



COMMISSION INITIATED REVIEW OF ALLEGATIONS REGARDING BIMBERI YOUTH JUSTICE CENTRE

Report of the ACT Disability and Community Services
Commissioner and ACT Human Rights Commissioner



**ACT HUMAN RIGHTS
COMMISSION**

Australian Capital Territory





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March 2019



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COMMISSION**

Australian Capital Territory

Report of a commission-initiated consideration prepared under section 84 of the
Human Rights Commission Act 2005

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Contents

Executive Summary	1
Addendum	3
Recommendations	4
1. Introduction	7
1.1 Background to the report	7
1.2 The ACT Human Rights Commission	8
1.3 Legislative basis for the investigations and report	8
1.4 Methodology	8
1.5 Bimberi Youth Justice Centre	9
1.6 Legal and policy framework	10
1.7 Oversight framework for Bimberi	10
2. Use of Force	12
2.1 Relevant law and policy	12
Human rights	12
Legislation	12
Policy	14
Practice Guidelines	15
2.2 2011 Report recommendations	15
2.3 Allegations and Concerns	15
Information reviewed	16
Investigations of specific allegations	23
2.4 Conclusions and systemic issues	32
Inadequacies in CCTV camera coverage	33
Least restrictive approaches	34
Grounds for use of force	35
Use of force and restraint techniques	36
3: Segregation	40
3.1 Relevant law and policy	40
Human Rights	40
Legislation	40
Policy	43
Practice Guidelines	43
3.2 2011 Report recommendations	44
3.3 Allegations and concerns	45
Information reviewed	45
Investigation of specific allegations	48
3.4 Conclusions and Systemic Issues	53

4. Time Out	56
4.1 Relevant law and policy	56
4.2 2011 Report recommendations	57
4.3 Allegations and concerns	57
4.4 Conclusions	60
5. Lockdowns	61
5.1 Relevant law and policy	61
Human Rights	61
Legislation and policy	62
5.2 2011 Report recommendations	62
5.3 Allegations and concerns	63
Information reviewed	63
5.4 Conclusions and systemic issues	66
Staffing issues	66
Conclusion	69
6. Strip Searches	71
6.1 Relevant Law and Policy	71
Human Rights	71
Legislation	71
Policy	73
6.2 Relevant 2011 report recommendations	74
6.3 Allegations and concerns	75
Information reviewed	75
6.4 Conclusions	78
7. Coree Unit	80
7.1 Background	80
7.2 Relevant Law and Policy	80
Human Rights	80
Legislation	81
7.3 Relevant 2011 report recommendations	82
7.4 Allegations and Concerns	82
Information reviewed	82
Investigation of Specific Allegations	83
7.5 Conclusions and systemic issues	85
8. Other issues	87
8.1 Health services	87
8.2 Drug and alcohol and other rehabilitation services	88
Drug and alcohol services	88
Other Rehabilitation Programs	90
8.3 Transition and throughcare	91
8.4 Detention of children and young people aged under 14	94
9. Implementation	96
Appendix A: Summary of Allegations and Findings	97

Executive Summary

This report documents the ACT Human Rights Commission's investigations into a range of allegations and concerns about the treatment of young people at Bimberi Youth Justice Centre ('Bimberi') in the period from 2014 to 2017. These allegations were raised with the Commission directly and many were also reported in the media. A summary of specific allegations and findings is provided in Appendix A to this report.

The Commission's investigation initially focused on an allegation of unlawful use of force against a young person during a serious incident at Bimberi on 6 May 2016. In the process of investigating this incident, other concerns were raised with the Commission and in the media, including issues of understaffing and ongoing lockdowns, the use of the 'squat and cough' technique during strip searches and other allegations of victimisation and excessive use of force against young people by Bimberi staff. Given the serious nature and broad range of concerns raised, and the public interest in ensuring that issues were independently examined, the Commission decided to widen the investigation to conduct a review of individual incidents and systemic practices at Bimberi in the period from 2014 – 2017 inclusive (the 'review period').

The review considered information from a range of sources. The Commission interviewed 39 individuals including young people who had been at Bimberi in the review period and some of their family members, as well as youth workers, management and health staff at Bimberi and held a group discussion with onsite teaching staff. We reviewed extensive information obtained from the Community Services Directorate (CSD) and other relevant stakeholders; conducted physical inspections of the facility; reviewed and analysed data from registers of searches, use of force, segregation and complaints; and viewed CCTV footage and reports of numerous incidents. The review team met with CSD and Bimberi management on a number of occasions to discuss the allegations and issues arising during the conduct of the investigation.

Overall, the Commission's investigations did not reveal an entrenched culture of violence or disregard for the human rights of young people at Bimberi. There have been many improvements since the Commission's broader review of the ACT Youth Justice System in 2011, particularly in the recruitment, training and development of skilled staff at Bimberi, and there is now a clear focus on case management and building supportive relationships with young people. Most young people we interviewed spoke highly of most staff members at Bimberi, and we were impressed with the sensitivity, care and commitment demonstrated by many staff working with these young people, who often have complex needs and challenging behaviours. While the Commission did find evidence of some incidents of excessive or unjustified use of force by staff, we are satisfied that Bimberi management has generally treated issues seriously, conducted reviews of all incidents, and taken appropriate action where misconduct has been established.

Nevertheless, the Commission's review did uncover some serious and concerning systemic issues which require further action, both in the short term and longer term, to ensure the safety and wellbeing of young people and staff at Bimberi.

