on community supervision orders and the rate in detention. Further, the majority of young people who are detained at Bimberi have not been sentenced; they are there because they have either been refused bail or they are subject to a remand order. Aboriginal and Torres Strait Islander children are greatly overrepresented in all parts of the system.

A recent discussion paper *Towards a Diversionary Framework for the ACT* (Feb 2011) acknowledges these concerns and canvasses options for improving performance in the diversion of young people from the system and for better meeting their needs.

An overview of the international literature and the limited Australian research on young people in the Justice system provides a compelling case for much stronger collaborative arrangements across government and non government agencies, and the wider community. The social and economic costs of failure to do so are apparent when consideration is given to typical profiles of young people in the Justice system.

For instance many involved with Youth Justice, and the majority of those in detention, have significant histories of trauma through child abuse, neglect, and family violence.

² ACT Government (2011) *The ACT Government's Submission to the Human Rights Commission's Bimberi Reviews*, p. 30



Research indicates that institutionalization, stigma and poor self-concept are found to accompany periods in youth detention especially when this is prolonged. There is also a tendency for young people, who are cut off from families and communities to strengthen criminal networks. However, ongoing criminal activity is not the only issue of concern for these young people and for society; those who have been incarcerated are also more likely to be violent with their intimate partners, become parents very young and to abuse and neglect their own children. There is also strong evidence that incarceration is intergenerational.

Young people detained in custody are likely to have encountered many human service systems along the way, including education, mental health and drug and alcohol agencies, child welfare (including out of home care) and public housing. Far from being active recipients of what are generally regarded as universal or targeted services a picture emerges of young people who either do not access services, drift away from key institutions critical to their future or are actively excluded from them. Previous Australian inquiries into children and the legal system have identified the vulnerability of children exiting detention (many of whom are Aboriginal) especially in getting the assistance they need in education, health, housing, and employment.

Recurring themes in the literature are the early indicators of later criminal behaviour and the increasing difficulties faced by young people as alienation from key institutions and service systems becomes more entrenched.

With this understanding of vulnerable young people, and particularly those who spend periods of time in detention, we asked a number of senior executives in the Community Services Directorate their views about future structures and organizational arrangements that could bring about reform in Youth Justice.



The Interviews

Confidential interviews were conducted with 16 executives³ across the Community Services Directorate,⁴ almost all of whom had worked for many years in practice with disadvantaged children, young people and their families. The genuine wish for the system to improve the lives of very vulnerable children was strongly evident in the interviews.

Participants spoke of their high hopes for Bimberi, particularly the intention to drive change away from the custodial culture that had developed in Quamby in its latter years. Many participants spoke of the need for a relationship focused culture in which the time that young people spent in Bimberi could be used as an opportunity to identify and address life barriers.

Almost all spoke of the impacts of a struggle to employ enough skilled staff, as the lack of diversionary options caused numbers to rise in Bimberi, and the negative impacts of a reactive political environment and a media which is quick to sensationalise. Risk averseness grew along with an increasing preference for the 'lockdown' of young people to deal with security risks and thus avoid the panic engendered by damaging media.

We heard of the gradual decline in key programs for young people: education, sport, and in getting competency based training in place, due to the deteriorating staffing situation. We also heard how good staff stayed despite these events and the public humiliation of recent months.

We heard that substantial efforts are being made to address problems at the Centre and to widen the focus of these efforts to each of the articulated goals of Youth Justice, including with the broader group of vulnerable children and young people who are at risk of poor outcomes.

In particular participants spoke positively about vastly improved recruitment processes (levels, permanency, qualifications, and competency based training), much stronger communication between "Moore St" and the centre, a significant refocusing on education and skills of residents, one to one tutoring for children

³ The Commission provided the consultants with the list of executives to approach for these interviews. All invitees agreed to participate

⁴ We asked interviewees:

"Thinking about the Government's stated goals for Youth Justice, including for Bimberi:

What works well now that may assist in the future?

What continues to be a problem?

What future organizational arrangements can bring about lasting positive change for vulnerable children and young people in the ACT?"



with very poor literacy, agreements with CIT (albeit limited ones) and partnerships with Registered Training Organisations. Sporting and music programs have been strengthened and some industry partners are being identified for future employment opportunities.

Participants also spoke of issues they felt still required attention if these gains were to be sustained beyond the Review. We use a well known theory of public sector change^{5 6} to organize our analysis of these issues.

1. Firstly it is apparent that managers feel there is more work to be done in communicating the 'public value' of a Youth Justice system which is focused on rehabilitation outcomes. Many participants felt there was a need for the government to more strongly communicate this vision and purpose, and the reasons for taking this approach. Many also expressed the view that there should be more attention to performance measures and other accountability mechanisms which support this vision. For example managers are frustrated with:
 - Formal performance frameworks in which current measures do not recognize the importance of systems working together to improve outcomes for young offenders.
 - External oversight bodies which are appropriate and necessary but lack the advocacy focus necessary for system wide change
 - Internal management systems in which the focus has been on safety and security and not on children's outcomes. Participants wanted to see a much greater role for internal quality assurance systems and external experts in Youth Justice.
2. Secondly managers identified problems in creating the authorizing environment necessary to achieve the better outcomes for vulnerable young people. They did not feel there was yet a coalition of key groups and individuals across sectors to support the rehabilitation vision or the actions needed to achieve it. Some of the concerns which fall into this category include:
 - A lack of legislated and policy options to divert young people from detention and mechanisms to achieve good throughcare;

⁵ Moore, M (1995) *Creating Public Value: Strategic Management in Government*. Cambridge, Massachusetts: Harvard University Press

⁶ Benington, J., & Moore, M. (2011) *Public Value: Theory and Practice*



- Recognition that although good progress has been made at Bimberi more work is needed to ensure staff understand the vision and fully embrace it;
 - The ongoing frustration with lack of a whole of government approach. The view was put many times that other agencies (government and non government) lack clarity of their roles with vulnerable youth, before, during and after detention.
3. Finally participants identified the need to build greater operational capacity to support the vision. The areas identified as most needed included:
- Earlier intervention - participants identified unleveraged opportunities for earlier local, cross agency interventions – especially for 9-14 year olds. A number of existing programs such as the Child and Family Centres, Schools as Communities and various collaborative ventures in schools (the G8, for example) were identified as good platforms for collaborative early intervention approaches
 - Continuity of case work approaches (including case management) across all phases of youth justice and between child protection and youth justice – and need for an afterhours youth justice response collocated with the afterhour's child protection response, was considered essential. Existing models of practice such as the Child Protection Case Conferencing pilots were thought to be appropriate for extension into Youth Justice.
 - A shared practice framework for vulnerable children and young people, including across Youth Justice; one which would embed a common set of principles and models which are relationship and outreach focused, ecological, and sustained for as long as the young person requires assistance. A Practice Guide for Youth Justice which sits underneath the overarching Practice Framework for vulnerable youth could provide a much greater level of consistency of principles and approaches.
 - Continued recognition of the need to 'over staff ' Bimberi , ensure that staff are appointed permanently whenever possible but also maintain a good pool of trained casual staff



- The need for partnerships with RTOs, industry and philanthropic bodies so that staff and young people can access competency based training, and that young people will have opportunities for further education, skill development and employment when they leave.

What Needs to be Done to Support the Change

The interviews pointed to a number of underlying problems in the operation of the Bimberi centre as a component of a broader, effectively functioning response to addressing the needs of vulnerable and at risk young people.

Some of these problems relate to day-to-day management and resource issues. Others are more systemic and if not addressed, will ultimately undermine the good work which is being done to address current tangible, operational challenges. One of the key issues with regard to the operation of Bimberi has been the lack of a common view throughout the Government, the Department and the ACT community more broadly, of its purpose and role in the overall response to young people at risk.

The second issue has been the centre's separateness – some have described it as the "oil rig". This separateness appears to be at the core of a number of the criticisms of the centre, ranging from the development of a separate staff culture, poor continuity of case management and uncertainty of resourcing for therapeutic and educational programs.

The proposals of this report seek to establish the mechanisms that will underpin the maintenance of an organizational culture focused on the reform and rehabilitation of young people detained at Bimberi, but more widely those that come in contact with the ACT youth justice system.

Essentially an effective organizational architecture will be characterized by both clarity and agreement around the values and purpose of the organization. These will be communicated throughout the organization and will shape the day-to-day activities which characterize its operation.

This shared values statement and clarity of purpose will be given expression through an effective monitoring and performance management system that will be owned and operated by the staff within the organization. It will underpin human resource issues from day-to-day staff management and supervision to staff recruitment and training. From the outside its existence will be recognized by the coherence of the organization and its capacity to focus on achieving common



goals. It is an approach that is sometimes summarised by the term “organizational culture”.

Without a rigorous commitment to the maintenance of a coherent set of values throughout the organisation, from the top levels of its leadership to the day-to-day frontline staff delivering services, the organisation faces the risk of a “cultural drift” in which component parts of the organisation developed separate cultural identities and operate effectively for divergent and sometimes competing purposes.

What the proposals will achieve

With this in mind we have developed a set of proposals for the Commissioners to consider in the development of their recommendations. The proposals build on the views of the executives and managers we interviewed but also reflect our interpretation of contemporary best practice in organizational design in public sector agencies. In summary the proposals seek to bring about the following changes in the way the ACT responds to vulnerable young people.

1. Bimberi will not operate as a separate entity disconnected from the broader response to vulnerable youth in the ACT but will be part of a co-ordinated system which focuses on achieving good outcomes for this high need group.

In order to achieve this a number of things need to be put in place outside Bimberi as well as within it.

External Factors

2. Led by the newly created Strategic Board the ACT will adopt a clear statement of the goals to which it aspires for vulnerable young people. This statement will include an aspiration to improve the health, safety, wellbeing, learning and development of this vulnerable group.
3. The achievement of broadly based outcomes for vulnerable young people will not occur through the actions of a single directorate but will require the input of a number of different directorates. The Strategic Board will take responsibility for coordinating these directorates and overseeing the allocation of resources to support the outcomes.



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4. The Strategic Board will prepare an annual report to government on how this group of vulnerable young people are faring, describing them in terms of their health, safety, wellbeing, learning and development.

Internal Factors

5. The practices of responding to these vulnerable young people will reflect the principles of continuity, a focus on outcomes (how the young people are rather than what the government is doing), and the use of interdisciplinary teams.
6. Within that overarching focus on the needs of vulnerable young people there will be a statement of purpose for Bimberi that reflects the opportunities it provides to actively address young people's range of developmental needs. Its purpose will not simply be conceived as the incarceration of young people as a punishment for an offence; but will be judged by its contribution to the improvement of outcomes for this group.
7. The performance management, training and recruitment of staff will be revised to reflect that purpose to reflect that purpose.

Proposals

Whole of government coordination

Proposal 1

That the Strategic Board establish a committee on vulnerable children and young people which reports annually on its strategic directions and achievements for this group of ACT citizens.

Agreed statement of purpose

Proposal 2

That a statement of purpose which reflects the rehabilitation role of the Bimberi centre be developed and agreed across government.



Adopting an outcomes framework

Proposal 3

That the Board adopt an outcomes statement for vulnerable young people in the ACT and jointly monitor these outcomes, reporting annually on their achievement. This outcomes statement should describe the health, safety, wellbeing, learning and development of young people and should be supported by a set of performance indicators related to these five core areas.

Proposal 4

Within the context of this outcome statement the Community Services Directorate will have a particular responsibility to report on vulnerable young people including those who have spent time as residents of Bimberi.

Proposal 5

At the same time, the Strategic Board itself should take joint responsibility for the achievement of the outcomes, providing an authorizing environment for the collaboration necessary between health, education, community services and justice agencies.

Continuity of case management

Proposal 6

That managers of the Community Services Directorate pursue the development of mechanisms for case management continuity. This would be designed to remove the distinction between community youth justice case managers and those operating within Bimberi to ensure that, for a young person on remand, continuity of case management would be the rule rather than the exception.

Proposal 7

The Community Services Directorate should re-examine whether the existing legal framework is sufficient to support continuous involvement of case managers for young people after they leave Bimberi.

Mechanisms of case coordination

Proposal 8

That multidisciplinary care teams be established to manage the needs of the most vulnerable at risk young people in the ACT.



Proposal 9

It is recommended that case managers within these interdisciplinary teams have continuing responsibility for the care of young people regardless of their setting and placement.

Senior authority for case coordination

Proposal 10

That an executive level group is established across the directorates of education, health, community services and other relevant directorates to review systemic issues with regard to the management of complex cases of vulnerable or at risk youth. This group should meet quarterly and be an ongoing part of the case management process, reviewing one or two cases each time it meets.

Internal organizational process

Proposal 11

That the ongoing improvement plan be developed for the Bimberi centre to be monitored and reviewed internally through a self-study process which is externally validated, annually.

Standards framework for ongoing review

Proposal 12

That the improvement plan be developed in response to a standards framework that draws on national best practice in juvenile detention centres and the outcomes framework against which the well-being of vulnerable young people in the ACT will be monitored.

Building the process

Proposal 13

That the development of the continuous improvement plan and its monitoring include the key components of authorization, goal setting, data collection and review, external validation and replanning in order to ensure a continuous cycle of service improvement.

Human resource management

Proposal 14

That all staff who have regular contact with Bimberi residents have at least certificate for qualifications in youth work, youth justice or social work.

Proposal 15



That the Bimberi service be seen as an important opportunity to intervene therapeutically in the cycle of disadvantage for vulnerable young people and that it be staffed accordingly with educational, health and mental health professionals.

Performance management for senior managers and team leaders

Proposal 16

That the performance management process should be based on measures of both the managers' achievement of performance goals as well as process measures such as the maintenance of productive working relationships within their area of responsibility.

Proposal 17

That individual development and support plans be core components of the implementation of the matrix model of performance management.

Conclusion

The interviews with senior executives in the Department pointed to a number of underlying problems in the operation of the Bimberi centre. Some of these problems relate to day-to-day management and resource issues, such as the use of temporary staff and the associated pressure on existing staff as they cope with high numbers of young people. These operational issues are important and it is evident that senior management has made substantial efforts to address these in the last 6 to 8 months.

However there are other difficulties executives identified which are more systemic and if not addressed, will ultimately undermine the good work which is being done to address the tangible, operational challenges which the centre faces. These difficulties relate to the organisational processes and structures which are the focus of this report.

In summary, the changes being implemented in Bimberi need to be supported by organisational and policy changes which ensure that Bimberi is seen as only one part of a comprehensive co-ordinated system of response to the needs of vulnerable and at risk youth.

Bimberi is one part of the youth justice system which is in turn one part of a broader set of services focused on the care, protection, education, health and well-being of young people. Effective long-term reform will be dependent on ensuring that the objectives of the ACT government are delivered through a coordinated response. While Bimberi remains an isolated and discrete element of the overall programme for the vulnerable young people it is at risk of losing its



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focus on the therapeutic and rehabilitation of goals to which the ACT government is aspiring.

On the basis of the discussions with senior executives of the Community Services Directorate the proposals in this report have been designed to overcome this difficulty and to underpin a coherent response to the well-being of vulnerable young people in the ACT.



Background

Following a resolution in the ACT Legislative Assembly, the ACT Government directed the Human Rights Commission⁷ (The Commission) to undertake a review of conditions at the Bimberi Detention Centre. The Commission was tasked with investigating a number of specific operational concerns at the Centre as well as more broad ranging issues of relevance to a wider group of vulnerable youth in the Territory.

These included programs for education and training, health and wellbeing and rehabilitation; early intervention services; the effectiveness of diversionary strategies; the ongoing monitoring of recidivism particularly for detainees held in remand; and throughcare and aftercare services provided to detainees and Community Youth Justice clients.

The Commission recognised that the implementation of any recommendations it made to respond to these issues would need to be facilitated by the organizational arrangements in place within the responsible ACT Government agencies. In this regard the Commission sought the advice of two consultants with experience in public administration and community services in the ACT and more widely.

Specifically the Commission asked the consultants to concentrate on the views and perspectives of current and former senior executives of the ACT Department of Disability, Housing and Community Services (now the Community Services Directorate). The consultants were not asked to evaluate the effectiveness of the current arrangements or to comment on the performance of departments, organizational units or individuals. Rather the Commission required the consultants to provide a set of proposals about Bimberi within the wider context of Youth Justice and other organizational units of critical importance to Youth Justice, that would embed long lasting positive change.

This is the report of those consultations and proposals. The interviews and the writing of this report took place in May 2011.



The approach

The consultants sought to address the questions:

- How can the Youth Justice system best deliver public value in the future to vulnerable children and young people and the broader ACT community?
- What organisational processes and structures are needed to achieve good outcomes for children and young people in the ACT Youth Justice system?

Specifically we wanted to know:

- What needs to be done to communicate a common vision for a Youth Justice system in the ACT?
- How can this system deliver good outcomes to children and young people and how will we know this has been achieved?
- Is there a strong authorizing environment or mandate for this vision? What could strengthen the mandate for implementing the vision?
- Are operating models in place to support good outcomes for children and young people in the ACT Youth Justice system? How can these be improved?

To answer these questions we interviewed executives from the Community Services Directorate and asked them a range of questions about current and future arrangements in Youth Justice. To prepare for these interviews we canvassed key policy and planning documents, literature about children and young people in the Youth Justice system and change theories which provide a useful basis for conceptualising reform in public sector administration.

Background information also included the body of literature known as 'What Works' (Australian Institute of Criminology, 2002; Buttrum, 1997; Elliott-Marshall, Ramsay, & Stewart, 2005; Harper & Chitty, 2005; MacKenzie, 2000) and up to date reviews of 'Wraparound' (an evidence based model of service delivery to young people with high and complex needs) (Burns, Schoenwald, Burchard, Faw, & Santos, 2000; Carney & Buttell, 2003; Walter & Petr, 2011). We also reviewed the public policy and organizational literature to inform our discussion of future arrangements (Lundin, 2007; Sinclair, 1993; Winkworth & White, 2010, 2011). A review of this literature is outside the scope of our brief however we do provide a short overview of what we know about the vision for the youth justice system in the ACT and children and young people who are in that system.

We do this in order to state from the outset assumptions that we have about the purpose of the Youth Justice system and also about the needs of young people in that system. In doing so we set the scene for our central thesis, which is the need



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for a much stronger whole of government and, whole of society, responsibility for vulnerable young people in the ACT if the Youth Justice system is to be successful in its vision to rehabilitate these young people.