The investigation of individual incidents by management and external oversight agencies, including the Commission, is hampered by the poor quality of CCTV footage, lack of audio recording and the placement of CCTV cameras at Bimberi. There is a real risk of serious incidents going undetected in blind-spots, and without audio recording it can be difficult to determine what led to the incident and whether de-escalation techniques were appropriately used to avoid the use of force as far as possible. There is an urgent need to review and upgrade this technology and consider the use of body-worn cameras to increase accountability.

While there is not evidence of a widespread culture of condoning abuse or mistreatment of young people at Bimberi, the Commission is aware of instances where some staff members, including senior staff, did not accurately report incidents to management and failed to disclose potential misconduct. There were indications of mistrust between some staff and management which has affected communication and transparency.

The Commission also found that young people are often brought to the ground during a use of force by staff, which may not be the least restrictive approach available. The prone restraint position (where a young person is placed chest down on the floor and held there using force) was being used regularly in responding to violent incidents at Bimberi during the review period, despite being specifically prohibited in Bimberi policy. Prone restraint poses a serious danger of positional asphyxiation, and it is concerning that this inconsistency between policy and practice had not been detected and addressed, despite regular reviews of CCTV footage of incidents. There were clear gaps in the training, support and guidance for staff in the use of force and restraint techniques.

There has been a commendable decrease in the use of strip searching at Bimberi overall. However, the Commission found that some young people were subject to 'squat and cough' procedures during strip searches conducted in the review period (confirmed by Bimberi management). This procedure is not consistent with the human rights of young people and is not authorised in legislation or policy. While a clear management direction has now been given to prohibit 'squat and cough', it is concerning that this degrading practice, which was criticised at Quamby Youth Justice Centre, had been allowed to re-occur at Bimberi.

At a broader level, maintaining appropriate staffing levels over time, and with fluctuating numbers of young people at Bimberi, remains a significant challenge, but it is key to a functional and human rights compliant youth justice centre. Insufficient staffing contributed to serious systemic issues in Bimberi in the review period, including a dramatic increase in lockdowns. This in turn resulted in reduced access to education and programs, leading to frustration for young people, and increased risk of staff injury and burnout. It is not acceptable for young people to be continually locked down, or for staff to be placed at risk of occupational violence due to inadequate staff numbers. While these issues have been resolved in the short term through additional recruitment rounds, there is a need for a comprehensive and transparent plan and adequate resourcing to maintain staffing levels. Shift duration and flexibility for staff with family and other responsibilities must also be considered in this planning process.

Our review also highlights the difficulties faced by Bimberi staff and management in meeting the needs of a wide cohort of young people, from 11 year old children to young adults completing sentences for offences committed as young people. Bimberi is not an appropriate facility for primary-school aged children with trauma and other complex needs. The current age of criminal responsibility in the ACT, which is set at ten years, does not accord with international human rights standards and should be re-examined. In the meantime, more must be done to provide alternative community-based placements and therapeutic supports for children 14 and under to prevent their entrenchment in the youth justice system.

The Commission has made a number of targeted recommendations to address the key issues that children aged 14 and under have been identified during the course of this investigation. The Commission looks forward to working collaboratively with the ACT Government to ensure the recommendations are implemented within a reasonable timeframe.

December 2018

Addendum

During the time the Commission conducted its investigation (which was finalised in June 2018) and wrote up its findings, some additional concerns were brought to the attention of the Commission which required some further consideration. Those concerns are being addressed through various mechanisms, including via the Public Advocate and through formal complaints to the Disability and Community Services Commissioner. Those concerns raised a range of issues about treatment of young people in Bimberi and access to health services. Those issues will also continue to be monitored through the recently established Bimberi oversight group, comprising representatives from CSD, the Human Rights Commission, the Office of the ACT Inspector of Correctional Services, the Murrumbidgee Education and Training Centre (METC), Justice Health Services, ACT Ombudsman and Bimberi Official Visitors.

February 2019

Recommendations

Recommendation 1:

That the ACT Government review and upgrade the security camera systems at Bimberi as a matter of priority to ensure comprehensive coverage of the centre and high quality footage of incidents. The review should ensure the privacy of young people is protected, in particular in sensitive areas such as bathrooms. The utility of body-worn cameras and privacy issues should be considered in this review and staff, young people at Bimberi, and key stakeholders such as METC should be consulted.

Recommendation 2:

That the ACT Government employ consultants or staff with professional expertise in positive behaviour support to build capacity at Bimberi to support young people with complex needs and challenging behaviours, and to reduce reliance on restrictive practices such as use of force and segregation.

Recommendation 3:

That the ACT Government introduce an amendment to the CYP Act to ensure consistency with the Use of Force Policy and Procedures by removing the grounds of authorisation for the use of force to achieve compliance with a reasonable direction or to stop a behaviour breach. The Act should be amended to specify that force may only be used where necessary to prevent an imminent risk of a detainee inflicting self-harm, harming another person or seriously damaging property.

Recommendation 4:

That CSD review the Use of Force Practice Guideline and training material provided at Bimberi to ensure that staff are being given clear, consistent and practical guidance on the safest techniques for restraint where the use of force is unavoidable. This training must emphasise the prohibition on prone restraint (which includes any holding of a young person on the ground in a chest down position) and specify alternative approaches to be used by staff to manage violent incidents.

Recommendation 5:

That Bimberi Management review record keeping arrangements to ensure that a clear and accurate record is kept of the total amount of time each day that a young person has access to exercise and to open air while in segregation. These records should be made available to oversight agencies on request.