The purpose of ACT Youth Justice

As is the case with Youth Justice systems internationally debates about Bimberi are prone to vigorous criticism from both ends of the spectrum; on one end there have been claims that the Centre fails to provide much needed services to vulnerable children or to protect their human rights; at the other end the government has been criticized for failing to hold young people accountable or to protect society from dangerous young criminals.

Underpinning these arguments are different ways of thinking about the purpose of justice systems. The Retributionists argue the primary aim is to deliver punishment for crimes committed; the utilitarian perspective is that the primary goal of Justice systems is stopping reoffending (that is, reducing recidivism).

The third perspective is the humanitarian approach, which argues that the sole aim of Justice systems is rehabilitation. Some theories of rehabilitation tend to be concerned mainly with treatment and other psychologically based processes to stop offending behaviour. Others focus strongly on acknowledging the agency and capacity of the young person for change; encouraging them to take responsibility for their actions alongside efforts to build their capabilities for a positive future.

This means being held directly accountable in some way, and that they are meant to do things themselves, rather than simply being passive actors in the criminal justice systems.... Intervention strives to reach a point where the young offender will be seen as a community asset rather than a liability (White. R., 2008:49)

Rehabilitation within this conception draws together elements from the two ends of the spectrum: it emphasizes the importance of enhancing the talents and skills of the young person in a way that builds their sense of personal agency; it also acknowledges the importance of personal responsibility, but in a way that is respectful, hopeful for positive change and cognizant of the role of others in this change.

It has been argued that utilitarian and humanitarian perspectives are not mutually exclusive and that both approaches should be applied to young offenders. Most Australian youth justice systems articulate goals that are consistent with both approaches. However they do this often within highly reactive political environments that at times push strongly for punitive and retributive youth justice systems.



So much so there are claims internationally that the eroding of the “*parens patriae* premise”⁸ (the state as parent) has meant that Youth Justice systems are increasingly responding to calls for tougher regimes and are therefore less able to properly invest resources in environments that address the factors which have brought them into the Justice system; factors that will impact on them while they are in the system, and when they leave it (M. Moore & Wakeling, 1997).

The ACT Government, in its submission to the Review, articulates four goals for its Juvenile Justice system:

Within a human rights framework and applying the best interests principle, the objectives of the ACT youth justice system are:

- 1) To prevent young people from entering the youth justice system and to divert those young people who do come into contact with the youth justice system at all opportunities
- 2) To support the holistic development and wellbeing of young people in the youth justice system to keep them safe and to maximize their opportunities to achieve positive life outcomes
- 3) To promote young people’s rehabilitation and reduce recidivism
- 4) To facilitate effective throughcare and transitioning to assist a young person’s reintegration into the community⁹

These goals, which in summary propose a vision for Youth Justice of prevention, inclusion, rehabilitation and reintegration, position the ACT Youth Justice system clearly within the humanitarian philosophical discourse. With this vision at the forefront we are better able to frame our interviews, analysis and proposals.

⁸ Latin term which refers to the inherent jurisdiction of the courts to make decisions concerning people who are not able to take care of themselves (<http://www.duhaime.org/LegalDictionary/P/ParensPatriae.aspx>). **Parens Patriae** situates juvenile deviants/delinquents between criminal and civil law. Since those considered children, under the *parens patriae* doctrine, are not treated as criminals, the focus of corrections was on treatment (<http://homepage.mac.com/brenn/Child%20Savers.html>)

⁹ ACT Government (2011) *The ACT Government’s Submission to the Human Rights Commission’s Bimberi Reviews*, p. 30



Children and Young People in the Youth Justice System

Our task is also guided by an understanding of children and young people in the youth justice system.

What Australian data systems tell us

Australia has an emerging evidence base about children and young people in Youth Justice systems drawn mostly from the annual data collection of the Australian Institute of Health and Welfare (AIHW, 2009) and a number of reports just released by the Australian Institute of Criminology (Richards, K, 2011(a), Richards, K, 2011 (b); Richards, K & Lyneham, M, 2010).

A snapshot of youth justice in the ACT is provided in the Government's discussion paper on a diversionary framework (Department of Disability Housing and Community Services, 2011) and we will not revisit it in detail here. However it is not possible to overstate the significance of the overrepresentation of Aboriginal and Torres Strait Islander children in all Australian Youth Justice systems including in the ACT where Aboriginal children and young people are overrepresented in both community supervision and detention, with overrepresentation higher in detention than community based orders. The data also indicates that since 2000 the rate of children and young people generally in the ACT, in community based orders and in detention, is higher than the national rate (DHCS, 2011: 7).

This upward trend is in spite of Australian policy over the past three decades to actively divert young people away from the criminal justice system and to reduce the numbers of young people who receive custodial sentences. The policy towards diversion is influenced by international evidence which indicates incarceration, in and of itself, is limited in its impact over rates of recidivism and, may in fact, contribute to it (MacKenzie, 2000; UK Home Office, 2005).

The stigma of incarceration, and the actual impacts of removal from family, communities, education and employment are well documented in the international literature (Altschuler & Brash, 2004; Armstrong, 2003; Goldson, 2000; Maxwell, Kingi, Robertson, Morris, & Cunningham, 2004). Young people who are incarcerated are more likely to be disengaged from education and to experience mental health, drug and alcohol issues and generally poorer health (NSW Department of Juvenile Justice, 2003).

Institutionalization (the decreasing ability to live independently), stigma and poor self concept (Borzycki, 2005) accompany periods in detention especially when this is prolonged. There is also the tendency for young people, who are cut off from



families and communities to strengthen criminal networks. These negative effects are worse for those with mental health issues, females and young Aboriginal people (Moore, T., et al, 2008).

The ACT Government acknowledges that at the national level the ACT is not performing well on all three key measures related to the effectiveness of diversion: the rate of young people on remand, the rate who are on community supervision orders and the rate in detention. Of concern also is the fact that majority of young people who are detained at Bimberi have not been sentenced; they are there because they have either been refused bail or they are subject to a remand order (Department of Disability Housing and Community Services., 2011:1).

The recent discussion paper Towards a Diversionary Framework for the ACT (ACT Government, 2011) canvasses options for improving performance in the diversion of young people from the system and for better meeting their needs.

Child abuse and neglect and juvenile justice – the same children

An overview of the international literature and the limited Australian research on young people in the Justice system provides a compelling case for much stronger collaborative arrangements across government and non government agencies, and the wider community. The social and economic costs of failure to do so are apparent when consideration is given to typical profiles of young people in the Justice system.

Very little Australian research is available to shed light on the backgrounds and experiences of children and young people in the youth justice system or what happens to them after they leave the system. However the international literature consistently shows the link between children who have suffered trauma through child abuse and neglect with later episodes of juvenile crime (Mersky & Reynolds, 2011), intimate partner violence and abuse of their own children.

Retrospective studies examining the early histories of young offenders indicate that between one and two thirds have experienced maltreatment (Colman, Mitchell-Herzfeld, Kim, & Shady, 2010). Further, those who have been removed from their families by State authorities because they have been abused, are more likely to be detained in custody than those who do not share a child welfare history.

The need for rehabilitative environments which address trauma is also apparent through research which indicates the increased likelihood that young people who are incarcerated will not only become younger parents than the average but will



experience highly conflicted and often violent intimate partnerships while their children are young. In addition to heightened tendencies to domestic and family violence, there are indications that other forms of child maltreatment are more prevalent in young people who were juvenile offenders¹⁰ (Colman, et al., 2010).

Intergenerational impacts

Furthermore, parental incarceration which starts in juvenile detention appears to be intergenerational (J. Murray & Farrington, 2008; J. Murray, Janson, & Farrington, 2007; National Crime Prevention, 1999) (National Crime Prevention 2000; Murray 2007). For example boys' anti-social behaviour throughout their life is predicted by parental incarceration. In Murray and Farrington's study 48 per cent of boys who were separated from their parents because of parental imprisonment between birth and age 10 years were convicted as an adult, compared to 25 per cent of boys who were separated for other reasons (J. Murray & Farrington, 2008) and predicts mental health issues in males.

Parental incarceration has also has been found to predict mental health issues in males. Travis, McBride and Solomon (2003) note that traumatic separation from parents may interrupt the achievement of key developmental tasks resulting in, for example, impaired parent-child attachment, acute traumatic stress reactions, developmental regressions, rejection of limits on behaviour, and an impaired ability to overcome future trauma (Travis, McBride, & Solomon, 2003).

These in turn are considered key risk factors for juvenile offending (National Crime Prevention, 1999). As evidence of this, a NSW study, found that 11% of juveniles in detention had a parent in prison on the day of the survey whilst 40% had a parent who had been in prison at some time (NSW Department of Juvenile Justice, 2003).

Many service systems know these children and young people

In the absence of Australian research we look to the international evidence which indicates young people detained in custody are more likely to have encountered many human service systems but tend not to engage with them in a sustained way or in a way that positively contributes to their future wellbeing. These systems include education and special education, mental health and drug and alcohol agencies, child welfare agencies, out of home care and housing (Maschi, Smith Hatcher, Schwalbe, & Scotto Rosato, 2008). Far from being active recipients

¹⁰ For example in a prospective Study which tracked 999 young offenders (499 girls) released from New York State correctional facilities in the early 1990s nearly two-thirds of the girls were investigated by child protective services for alleged acts of child maltreatment and over half became clients of both the child welfare and adult criminal justice systems (Colman et al, 2010).



of what are generally regarded as universal services (such as health and education) or secondary level services for those who need additional assistance (such as those mentioned above), a picture emerges of children and young people who either do not access services, drift away from key institutions that are critical to their future or in many instances are actively excluded from them.

For instance, the literature suggests that many youth who enter the youth justice system lack consistent community health care prior to and after incarceration. In fact, for many youth, the justice system provides their first access to needed health care services (Pumariega, et al., 1999; Rogers, Pumariega, Atkins, & Cuffe, 2006). Research shows the association between juvenile offending, substance use and mental health, with substance use frequently cited as a contributing factor at the time of a young person's arrest. For example in one US study between 40%-69% of young people in detention had an illegal drug detected in their urine at the time of arrest (National Institute of Justice., 1999)

Young people in detention often have had substance use problems for a long time. Abrantes et al (2005) found that 150 out of their sample of 252 youth in the detention centre met the substance use dependence criteria, with the average time of use being 4.56 years. These young people also reported an average of 2.5 years from the time they began misusing substances to their first brush with the Youth Justice system (Abrantes, Hoffman, & Anton, 2005).

The comorbidity of mental health and substance abuse issues is also common among young offenders. In the above study the overwhelming majority (90%) of young people in the study were diagnosed with major depressive disorders, mania, conduct disorders, and substance dependence, with the latter two being the most frequently reported co-occurring conditions (Abrantes et al, 2005)¹¹.

Although education is highly valued in our society as the universal right of all, barriers to staying engaged with school such as the prevalence of learning disabilities, serious emotional disturbances and mental health issues, inability to read and write, major family disruption including family violence, are all evident in the histories of children and young people in the justice system Bruns, et al, 2005; Kaufman et al, 2004 and Malmgren & Meisel, 2002 in Maschi et al, 2008).

¹¹ Golzari et al., 2006 M. Golzari, S. Hunt and A. Anoshiravani, The health status of youth in juvenile detention facilities, *Journal of Adolescent Health* **38** (6) (2006), pp. 776–782. Article |



Although there are almost no studies of educational barriers experienced by young people in Australian youth justice systems a recent unpublished study in the ACT provides poignant accounts by young people themselves of their fragmented school histories and early exclusion from education. Furthermore this study clearly demonstrates the difficulties that these young people will face after they leave incarceration in gaining educational qualifications, skills and employment. Despite their high hopes not to return to detention some were back within the month (T. Moore et al, 2008).

Previous Australian inquiries into children and the legal system (Australian Government, 1997) have identified the vulnerability of children exiting detention (many of whom are Aboriginal), especially in getting the assistance they need in education, health, housing, and employment.

Young offenders are particularly vulnerable. They are seen as undesirable housing clients. They receive few services from the mainstream health system and their particular health problems, such as drug and alcohol abuse, are often seen to be their own fault, a consequence of their lifestyle choices (The Director of the Department of Juvenile Justice in NSW) (Australian Government, 1997).



What children and young people say about their experiences in Youth Justice

The voices of young people in Youth Justice have been almost entirely unheard despite the perspectives this could bring to improving outcomes for this vulnerable group. In other human service domains, particularly health there is an established tradition of consumers as key participants in service design, delivery and evaluation. Yet apart from some inquiries into how young people experience incarceration (Wilson & Rees, 2006) and their interactions with police (Hurst, Frank, & Browning, 2000) the voices of these young people are almost absent from Australian research (Abrams & Aular, 2005).

A recent unpublished study in the ACT (T. Moore et al, 2008) identifies the gap in research with children and young people as particularly evident in their experiences of transition from juvenile detention and their reintegration back into the community. In their study Moore and others, tracked 11 young people on committal orders to Quamby Detention Centre in the ACT over an 18 month period. During this time, young people were interviewed within the facility and, where possible, back in the community. Four young people identified as being Aboriginal or Torres Strait Islander and three were from a culturally or linguistically diverse background. The following excerpt from this research describes the cohort.

These young people had family members who had their own alcohol or other drug problems, who were engaged in criminal behaviour, who were unable to provide children with safe, stable and positive home environments. By late primary school these young people had begun to drop out of education, drink heavily and commit petty offences. Some of these young people had parents who tried to protect their children from the negative influences in their home environments while others failed to do so. Most had some involvement with Care and Protection services, with at least four spending some time in Out of Home Care.

These young people began to appear before the courts around the age of 12 and the experienced constant recycling through the juvenile justice system – escalating their crimes from petty theft and misdemeanours to car thefts and aggravated assaults. Each time they exited Quamby they failed to develop strong connections with schools, positive peers or support networks and often returned within 12 months of release (p. 8 of Executive Summary).

Although this research refers to a previous detention centre and a different time (2007-2008) it does illustrate the importance of hearing directly from young people themselves and way in which their voices add a compelling new dimension to the public understanding of who these young people are. In this instance we hear how young people did not feel their time in detention was one of rehabilitation. They were generally sceptical because they believed most of the programming was focused on what they did while they were in detention rather than in preparing them for release.



They also felt that they were returning to the same set of risk circumstances in their environments as they left. Further “many young people recognised that they had become reliant on the system, had lost many living skills and often felt ill-equipped for dealing with the challenges confronting them outside” (T.Moore et al, unpublished, p.23-24).



Interviews with Departmental Executives

Confidential interviews were conducted with 16 executives across the Community Services Directorate, including the Director General and Deputy Director General, a number of former and current executives with responsibility for the Children and Young Peoples division, and two other people with responsibilities associated with Bimberi and the current Review. The Commission provided the list of people to be interviewed.

Given the specific focus of the reviews carried out by the Commission itself we decided to lightly structure these interviews with a view to providing participants with maximum opportunities to voice their opinions about future change. We framed our questions with reference to the stated goals of Youth Justice (DHCS, 2011:30)¹²

We asked interviewees:

“Thinking about the Government’s stated goals for Youth Justice, including for Bimberi:

- What works well now that may assist in the future?
- What continues to be a problem?
- What future organizational arrangements can bring about lasting positive change for vulnerable children and young people in the ACT?

Reflecting on the past

We did not specifically ask about problems in the past, preferring to set boundaries around these issues which will be addressed by the Commission. However, most of the people interviewed chose to discuss concerns about the situation in Bimberi last year.

The genuine wish for the Youth Justice system to improve the lives of very vulnerable children was strongly evident in the interviews. Despite the professional and personal pressures of the Review and the high levels of public scrutiny and admonition inherent in statutory work, most indicated a desire to

¹² Within a human rights framework and applying the best interests principle, the objectives of the ACT youth justice system are:

- 1) To prevent young people from entering the youth justice system and to divert those young people who do come into contact with the youth justice system at all opportunities
- 2) To support the holistic development and wellbeing of young people in the youth justice system to keep them safe and to maximize their opportunities to achieve positive life outcomes
- 3) To promote young people’s rehabilitation and reduce recidivism
- 4) To facilitate effective throughcare and transitioning to assist a young person’s reintegration into the community (DHCS, 2011:30)



continue to be directly involved in developing and improving service delivery systems for disadvantaged young people.

Many spoke about the high hopes they had for Bimberi, the extensive consultation processes that were used in the lead up to building the facility; the desire to drive cultural change through the architecture and layout of the building and the efforts made to create excitement about the human rights compliant environment

We wanted it to feel different for the staff. It was deliberately on the other side of town from the old Quamby. We went to great lengths to change culture. We organized special events, barbeques and other events to build the excitement.

The hope was to drive change away from a custodial culture to one that was more relationship focused and to use the time that children spent in Bimberi as an opportunity to identify and address life barriers.

We knew that this might be the only time in their lives that they had the opportunity to have a positive educational experience.

However almost all participants also spoke of concerns with levels and quality of staff, management styles and the safety and security of both staff and children and young people at the Centre. Staff on temporary contracts, remuneration levels which (without penalty rates) compared unfavourably to staff in the rest of the Department and the ACT government, 12 hour shifts, many staff without formal qualifications and a strained relationships with Centre management all contributed to an uncertain staff group.

Repeatedly we heard about what can occur in a youth detention centre where there has been a struggle to employ skilled staff, in a reactive political environment and where media is quick to sensationalise.

Some participants told us that these volatilities led to risk averseness and an increasing preference for the 'lockdown' of young people to deal with security risks. We heard of the gradual decline of key programs for young people: education, sport, music, and competency based training due to the deteriorating staffing situation as well as a perception of remoteness between the Centre and the central operations at 'Moore St'. The situation further deteriorated with what a number of participants referred to as the 'demonizing of children' and the running down of the reputation of the Centre in the media. It became harder to attract good staff at any level.



We also heard that some good staff stayed despite these events and the distressing public humiliation of recent months.

The kids were locked down because there were not enough staff. When staff are insufficient they always go to the lowest common denominator and that is safety and security. Then bad staff stay and good staff go. Its always the same. Fortunately some good staff stayed. They were stubborn and resilient and they couldn't leave the kids or their teammates.

Many were disappointed in the limited opportunities for young people in the centre while they served their sentences. The view was put that a preoccupation with the building, the 'space itself' [of Bimberi] and the focus on being human rights compliant, while entirely appropriate, had inadvertently resulted in a failure of a bigger imagination about these young people including the longer term view of what was needed to assist them for the rest of their lives.

What is the problem now?

Communicating a common understanding of purpose

Most participants identified a lack of a shared understanding of the purpose of the Youth Justice system, and Bimberi within this system, as one of the overarching problems that continued to undermine external and internal support for rehabilitation.