Recommendation 6:

That CSD and the Education and Training Directorate ensure that where a young person is in segregation or subject to separation or other management direction, that the young person be provided with face to face educational support, as well as access to appropriate educational materials, each school day.

Recommendation 7:

That the ACT Government introduce amendments to the segregation provisions in the CYP Act to ensure consistency with the HR Act. In particular, s 212 of the CYP Act should be amended to remove the concepts of prudence and good order as grounds for segregation, and the safeguards regarding duration and review of segregation directions should be strengthened. The draft provisions recommended by the Northern Territory Royal Commission provide a useful model for reform, which could be adapted to meet the needs of the ACT.

Recommendation 7a:

That the notice of a segregation direction given to a young person include information about their right to seek an external review of the direction, and information on how to make that application for external review. That the ACT Government review and update the External Reviewer Appointment instrument issued under the CYP Act.

Recommendation 8:

That CSD review staffing arrangements at Bimberi and develop and fully resource a long term staffing strategy to ensure adequate staffing to meet the needs of fluctuating numbers of young people at Bimberi. This review should consider how staff can be better supported and should include consultation with staff regarding changes to shift length.

Recommendation 9:

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

Recommendation 9a:

That CSD review protocols relating to Bimberi practices in response to emergency and operational codes to ensure Bimberi can provide a flexible, scalable response that does not necessarily require a whole-of-Centre lockdown.

Recommendation 10:

That CSD amend the Search and Seizure Policy and Procedure to specifically prohibit the use of 'squat and cough' procedures during strip searching.

Recommendation 11:

That Bimberi management ensure that training for staff at Bimberi reinforces the prohibition against the use of 'squat and cough' procedures during strip searching; and provide greater guidance and support to staff regarding the record keeping requirements for strip searching, including the need for detailed reasons for each search.

Recommendation 12:

That Bimberi management review the dual use of the Coree Unit for induction and segregation and determine whether another Unit could be used for segregation purposes to reduce inappropriate mixing of young people. If this is not possible, measures should be implemented to reduce the negative impact of the dual use of Coree on vulnerable young inductees.

Recommendation 13:

That CSD and ACT Health review the current practices of administration of medication at Bimberi to ensure young people safely receive their own medication as prescribed, in an environment that is safe and protects each young person's personal health information.

Recommendation 13a:

That ACT Health review the drug and alcohol services and programs currently available to young people at Bimberi and consider how more pro-active support could be provided to young people while in detention to assist with rehabilitation from drug and alcohol dependence. Consideration be given by the ACT Government to increasing the youth drug & alcohol counselling resources available from ACT Health to increase availability of drug and alcohol services in Bimberi.

Recommendation 13b:

That CSD review the availability and range of rehabilitation services and programs at Bimberi, and consider what programs could be made available to young people in the evening.

Recommendation 14:

That the ACT Government consider the reopening of the Bendora Transition Unit or that it implement a systematic program of throughcare at Bimberi similar to that previously offered through the Bendora unit. CSD should consult with young people, the METC, and key stakeholders including members of the Bimberi oversight group, in developing such a program.

Recommendation 15:

That the ACT Government consider developing a flexible therapeutic protection place or other suitable therapeutic placements in the community to better meet the needs of children and young people aged under 14 who engage in harmful conduct and come into contact with the youth justice system.

1. Introduction

1.1 Background to the report

In 2011, the ACT Human Rights Commission conducted a comprehensive review into the ACT Youth Justice System and Bimberi Youth Justice Centre and provided a Report to the Legislative Assembly (the 2011 Report).¹ The report contained 224 recommendations, of which 189 were agreed to or agreed in principle. Many of these recommendations have now been implemented through the Blueprint for Youth Justice.

This report is not a second comprehensive review of Bimberi or the youth justice system. Rather, it is a report of the Commission-initiated Consideration (CIC) under section 48 of the *Human Rights Commission Act 2005* ('the HRC Act') into a range of specific allegations and concerns about mistreatment of young people at Bimberi.

In 2016 the Disability and Community Services Commissioner received a complaint regarding a serious violent altercation that occurred on 6 May 2016 at Bimberi, which resulted in injuries to staff and young people. Concerns were raised with the Commissioner about the use of force by a staff member and the segregation of young people following the incident. The Commissioner commenced a CIC into this incident, but finalisation of this consideration was put on hold pending the completion of internal and external investigations of staff conduct in accordance with their enterprise agreement, and subsequent Fair Work Commission proceedings.

Following the 6 May incident, a range of allegations of mistreatment of young people at Bimberi were raised with the Commission on an anonymous basis by person(s) identifying as former Bimberi staff. Many of these allegations were also raised directly with the Community Services Directorate (CSD) and reported in the Canberra Times over the course of 2017.

Given the serious nature of some of the allegations, and public concern about the treatment of young people at Bimberi, the Commission decided to widen its initial investigation to also look at the allegations and concerns raised.

As there were numerous allegations made about a range of issues at Bimberi, the Commission prioritised investigation of those allegations which raised the most serious human rights concerns, relating to use of force and restraint, segregation, lockdown and strip searching of young people. The investigation involved an examination of evidence available in relation to each allegation, to the extent that it was possible to identify a particular timeframe and incident. The Commission also considered a range of systemic issues arising from the incidents and other evidence reviewed.

¹ Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011).

1.2 The ACT Human Rights Commission

The Commission is an independent statutory authority established by the *Human Rights Commission Act 2005* (ACT) (the HRC Act) to promote the human rights and welfare of people living in the ACT.

The Commission comprises:

- > The President and Human Rights Commissioner, Dr Helen Watchirs;
- > The Public Advocate and Children & Young People Commissioner, Ms Jodie Griffiths-Cook;
- > The Disability and Community Services Commissioner, Discrimination Commissioner and Health Services Commissioner, Ms Karen Toohey;
- > The Victims of Crime Commissioner, Ms Heidi Yates.

The Commission has a number of functions under the HRC Act, including encouraging and assisting in the resolution of complaints made under that Act by providing an independent, fair and accessible complaints-resolution process; promoting improvements in the provision of prescribed services; and identifying, inquiring into and reviewing issues relating to the matters that may be complained about under the HRC Act.

1.3 Legislative basis for the investigations and report

This investigation was led by the Disability and Community Services Commissioner in conjunction with the President and Human Rights Commissioner as a Commission initiated consideration under s48(1) of the HRC Act. One of the functions of the Disability and Community Services Commissioner under the HRC Act is to consider complaints about services for children and young people, which includes services provided at Bimberi.

Section 48(1) of the HRC Act provides that the Commission may also, on its own initiative, consider by way of an independent investigation referred to as a CIC:

- a) an act or service that appears to the commission to be an act or service about which a person could make, but has not made, a complaint under this Act; or
- b) any other matter related to the commission's functions.

Section 84(1) of the HRC Act provides that the Commission may prepare a report communicating the outcomes of a CIC and to provide it to anyone the Commission considers appropriate.

1.4 Methodology

The investigation was conducted by the Disability and Community Services Commissioner and two Commission staff members with complaint investigation experience and human rights legal expertise.

In the course of the investigation, the review team:

- > Interviewed 39 people, consisting of:
 - 16 young people who were detained in Bimberi during the review period, including some young people in the Alexander Maconochie Centre (AMC) who were previously detained at Bimberi;
 - Parents of young people currently or formerly resident in Bimberi;
 - 10 current or former operational staff;
 - 4 current or former managers;
 - ACT Health staff working at Bimberi; and
 - Staff from oversight bodies with a regular presence at Bimberi.
- > Conducted a group discussion with teachers working at Bimberi and Senior Managers of the Education Directorate;
- > Met with officers and managers of CSD on multiple occasions to review confidential documents and request responses to allegations;
- > Reviewed information and formal written responses to the allegations from CSD;
- > Reviewed information relevant to some of the allegations from stakeholders including ACT Policing, the ACT Ombudsman, Legal Aid ACT, the ACT Health Directorate, and the ACT Education Directorate;
- > Conducted inspections of areas of Bimberi relevant to the allegations;
- > Reviewed registers at Bimberi for the period 2014-2017 inclusive, including the strip search register, the segregation register, the internal complaints register, the time-out register and the use of force register;
- > Reviewed Bimberi staff induction materials, including training notes from sessions on Responding to Critical Situations, Working With Young People With a Cognitive Impairment, Quality Decision Making, and Complaints Management;
- > Reviewed CCTV footage of over twenty incidents of use of force on young people at Bimberi;
- > Reviewed 52 critical incident reports;
- > Reviewed Bimberi client residential files.

The review team had a regular presence at Bimberi, attending on numerous occasions, particularly between October 2017-May 2018, to conduct interviews, inspect registers and to observe day to day operations at the centre.

1.5 Bimberi Youth Justice Centre

Bimberi is a 40-bed facility located in the northern Canberra suburb of Kenny which accommodates young people between the ages of 10 and 21 years who are remanded in custody or sentenced to a period of detention. Bimberi is the ACT's only youth detention facility and the first youth detention facility in Australia to be established under a human rights framework (the HR Act). Child and Youth Protection Services (CYPS) in CSD has administrative responsibility for Bimberi.

Justice Health Services within ACT Health is responsible for providing primary health services and forensic mental health services to young people at Bimberi. Additional healthcare services are provided at Bimberi through partnerships with external organisations. Education services and programs at Bimberi are provided by the Murrumbidgee Education and Training Centre (METC), a school-related institution under the *Education Act 2004* (ACT) administered by the ACT Education Directorate. The METC programs are supplemented by other activities and programs delivered by external organisations.

Bimberi currently has three operational units where young people are accommodated: Coree, Namadgi and Majura. Namadgi has three wings, while Coree and Majura both have two wings. Within each unit there are communal spaces comprising a kitchen, bathroom, lounge room and telephone booth. There is a fourth unit, the Bendora Unit, which was previously used as a transition unit but is not currently in use. There are buildings for education, health, and visits, which are all separate from the units.

1.6 Legal and policy framework

The *Children and Young People Act 2008* (CYP Act) provides the primary legislative framework for the ACT's youth justice system. The CYP Act governs operational issues at Bimberi including the use of force, segregation, strip searches and other searches. It also stipulates the minimum living conditions that young people at Bimberi are entitled to. Other relevant legislation includes the *Human Rights Act 2004* (HR Act), the *Public Sector Management Act 1994*, the *Work Health and Safety Act 2011* and legislation relevant to specific service providers at Bimberi such as the *Education Act 2004*.

The HR Act sets out human rights which are recognised and protected in the ACT. Children and young people have the full complement of human rights protected by the Act, and there are also rights providing specific protection for children and young people in recognition of their particular vulnerability. As public authorities under the HR Act, CSD, Bimberi management and all staff at Bimberi have obligations to act compatibly with the rights in the HR Act, and to give proper consideration to relevant rights when making decisions. People who are victims of contraventions by public authorities of their obligations under the HR Act can initiate proceedings in the Supreme Court of the ACT.² In interpreting the content of particular rights protected under the HR Act, international human rights law, including comparative case law and UN guidelines and rules provide useful guidance.