Analysis of policy documents and the Department's website confirmed that written forms of the vision, goals, and principles which underpin the system are not strongly communicated. While the stated goals appear in the Government's submission to the Review¹³ there is only a light reference to young offenders (some of whom are as young as 10) in the ACT Young People's Plan and almost no reference in the ACT Children's Plan. The lack of a strong and clearly stated vision, which is uncompromising about rehabilitation, was the most often stated concern among participants. For example we were told:

*There is a need for greater awareness and consensus of objectives.
Fundamental changes are needed here.*

¹³ ACT Government (2011) *The ACT Government's Submission to the Human Rights Commission's Bimberi Reviews*, p. 30

Department of Disability, Housing and Community Services (2004) *The ACT Children's Plan 2004-2014*, ACT Government, Canberra 2004

¹³ Department of Disability, Housing and Community Services (2009) *The ACT Young People's Plan 2009-2014*, ACT Government, Canberra, Dec 2009



We need more glossies with the five key goals

Some felt there was a fundamental lack of clarity about the role of Youth Justice and Bimberi's role within it.

We are not clear on the systemic role of Youth Justice and Bimberi's place in achieving the goals.

One of the biggest challenges is determining 'what is the purpose of Bimberi and the broader Youth Justice system?'

There was also a view that while the written documentation is now stronger about the need to prevent child abuse and neglect, family violence, and other known contributing factors to serious social, emotional and economic disadvantage to children, it stops short of including children in the youth justice system in this narrative. In this sense the policy, the story does not strongly acknowledge the crossover between children under the notice and care of Care and Protection services and children who interact with Youth Justice. Participants frequently acknowledged the serious levels of disadvantage experienced by these children particularly those who are Indigenous and those who have been previously removed from their families.

Several managers made the point that research continues to demonstrate the absence of any evidence base for punitive and coercive approaches in Youth Justice. Furthermore, they claim there is an absence of evidence of any apparent value to most young people in being detained, other than the opportunities this may afford to link them with health, education, employment, and other social programs that have the potential to make a positive difference in their lives.

People think we bring crime down through being tough on kids. This is not true. We prevent crime by allowing kids to grow up, get girlfriends, get jobs, by promoting their development. This is how we get good results.

We are too driven by the community safety crime prevention agenda.

Several participants referred to the hopes they had about the culture of Bimberi when it was built. They were dismayed about political reactivity in relation to some incidents which they felt were natural in a youth detention environment. There was a view expressed by a number of participants that the community's reaction to safety or disciplinary matters at the Centre diverted the service from its rehabilitation focus. They felt that the Centre had come to be judged by



community and other oversight bodies on a limited set of objectives related primarily to safety and security rather than the broader rehabilitation focus of the work.

We really struggled with the way incidents got into the political realm – the media outcry and intolerance over the roof incident. [for example].

Then the pressure to be more secure. We were sent the wrong messages and we sent the wrong messages to the community - that this is not to happen again rather than realising the kids would come down in time.

The facility was purpose built for a less custodial culture. We need to be better at developing a story and communicating the story. The Department has not effectively maintained the narrative

Our messages are very reactive. The emphasis is all about security. We have failed to send out strong messages about what Bimberi is about. When the media got involved and it got into the political domain then debate shut down.

*We seemed to have lost the big picture and we've lost the little picture
We need bipartisan support for the role of Bimberi.*

And as another participant put it:

The act of courage is to hold the line that Youth justice is not about stopping youth crime It's about helping vulnerable young people. It is by focusing on developmental outcomes for these children that we stop juvenile crime.



Absence of performance measures and other accountability mechanisms to support the vision

Participants were aware that there are a number of mechanisms commonly used to increase the quality and integrity of public systems. These include formal performance frameworks (using a range of agreed indicators against which performance is measured); internal management systems to hold managers to account for their particular areas of responsibilities and external oversight bodies which have legislative powers to hold agencies to account.

Our consultations indicated frustration with all of these mechanisms and a perception that individually and collectively they fall short of supporting improved outcomes for vulnerable children and young people.

Performance measurement includes strategies used to assist governments assess the impact of what they are doing, to improve service provision and to target resources more effectively (AIC, 2011). However, in youth justice systems across Australia recidivism is the only agreed measure of performance. This is problematic for Youth Justice agencies which argue that many factors influence recidivism and most of these are not within their control. As one manager said:

We have no control over who comes into our system

Another argued that although it should be the whole of society's responsibility to look after vulnerable children Youth Justice is the agency least able to influence health, education and other positive social outcomes, yet it is the one compelled to take responsibility.

We need to be clearer about what the department is responsible for and what we are having to manage.

While there are no specific performance indicators for Bimberi¹⁴ the Directorate is required to provide information on enrolment and attendance at an educational institution to the Productivity Commission's Report on Government Services. The limitations of this as an indicator for driving improved educational outcomes for children in Bimberi is understood when it is realized that despite a lack of any educational awards or achievements to young people in Bimberi last year the government achieved 100% on this indicator because all children are enrolled in the Murrumbidgee Education Centre.

¹⁴ Performance indicators are identified in the ACT Government Budget papers in the Strategic Indicators and Accountability Indicators in Output 4.1 Youth Services.



Interviewees took the view that performance attention is currently focussed on safety and security. There is a need for a performance framework that is more focussed on rehabilitation and outcomes for young people .

We need a coordinated whole of government data report

There was also the view that Youth Justice and other government agencies tend to be mainly measured against timeliness indicators. The problem here is that staff focus on what they are being measured against rather than on better outcomes focus for young people.

People perform to their performance indicators. We need to shift expectations to outcomes.

External oversight bodies were regarded as appropriate and necessary to ensure statutory agencies, including the youth detention centre, were accountable and open to scrutiny. However most of the managers who took part in these consultations expressed a view that, in spite of the relatively large number of oversight bodies in Canberra, there is a lack of advocacy for system wide change including the need for whole of government, whole of community approaches to improving life outcomes for these children. Instead,

There tends to be a focus on things like haircuts, newspapers and visitors.

Our focus has been on complying with human rights without concern for what happens when they come out. Human rights should be business as usual.

Oversight bodies have not tended to see advocacy for wider systemic change as their role, such as the need for more diversionary processes. Rather there is a tendency to focus on complaints and to give feedback about what the department is doing wrong. We have been frustrated by a lack of willingness to go beyond the responsibilities of this department to deal with issues.

Lack of robust data systems - The participants indicated that the lack of a robust data system within the directorate has a number of implications. The existing arrangements do not help the ACT community understand the serious, long standing disadvantage of children in the system and what happens to them after they leave detention, the severity and scope of problems or how well the system is doing in addressing these problems.



There is a view by a number of participants that existing data systems including paper based systems, registers and spreadsheets are inadequate for the tasks they are required to perform. Firstly there is difficulty in gathering a basic profile of children - their child protection histories, the number who are or have been in out of home care, their education and health histories.

Then there is difficulty meeting local or national data reporting requirements. For example, we were told it will be difficult to easily gather information for the Performance Indicators currently being developed by the Australian Institute of Health and Welfare (AIHW) (safety and security, number of assaults and incidents of self harm).

Finally it is an ongoing challenge (within current resources) to service requests for information from oversight bodies and to regularly report to them.

Internal performance management Interviewees suggested this was an area for considerable improvement. The political sensitivities around Bimberi, the lack of media and community support for rehabilitation objectives, and performance measures that are predominantly focused on safety and security have driven management performance priorities away from achieving rehabilitation and integration goals. Although new arrangements this year for much greater level of onsite presence of managers and senior managers at Bimberi were already showing positive signs of improving practice, there was more to be done. Participants made a number of suggestions including a much greater role for quality assurance systems and self study that provides opportunities for self reflection and evaluation. Other jurisdictions have made greater use of experts in youth justice who are commissioned to conduct thorough audits against a wide range of indicators. These indicators go much further than current performance indicators which focus on safety and security; they include critical measures of an effective rehabilitative culture such as quality of relationships.

As one interviewee observed

This can be quite comprehensive even down to the level of food, the way the cooks interact with the kids



Legislation and policy does not always support the vision

There were three areas of consensus about the need for stronger policy and/ or legislative frameworks to support a rehabilitative vision for youth justice: diversion from the system, throughcare, and procedures in relation to how and where casework with young people on orders takes place. The people we interviewed described this as the need for greater attention to active outreach.

Diversion - Although endorsing the strength and continuing relevance of the Children and Young People Act 2008 there is a shared view that other relevant legislative frameworks such as the current Bail Act may not support the best interests of children caught up in the Justice system. This has been discussed at length in the Government's discussion paper on a Diversionary Framework for the ACT¹⁵ and in the Commission's report. That numbers of children in Bimberi are twice the national average, and five times the number in Victoria, supports the call for scrutiny of legislation and related orders as to whether there is sufficient flexibility for diversion from detention.

All of those interviewed identified the lack of diversionary options to detention as a major contributing factor to the problems last year. They acknowledge that this continues to be a major barrier to a rehabilitative youth justice system.

There is an oddity in the Canberra figures. Young people are locked up at twice the national average and five times the number in Victoria. And this does not only apply to children in detention. The figures show that we have 1.5 times national level in community youth justice. Y J. Its hard to make sense of this when you consider our demographics here in Canberra.

The need to leverage existing legislative provisions for throughcare - All operational managers who were interviewed expressed concerns about throughcare and the extent to which existing legislation authorized continuing relationships with children after they leave Bimberi. Agreement was strong that an ideal Youth Justice system would position detention in Bimberi as a small interruption in what is otherwise an ongoing casework relationship with highly vulnerable children; 'its just a change of address' as one person observed. However there are different views and some uncertainty about whether existing provisions such as Good Behaviour Orders are sufficient to achieve this or new

¹⁵ Department of Disability Housing and Community Services (2011) Discussion Paper: *Towards a Diversionary Framework for the ACT*, Australian Capital Territory, Canberra, Feb 2011, p. 30



legislation, for example provision for parole, is required for what some regard as more effective continued support.

It was also acknowledged that although the recent budget provided substantial resources for young people leaving care, including those reaching the age of 18, there still existed a significant throughcare policy gap for young people turning 18 who do not meet this criteria. The point was made that these youth often had significant child welfare histories, may have previously been in care and were leaving the youth justice system ill equipped for the next stages in their lives.

Not all key stakeholders support the vision

Change theories consistently point to the importance of engaging stakeholders, whose support is critical to the outcomes sought. Many who were interviewed believed that key stakeholders were not engaged with the vision and goals of a rehabilitative Justice system for young people.

There was a view among many managers that last year Bimberi operated like an 'oil rig. In one sense this referred to the challenges for senior management, not based at the centre, in gaining a first hand experience of the culture and day to day practices of the centre. It also referred to the sense of isolation from Central Office and from each other that some staff at the Centre experienced. The view was expressed that at the centre, some staff were

heavy on security rather than being heavy on relationships, rules based rather than person based.

Anything so out of sight develops its own culture....We need to get more people out there.

Others also indicated the best way to ensure safety and security for all was to 'open it up'

The best protection in an institutional setting is to have lots of providers coming in and out

While there is recognition there is more to be done considerable efforts have been made to improve communication between Bimberi and 'Moore St' and within Bimberi itself. Strategies are also in place to build more positive relationships with the young people. However it was acknowledged that more work was to be done in building the 'coalition for change' including a shared vision across the Directorate, the ACT government and the community before Bimberi could embrace all aspects of the change.



A widely held view is that other ACT agencies lack clarity about their responsibilities to vulnerable youth before, during and after their contact with the justice system. We heard that

this group of shared clients who come into contact with many systems are really non clients. They belong to everybody yet they belong to nobody

Others spoke of the need for much more support 'on the outside'

People do what they have to but there is no real commitment. The links are OK but the 'buy in' is really poor Trying to get [other ACT government agencies] to commit resources was like pulling teeth.

Frustration was expressed about the unclear roles of Education and CIT. We heard about promising initiatives to respond to youth at risk such as the G8 in Gininderra and the forthcoming T20 in Tuggeranong, which are cross sectoral and collaborative across Education and Child Protection. However overall the people we interviewed felt the issue of a shared responsibility for this group of children was particularly uncertain across the Justice and the Education systems. Examples were given of ongoing battles for additional resources to assist young people with major literacy and numeracy problems. That some Indigenous children have made dramatic improvements with additional one on one support in recent weeks attests to the value of tutoring and other more individualized approaches, however, 'it is never clear who pays or how long they will pay'.

Casework

Participants identified several concerns about current casework/case management arrangements. They also indicated that there are plans within new tendering arrangements to change the case management model to include a greater focus on Aboriginal young people and to increase the role of the non government sector. However concerns overall about casework interventions can be summarized as: the need for much earlier interventions where children exhibit risk profiles for later offending, the absence of continuity across phases of contact with child protection/ youth justice systems, the need for a much stronger ecological focus for casework (ie: working with people and places that matter to children and young people) and the need for an overarching practice framework for working with vulnerable young people.



Early intervention

Participants pointed to the evidence that children and young people at risk of trajectories into Youth Justice can be identified much earlier. They indicated the need for earlier team based interventions with very vulnerable children and their families. This would require a more local, cross agency approach

We are well resourced in this town. But there is a huge pressure on managers in statutory agencies like care and protection and youth justice to stay focused on their core business. We need to use our resources differently. We need to create a higher level focus on working out in the community. We could even conceive of multi disciplinary teams in the four regions of Canberra and trial different approaches.

A view was held by several that there is a particular gap in services for children aged 9-14 where specific young offending risk factors become very clear, and that this should be an obvious focus for earlier intervention.

Continuity

There was widespread recognition among participants that existing casework/case management arrangements lacked continuity. This occurs across Youth Justice itself in that there is a lack of clarity about the program boundaries of Youth Connections, Wraparound and other Youth Justice Programs particularly when young people are sentenced or remanded in Bimberi.

There is a further lack of continuity when young people leave Bimberi. We heard of a number of structural and legislative barriers such as those mentioned above which apparently prevent ongoing contact. Programmatic boundaries in non government sector programs also appear to currently prevent ongoing contact with young people after they leave Bimberi.

At times we have had lots of services coming into Bimberi but the contact stops as soon as the young person is discharged

A critical gap in the continuity of casework support for young people in the Youth Justice system is the lack of an afterhours response. This is recognized by participants (and has been identified in the Departments Discussion Paper on Diversion) as a contributor to young people detained at Bimberi (rather than in other accommodation including with kin, in out of home care or in other youth facilities).



Models that are ecological and enduring

Participants indicated that the considerable rhetoric in public documents about outreach strategies with vulnerable children, young people and their families, this was often not matched by reality. Many felt there was a need to strengthen outreach and other community and “ecologically based foundations” to the policy/ practice framework. The current requirement for young people on orders to see their caseworkers at the Moore St building was given by several as an example of a procedure which is not based in an ecological understanding of the needs of very vulnerable children and young people.

It is not helpful for young people to have to come into this building to report to the Department

Of course they will not choose to come into here after they leave Bimberi. The cost of bus fares, parking, and the humiliation of waiting downstairs with security will inhibit that. We need to get much better at going out to them and offering them support.

A shared practice framework

Participants observed that the focus on relationships has diminished as Bimberi became more “rule structured” and “risk averse”. In reflecting on the past there was a view that

We didn't invest anywhere near enough in staff, our most important resource. Instead the investment went into the physical structure of the place.

It was in the quality of staff, and the investment in staff that the Department was seen as having an opportunity to model the kind of respectful relationships it wanted to see between staff and young people.

We've never taught the staff how to achieve this.

Participants noted that lack of resources has prevented the development of a comprehensive and shared practice framework across operational units which work with vulnerable young people, including Youth Justice; one which would embed a common set of principles and models which are relationship and outreach focused, ecological (working with the people and places that matter to young people), and sustained for as long as the young person requires assistance.



What is working well now and has potential for future arrangements?

A strong legislative framework

We asked interviewees if they thought the legislation supported the articulated goals of the Youth Justice system.

The general consensus was that the Children and Young People Act 2008 which took some years and a great deal of careful attention to develop was probably adequate in its current form. It has a strong human rights focus, represents best practice in Juvenile justice institutions and provides a strong framework for a rehabilitative system. Of particular significance in the Act are provisions that enable the CEO or his delegate to “declare a Care Team” so that information can be shared among professionals and family members, where a number of different agencies are involved with vulnerable children and young people.

While it is not clear how often this provision has been used in relation to children in the Youth Justice system it is acknowledged by managers in this consultation as potentially powerful in enabling earlier, collaborative planning across agencies and with families for children identified as at risk of offending.

The potential to expand existing models of practice across the system to improve outcomes for very vulnerable children and young people

A number of existing initiatives were identified as having potential to be modified and expanded so that they are of greater relevance to Youth Justice. These programs provide platforms from which other early intervention and prevention programs can operate. Managers indicated that The Child and Family Centres at Tuggeranong, West Belconnen and Gungahlin which have a specific focus on children aged 0 to 8 years (by which time most children at risk of a youth justice trajectory can be identified) and the Schools as Communities program have the potential to more effectively identify children in the early childhood years or kindergarten.

There is also currently a developing momentum, a coalition of concerned practitioners in the Directorate and across other sectors (mental health, education, family violence, and universities in Canberra) for a developmental trauma recovery and research centre which would work with children and families, many of whom may have later contact with the Justice systems.¹⁶

¹⁶ This meeting of concerned professionals met at the University of Canberra on June 8 to discuss a way forward for children and young people in the child welfare and youth justice systems affected by trauma



As well as building social support and leveraging community resources to reduce isolation for very disadvantaged families these programs were regarded as ideally placed to identify young children at high risk and to set in train integrated approaches to prevent poor outcomes including young offending behaviour. There was a view held that the potential of these programs had not to date been fully utilized.

We also noted that there is a commitment in the youth Justice area to implementing key messages from the previously mentioned “What Works” literature including strategies that focus on risk assessment frameworks and instruments designed to better identify which youth require secure detention; these can be important in diverting young people from detention by providing an evidence based assurance to courts that the right decisions are being made about secure vs non secure arrangements. Participants hoped that these initiatives could continue to be supported and that much needed training of staff across Youth Justice in their use would be given a greater priority than it had in the past.

The recent Child Protection Case Conferencing Pilot (Nov 2009-June 2010) was also identified as another successful model with potential for implementation across Youth Justice and Care and Protection Services. The model, which uses an independent chair and the Care Team provisions of the Children and Young People Act, brings together key people and agencies to plan for vulnerable children. An internal evaluation¹⁷ recently indicates what is possible using strengths based approaches, interagency collaboration and active family involvement.