There are a range of policies and procedures for Bimberi, which are notifiable instruments under the CYP Act and must be complied with. There are also practice guidelines at the Directorate level which are internal guidance documents for staff.

Relevant human rights and legislative and policy provisions are considered in each section below.

1.7 Oversight framework for Bimberi

The primary agencies with oversight powers and jurisdiction in relation to children and young people in Bimberi are the Official Visitors, the Public Advocate and the Commission.

2 *Human Rights Act 2004* (ACT) s 40C.

Under the ACT's Reportable Conduct Scheme, the ACT Ombudsman also has a role in overseeing how organisations prevent and respond to allegations of child abuse and misconduct. Reportable conduct covers a broader range of conduct compared to the types of child abuse which must be reported to Child and Youth Protection Services (CYPs). Employers covered by the scheme (which includes CSD) must report allegations, offences or convictions relating to child-related misconduct by an employee to the Ombudsman.

Official Visitors, the Public Advocate and the Commission all have powers to enter and inspect Bimberi at any reasonable time,³ inspect the register of searches and use of force,⁴ and inspect the register of segregation directions.⁵

The Public Advocate and the Official Visitors also have some additional functions. The functions of the Public Advocate include acting as an advocate for the rights of children and young people, listening to and investigating concerns from children and young people about the provision of services for the protection of children and young people, and monitoring the provision of services for the protection of children and young people. The Public Advocate is a mandated reporter under the CYP Act.

The Official Visitors have a range of functions in relation to children and young people at Bimberi under both the *Official Visitor Act 2012* (ACT) and the CYP Act. Relevantly, they:

- > Visit detention places;
- > Receive and consider complaints from children and young people in detention and others on their behalf; and
- > Are available to talk to children and young people in detention and anyone else who has a concern about them or a detention place.

If an Official Visitor believes on reasonable grounds that the care, treatment, living conditions or detention of a young person is not in accordance with the CYP Act, they must report the belief to the Minister for Children, Youth and Families. The Official Visitors are also required to report to the Minister every quarter on the complaints received in relation to Bimberi, the actions taken on the complaints received, and any matters referred by the Official Visitors to an investigative entity.

An Official Visitor is required to attend Bimberi at least once a month. There are currently two appointed part-time Official Visitors who visit and oversee Bimberi, each of whom attend Bimberi on an (alternating) fortnightly basis. As such, there is a currently an Official Visitor at Bimberi once a week.

In December 2017, legislation was passed by the ACT Parliament creating an Inspectorate of Custodial Services to oversee the ACT corrections system.⁶ The new inspectorate role has powers to, among other things, enter correctional centres at their own initiative, inspect correctional centres, inspect certain documents relating to detainees and the provision of correctional services, and speak to and interview detainees. The legislation provides for the inspectorate role to first oversee corrections centres under the Corrections Act, and for detention places under the CYP Act (Bimberi) to come within the oversight jurisdiction of the inspectorate in 2019.

3 *Children and Young People Act 2008* (ACT) ss 153, 37; *Official Visitor Act 2012* (ACT) s 15(1).

4 *Children and Young People Act 2008* (ACT) s 195.

5 *Children and Young People Act 2008* (ACT) ss 207, 222.

6 See the *Inspector of Correctional Services Act 2017* (ACT).

2. Use of Force

Many of the most concerning allegations made about treatment of young people at Bimberi relate to reports of excessive or unauthorised use of force by staff against young people, and alleged victimisation of particular young people at Bimberi. This section examines issues of safety and security at Bimberi and sets out the Commission's investigation of allegations relating to particular incidents of use of force and restraints, as well as more general concerns.

2.1 Relevant law and policy

Human rights

The HR Act provides in section 19 that anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the person. It also provides explicit protection from torture and cruel, inhuman or degrading treatment in section 10.

Further guidance regarding use of force is provided in rule 64 of the United Nations Rules for the Protection of Children Deprived of Their Liberty (the Havana Rules), which provides that:

Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorised and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time. By order of the director of the administration, such instruments might be resorted to in order to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. In such instances the director should at once consult medical and other relevant personnel and report to the higher administrative authority.⁷

Legislation

As an employer, CSD has obligations under the *Work Health and Safety Act 2011* to ensure the health and safety of its workers and of all persons at Bimberi.⁸

Under the CYP Act, the director-general must make arrangements to ensure, as far as practicable, that the use of force in relation to young people at Bimberi is always a last resort, and is in accordance with the applicable provisions of the Act.⁹

⁷ *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, GA Res 45/113, 45th sess, 68th plenary meeting, UN Doc A/RES/45/113 (adopted 14 December 1991), article 64.

⁸ *Work Health and Safety Act 2011* (ACT) s19.

⁹ *Children and Young People Act 2008* (ACT) s 223.

Section 224 of the CYP Act provides that an authorised person may use force if the person believes on reasonable grounds that the purpose for which force may be used cannot be achieved in another way; and the force is necessary and reasonable for any of the following:

- i) to compel compliance with a direction given in relation to a young detainee by the director-general;
- ii) to prevent or stop the commission of an offence or behaviour breach;
- iii) to prevent unlawful damage, destruction or interference with property;
- iv) to defend the person or someone else;
- v) to prevent a young detainee from inflicting self-harm;
- vi) to prevent a young detainee from escaping.¹⁰

Section 225 regulates the application of force. It provides that a youth detention officer may use force only if the officer gives a clear warning of the intended use of force; allows enough time for the warning to be observed; uses no more force than is necessary and reasonable in the circumstances; and uses force, as far as practicable, in a way that reduces the risk of causing injury.¹¹ However, a youth detention officer does not need to comply with the requirements to give a clear warning and allow enough time for the warning to be observed if, in urgent circumstances, the officer believes on reasonable grounds that doing so would create a risk of injury to the officer, the young person or anyone else.