Recent changes at Bimberi show what is possible

The view was held that the Review has sparked considerable change and provides opportunities for a much greater focus on vulnerable children. It has placed the spotlight on processes that some managers have been concerned about for a long time such as case management, throughcare, staff recruitment and skills; it has provided a major injection of funds immediately to address urgent problems and the potential to make positive improvements for children has been demonstrated.

Some managers spoke about the changes which in their view indicate what is possible to achieve with more attention to staffing and specific program issues. The most frequently mentioned changes included:

Staffing

Participants indicated that considerable progress had been made over the past few months in the following areas:

¹⁷ Office for Children, Youth and Family Support (2010) Child Protection Case Conferencing Pilot Evaluation, Unpublished document, September 2010



- Staffing levels - A concentrated effort to recruit and an agreement to 'overstaff' has resulted in a greatly improved levels of staffing at the Centre
- Staff permanency: All staff are now on permanent contracts and efforts are being made to ensure there is a robust casual pool of staff
- Staff qualifications – The Department is supporting staff diplomas in Youth work. Bimberi staff are currently attending weekly CIT certificate IV workshops with graduation expected in June 2011. A further 7, from the last recruitment round, have enrolled in the CIT workshop. They are expected to graduate in March 2012. The Diploma of Youth Work commenced on Friday 15 April, with 15 starters, with graduation scheduled for December 2011.

Refocusing on education and skills of residents

We were told that last year at Bimberi no young person gained a certificate or a formal award for school or any other other vocational achievement. However a number of changes this year show what is possible with additional resources to the school and the development of partnerships with CIT and industry: for example

- Resources made available for one to one tuition of some children and young people with major literacy and numeracy deficits have made dramatic differences to learning and behaviour
- 16 kindles have been purchased to provide children and young people with more intensive, self directed reading tuition
- Limited agreements with CIT for enrolment of young people and partnerships with both Registered Training Organisations (RTOs) and Industry partners such as the construction industry have immediately opened up opportunities for young people that have not existed for some time.
- Resumption of critical wellbeing programs due to better staffing levels and the greater sense of safety and security that this affords. For example sporting and music programs have been resumed after having been disbanded last year.
- Staff report that communication at the centre has also greatly improved under new management arrangements.

It's a different world now from what it was last year. Communication has dramatically improved. We're having regular weekly meeting with management at the Centre, Moore St is coming out every week and there really seems to be a belief that things need to be opened up.



Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice

There seems to be the thinking that consultation and openness of communication is the only way to solve problems. With all the drama of the inquiries they actually have helped propel some changes.

But concerns remain about the future...

However along with a sense of relief that the Centre is currently fully staffed, resources are flowing and that a more positive staff culture focused on children and young people is emerging, a number of managers expressed a lack of conviction about how long lasting the changes would be. Some who have been part of previous reviews felt that changes only last as long as the political imperative remains

These kinds of changes [the ones that stem from media and political scrutiny] never last. It started off well; there is a sense of urgency and that's good but when the urgency disappears what will happen then? Will it all go?

Managers said that staff are noticing the change but still feel more is needed. There is also an anticipation that a change which continues to be driven 'by the papers' may not endure.



What Needs to Be Done to Support the Change

The complexity of issues faced by children and young people in the Justice, system described earlier in this report were reinforced in our interviews with Departmental executives, most of whom have spent the majority of their professional working lives in services concerned with vulnerable children, young people and their families. The far reaching impacts of a failure to address the needs of young people costs society dearly, including the costs of: recidivism as juveniles then as adults, the tendency for young people who have been incarcerated to become very young parents often without family or other social support, the increased likelihood of family and intimate partner violence, serious ongoing physical and mental health and substance use issues, a greater chance of abusing and neglecting their own children, and these children and young people more likely to engage in juvenile crime.

While it is self evident that a short period in detention cannot by itself address the magnitude of issues confronting many young people when they leave custody (Mears & Travis, 2004) there is also considerable evidence that it is possible, at critical early points, to identify children and young people who are likely to enter the youth justice system (National Crime Prevention, 1999), particularly as they and their parents interact with early childhood, housing, health, education, and social security systems.

A much greater collaborative response across government services the community services sector and other key community institutions is required to prevent entry into the system in the first place, provide a wider range of options to incarceration, and to provide young people who are incarcerated with opportunities to “build their talents and skills” through education, training and/or employment.

Although collaboration between services can produce significant improvements for young people, on its own service this kind of collaboration does not tend to produce long term ownership or increase the sense of control that people and communities have over their own destinies (Gray, 1996; Huxham, 1996; Huxham & Vangen, 2005). Partnering with local community organisations and the business sector can create opportunities for people to participate in the normal social and economic lives of their communities. Sporting clubs, industry bodies, philanthropists, churches, are examples of other community entities that can provide the formal and informal social support, resources, prosocial networks and opportunities critical positive futures away from welfare and correctional institutions. (Appendix 1 illustrates a case study of how such an approach worked in practice in Berks County Pennsylvania)



The substantial literature that has developed in recent years on joined up approaches claims that goals can be best accomplished by agencies coming together to actively work on accomplishing a broad common mission. Certainly there is a view in the child welfare literature that the two most important shifts in policy and practice are the moves towards integrated or collaborative ways of working and the increasing emphasis on improving outcomes for children and young people (N Frost, 2005; N. Frost & Stein, 2009)

The usual approach to outcomes by Government in contemporary program management is to identify high-level outcomes such as a “a strong diversified economy” or “a fair socially cohesive and vibrant society” and then to specify a related set of outputs in budget documents and annual reports. Intermediate outcomes are specified and a results logic is set up to drive program decision making, with service delivery plans then based on a hierarchy of results (White 2006: 11).

However the problem with this approach is that by their very nature outcomes, which apply to complex policy, challenges (such as reducing juvenile recidivism) are often shared across departmental structures in which a particular agency is only one of a number of contributors to the outcome. This becomes even more challenging for government when the role of other sectors is also critical to the outcomes sought. The causal link between outputs and outcomes is often not clear (White, 2006:12).

As the research indicates, outcomes for children and young people in Youth Justice are clearly the result of many inputs many of which are not within the control of any one agency of government. Yet the reality for government is that the community will continue to judge it based on its ability to make an impact on the outcomes outlined in its policy agenda. For example, in the ACT the community will continue to judge Youth Justice and the Community Services Directorate on its ability to address its key goals – prevention, rehabilitation, inclusion and reintegration (DHCS, 2011:30).

We address these and other issues in the following section. To guide the analysis we use a theory of change which is widely used in public administration.



A conceptual model guide the analysis and proposals

To guide the analysis and the proposals we used a model developed by Mark Moore¹⁸, to broadly identify the conditions necessary to successfully implement public sector change and address questions about structural arrangements (internal and external) that could bring about long lasting positive change for the children and young people in Bimberi and in the wider Youth Justice system. The premise of this model which is particularly applicable to Bimberi is that regardless of how much individuals and organizations desire to bring about change this will only happen if the change has: legitimacy and support (authorization) from those affected; public value which is recognized by those implementing the change; and the necessary operational capacity to implement the change.

Moore's work focuses on the ways in which leaders of public organizations can engage communities in supporting and legitimizing their work. All public investment, according to Moore, is "founded on the shifting sands of public aspirations" so to survive they must be able to generate support for what they do. This support is built on shared understandings and commitments to the purposes intended to be served by the public investment. Moore claims that the foundations of public initiatives therefore lie in their "mandates for action" (Moore 1990, 1995 in Moore, 1997:254).

This theory of change provides a way of framing our analysis and proposals for structural and organizational arrangements required to support reform in Youth Justice. First we will discuss each of these concepts and what they mean in practice.

Public Value

Moore (2000) argues that any successful enterprise requires a 'story, or an account of what value or purposes the [activity/ enterprise/ change] is pursuing' (p.197). While some public enterprises are founded on "durable, widely supported foundations" others, (and Moore specifically refers to Youth Justice) are "fickle, hotly debated, inconsistent and hard to operationalise" (1997:254). The interviews clearly indicated that the Department had not yet effectively communicated a compelling vision with clearly defined goals and principles; nor were there evaluation and accountability mechanisms in place to support this. In the case of Bimberi we identify the need for a strong statement of purpose and supported by an outcomes framework. These are two key mechanisms, which will

¹⁸ Mark Moore is Professor of Public Policy at the John F Kennedy School of Government, Harvard University



flow on to a range of other strategies to improve the quality of service delivery. These are described in more depth in the Proposals.

An authorizing environment

The authorizing environment refers to the high level mandate for an activity to occur. Even where practitioners, managers and others are committed to a Youth Justice system which focuses on prevention, rehabilitation, inclusion and reintegration, without a strong mandate for this vision it may be easily undermined in a reactive political environment.

The elements of a strong authorizing environment previously identified include: a formal mandate through legislation, endorsement through public enquiries, policy documents, memoranda of understanding, and information sharing protocols (Winkworth & White, 2010, 2011).

Authorisation also requires the vision to be endorsed by members of critical operational staff groups, in this case the Bimberi staff are just such a critical group; other agencies whose involvement is critical to successful outcomes (for example, education and health) and experts in the field (in this case, experts in Youth Justice).

In our proposals, the ACT Strategic Board, set up under the Hawke review and other governance bodies will be required to embed a stronger authorizing environment, including by other government agencies, for reform in Youth Justice.

Operational Capacity

Many reforms fail because they cannot be delivered. In operational child welfare contexts, including youth justice this often relates to staffing resources, including skills, numbers, practice models that address issues confronting children and young people in Youth Justice, shared practice frameworks among those who are critical to the delivery of practice models, and other resources and infrastructure.

In the case of Bimberi we propose a range of delivery mechanisms to bring about to the changes in practice identified in the literature and the interviews.



Analysis and Proposals

The interviews with senior executives in the Department pointed to a number of underlying problems in the operation of the Bimberi centre as a component of a broader, effectively functioning response to addressing the needs of vulnerable and at risk young people.

Some of these problems relate to day-to-day management and resource issues, such as the high use of temporary staff and the associated pressure on existing staff as they cope with high numbers of young people. These operational issues are of course important and it is evident that senior management has made substantial efforts to address these in the last 6 to 8 months.

However there are other difficulties which are more systemic and if not addressed, will ultimately undermine the good work which is being done to address the tangible, operational challenges which the centre faces. These difficulties relate to the organisational processes and structures which are the focus of this report.

This report set out to answer the questions: -

- How can the Youth Justice system best deliver public value in the future to vulnerable children and young people and the broader ACT community?
- What organisational processes and structures are needed to achieve good outcomes for children and young people in the ACT Youth Justice system?

These questions raise significantly different issues from the day-to-day operational issues mentioned above. They relate to aspects of the organizational architecture of the ACT's response to vulnerable and at risk young people. They may manifest themselves as observable issues such as "poor communication" or more generally "cultural clashes" but at their heart they are manifestations of more fundamental difficulties in organizational design and implementation.

Essentially an effective organizational architecture will be characterized by both clarity and agreement around the purpose of the organization. This purpose will be communicated throughout the organization and will shape the day-to-day activities which characterize its operation. As referred to above very often this clarity of purpose will be based on a shared values statement relating to the outcomes the organization seeking to achieve (Moore, 1997). This shared values statement and clarity of purpose will be given expression through an effective monitoring and performance management system which will



be owned and operated by the staff within the organization. It will underpin human resource issues from day-to-day staff management and supervision to staff recruitment and training. From the outside its existence will be recognized by the coherence of the organization and its capacity to focus on achieving common goals. It is an approach which is sometimes summarised by the term “organizational culture”.

Without a rigorous commitment to the maintenance of a coherent set of values throughout the organisation, from the top levels of its leadership to the day-to-day frontline staff delivering services, the organisation faces the risk of a “cultural drift” in which component parts of the organisation develop separate cultural identities and operate effectively for divergent and sometimes competing purposes.

One of the key issues with regard to the operation of Bimberi has been the lack of a common view throughout the Government, the Department and the ACT community more broadly, of its purpose and role in the overall response to young people at risk.

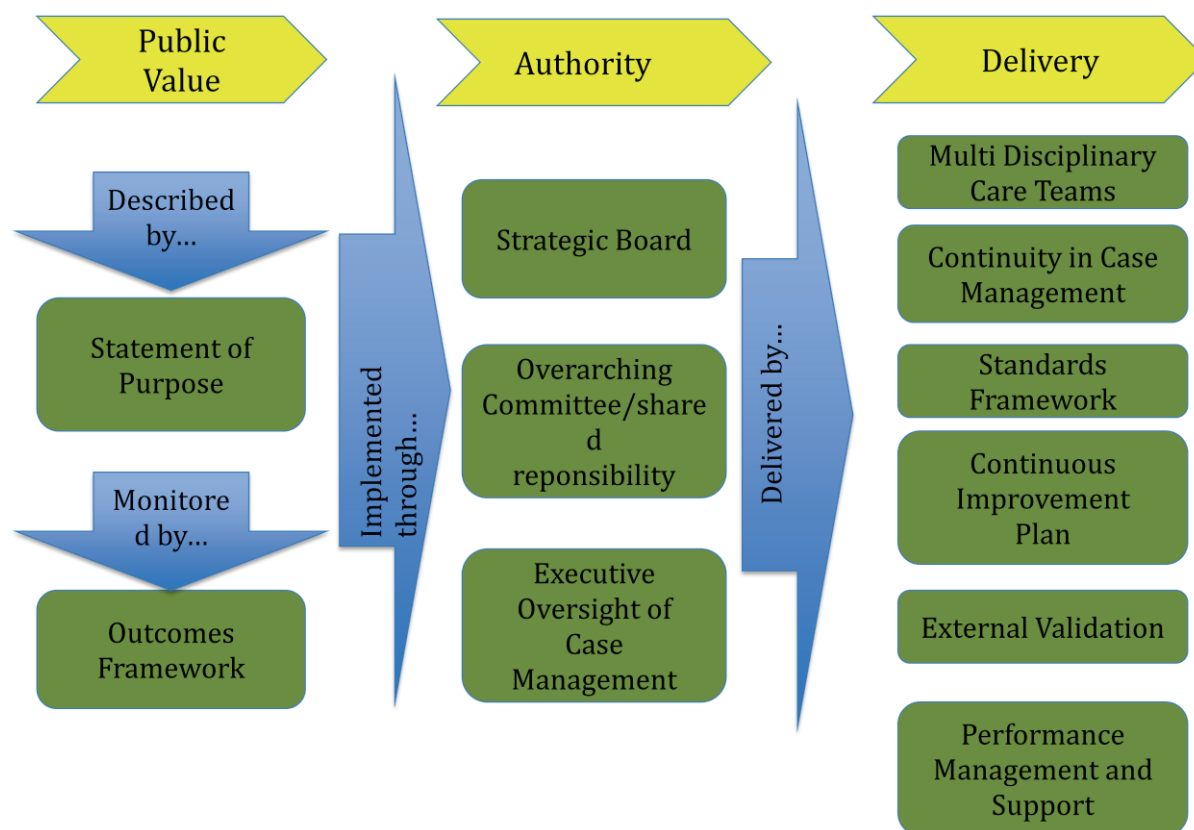
The second issue, perhaps related to the first, has been the centre’s separateness – some have described it as the “oil rig”. This separateness appears to be at the core of a number of the criticisms of the centre, ranging from the development of a separate staff culture, poor continuity of case management and uncertainty of resourcing for therapeutic and educational programs.

The proposals of this report seek to establish the mechanisms which will underpin the maintenance of an organizational culture focused on the reform and rehabilitation of young people detained at Bimberi, but more widely those that come in contact with the ACT youth justice system.

Its major features are outlined in figure 1 below.



**Fig 1 DELIVERING PUBLIC VALUE THROUGH BIMBERI YOUTH CENTRE
SUMMARY OF PROPOSALS**



What the proposals will achieve

In summary the proposals seek to bring about the following changes in the way the ACT responds to vulnerable young people

1. Bimberi will not operate as a separate entity disconnected from the broader response to vulnerable youth in the ACT but will be part of a co-ordinated system which focuses on achieving good outcomes for this high need group.

In order to achieve this a number of things need to be put in place outside Bimberi as well as within it.



External Factors

2. Led by the newly created Strategic Board the ACT will adopt a clear statement of the goals to which it aspires for vulnerable young people. This statement will include an aspiration to improve the health, safety, wellbeing, learning and development of this vulnerable group.
3. The achievement of broadly based outcomes for vulnerable young people will not occur through the actions of a single directorate but will require the input of a number of different directorates. The Strategic Board will take responsibility for coordinating these directorates and overseeing the allocation of resources to support the outcomes.
4. The Strategic Board will prepare an annual report to government on how this group of vulnerable young people are faring, describing them in terms of their health, safety, wellbeing, learning and development.

Internal Factors

5. The practices of responding to these vulnerable young people will reflect the principles of continuity, a focus on outcomes (how the young people are rather than what the government is doing), and the use of multidisciplinary teams.
6. Within that overarching focus on the needs of vulnerable young people there will be a statement of purpose for Bimberi that reflects the opportunities it provides to actively address young people's range of developmental needs. Its purpose will not simply be conceived as the incarceration of young people as a punishment for an offence; but will be judged by its contribution to the improvement of outcomes for this group.
7. The performance management, training and recruitment of staff will be revised to reflect that purpose to reflect that purpose.

The following discussion and proposals will describe how these seven elements of a new approach to delivering better outcomes for vulnerable young people will come about.



Whole of government coordination

All jurisdictions struggle to provide integrated services to young people. Governments have long sought to achieve broad policy outcomes through the creation of separate portfolios with accountabilities to deliver on specific policy agendas. In many ways this approach has been inconsistent with the development of collaborative approaches to delivering outcomes in the social services field in which broad policy outcomes may be the responsibility of a variety of separate departmental regimes.

In Victoria, the difficulties of this approach have been recognized and an attempt made to address them through the creation of the Children Services Coordination Board established under the auspices of the Child Well-Being and Safety Act. This Board comprises the heads of departments in the Victorian government bureaucracy including the Department of Premier and Cabinet as well as Treasury and Finance, police, justice, Education, Human Services and Health. Its role is to provide an opportunity for the complex needs of children and young people to be seen holistically and to create a forum in which broadly based advice can be developed for government.

In this regard the opportunities created by the Hawke review in the ACT provide the basis for developing an integrated approach to the difficulties of vulnerable young people in the ACT. The Review noted that:-

“Traditional public service departments and hierarchies are not well adapted to dealing with the complex and interrelated issues to which governments around the world are increasingly being required to turn their minds.....”¹⁹

Hawke recommended a number of changes to the structure of the ACT administration which are designed to promote a much more integrated approach. In particular the creation of the Strategic Board, and the potential to develop subcommittees of the Board, provide the ACT with an opportunity to place the needs of this complex group in an environment where they can be considered jointly and in which all Directors-General can make an ongoing commitment to responding to the difficulties of vulnerable and at risk youth.

It also provides an opportunity for authorizing joint funding and accountability mechanisms focused on broadly based outcomes rather than simply on specific outputs which in the past have tended to form the basis of departmental funding regimes.

¹⁹ Hawke page 5



Proposal 1

It is proposed that the Strategic Board establish a committee on vulnerable children and young people which reports annually on its strategic directions and achievements for this group of ACT citizens.

Agreed statement of purpose

While there have been significant improvements in the operations of the Bimberi centre in the last six months, these have been largely driven by reactions to the concerns raised in late 2010 rather than by a series of systemic reforms.

If these significant improvements are to be maintained, one of the first issues to be resolved is the development of a common statement of purpose which is agreed by government, senior administrators and by staff at the centre. The statement of purpose needs to have a number of features. The statement of purpose must:-

- Emphasise the therapeutic as well as custodial nature of the service
- Recognise that most residents of Bimberi are there for short periods and are often connected to other service systems
- Be agreed across government and communicated throughout the service system for vulnerable young people
- Be used as the basis for assessing and monitoring outcomes.

It would be appropriate that the strategic board provide the authorizing framework for this statement of purpose. However its dissemination needs to be significantly wider than the board. In particular the statement of purpose needs to be incorporated in the leadership, supervision and training processes for Bimberi staff to ensure that a consistent message is maintained across this group.

In this regard the managers and executives within the Community Services Directorate need to maintain close connection with the Bimberi centre providing leadership to ensure that the service operates in a way that it can consistently deliver on the statement of purpose.

Finally, it is important that this statement of purpose be placed in a broader context of the plan for children and young people in the ACT. As part of the vision statement for children and young people, it would be appropriate that the particular needs of this vulnerable group are clearly identified and that strategies



are articulated to achieve the broad objectives of rehabilitation and reintegration of this group into the wider ACT community.

It is understood that some work has already commenced in relation to the development of such a statement of the vision for youth justice however its placement within a broader framework of a whole of government response to vulnerable young people is unclear.

Proposal 2

It is proposed that a statement of purpose which reflects the rehabilitation of role of the Bimberi centre be developed and agreed across government.

Adopting an Outcomes framework

The success or otherwise of achieving these broad goals for children and young people is closely related to the way in which the goals are both specified and monitored. When organizations are assessed on specific outputs or indicators these tend to become the dominant focus on the service, not only in how it is judged but also in how it operates.

In the particular case of Bimberi its key performance indicators appear to have become dominated by matters of security and custodial management. While these issues are important they are by no means the only reason for the service's existence. In fact, for many of the executives interviewed for this report it was a matter of concern that the broader objectives of rehabilitation and reintegration have been given a very low profile.

In recent years human services departments in Australia have worked to develop broad outcomes frameworks which describe features of children and Young People's development which go beyond more simple descriptions of program outputs which have characterized public sector administration in recent decades. In this regard outcomes frameworks developed in Victoria, Tasmania, West Australia are notable.

These frameworks take a broader ecological approach to children and Young People's development and allow governments and organizations working with young people to focus on the broader outcomes of the work rather than on specific features of their day-to-day activities. For example, these frameworks identify outcomes in health, learning, development, safety and well being of young people and link these to indicators which can be reliably measured. This represents a significant change from more traditional approaches which focus on measures of activity, outputs or processes. While the more traditional



measures can be useful as program management devices, their existence can obscure the fundamental purpose of the provision of the service.

The ACT Young People's plan provides a sound basis on which an outcomes approach might be developed. The existing plan makes significant commitments around the implementation of programmes and other initiatives. It would be an appropriate step to overlay this plan with an outcomes framework and associated monitoring system, which will inform the ACT community on the broader question of how young people are faring.

Shared responsibility

If Bimberi is to be successful in achieving excellent outcomes for young people its role in a broader service context needs to be recognized. Bimberi is only one of a number of agencies which needs to take responsibility for outcomes for the young people in the ACT. So, for example, while Bimberi has a role to play in ensuring that residents are able to achieve educational or employment outcomes, so do other agencies within the ACT service community share this responsibility. One of the agencies which would have a key responsibility in this area is the Canberra Institute of Technology (CIT). As the lead public sector provider of vocational educational and training the CIT would be the agency most likely to assist Bimberi in delivering on these outcomes for its residents.

It is the experience of many jurisdictions that describing goals in terms of outcomes makes a significant difference to the opportunities and willingness of services to develop collaborative programs to achieve these outcomes.

This will be particularly true if the ACT is able to make best use of the opportunities of the new public sector arrangements to promote joint accountability and responsibility through mechanisms such as the strategic board and its committees. This is not a simple task.

"The fact that outcomes are usually the result of many inputs, and these inputs may not all be within the government control, means that measuring the effectiveness of government action can be difficult. This is not the case with outputs, which are designed to be the direct product of government action and are much more amenable to measurement, which in turn leads to an evaluation of program effectiveness. Nonetheless, the reality is that the community will continue to judge the government by its impact on the outcomes outlined in its policy



agenda and so new ways of monitoring these outcomes and reporting these results to the community need to be found and implemented.”²⁰

Proposal 3

It is therefore proposed that the Strategic Board adopt an outcomes statement for vulnerable young people in the ACT and jointly monitor these outcomes, reporting annually on their achievement. This outcomes statement should address the health, learning, development, safety and well-being of young people and should be supported by a set of performance indicators related these five core areas.

Proposal 4

Within the context of this outcome statement the Community Services Directorate will have a particular responsibility to report on vulnerable young people including those who have spent time as residents of Bimberi.

Proposal 5

At the same time, the Strategic Board itself should take joint responsibility for the achievement of the outcomes, providing an authorizing environment for the collaboration necessary between health, education, community services and justice agencies.

Continuity of case management

It is apparent that many of the young people who are residents of Bimberi were clients of the youth justice system prior to their entry to the centre. In addition many of these young people have been through the ACT's care and protection system. Certainly they are all eligible to be part of the education system although many have been not attending schools for some time.

Similarly, many of these young people have particular health needs including drug and alcohol problems and/or mental health problems.

After they leave Bimberi virtually all of these young people will have some sort of contact with support services, education services or police and justice services into the future.

From this perspective it is hard to justify the systemic separation of case management responsibilities within the Youth justice area. It is apparent that case managers within Bimberi begin a separate case management process once a

²⁰ White, M. (2006). Victoria's approach to putting children first. *Public Administration Today*(8).



person has entered the service. In some cases this is justifiable, particularly if the young person is remaining in the service for a substantial period of time. However, for many young people the disruption of the case management as they enter and leave Bimberi is hard to justify. Case management practices appear to be driven, at least to some extent, by the security needs of the custodial environment rather than by the needs of the young person.

This issue was raised by a number of those interviewed for this review and we are aware that senior managers are keen to develop a more continuous system. Such continuity will allow the development of longer-term objectives for the young person, the development of an ongoing relationship with an individual case manager and greater clarity of responsibility for outcomes.

Proposal 6

It is proposed that managers of the Community Services Directorate pursue the development of mechanisms for case management continuity. This would be designed to remove the distinction between community youth justice case managers and those operating within Bimberi to ensure that, for a young person on remand, continuity of case management would be the rule rather than the exception.

This issue is addressed more fully below in a discussion of the development of multidisciplinary teams. With regard to case continuity the key issue is that the distinctions between community youth justice case managers and those operating within Bimberi reflect a structural divide created by the decision of the courts.

This does not necessarily reflect a substantial difference between the needs of the young person, nor between the skills of the professionals challenged with overseeing the coordination and delivery of services designed to assist the young person. The young person's needs remain substantially the same and this should be reflected in the case management system.

Legal Basis for ongoing case management of vulnerable young people.

In addition to developing organizational and professional mechanisms for ongoing continuous case management, it is apparent that the Department needs to clarify the legal basis for such ongoing case management. Some participants in this review indicated the need for the development of a parole system to provide a legal basis for engaging with young people once they have left Bimberi.

On the other hand others indicated that the new legislation already provides an opportunity for such ongoing management. The difference between the two points of view appears to be that the parole option allows for decisions around



ongoing case management to be made while the young person is within the service. On the other hand post-release Good Behaviour Orders allow for ongoing case management but need to be made at the time of sentencing. It is beyond the scope of this particular review to resolve this matter.

Proposal 7

However the Department should re-examine whether the existing legal framework is sufficient to support continuous involvement of case managers for young people.

Mechanisms of case coordination

Interdisciplinary Teams for High Risk Young People

If the ACT were to adopt the proposal in this report that it develop a framework describing its goals for the developmental outcomes of young people, then this needs to be accompanied by a more interdisciplinary approach to the delivery of services to young people. Such interdisciplinary approaches generally require the establishment of locally based teams of professionals that can take responsibility for particular areas action to support vulnerable young people.

The ACT has the opportunity to develop such mechanisms under its existing Act. In particular the Director-General of the Community Services Directorate has the power to create a “Care Team” to provide co-ordinated case management. Within the context of these care teams officers have the authority to share information regarding the young person and to develop plans with the child’s family for their well-being.

This is an authority which could be used more widely, building off the existing effective practices already in place around programs such as Turnaround and Youth Connections. The creation of such “Care Teams” around particularly vulnerable youth would need to be implemented in conjunction with an authority for continuous case management so that the work of the team was not hindered or interrupted by the young person being placed on remand or even committed to Bimberi.

The development of interdisciplinary care teams focused on the ACT’s most vulnerable “at risk” youth would assist in moving the focus of professional work with this group away from particular interventions or events in the young person’s life. Under the present arrangements the young person acquires a different status depending on the nature of the current intervention, and this brings with it a different set of resources and staff. For example the “care and protection”



response is different from the “on remand” response and different again from the “community-based order” response. This results in a fragmentation of the services and management of the young person’s needs and can act to obscure the fundamental purposes of the intervention.

As one participant in our interviews noted that “Bimberi is in many ways just a change of address”. Services to this highly vulnerable group of young people need to be built off the assumption that they will have a variety of living arrangements (family, kinship, youth refuge, Bimberi, independent living,) and will come in contact with a variety of service systems. The mechanisms put in place must be built on the assumption of the continuity of the young person’s needs rather than separation of the systems we use to respond to these needs.

Proposal 8

It is proposed that interdisciplinary care teams be established to manage the needs of the most vulnerable at risk young people in the ACT.

Proposal 9

It is proposed that case managers within these interdisciplinary teams have continuing responsibility for the care of young people regardless of their setting and placement.



Senior Authority for Case Co-ordination

In addition, it would be important that these Care Teams are able to access resources to ensure that the broader goals of education, employment and health are supported regardless of the young person's placement in Bimberi or elsewhere.

This interdisciplinary approach raises the issue of providing an authorizing environment for the case management decisions regarding the complex needs of vulnerable young people.

The care teams themselves may provide an effective vehicle for the day-to-day coordination of case management however they do not provide the level of authorization and strategic systemic review which would be necessary for the continuing management of complex cases for vulnerable children and young people and their families.

Models of high-level authorization exist within the care and protection systems in a number of jurisdictions in Australia. In these models senior managers meet on a regular (monthly, bimonthly or quarterly) basis to review progress on the management of particular cases. The meetings generally focus on only one or two cases at a time.

It is important in these models that senior managers do not feel the need to take over the role of day-to-day case management but focus on the broader systemic issues which relate to the management of the case. This approach leads to the identification and resolution of blockages that may develop between agencies; and at the same time has the advantage of addressing difficult cross portfolio issues with regard to particular cases.

Proposal 10

It is proposed that an executive level group is established across the directorates of education, health, community services and other relevant directorates to review systemic issues with regard to the management of complex cases vulnerable or at risk youth. This group should meet quarterly and be an ongoing part of the case management process, reviewing one or two cases each time it meets.

Internal Organisational Processes.

Effective implementation of change and the maintenance of that change require the sort of high-level authorisation and day-to-day senior management involvement which has been outlined in the sections above.



Without this high-level leadership and active management the energy for change can often dissipate and former practices will be readily re-established. However, in addition to these external processes there are a number of key actions, which can take place within the service.

One of the most powerful of these is an ongoing analysis and review of service quality and achievement by the service itself.

On-Going Review

There are currently many external forms of oversight for Bimberi, including the Human Rights Commission, the Children's Commissioner and the Official Visitor. However these forms of oversight, valuable as they are, tend to be "post-hoc" processes which focus on specific aspects of the centre's operation or events that have taken place within it. When they are more comprehensive such as the current review, they tend to only occur sporadically and years apart.

If genuine changes are to be sustained these need to be owned by the staff of the service and constantly monitored by the staff at the centre itself. This is not an unusual process with human service agencies in Australia. Accreditation processes associated with other human service delivery activities such as hospital accreditation systems, aged care and child care systems both promote and rely on self-study mechanisms which are externally validated.

Key advantages of this approach are not only the regularity of the reviews but the ongoing ownership of the review by the staff and the opportunity to self critique in an environment which they feel they control.

A key element of this approach is that the self-study process operates within an agreed framework of standards and leads to the development of an ongoing improvement plan. Performance against this improvement plan would be regularly reviewed by the centre itself, assessments made of performance against the plan and new goals set for consideration at the next review. Without this commitment to an ongoing process it is likely that the improvements in the operation in the Bimberi centre in the past six months will not be maintained.

An important addition to this self-study process is an annual external evaluation or audit of the improvement plan by a body or individual with an expertise in the youth justice field but also with an understanding of the particular goals adopted by the ACT.

An example of this in operation is the work conducted within Western Australia by the Office of Inspector of Custodial Services. The regular reviews undertaken by



this Office provide an excellent model for the external evaluation which would be a necessary part of an ongoing reform process within Bimberi. However it should be reiterated that external processes alone cannot provide the ongoing support for systemic reform necessary.

Proposal 11

It is proposed that the ongoing improvement plan be developed for the Bimberi centre to be monitored and reviewed internally through a self-study process and which is externally validated annually.

Standards Framework for ongoing review

It has already been proposed above that the ACT develop a common purpose statement for the Bimberi service which is nested within a broader statement related to the vulnerable and at risk young people. Further it has been proposed that this is articulated in a statement of outcomes for these young people which is monitored on a regular basis.

These will form a strong basis for developing a regular ongoing internal self-study review process whereby managers lead staff of the service through a regular analysis of the performance in relation to these outcomes statements.

Other components on which this self-study approach could be built include the Standards for Juvenile Custodial Facilities prepared by the Australasian Juvenile Justice Administrators (1999) and the more recent Juvenile Justice Standards prepared by the same body in 2009. In addition to work of the West Australian Office of The Inspector of Custodial Services could be drawn upon to develop a framework of standards appropriate to the service environment of the ACT and its own policy framework. In this regard is important to note that the office of the Inspector of custodial services has recently released draft standards for juvenile detention facilities.

This is not to suggest that either of these documents provides all that the ACT, and the Bimberi service, would need in framing a self-study process. In fact it can be assumed that linking an outcomes framework for young people with some of the activities and procedures required to deliver these, would require some significant development. Nonetheless both the content of such documents and processes which would support it provide a useful starting point for this work.



Proposal 12

It is proposed that the improvement plan be developed in response to a standards framework that draws on national best practice in juvenile detention centres and the outcomes framework against which the well-being of vulnerable young people in the ACT will be monitored.

Building the process

With regard to the process elements of such an approach there are a number of key factors necessary to ensure the approach was successful.

Key features of an effective self-study process can include that it :-

- Is led by service leaders who provide authorisation, mentoring and support for the process
- Is founded on a clear set of desirable outcomes, which can be described by simple concrete examples good practice
- Engages the whole staff, particularly in a multidisciplinary environment
- Engages stakeholders and clients, including children and families.
- Leads to the adoption of specific development goals
- Monitors progress towards these goals.

Steps to establishing an externally validated self review process

Step 1 – Authorisation

An effective self-review process must be authorised by the governing board of the service. In this case the appropriate authorization would come from the Community Services Directorate. Within the service itself the management group would need to adopt, and commit to the self-study process, establishing a subcommittee of the Management and staff to take responsibility to promote and manage the continued self-study process.

The self study can be seen as a series of cycles where questions are posed, data is collected, shared reflection occurs and decisions are made about what further to do. This is a shared process that needs to involve a broad range of staff and stakeholders.

Service leaders in key programme areas would need to be committed to this type of approach as well as becoming familiar with the standards against which it would be agreed that the service would be measured. They would need to provide leadership to their own staff and mentoring for them throughout the process.



Step 2 - Data Collection and Information Gathering

In the first instance, the whole staff would review the standards in a structured workshop and make an assessment of the current performance of the service against the overall standards. As part of this workshop, staff would provide practical examples of how they believe the service was meeting these standards.

Gathering information from clients.

Service users and other stakeholders should be advised that the service is conducting the self-study process. Where appropriate the subcommittee might prepare simple surveys to elicit information from clients where they could provide useful insights into the centre's achievement of particular standards. In the past 6 months staff and residents of Bimberi have had the opportunity to respond to surveys of the kind proposed here.

The value of these types of surveys will be significantly enhanced by placing them in the context of a comprehensive review, linking them to agreed standards, using the outcomes to inform planning and guaranteeing that they will be repeated as part of an ongoing cycle.

Step 3 - Goal Setting Planning and Monitoring

Having gathered the relevant information and having made an assessment of the service's performance against the agreed standards, the service will make a decision regarding those aspects of the standards which the service will undertake to develop within the next 12 months.

In making this decision the service would need to consider the following principles:

Priority areas for development.

The priority areas for development for the service would need to reflect the priorities identified in the overarching policy document developed by the Strategic Board, but also may be driven by areas which it believes are of high professional importance, such as improving service quality, or are areas in which overall performance is relatively low.

Realistic assessment of possible progress

The creation of a set of standards would provide a framework in which the service may set short term or long term goals. For example in some areas the service may decide because of the difficulties to achieving change, it would only aspire to moderate achievements against the standards. In other areas the service may choose to be more ambitious and set goals further along the continuum of development.



Identifying opportunities and barriers

As part of developing a plan for improvement the service will be assisted by being explicit about the barriers to improvement in particular areas and by identifying opportunities to overcome these barriers. This list of barriers and opportunities can become an essential part of the monitoring process.

Monitoring Progress

Progress towards improvement should be described in practical terms which relate to the operation of the particular service. In this way members of the service will be in no doubt of what needs to be changed and what progress looks like “on the ground”. A timetable should be established for reporting progress through the governance structure of the service and to clients and stakeholders. While this will vary depending on the area of action chosen, quarterly reports provide a regular opportunity for review without an undue burden on staff.