Section 223 of the CYP Act provides that the director-general must ensure, as far as practicable, that force is not used on a young person in detention without first considering their age, sex, physical and mental health and any history of abuse.¹² If the proposed force involves any restraint of the young person, the physical and developmental capacity of the young person must also be considered. The director-general must also ensure, as far as practicable, that the use of force in relation to a young person is not observed by any other young person.¹³

Use of force under the CYP Act also includes the use of restraints.¹⁴ Restraints are defined as: body contact; handcuffs, restraint jackets and other restraining devices; and anything else prescribed by regulation.¹⁵ The director-general must ensure, as far as practicable, that the use of restraint is proportionate to the circumstances, and in particular that the circumstances are sufficiently serious to justify the use; the kind of restraint is appropriate in the circumstances; and the restraint is used appropriately in the circumstances.

10 *Children and Young People Act 2008 (ACT)* s 224.

11 *Children and Young People Act 2008 (ACT)* s 225.

12 *Children and Young People Act 2008 (ACT)* s 223(2).

13 *Children and Young People Act 2008 (ACT)* s 223(3).

14 *Children and Young People Act 2008 (ACT)* s 226(1).

15 *Children and Young People Act 2008 (ACT)* s 226(4).

Policy

The Children and Young People (Use of Force) Policy and Procedures 2018 (No. 1) provides further guidance regarding the use of force at Bimberi and responds to recommendations of the Commission's 2011 Report, that force should not be used simply to compel compliance with any direction or to prevent a behaviour breach.

The Policy limits the situations in which force can be used as follows:

Grounds for Using Force

- 6.4 To be authorised to use force under 6.5, a youth worker, transfer escort and escort officer must reasonably believe that the purpose for which force is to be used cannot be achieved in another way such as through the application of alternative strategies at 6.1.
- 6.5 Youth workers, transfer escorts and escort officers may use necessary and reasonable force on a young person in the following circumstances:
- a) to prevent escape from custody
 - b) as a process of self-defence if attacked or under imminent threat of attack and there is no other way of protecting oneself from harm
 - c) to protect another person including a young person, 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
 - d) to prevent a young person from harming himself or herself
 - e) to enforce a Segregation Direction, including to move a young person to a safe room, after all reasonable steps have been taken to persuade the young person to comply with the direction
 - f) to prevent or quell a riot or persistent serious disruption to the safety and security of a young person, other young people or other people at a detention place
 - g) to prevent or stop the commission of an offence or in response to a serious safety or security risk a young person, other young people or other people at a detention place
 - h) to prevent unlawful damage, destruction or interference with property
 - i) 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 person, or to prevent the loss, destruction or contamination of anything seized during a search.

The Policy also implements the recommendation of the 2011 Report to specifically prohibit the use of certain restraint positions that have been shown to pose a high risk of injury or other harm to young people. The Policy states:

Restrictions on Use of Force

- 6.14 Youth workers, transfer escorts and escort officers must:
- a) not exert physical force in the form of a pressure point hold
 - b) not use force that deliberately causes harm, pain or injury, or is degrading or humiliating or as a form of punishment
 - c) not restrain a young person using the prone position, double basket or the double-seated embrace.

Practice Guidelines

The 2011 Report recommended that CSD develop Practice Guidelines on Safe Physical Restraint, informed by relevant research. CSD subsequently developed a Practice Guideline on Use of Force. The Guideline reiterates the approach of the Policy. It provides that:

Staff must not use force to achieve compliance with a reasonable direction. Staff must not exert physical force in the form of a pressure hold. Young people are not to be restrained using the prone position, double basket or the double-seated embrace. Staff must not use force that deliberately causes harm, pain or injury, is degrading or humiliating or as a form of punishment.

The Guideline also includes 'rules for using force' namely that:

Staff must only use the minimum amount of force necessary to achieve the purpose for which force is being used and applied in a way that reduces the risk of causing injury. Staff must cease the use of force immediately after the need to restrain or involuntarily move a young person has passed. When using force, staff must not increase the amount of force applied once they have a young person under control.

However, the Guideline does not provide any further practical guidance on safe physical restraint techniques or procedures informed by research as recommended in the 2011 Report. Some guidance is provided in training materials and sessions, however, as discussed below, there are inconsistencies between these materials and the Policy and Guideline.

2.2 2011 Report recommendations

The 2011 Report considered the emerging evidence regarding the dangers posed by use of force and restraint, and recommended that CSD develop its own practice guidelines on safe physical restraint, informed by relevant research.

It noted concerns about camera blindspots, and recommended that CSD consider the Community Services Directorate consider if there are additional areas of Bimberi that should be covered by CCTV cameras, taking into account the privacy of young people and staff.

As discussed above, the Commission also recommended amendments to the CYP Act and Use of Force Policy and Procedures 2008 to remove references to use of force being used to maintain good order, to achieve compliance with a direction, and to prevent a behaviour breach. The Policy and Procedures were subsequently amended, but not the Act itself.

2.3 Allegations and Concerns

A number of the serious allegations made to the Commission and also published in the media concern the use of force or restraint. These allegations raise broader concerns as to whether there is an entrenched culture at Bimberi where young people are abused and humiliated and where excessive use of force is condoned. Most allegations (apart from a specific complaint about an incident on 6 May 2016) were raised with the Commission on an anonymous basis by an informant identifying as a staff member at Bimberi. Some further allegations were made by young people during interviews and these were also investigated where possible.

Many of these allegations relate to the use of excessive or unauthorised physical force by workers in responding to violence or misbehaviour by young people. They include disturbing allegations of use of force intended to hurt or punish young people, such as pushing young people hard against a wall, choking them, dragging them

along the ground and punching or kneeling them, including while restrained on the ground. It was also alleged that in some cases youth workers offered young people physical punishment, 'taking a punch,' as an alternative to authorised behaviour management approaches.

Another group of allegations relate to workers encouraging violence between young people, particularly against other young people disliked by workers. It was alleged that two staff members facilitated a 'fight club' involving physical fights between young people. There were also allegations about abusive and humiliating treatment of certain young people who were disliked by staff members, including racist slurs or inappropriate comments.

While in many cases there was sufficient detail provided to allow a specific incident to be identified and investigated, some allegations were of a more general nature and it was not possible to determine the time frame or the young people or workers involved in an alleged incident.

The review team investigated each allegation through reviewing relevant client files, incident reports and use of force reports as well as viewing the CCTV footage of particular incidents.

To further examine general allegations that could not be particularised, the Commission reviewed 52 incident reports and all use of force records for the review period and looked at footage of many other incidents, as well as the individual files for young people where the name of the young person involved was provided. We reviewed all formal complaints made by young people during the review period. The review team spoke with 16 young people and 14 current and former staff members about their experiences at Bimberi and also interviewed public advocate staff and official visitors who have a regular presence at Bimberi. The Commission also reviewed training materials and practice guidelines for use of force at Bimberi. The results of these investigations are set out below.

Information reviewed

Use of force register

Under section 195 of the CYP Act, the director-general is required to keep a register of each incident of use of force at Bimberi, including the circumstances, decision to use force and the force used. This register must be inspected by the Public Advocate at least once every three months, and inspection is authorised to occur at any time.¹⁶

CSD commented to the Commission that the Public Advocate, in fulfilling its inspection obligations, should also be required to write to the director-general on a quarterly basis to indicate any concerns that they have with any use of force. The Commission understands the Public Advocate already communicates to Bimberi/CSD on an ad hoc basis any concerns identified at the time it inspects the registers. Consideration could be given to at least bi-annual reporting of any systemic issues identified during the register inspections by the Public Advocate, which could be considered at the Bimberi oversight meetings chaired by CSD.

Data provided by CSD indicates that there were 85 uses of force at Bimberi recorded in 2016/17 and 89 uses of force from July to December 2017. This significant increase in the use of force in the last half of 2017 coincides with rising numbers of young people at Bimberi, however, this increase does not appear to be proportionate,

¹⁶ *Children and Young People Act 2008 (ACT)* s 195(6)

as the number of young people on an average day at Bimberi increased from 11 in 2016/17 to 16 in July – December 2017 while instances of use of force doubled.¹⁷

In the six months from July to December 2017 the majority (26) of instances of use of force were in response to assaults or altercations between young people, and sixteen related to the planned use of handcuffs for escorts out of the Centre. Twelve uses of force were said to be in response to a young person refusing a direction and one was in response to a young person being disrespectful to staff.¹⁸

Commission staff reviewed every use of force report in the Use of Force Register from 2014 to 2017 and requested to view CCTV footage for selected incidents which did not include a sufficiently detailed description of the force used or, on the face of the information recorded on the register, raised concerns for the Commission about the grounds for use of force, proportionality of the use of force response or type of force used.

Incident reports

The *Children and Young People (Records and Reporting) Policy and Procedures 2018* requires staff to report a range of incidents at Bimberi. Incidents are graded as category 1 or category 2 in terms of seriousness, with category 1 being serious incidents including a death in custody, attempted suicide, serious injury, serious misconduct or escape, and category 2 being all other reportable incidents including less serious assaults, fights, threats and self-harm.

Incident reports include a description of the incident, operational responses and any referrals made (such as to ACT Policing, Forensic Mental Health, and ACT Public Service (ACTPS) Shared Services for investigation) and may attach copies of search or use of force records, segregation directions, witness statements from each youth worker involved, statements from young people, medical practitioners reports and managers' reports. Each incident is reviewed by the Unit Manager, the Operations Manager and the Senior Manager before going to the Director of CYPS for review, and their comments are included in the report.

In the period from January 2014 until June 2017 there were 290 category 2 incidents reported and 4 category 1 incidents. Many of the category two incidents are for issues unrelated to violence or use of force, including matters such as illness or accidental injury, detection of contraband or fire alarms being activated. The category one incidents in the review period related to an escape from escorted leave, an attempted suicide, a serious health issue requiring hospitalisation and a serious assault (the 6 May incident).

The Commission requested and reviewed 52 incident reports for the period January 2014 – September 2017 relating to incidents where force had been used. The vast majority of these incidents related to fights and assaults between young people, and also assaults or threats by young people towards staff.

Four of these incident reports record a finding by Bimberi management that staff had not acted appropriately during the incident, based on a review of statements and of CCTV footage and other evidence where available. In these cases follow-up action was taken to address the issues identified, including counselling of staff, or referring the matter to CSD Employee Relations for further investigation in accordance with the Enterprise Agreement.