Step 4 Validation

The completion of this self-study process would be through a validation process to confirm whether the service’s assessment of its of performance can be confirmed. This validating team would need to be well briefed on the purpose of the Bimberi service within the wider framework of a strategy of responding to vulnerable and at risk youth in the ACT.

It should be re-emphasised that it is not simply a matter of importing a set of standards which may be appropriate for a particular jurisdiction but which may, at least to some extent be inconsistent with the policy directions of the ACT. At the same time the use of a well established agency with expertise in this complex area has many advantages of both quality and efficiency which should not be ignored.



Proposal 13

It is proposed that the development of the continuous improvement plan and its monitoring include the key components of authorization, goal setting, data collection and review, external validation and replanning in order to ensure a continuous cycle of service improvement.

Human Resource Management

It was not the purpose of this particular review to enquire into the day-to-day operations of the Bimberi service. Rather it was the intention of this to provide some proposals on how organizational processes and structures can be put in place to sustain reforms begun in the service.

Notwithstanding this it is appropriate to make some observations on the basic features of human resource management within the service which go to the issue of how the change will be sustained. Fundamental to these is an emphasis on ensuring that centre staff are appropriately qualified for the tasks which are central to the management of residents of the Bimberi centre.

A key issue here is ensuring that the training and qualifications of staff are consistent with the provision of the service which is at its core developmental and therapeutic for young people detained at the centre. While there is undoubtedly a custodial and security component of the work the view of the ACT government is that the core goals of Bimberi relate to rehabilitative and restorative outcomes.

From this perspective it is essential that all staff are employed on the basis of qualifications which support this rehabilitative outcome. At the very minimum it would be necessary to have staff qualified at certificate four level in areas such as youth justice/youth work/social work if they are to be in regular contact with young people at the centre.

In addition it would be expected that the centre would employ a significant complement of professionally trained staff in areas of education, mental health, social work, and psychology. Staff qualified in range of health services should be either working in the centre or available readily to it.

Earlier in this paper the concept of interdisciplinary teams working with the most vulnerable at risk young people has been canvassed. If the time a young person spends in detention, as opposed to that spent in community-based services, is to be maximized then the service must take the opportunity to providing the most effective therapeutic environment that it can. Time spent at the centre provides



an opportunity to break the cycle of disadvantage that characterizes the lives of many of these young people.

It provides a time in which family relationships might be re-established if appropriate, mental health issues can be assessed and addressed and educational and health deficits identified and young people given the opportunity to succeed in an educational environment. While the service will rely on a range of external agencies to assist in this regard, it is essential that effective case management and casework will occur through the agency of well-qualified staff.

Proposal 14

It is proposed that all staff who have regular contact with Bimberi residents have at least certificate for qualifications in youth work, youth justice or social work.

Proposal 15

It is proposed that the Bimberi service be seen as an important opportunity to intervene therapeutically in the cycle of disadvantage for vulnerable young people and that it be staffed accordingly with educational, health and mental health professionals.

Performance management for senior managers and team leaders

The other element of human resource management that is essential to maintain change processes is a performance management system that supports and is congruent with the strategic direction of the service.

It is a recipe for failure for the organization to espouse a particular strategic direction and then judge the performance of its managers on the basis of a different set of indicators. While this may seem routinely obvious it is not uncommon for services to espouse (say) developmental and rehabilitative outcomes on the one hand and then judge the performance of a service such as Bimberi on its security and custodial measures.

For example the performance indicators that appear to be given the most attention are those related to custodial matters. In this context it is appropriate to note that the failure of residents at Bimberi to acquire certificated qualifications should raise the same sense of concern as escapes or incursions into prohibited spaces within the centre.

Performance management systems need to integrate two components – an ongoing review of performance which reflects strategic directions of the service and a support mechanism which assists staff and managers to successfully achieve the objectives set out in the performance management system.



Review process

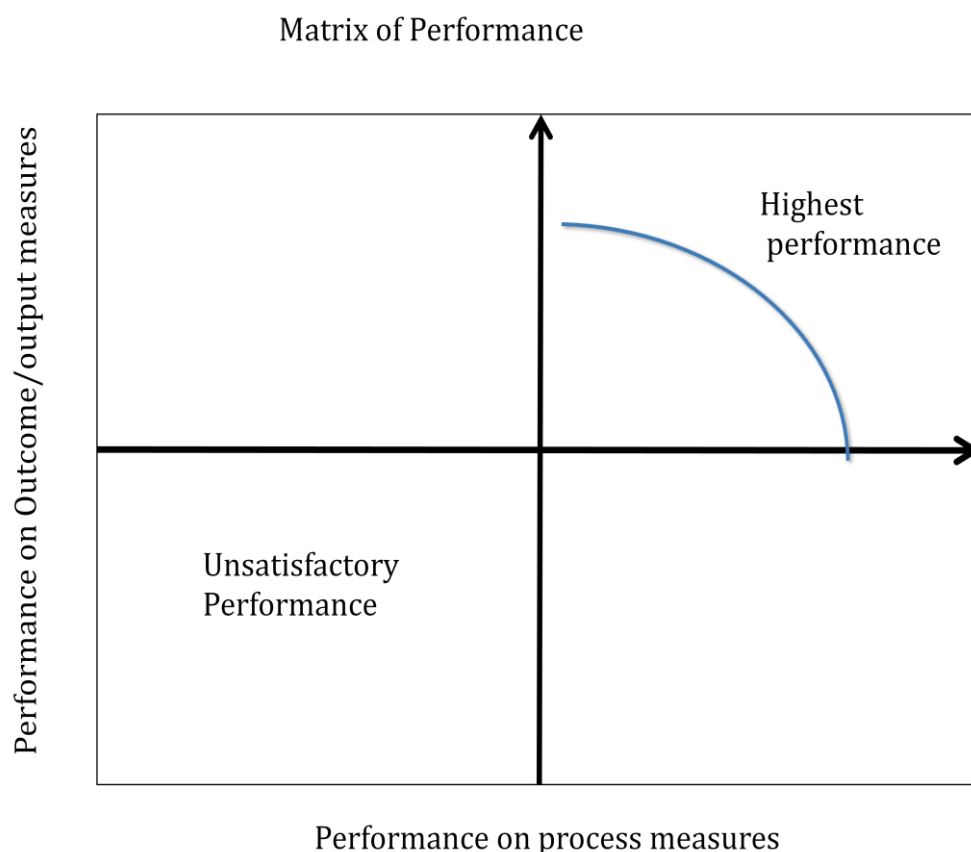
Performance management systems are well known and well tried within agencies such as the Community Services Directorate. It is not the place of this report to rehearse the basic principles of performance management systems.

Notwithstanding this, having interviewed a range of managers there are some observations which, if implemented, might be useful in sustaining the change process which senior executives envisage. One of these is the implementation of the matrix model of performance management.

Our interviews with senior managers in the Department led us to conclude that there are two broad areas in which the performance of leadership staff within the Bimberi service might be developed. On the one hand leadership staff are usually assigned the responsibility of delivering on a series of performance outputs that can be measured by the core activities of the service. In this case these outputs would relate to effective and efficient operation of the centre, as well as some key outcome measures relating to the well-being and development of the residents.

On the other hand senior executives of the Department are keen to see that the management of the service is conducted in positive and productive ways to ensure that staff are valued and that principles of transparency and equity underpin the management and recruitment of team leaders and frontline staff. In particular executives emphasized the importance of building and maintaining productive working relationships within the centre, including between staff and residents.

One approach to ensuring that this is possible is to adopt a matrix model of performance management. In a matrix model managers are judged according to a number of broad dimensions and need to show evidence of achievement in each of these in order to receive a satisfactory rating through the performance management system. For example the diagram below indicates that a manager who performs well on the outcome/output measures but poorly on the processes of effective staff management is not rated highly. On the other hand a manager who rates highly in the processes of staff management and is unable to achieve effective outcomes is also not rated highly.



Proposal 16

It is proposed that the performance management process should be based on measures of both the managers' achievement of performance goals as well as process measures such as the maintenance of productive working relationships within their area of responsibility.

Accompanying this matrix approach there would need to be supervision model which provides support for staff in achieving outcomes on both aspects of the matrix. This is particularly true for team leaders and unit managers within the centre whose task of directing front-line staff can often be the determining factor of outcomes. It is the team leaders and unit managers who face the difficult task of interpreting the value statements, outcome measures and other performance indicators into day-to-day leadership and management decisions which provide clear guidance staff working with residents.

From this perspective it is the responsibility of senior managers within the centre to provide regular supervision and support for these team leaders. These support supervision sessions would be based around a clear individualized performance



plan for each of the team leaders. These performance plans need not be complex documents and indeed may well benefit from being simplified to focus on a few key goals against which the progress of the manager/team leader may be reviewed. As with all performance plans an element of professional development and support required by the individual needs to be maintained as a necessary part of the plan.

It is not the place of this review to explore these areas in detail. Other processes and reviews are in place to comment on these matters. Suffice to say that sustaining change management requires active and ongoing performance management within a framework which translates broad strategic directions into everyday activities and management tasks within the centre. The key to this is to ensure congruence between the two and to conduct sufficiently regular reviews to ensure the activities of the service continue to be consistent with its broad strategic directions.

Proposal 17

It is proposed that individual development and support plans be core components of the implementation of the matrix model of performance management.

Conclusion

In summary, the changes being implemented Bimberi need to be supported by organisational and policy changes which ensure that Bimberi is seen as only one part of a comprehensive co-ordinated system of response to the needs of vulnerable and at risk youth.

Bimberi is one part of the youth justice system which is in turn one part of a broader set of services focused on the care, protection, education, health and well-being of young people. Effective long-term reform will be dependent on ensuring that the objectives of the ACT government are delivered through a coordinated response. While Bimberi remains an isolated and discrete element of the overall programme for the vulnerable young people it is at risk of losing its focus on the therapeutic and rehabilitation of goals to which the ACT government is aspiring.

On the basis of the discussions with senior executives of the Community Services Directorate the proposals in this report have been designed to overcome this difficulty and to underpin a coherent response to the well-being of vulnerable young people in the ACT.



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APPENDIX 1

CASE STUDY OF A WHOLE OF GOVERNMENT AND COMMUNITY APPROACH TO DIVERSION

One recent example of how a genuinely cross sectoral approach worked to reduce the number of young people sentenced to detention and build their talents and skills for positive futures is the story of Berks County Pennsylvania

(<http://www.macfound.org/site/c.1kLXJ8MQKrH/b.4464457/apps/s/content.asp?ct=8405511>)

. This compelling youtube clip describes how key community leaders, business and government developed a partnership with a philanthropic Foundation to address the escalating numbers of young people sentenced to detention.

The Foundation provided technical and financial assistance to collect better data thereby improving everyone's understanding of the scope and severity of their problem as a community, especially the overrepresentation of young people of colour in the youth justice system. Partnerships between the government, the foundation, community agencies, volunteer mentors with concrete skills and other role models, and the local high school which provided rooms, computers and cafeteria between 3-9 each night, have resulted in a halving of the number of young people sentenced to detention, a saving of \$2 million dollars in one year and only one young person from the program committing another crime.

Appendix C: Summary of Survey Results – Young People

Introduction

The ACT Human Rights Commission (the Commission) is committed to the engagement of children and young people in processes that affect their lives. This commitment is consistent with Article 12 of the United Nations' *Convention on the Rights of the Child*, which states that:

'States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'

To reflect this commitment, all young people detained at Bimberi from January to March 2011 were invited to complete an 80 question survey designed and administered by the Commission.

Survey limitations

The survey was not professionally designed, and was not intended to be academically rigorous. Rather, it was designed to be another tool the Commission could use to engage with young people to hear their views. On the most part, the Commission did not verify the accuracy of the survey responses, with results therefore needing to be treated with some caution. Just because a young person, or a group of young people, reported something to be the case, does not necessarily mean that it was the case.

Having said that, all surveys were completed with support from Commission staff, either one-on-one, or in small groups, and most young people who participated appeared to be interested in the questions, and to take their time to form a serious and considered response. Additionally, when young people completed the survey in small groups (with Commission staff present) they did not appear to be influenced by each other, with participants frequently stopping to discuss the range of views being expressed.

While the Commission does not claim that all of the survey results are completely factual, they do represent the views of 19 young people living in Bimberi, and they appear believable and consistent with information provide to the Commission by a range of participants during face to face interviews and in written submissions.

Results

Nineteen young people completed the survey, including 16 young men and three young women. Of those who responded to the question, one reported that they spoke a language other than English at home, and six identified as being from an Aboriginal or Torres Strait Islander background. Participants ranged in age from 14 to 18 years old.

Engagement with the youth justice system

Almost 80% of participants (n=15) reported to have been in custody before their current admission. Over half of the participants reported that they had first been detained before they were fourteen (n=10), with 40% reporting that they had spent more than a year in custody (in total).

Young people reported a number of reasons for their early involvement in the youth justice system. Some reported family related issues, issues related to money, and issues related to their peer networks. Three young people reported a link between their involvement with care and protection services, being placed in out of home care and acting out as a result. Some young people reported that better financial support and family interventions might have influenced their early criminality.

There was a fairly even balance between the number of young people reporting that they were serving a committal (n=10) and those reporting that they were on remand (n=9). Young people reported that they were often sentenced for breaching bail conditions, with some reporting that they believed their bail conditions to be unreasonable and unmanageable.

On admission

Eight young people reported being treated well on admission to Bimberi, and eight reported that they were treated badly, or neither well nor badly. Most young people (n=14) reported feeling safe on their first night at Bimberi.

All young people reported being searched when they first arrived at the Centre, with 70% reporting that they were searched with their clothes on.

Most young people reported that they were offered a medical check up on admission and were asked about any health issues that they might have. Almost 90% reported that they saw a doctor or nurse within a day of their admission. Two-thirds reported being offered a shower on admission, and 50% reported being offered a phone call.

Most young people reported that issues they presented with on admission (such as letting family know where they were, or feeling upset) were addressed on admission. Twenty percent of young people who identified as having alcohol or other drug issues reported being offered support on admission, and 10% of young people who smoked reported being offered assistance.

Most young people reported that they were not informed about issues, supports, or their rights when first admitted, with only one of the young people reporting having received a resident's handbook (after requesting one). Less than a third of young people reported that they had been told about where in the Centre they were allowed to go. Only 22% (n=4) of young people reported that they understood all of the information given to them on admission.

Most young people reported, however, that they were often told by their case manager about what services were available, and how to stay in contact with family and friends using the phone system. Over half of the young people reported that felt informed about the Official Visitor and her role.

Day to day arrangements at the Centre

Mixing

All young people reported that there were times that they were unable to mix with other residents while at Bimberi, with 90% wishing for more opportunities to mix. Young people reported feeling safe in mixing with young people either all the time (n=12) or most of the time (n=6). No young people reported feeling safe only sometimes or never.

Clothing and shoes

Over 80% of young people reported being unhappy about the quality of their footwear (n=15), and 43% felt that their clothes were 'bad'. Most reported that they were allowed to wear their own clothes when leaving the Centre or going to court.

Food

Around 90% of young people reported that the food at Bimberi was 'good' or 'very good' when cooked by the chefs at the Centre (n=16).

Programs and services

Young people reported sporting activities (primarily playing football); vocational activities (such as the Barista course, bricklaying and construction); art; music; metalwork; and woodwork classes as being some of the best programs they completed while at the Centre.

However, almost 90% of the young people reported that there were not enough things to do at Bimberi (n=16). Some reported wanting more cooking and life-skills courses, while others reported wanting opportunities to do science and youth work classes.

More than half of young people reported that they were able to spend time out-doors, use the pool, read the paper, and watch the news each day. All young people reported that they were never able to access the internet, with most reporting that they were unable to use computers or to play table tennis.

Health

Most young people reported that the quality of health services at the Centre was 'good' or 'very good', with just under half reporting that it was easy to access a counsellor, psychologist or alcohol or other drug service.

Twenty percent of young people reported that they were not receiving support for their mental health issues, and doctors, nurses and opticians were generally seen as hard to access. Young people reported being unsure about what sexual health programs were offered, or how to access them.

Most young people reported that required medication was provided at Bimberi.

Education

Most young people reported that the quality of education at Bimberi was OK (n=11), while four reported that it was either good or very good.

Time in rooms

Most young people reported spending significant periods of time in their rooms and within their units. Young people reported that on the weekends, in particular, they often did not leave their units until after 10.00am - more than 14 hours after they had entered their cabin the night before.

Safety

Most young people reported feeling completely safe at the Centre on their first night, when mixing with others, and in general. One young person reported that it might be 'really scary' for new residents when they first arrive, and suggested that a mentoring system might help younger residents. One young person reported that it was common to get into physical fights with other detainees, but that these were usually stopped quickly by staff.

Treatment by staff

Almost 50% of young people reported occasions when staff had made insulting remarks about them (n=9). Three young people reported that staff had made insulting remarks about their culture, and two young people reported that staff had made insulting comments about their families

Seventy-five percent of young people reported that there was at least one staff person in Bimberi that they could tell if they were treated badly (n=14), but only 40% percent said that they would tell (n=7). Five young people reported that they would tell a peer, or the Human Rights Commission (n=5), the Official visitor (n=3) or a family member (n=3). Several young people identified the current Operations Manager as person they trusted and who treated them respectfully.

Behaviour management

Young people reported being generally unhappy about the behaviour management system at the Centre, with the majority reporting that they considered the incentive and discipline system to be unfair. Most young people reported having had their privileges withdrawn, or having a fine or warning.

Most young people reported that they had been punished as a whole group for the actions of an individual or a small group, and some reported that they thought this was unfair.

No young person reported being placed in the isolated safe room. Twelve young people reported that they had been placed on segregation. Six of these young people reported that they had been segregated for a week or less, and 4 reported that they had been segregated for one month or more.

Some young people reported that they believed that segregation was unfair, and that the practice was implemented in an inconsistent manner and for reasons that did not justify the punishment. One young person reported feeling disillusioned with the process for review of segregation orders, and frustrated with not being able to attend education while in segregation.

Searches

Nearly all young people reported having been frisk-searched and strip searched while at Bimberi (n=18). Most young people reported frisk-searches as happening 'often', and strip searches happening 'sometimes'. No young people reported receiving a body cavity search, or being searched using a sniffer dog. Seventy percent of young people reported that staff of the opposite sex were never present (n=13) during a strip-search, with four of the remaining young people reporting that staff of the opposite sex were rarely present.

Just under 50% of the young people who answered the question reported that they were present when their room was searched, and two young people reported that legal documents had been removed from their room during a search and were not returned.

Restraints

Over half of the young people reported that they had been placed in handcuffs, a restraint belt, or another restraint device while in Bimberi (n=10). Forty-two percent reported that they were physically restrained by staff 'sometimes', and just under 40% of young people reported an injury that was a result of a staff restraint (n=7).

Having a say and raising concerns

Sixty percent of young people reported that they had little say on the way things were run at Bimberi (n=12), with most young people reporting that they would like more input in-put into recreational activities, education programs, mixing practices, rewards systems, searches, phone calls and visits and preparation for return to the community.

Fifty percent of young people reported that it was easy to make a complaint at Bimberi, but most young people reported that complaints made to staff members were handled 'unfairly'. Most young people reported that complaints made to their lawyer were dealt with better than complaints made to members of staff, and some young people reported that they were unsure about the effectiveness of the Public Advocate and the Official Visitor.

Rehabilitation

Most young people reported that they were unconvinced that Bimberi had a rehabilitative function, with most reporting that weren't many services to help them change their behaviours. One young person reported that they thought programs were more helpful when a young person was ready to change, and that young people might be more motivated to change offending behaviour as they approached adulthood.

More than a third of young people reported that that they did not have a case plan for when they were released from Bimberi, or that they didn't know about the plan if one existed (n=7).

Seventy percent of young people reported that they had a small amount of in-put into their case plans and case conferences.

Staying connected

Legal

Just under 65% of young people reported that they could speak to a lawyer in private while in Bimberi.

Family

Over 40% of young people reported that restrictions had been placed on phone calls and visits with their families, with all of these young people reporting that they thought these restrictions were unfair. Over 90% reported that they thought that their families were generally treated 'well' or 'OK', but most young people reported that visits with their families only 'sometimes' started on time. Twenty-five percent of young people reported that they thought that they would be informed if someone in their family was sick.

Maintaining ongoing cultural and religious connections

All of the young people who identified as being Aboriginal or Torres Strait Islander reported that they had been visited by workers from an Aboriginal or Torres Strait Islander service.

Over 80% of the young people who identified as being Aboriginal or Torres Strait Islander reported that their culture was respected in Bimberi, and over 65% reported that they had a chance to express their culture while in Bimberi.

Fifty percent of young people reported that it was very easy to participate in religious services if they wanted to.

Appendix D: Summary of Survey Results – Staff

Introduction

Between February and May 2011, the ACT Human Rights Commission (the Commission) distributed a 92 question survey to current and former staff of Bimberi, with some questions only being applicable to current or former staff.

The survey was designed by the Commission, in consultation with the Australian Education Union (AEU) and the Community & Public Sector Union (CPSU), and was available in either hard-copy, with results being dropped into a locked collection box located in a common administrative area of Bimberi, or via an on-line Survey Monkey link. The link to the on-line survey was distributed by the AEU and the CPSU to current and former staff who were members, and by CSD to current staff.

Participation was voluntary, and all surveys were anonymous (unless the participant chose to identify themselves).

Survey limitations

The survey was not professionally designed, and was not intended to be academically rigorous. Rather, it was designed to be another tool the Commission could use to engage with young people to hear their views. On the most part, the Commission did not verify the accuracy of the survey responses, with results therefore needing to be treated with some caution. Just because one staff person, or a group of staff people, reported something to be the case, does not necessarily mean that it was the case.

Having said that, all survey responses appeared measured and considered, with few extreme views being expressed. While the Commission does not know the identity of any of the participants, those staff who did express an interest in completing the survey did not appear to represent any one sub-group or clique of staff.

Additionally, while the Commission has no reliable way of verifying that the on-line surveys were completed by current or former staff, or whether one person submitted multiple surveys, the Survey Monkey link could only be accessed once per URL (or computer), and the information contained in the results of the on-line surveys reflected that they were completed by a diverse range of individuals with a detailed knowledge of Bimberi.

While the Commission does not claim that all of the survey results are completely factual, they do represent the views of 18 current and former staff, and they appear believable and consistent with information provide to the Commission by a range of participants during face to face interviews and in written submissions.

Results

The Commission received 18 completed surveys, 11 from male staff and 7 from female staff.

Respondents reported their occupational roles as being from across Bimberi, and included youth workers, team leaders and teachers.

Respondents reported that they had worked in the youth justice system for 'less than one year', to 'more than five years'.

Thirteen of all 18 respondents reported that no longer worked at Bimberi, with 4 respondents reporting that they had left in the last three months, and 9 respondents reporting that they had left more than three months ago. Five respondents reported that they were still working at Bimberi.

Motivations

Respondents generally reported 'making a difference' or 'helping young people' as the key drivers for their decision to work at Bimberi.

Of the 5 staff that reported that were still working at Bimberi, two reported that that they were likely to stay in the foreseeable future. When asked to identify what would assist them to stay at Bimberi, one respondent reported:

'Management need to look carefully at staff and their working conditions and try to be more supportive and helpful.'

Ten of the 13 former staff reported 'management issues' as their motivations for leaving. Other reasons reported as being motivations for them, or others, leaving, included:

- Staff shortages;
- Racism, bullying and harassment;
- Inconsistent treatment of staff by management;
- Lack of resources or programs;
- Lack of support from management
- Unsafe environment for staff
- Feeling isolated or worried about the safety of the 'one youth worker per wing' policy;
- Long hours;
- Not being given the resources or opportunity to work effectively in their role; and
- Poor communication between staff and between staff and management.

One respondent reported:

'The fact that the facility is EXTREMELY understaffed is dangerous, it is tiring and the burn out rate increases due to the long hours and the intensity of managing more and more youth.'

When asked to identify ways to improve staff retention, respondents reported a range of ideas, including:

- More staff/resources;
- More education or programs for young people;
- More training for staff;
- Better career opportunities for staff;
- Better communication between staff and between management and staff. More team bonding/cohesiveness in particular;
- Return to the 8 hour shift;
- More support for staff from management, particularly debriefing; and
- Training for managers on management/supervision.

One respondent reported:

'I think an assessment of the communication and skills gap between management and on floor staff needs to be addressed and revised to provide more fluidity between those who work in the office and those who work on the floor. A greater element of training staff is needed to improve the capacity for safety and security. More opportunity for team 'bonding' to strengthen the team spirit and support. An assessment of the facility of Bimberi to provide the risks - and to implement risk assessment training and strategy. I think the hours that staff work needs to be addressed and the lack of staff needs to be addressed.'

Management and supervision

Fifteen of all 18 respondents reported that they 'did not feel valued and respected by management at Bimberi' and that they did not feel that they were 'able to have a say in decisions that affect your work at Bimberi'. This was a consistent pattern across current and former staff.

Fifteen of all 18 respondents, including all five current staff respondents, reported that there were not 'adequate opportunities for staff to raise issues of concern with Management at Bimberi'.

Thirteen of all 18 respondents, and all five of the current staff respondents, did not feel they received 'adequate support or supervision while working at Bimberi'. Fourteen respondents, and all five of the current staff respondents, reported that they received 'little supervision'.

Seven of all 18 respondents reported feeling unsafe on the floor because of understaffing or being isolated with young people. When asked what challenges or stressful issues they had faced at Bimberi, respondents reported a range of issues, including:

- Lack of support or supervision, particularly a lack of debriefing or supervision after critical incidents;
- The 12 hour shift;
- Lack of rehabilitation/programs/case management for young people;
- Unfair treatment of staff and lack of transparency in promotion; and
- Lack of training.



When asked to identify ways to deal with these challenges, respondents reported a range of ideas, including:

- More frequency of training;
- Regular meetings with supervisors for feedback;
- More staff;
- Better quality assurance;
- Better information for staff on their rights and responsibilities;
- Return to 8 hour shift; and
- More transparency in decision-making.

Fourteen of all 18 respondents reported that 'complaints from staff were not generally treated seriously by management at Bimberi'.

When asked to describe the management style at Bimberi, current staff respondents reported a range of terms, including: 'inconsistent'; 'staff left to their own devices'; and feeling 'isolated in their duties'.

When asked to describe the management style at Bimberi, former staff respondents reported a range of terms, including: 'bullying'; 'authoritarian'; 'poor'; and 'providing insufficient direction or communication'.

Communication

Sixteen of all 18 respondents identified communication between staff and management at Bimberi as either 'bad' or 'very bad'.

Fifteen of all 18 respondents, and all 5 of the current staff respondents, reported that they did not think that 'staff across the various area of Bimberi (youth workers, health staff, education staff, etc) have adequate opportunities to meet and discuss issues of concern'.

When asked to identify ways to improve communication, respondents reported a range of ideas, including: '*creating a forum for staff and management to discuss issues and improve collaborative work*'. One respondent reported:

'The briefings that are held in the mornings are very valuable, but the youth workers who cannot attend because they are doing observations in the units miss out on valuable information that is discussed at these meetings.'

Eight of all 18 respondents reported that they would like teachers to participate in case management conferences, and some respondents reported that they would like all staff involved with young people, including youth workers, to participate in case conferences.

Training

Eleven respondents reported that they did not receive 'enough training to do their job well'. When asked to identify the most important areas of training, respondents reported a range of issues, including: 'having time learning on the floor'; and 'use of force training'.

When asked to identify the most important areas of training, respondents raised a range of issues, including: 'having time learning on the floor'; and 'use of force training'.

When asked to identify areas missing from training, or where additional training would be helpful, respondents raised a range of issues, including: 'negotiation or de-escalation training'; and lack of time spent training on 'day to day' issues that were likely to arise; 'behavioural support and management'; 'mental health'; and 'Aboriginal and Torres Strait Islander cultural awareness training'.

Most of the 12 respondents that answered the question reported that they had received training on: mandatory reporting; cultural awareness; mental health issues; alternatives to physical restraint/use of force; occupational health and safety; and fire safety. Five of these 12 respondents reported that they had received training on human rights.

Eight of all 18 respondents reported receiving 'no training' after induction, and 6 respondents reported that would like more refresher training. Some staff reported difficulties concerning the Certificate IV CIT course, with one respondent reporting:

'We appreciate the opportunity of doing the course, but it needs pre-planning for us to be able to attend. Many people have childcare to arrange to attend the course.'

Staffing levels

Fifteen of all 18 respondents reported that they did not consider staffing levels in Bimberi to be 'adequate'. Seven staff identified that the current levels were 'dangerous or unsafe'. When asked to identify other issues regarding staff levels, respondents reported a range of issues, including:

- Young people missing out on education due to staff shortages;
- Insufficient staff on the floor;
- Lunchtimes cut down; and
- There should be enough staff for youth workers to work in pairs.

Safety and security

Fourteen of all 18 respondents reported that Bimberi was a 'somewhat unsafe' or 'very unsafe' place to work. Nine respondents reported that Bimberi was 'somewhat unsafe' or 'very unsafe' for young people.

Eight of 15 respondents that answered the question reported that they thought that 'security considerations' had been used to 'unreasonably inhibit the provision of appropriate emotional support of residents'. Seven of these 15 respondents reported that they thought that 'security considerations' had been used to 'unreasonably inhibit the provision of counselling support or education delivery'.

When asked about what factors determined safety and security in the centre, respondents reported a range of issues, including:

- Shortage of staff, or experienced staff;
- Poor communication; and
- Faulty equipment, such as radios, CCTV and duress alarms.

When asked about solutions to security concerns, most respondents reported addressing staff shortages

Policies and procedures

Nine of all 18 respondents reported that the *Human Rights Act 2004* was a 'generally negative influence' at Bimberi.

Nine of all 18 respondents reported that the behaviour management system for young people was not applied fairly, and eleven respondents reported that they did not find the system easy to understand.

Complaints from young people

Eleven of all 18 respondents reported that 'young people are encouraged to make a complaint if they are unhappy with their treatment at Bimberi'. Six of these 11 respondents reported that they thought that complaints were 'taken seriously by staff'. Other respondents reported that they thought that young people's complaints were 'taken more seriously than staffing issues'.

Of the 13 respondents that answered the question:

- Seven reported that they thought the Human Rights Commission was effective in resolving complaints (three reported that they did not);
- Five reported that they thought the Official Visitor was effective in resolving complaints (six reported that they did not);
- Five reported that they thought the Public Advocate was effective in resolving complaints (three reported that they did not);
- Three reported that they thought the Ombudsman was effective in resolving complaints (five reported that they did not);

One respondent reported that they thought that there should be an 'independent group to work on-site to deal directly with complaints'.

Searches and use of force

Ten of all 18 respondents reported that they thought that searching, including strip searching, was 'generally used reasonably at Bimberi'. Five respondents reported that they thought that strip searches were used 'about the right amount', and three reported that they thought that strip searches 'should be used more'.

Most respondents reported that they don't like doing strip searches, but that 'they are necessary due to the amount of contraband'.

One respondent reported:

'People like to hide anything they can on / in their body or in / within their clothing. Searching is a MUST it is there for the workers safety as well as other residents.'

One other respondent reported:

'I wonder what is more important - finding a missing pen (often taken for fun by new remand students for a bit of fun and kudos in a boring place) - or the pride and dignity of vulnerable teenagers. Lets think about these incidents strategically and make balanced decisions depending on circumstance and risk - students who have been subjected to sexual assault or other violence may find a strip search incredibly demeaning and do more damage than a little graffiti - why are we here - to keep the walls pristine?'

Seven of 13 respondents that answered the question reported that they thought that restraints (such as handcuffs) were 'used reasonably'. Six respondents reported that they thought that restraints were used 'about the right amount, and five respondents reported that they thought that restraints were 'not being used reasonably'.

One respondent reported:

'Totally appropriate and necessary. If one detainee was to run off or climb on a roof, others may join in and we would have a total loss of control and a riot on our hands. Dangerous to detainees and staff.'

One other respondent reported:

'I felt saddened to see young people handcuffed, they were humiliated and vulnerable. At times I saw this happening just to transport young people across the yard - if they were putting up no resistance and they were inside why? These are kids for gods sake!!!'

Eight of the 12 respondents that answered the question reported that they thought they had the skills and the right levels of knowledge to manage young people's behaviours.

Segregation

Eight of all 18 respondents reported that they thought that segregation was 'not used reasonably at Bimberi', with most of these 8 respondents reporting that they thought segregation 'was not used enough'.

Eight of the 13 respondents that answered the question, reported that they thought that young people were treated 'well' or 'very well' while in segregation. Nine of the 13 respondents reported that they thought that segregation was 'beneficial for the development of young people at Bimberi'.

One respondent reported:

'Segregation is a good tool. It enables the worker to engage with the young person away from his/her peers where they receive negative influence. The downfall is management are biased as to who they decide to segregate.'

One other respondent reported:

'These students need to learn how to behave within society. Pulling them out of society to the extent of segregation is not going to teach them those skills.'

Rehabilitation

Eight of all 18 respondents 'disagreed' or 'strongly disagreed' that 'Bimberi is effective in helping young people improve their lives'. When asked about how to improve the rehabilitation of young people, respondents reported a range of issues, including:

- More varied education, particularly vocational education and more teachers;
- Better reintegration into community for longer term offenders;
- Greater cohesion between case management plans and education plans; and
- Intensive support and more focus on individual needs.

Seven of the 13 respondents that answered the question reported that services in Bimberi for physical and mental health and wellbeing were 'reasonably effective', and nine of these 13 respondents reported that they thought that education and training programs were 'reasonably' effective. Eight of these 13 respondents reported that they thought that living skills programs were 'not reasonably effective'; seven of these 13 respondents reported that they thought that programs to deal with difficulties and challenges were 'not reasonably effective'; and nine of these 13 respondents reported that they thought support for relationships with friends and family were 'not reasonably effective'.

Eleven of all 18 respondents reported that they thought that Bimberi was 'bad' or 'very bad' at preparing young people for their return to the community. When asked about how to improve reintegration into the community, respondents reported a range of issues, including:

- Organised visits with the family outside of the centre to integrate into the community; and
- Establish a Transition Unit.

Equality

Eight of all 18 respondents reported that they thought that females at Bimberi receive 'better treatment' than males, and ten of all 18 respondents reported that they thought that there were problems with 'racism/racial prejudice among the young people at Bimberi'.

Respondents were equally divided on the issue of whether young people with a disability were treated equally to others at Bimberi (including providing young people with a disability with the appropriate supports to allow them to participate equally).

One respondent reported:

'If these students were assessed using the normal education departmental guidelines they would receive support in terms of extra funding.'

Five of the 13 respondents reported that they thought that management treated men and women staff equally, and three of these 13 respondents reported that they thought that either men or women were treated better by management.

Five of the 12 respondents that answered the question reported that they thought that staff from different cultural backgrounds 'did not receive equal treatment to other staff at Bimberi', and six of the 12 respondents that answered the question reported that they thought that there was a problem with 'racism/racial prejudice amongst staff at Bimberi'.

One respondent reported:

'If you are white you will get picked on at some stage here at Bimberi.'

One other respondent reported:

'Their appears to be a subculture that does not like the Islander employees.'

One other respondent reported:

'I have witnessed Islander or employees of descent other than Australian being treated differently within the workplace.'



Appendix E: Forging New Pathways

Introduction

On 16 March 2011, the ACT Human Rights Commission (the Commission) hosted the 'Forging New Pathways' workshop at the Burringiri Aboriginal & Torres Strait Islander Cultural centre.

The workshop aimed to give key stakeholders an opportunity to create a vision for the ACT youth justice system, and to explore strategies through which the system might be improved. Although time was spent identifying and discussing current problems and challenges, the workshop was future-focussed and attempted to create a space in which participants could be innovative and visionary. The day's program included a mix of expert presentations, small group discussions and plenary sessions. The program was developed to ensure that participants could respond to current research and practice while drawing on their own practice wisdom and experience.

Presentations were given by Dr Kelly Richards, Senior Research Analyst, Australian Institute of Criminology (AIC), Professor Debra Rickwood, Professor of Psychology, University of Canberra, and Lisa Kelly, Service Integration Manager, headspace ACT. These presentations (which focused on the current trends in youth justice in Australia and the ACT and on good practice in rehabilitation respectively) sparked conversation and provided participants with a platform on which to develop strategies for the future.

Small and large group discussions were captured on butcher's paper and key themes were documented at plenary sessions.

Participants

Key stakeholders were identified and invited to the workshop by the Commission in consultation with government and community partners. Participation in the workshop was voluntary, with each participant giving their written consent for their input to be recorded and used for the purposes of the Review.

Thirty-two participants representing government and community services from the youth, health, mental health, homelessness, justice and legal sectors participated in the one-day forum.

Participants had varying levels of engagement with the youth justice system and experience working directly with young people. Specifically, participants had training and experience in youth work, social work, law, psychology, education, criminology, community development and mental health. A few participants were new to the sector, although the majority had worked for significant periods of time (up to twenty-five years). One participant identified having a child within the youth justice system. All expressed an interest in improving the lives of young people in the system and a commitment to being part of a process of reform.

Limitations

Neither the ACT Education and Training Directorate (RTD), the ACT Health Directorate (Health), nor the ACT Justice and Community Safety Directorate (JCSD) were represented at the workshop. Accordingly, the following comments need to be read in the context that the views of the broad sector working with young people, including those working within Bimber and Community Youth Justice, were not captured.

It should also be noted the views expressed by participants and the outcomes of the workshop, as reported in this summary, are not necessarily endorsed by the Commission nor all of the participants.

A vision for youth justice in the ACT

The first session asked participants to identify a set of key principles and expectations that would underpin a quality youth justice system. Participants were asked to develop a vision for the system and a mission statement that might guide not only *what* is provided, but also *how* it is provided.

Participants reported that the ACT youth justice system should be benchmarked as the lead system within Australia and should attempt to provide young people with life-changing services. Participants reported that the youth justice system should, in partnership with other systems, develop quality programs and supports that address not only young people's criminogenic needs but also improve their broader social, educational, employment and health outcomes.

Participants developed the following as examples of possible vision and mission statements for the system:

'To work collaboratively and innovatively to provide and sustain cutting edge, evidence based programs and supports in order to meet the individual needs of young people and reduce their offending.'

'In recognition that social inequity impacts significantly on young people's choices and behaviour, we will engage with young people, their families and their communities, to ensure that young people have access to resources needed to make fully informed and sustainable choices.'

'The youth justice system should intervene early, with appropriate supports, to rehabilitate and provide reparation. It should be timely, responsive and give young people ownership throughout the process. It should be integrated with the community. Long term it should make Bimberi redundant.'


'We are working to create an environment that:

- Achieves real justice for young people*
- Values and supports young people individually and within their family, community and culture*
- Supports the recovery of young people and their families*
- Supports young people to recognise and build on their strengths, gifts and worth.'*

Characteristics of a quality youth justice system

Participants reported that to be successful, the youth justice system must have a number of characteristics and be driven by a set of assumptions and beliefs about young people, their families and communities and the way that services and supports assist them. Participants reported that a best practice youth justice:

- **Has non-partisan support.** Participants reported that in a jurisdiction like the ACT where there was significant political scrutiny and debate, politicians and political parties must develop a shared vision for youth justice which would be used as the platform on which growth and development could occur. Participants believed that there needed to be a nonpartisan commitment to reform in youth justice and believed that to achieve positive outcomes, parties need to work constructively together rather than sustain a climate within which programs are afraid to take risks and to adopt new approaches due to undue political scrutiny and reproach;
- **Has a commitment to justice reinvestment.** Justice reinvestment (which sees the reallocation of public funds that would usually be spent on imprisoning offenders to community programs, services and activities which address the broad underlying causes of crime in particularly at-risk communities) was strongly encouraged by participants who believed that current practices and approaches were not effective in curbing young people's criminal behaviour or improving their lives;
- **Is embedded in community.** A number of participants reported that the youth justice system was not connected strongly with other sectors and systems such as youth support, education, health and employment, and that to be most successful it must have community buy-in at all levels. Participants reported that workers from the youth justice system would benefit from engaging in broader youth sector activities (such as joint training and information sharing), and argued for further linkages to be developed. Participants reported that this might assist to minimise the sense of isolation felt by youth justice staff, and reduce service duplication and misunderstanding;
- **Is driven by the best interests of the young person.** Participants reported that the needs and best interests of young people needed to be central to all policy and program decisions and implementation, and should shape not only what is done with young people but also how supports are provided;
- **Is collaborative:** Participants reported that to be effective, partnerships needed to be developed across government and community to ensure that programs, services and supports meet the broad needs of young people and provide a certain level of consistency and continuity of care. Young people, their families and members of their support networks should all be actively engaged in identifying needs, goals and the implementation of plans;
- **Is strengths-based, optimistic and solution-focussed.** Participants reported that young people, families and, to a lesser extent programs and services, were often cast in a negative light and this influenced how each were seen and treated within the system. Participants reported that until the community and the system were optimistic about young people and believed that change was possible, little reform would occur. They also reported that too much of the rhetoric focused on problems and challenges and that more investment needed to focus on solutions and opportunities;
- **Is focused on rehabilitation.** Participants advocated for a rehabilitative model of youth justice that helps young people to take responsibility for their criminal behaviour but also provides them with opportunities to repair connections and prepare them for a positive reintegration back into their communities. Participants reported that staff within youth justice programs (including CYJ and at Bimberi) should take a mentor-like relationship, rather than using punitive and coercive approaches that are shown to be counter-productive;
- **Is therapeutic.** Participants reported that young people's involvement in the system was often as a result of early experiences of trauma and adverse life conditions which needed to be repaired alongside and within the youth justice



system. A greater investment in therapeutic supports for young people and their families before, during and after periods of incarceration were strongly encouraged;

- **Includes supports that are ongoing, ensure that young people are supported for as long as they need assistance and foster continuity of care.** Participants reported that there was frequently fracturing within what they considered to be a siloed and isolated system. It was reported that to be effective, the system must encourage opportunities for young people to connect to positive programs and workers and for programs and supports to be flexible and long-term;
- **Is evidence-based.** To have a good grasp on what needs to be done, participants reported for good assessment, data gathering, analysis and evaluation processes. It was argued that a good system was driven by evidence and research and that academics, policy makers, practitioners and service recipients all be engaged in shaping and monitoring the service system;
- **Is responsive to individual need and circumstance.** Participants reported the importance of considering each young person's needs, wishes and circumstances differently and developing responses that address these in appropriate ways; and
- **Responds to issues early in the life of the young person.** Participants reported that many of the families of the young people who are currently engaged in the youth justice system have been known by agencies and services for many years. It was considered a poor indictment upon the ACT's service system that these young people had not been assertively assisted in the past, and that many ended up at Bimberi because the system itself failed to adequately identify and respond to their needs.

Ensuring quality programming

After considering a vision for the youth justice system, participants discussed a range of themes related to quality programming and the implementation of supports and services for young people. These discussions were informed by a presentation by Professor Debra Rickwood, who shared the findings of a 2007 study she conducted and her observations as part of the headspaceACT team.

Targeted supports

In her discussion about the *What Works* literature, Dr Rickwood suggested that programs to enable rehabilitation need to effectively assess young people's needs, target those most at risk of reoffending and provide them with services that meet their criminogenic needs. Participants believed that many of the programs that currently exist have a scatter gun approach, and that targeted programs would result in more effective outcomes.

Actively divert low-risk young people from the system altogether

Dr Rickwood reported that international evidence suggests that incarceration in and of itself can have negative effects on rates of recidivism and can lead to poor psychosocial outcomes for young people who are at low risk of repeat offending.

Participants strongly felt that young people must be actively diverted away from the youth justice system generally, and from Bimberi specifically. Police were seen as playing an important part in this diversion: that they needed to be sufficiently skilled to identify low-risk offenders and use more cautioning and non-punitive responses with young people falling into these categories. There was some debate as to how proactive police might need to be in responding to less serious offences (such as minor theft), with a number of participants arguing that the police's time and resources might better be used engaging and encouraging young people to find more pro-social activities and role models.

At the court level, there was a view that lawyers and magistrates might need additional information and guidance about the nature of low-risk offenders and alternate options to incarceration. Participants strongly argued that these young people should, as a default, be allowed bail, and should only ever be remanded to Bimberi in exceptional circumstances.

Participants were concerned about the number of young people on remand at Bimberi. Of particular concern were the large number of low-risk offenders who were held at the centre for extended periods, and those whose incarceration put them at greater risk of reoffending. It was argued that remand should be used more sparingly and that stays should be minimal, particularly for those least at risk of reoffending.

Actively target high-risk offenders (those most likely to become life persistent offenders)

Dr Rickwood highlighted the fact that some young offenders were more likely to participate in criminal activity into adulthood than others. Those with a disrupted family background, those with parental alcohol or other drug issues, those whose parents or other family members are involved in the justice system, those who have experienced child abuse and

trauma, with poor social skills, self esteem, low IQ and involvement with the care system have shown to be more at risk, particularly when these issues coalesce to exacerbate these risk factors.

Participants argued that community organisations should be funded to assist Care and Protection Services (CPS) and schools to actively identify and support high risk families and young people experiencing multiple disadvantages as early as possible. Participants pointed to the achievements of programs such as *Intensive Family Support* (OCYFS), and the *Communities for Children* (Northside Community Services) which supported disconnected families early and suggested that similar partnership models be developed across the ACT.

Grounding in developmental psychology and learnings from brain development

Participant reported that to best respond to the needs of young people and to provide them with a service framework that met both their psychosocial and criminogenic need, the broad service sector (but particularly services provided to young people while in the youth justice system) needed to be grounded in developmental psychology with an appreciation of brain development. There was a view that services provided at Bimberi, within CYJ, and by community services more broadly, might not yet be sufficiently trained or skilled to fully appreciate and respond to developmental needs.

Participants advocated for more training of workers on how to best support young people, better assessment of young people's progress, and the provision of more targeted and responsive supports to young people based on their developmental capacity.

Recognition of issues related to intellectual and learning disabilities and cognitive impairment

Participants noted that many young people in detention have an intellectual or learning disability, or a cognitive impairment. Participants argued that this might have implications on the ways that the system assesses young people and the supports that the system puts into place. It was reported that while the system continued to fail to appreciate the impacts of these conditions, young people were being set up to fail and were often unfairly judged for their poor performances (participants reported that these young people were often considered to be uncommitted or unwilling to engage in programs that they did not understand, or benefit from). Participants observed that in particular, text-based and cognitive behaviour programs may be particularly ineffective for these young people. They advocated for better assessments, training and targeted services to these young people.

Trauma

Many of the young people engaged in the youth justice system have experienced trauma and there is evidence (both anecdotal in the ACT, and empirical in the wider youth justice literature) that engagement with the system can be traumatic and traumatising for young people and those who work with them. Participants argued that better assessment and training was required to help the system be more informed on trauma-related issues and ways that the system might be improved to ensure that negative impacts of incarceration were minimised and, optimally, redressed.


Gender

Participants were concerned that service responses to young people in the youth justice system may not sufficiently take into consideration the young person's gender. There was a view that as there are less young women in the system than men, young women are not always provided with equitable service responses, and that operations at Bimberi did not always recognise the fact that being a young woman in a male-oriented environment might be additionally confronting. Participants reported that this was probably the case but also argued that similar issues might arise for young men whose masculinity might be not the norm.

Culture

Participants were concerned that Aboriginal and Torres Strait Islander young people continue to be over represented in the youth justice system and that no real progress has been made in diverting these young people away from crime nor reducing their rates of recidivism. Dr Richards cautioned that while the ACT's small population may skew the statistics somewhat, the fact that Aboriginal and Torres Strait Islander young people often make up half the young people residing at Bimberi is unacceptable. Participants believed that even in light of the Royal Commission into Aboriginal Deaths in Custody, appropriate responses to Aboriginal and Torres Strait Islander young people and families were not being effectively implemented.

Participants suggested that instead of constantly asking 'why are young Aboriginal and Torres Strait Islander people having such bad outcomes?' the system should be asking 'what are we doing right for non-Indigenous young people', and that we can learn from these successes..



Participants were encouraged by stories of success from Circle Sentencing, a specialised court within the ACT Magistrates Court, and were of the view that more investment in the program and further support for Aboriginal and Torres Strait Islander families and the community to engage in the process would be beneficial.

Flexibility and innovation in service purchasing

Participants highlighted the challenges of being innovative and collaborative within a competitive and sometimes wary service environment. Participants argued that competitive tendering and unrealistic service expectations have led to inter-agency competition and a level of scepticism about developing partnerships and sharing information across systems. Participants felt that block funding attached to at-risk families and communities might assist organisations to work more collaboratively, with partnerships being developed to meet the needs of specific clients.

Evaluation and research

Participant argued that poor data collection, analysis and information sharing processes have kept the ACT community from fully appreciating the nature and most appropriate ways to assist young people in the youth justice system. Participants believed that this needed to be redressed as a matter of urgency so that our progress could better be captured and understood.

Participants felt that evaluation and research were integral to the development and sustainability of a high quality youth justice program. Participants advocated for both quantitative research (where issues like recidivism might be considered and project outcomes evaluated) and qualitative research (where young people's experiences might best be gathered and understood to inform program and policy development). Participants suggested that a partnership (or series of partnerships) not dissimilar to that between the Office for Children, Youth and Family Support and the Institute of Child Protection Studies might provide the Government and the youth justice system with more informed and critical guidance to ensure that best practice was being delivered.

As part of any evaluation or research process, participants believed that opportunities needed to be created to allow the whole sector to be given training and feedback about how things are going and what might be learned. Participants expressed a level of frustration about a perceived practice within DHCS to commission and conduct research and evaluations both internally and externally without providing the broader system with the results of this research and evaluation. Participants noted that this was particularly frustrating when the sector provided significant time, resources and intellectual capital to service provision without any perceived return on this investment.

Supporting young people back into the community

Participants argued that planning for release back into the community needs to begin upon young people's entrance into the system rather than the weeks (or days) prior to their release.

Participants suggested that positive transitions might better be achieved if services, and service systems, worked in a more integrated and coordinated way. Programs such as *Intensive Family Support* and *Turnaround* (OCYFS) were identified as examples of good practice where a range of appropriate services were drawn together to provide well managed, clearly warranted and jointly provided services to children, young people and families. These program's capacity to monitor and sustain 'buy-in' from service partners was recognised, with participants advocating that this aspect should be replicated in programs assisting young people engaged in youth justice.

Participants believed that case managers from Bimberi should join with other community providers, with family and with young people themselves to develop a 'care team' which could support young people and families throughout their engagement with the youth justice system and beyond. Participants also felt that issues broader than criminogenic need and court-ordered directions should be considered as part of this case planning process, and that case plans needed to be implemented and monitored post-release to ensure that all players were meeting their commitments and that new and emerging needs might be better dealt with as they arose.

Participants advocated for at least two full time workers to complement the Bimberi and CYJ teams to solely focus on supports through transition. Participants were unsure whether these workers should be managed by Bimberi or CYJ, but there was agreement that transitioning needed to be well managed and supported and, commence early in young people's engagement with the system.

Barriers to the provision of effective throughcare supports

Participants argued that a number of systemic policies and practices inadvertently affected rates of criminal offending and challenged rehabilitation. In particular, participants were concerned about education policies that allowed young people to have extended periods away from the classroom (suspension policies), and suggested that such policies may lead to a spike in criminal offending and then an increase in incarceration as a result. Participants argued for better targeting of at-risk students, and more inclusive strategies to assist young people to stay engaged and re-engage.

Legal and court issues

In her presentation, Dr Kelly Richards highlighted that only 7% of remandees in the ACT were committed for an offence. She considered this problematic because, in line with a number of UN principles, remand should only occur as a last resort; because incarceration often leads to social isolation and disconnection and can increase the likelihood of recidivism; and because the personal and economic cost of detaining a young person is significant.

Participants felt that current bail arrangements were overly restrictive and often led to young people being unnecessarily detained for breaching of these arrangements. Dr Richard's presentation pointed to the fact that many young people did not apply for or receive bail.

Participants felt that the current system did not appropriately respond to young people who were on remand at Bimberi and, who by the nature of their legal status, should be considered not guilty. Participants believed that young remandees were often not given the same opportunities as young people on committal to engage in programs, to receive case management or receive supports to address some of the risks and challenges that they encountered when leaving detention.

Reasonable directions

Participants were wary of the nature and provision of 'reasonable directions' in young people's youth justice orders. Participants argued that often these directions were unreasonable and made it incredibly difficult for young people to comply.

Lack of knowledge about services

Participants reported that a major barrier to providing quality assistance related to a general lack of knowledge about available services, service types and eligibility criteria and ways of working. Participants also argued that magistrates were often unaware of what programs were available or, due to a lack of involvement and information with these programs, were wary of referring young people to services. Participants felt that this was problematic in that services appeared siloed and unable to respond broadly, while magistrates were limited in initiating non-custodial orders due to a perceived lack of alternatives.

Limited 'mirroring' of services and supports

Participants argued that many of the services and supports that young people received while detained were not available to them on re-entry to the community. In particular, participants were concerned about the fact that government run mental health services were often unavailable to young people in the community because the young people did not meet eligibility thresholds or because the services aren't funded for those not detained.

Poor communication and sharing of information

Participants argued that a lack of communication and information-sharing across the service delivery sector was an issue, and that health records, case management plans, and basic assessments and progress notes are frequently attached to particular programs rather than to the young person themselves. Participants felt that such records are often unavailable to other providers, families and young people themselves during periods of incarceration and then on their return to the community.

Within the mental health domain, for example, participants argued that a young person might have files held at Child and Adolescent Mental Health Services (CAMHS), Corrections Health, headspaceACT and in the offices of private psychologists. Participants reported that often these files are not shared (even with young people's permission) and that young people are often diagnosed and treated without a consideration of what has been done before. Participants felt that the prescription and dispensing of medications was a specific issue.



A lack of a single, accessible and responsive case plan

Participants advocated for a single case plan to be developed and implemented across the young person's engagement within the youth justice system, and that aspects of the plan should be accessible to the young person, their families and all system partners and should only be restricted when and if the young person decides, or for reasons of privacy.

What's missing?

Participants argued that a significant proportion of antisocial behaviours among life course persistent offenders were related to a broad range of psychosocial issues, and that these need to be addressed if positive change is to occur. Participants suggested that there are a lack of therapeutic responses for children, young people and families generally, and that during periods of incarceration, young people should be given opportunities to work on issues such as childhood trauma, poor mental health and general emotional health and wellbeing. Participants felt that these supports should be complemented with community-based programs so that ongoing assistance and growth might be enabled.

Participants argued for more youth specific lawyers to be employed, to ensure that young people were not only appropriately represented in court but were also able to have more regular contact with their lawyers.

Participants argued that young people were often unaware of their legal rights, were confused about the court system and their interactions within it. Participants felt that more legal education should be provided to young people at Bimberi, and that families should be given more information about their children's legal process.

Participants argued that if magistrates were more aware of the range of services available to young people in the community, and had more confidence in these service's ability to support young people, that unnecessary bail conditions might be avoided.