¹⁷ ACT Legislative Assembly, *'Bimberi Headline Indicators Report March 2018 – Revised'* (Minister for Disability, Children and Youth)

¹⁸ Analysis of use of force reports compiled by the Public Advocate.

One such incident was not the subject of any specific allegation made to the Commission. However, it is a useful illustration of the multi-layered review process in action. In this incident a young person was alleged by a youth worker and other witnesses to have 'shoulder charged' or 'aggressively pushed past' the worker while walking on the oval. The witness reports suggested that the young person threatened the worker before force was used by the worker to bring the young person to the ground. The Unit Manager's report indicated that the use of force by the youth worker was appropriate although it suggested that the worker should be "*encouraged to negotiate and distance [themselves] from the young person when in a threatening situation.*"

However, the Operations Manager's report notes that the CCTV footage provided no evidence of serious contact by the young person with the worker and it was apparent that no de-escalation was attempted before force was used. The Commission reviewed the footage of this incident which appeared to show the young person brushing past the youth worker. The youth worker immediately approached the young person and tackled the young person forcefully to the ground, apparently without warning.

The Operations Manager concluded that the application of force was not appropriate and was not consistent with policy as it was not the least restrictive approach available in the situation. Senior management confirmed this view and agreed that the worker should undergo counselling and further assessment of their competence regarding use of force. Briefings were also given to Unit Managers and staff regarding the witness statements given that were inconsistent with CCTV footage.

In 17 other cases where staff were found to have acted appropriately but some concerns were identified, management provided analysis and comments, for example encouraging earlier intervention and de-escalation of potential incidents:

- Earlier intervention when the two YP were verbally sparring throughout the morning may have prevented the incident.
- In retrospect, the use of more proactive and preventative strategies may have defused the situation before it reached crisis point. Staff involved in the incident have been briefed on prevention measures, early intervention, and de-escalation techniques for future reference.

It is clear from management comments that excessive use of force is generally treated very seriously, and that the multiple layers of review are usually effective in ensuring detection of issues such as discrepancies between the description of events in the witness statements and as recorded in CCTV footage.

Complaints Register

The Commission reviewed Bimberi's register of complaints from young people for the period 2014-2017. There were no complaints recorded in relation to use of force for the years 2014-2016, and one complaint in 2017. This complaint did not relate to an allegation previously raised with the Commission. The complaint was investigated by Bimberi management and the report of the investigation notes that the CCTV footage of the incident was unclear (which was confirmed by the Commission) however, the youth worker involved in the incident was required to participate in refresher training on Responding to Critical Situations. There was one complaint in 2015 regarding a racist comment made by a staff member which is discussed in detail below.

CCTV footage

Commission staff viewed CCTV footage of over 20 incidents where force was used. The Commission viewed footage for all allegations relating to use of force which could be linked to a use of force report, and also looked at CCTV footage of other incidents where the description in the use of force form raised questions or concerns. The review team followed up matters mentioned by the young people during their interviews, for example by checking use of force registers to try and establish dates, and then viewing corresponding CCTV footage where available.

It is apparent from viewing footage of incidents that the quality and resolution of the recording is variable, and generally does not allow a detailed view of what is occurring. There is usually no corresponding audio recording of the incidents so it is not possible to determine what is being said and whether appropriate de-escalation strategies have been attempted. Workers in the Bimberi control room have the ability to focus and zoom the CCTV cameras remotely, but this often only occurs once an incident is in progress, so the precursors of an incident may not be recorded. Even with the ability to zoom, some incidents occur out of clear range of the CCTV cameras, and in these cases, either there may be no footage of an incident (if it occurs in a blindspot), or the footage may be distant and unclear, and might be obscured by bystanders unintentionally blocking the view of what is occurring on the ground. Workers and young people were aware of the 'blind spots' where there is no CCTV coverage.

Details of particular incidents viewed on CCTV and systemic issues arising from this footage are discussed further below.

Interviews with young people

The Commission interviewed 16 young people who had been at Bimberi during the review period. All young people interviewed spoke about safety and security issues. Thirteen young people said that they felt safe at Bimberi, and three young people stated that they did not feel safe.

Of the sixteen young people interviewed by the Commission, thirteen spoke about the staff at Bimberi. Most young people considered that the majority of the youth workers were helpful and caring, although they felt there were some who were less interested in helping them:

"Most of the workers were ok. The older women were like mum. They made you feel safe."

"Most workers are cool"

"They always helped me out"

"Most are good, a few here who don't give a fuck about the kids and aren't here to work with kids, just here for the money"

"Half are here to make your life hard, half are here to work with you and help you"

"Most are good, some are gronks "

"Certain workers will interact but some just see us as criminals"

"There are a few rude workers here for the money, not the kids – they make the kids' day worse"

"Some workers are heaps good, like mum and dad"

One young person who was at Bimberi in 2015 and 2016 said that they *"had a good relationship with all the workers there"* but that the treatment received from the workers *"depended on who you were and whether they liked you."*

A few young people also expressed the view that managers were less connected with young people than the youth workers and needed to talk directly with young people before making decisions that affect them:

"They don't know what is going on with the kids, they need to come in and work with us, they don't know what it's like managers make decisions [about you] but don't come down to talk to you"

"It's the same with the people who tell [the Bimberi manager] what to do [i.e. CSD], they don't know what's going on on the ground, so they make changes that don't make sense – they should work with the kids more so they know what's going on."

However, others described having good relationships with managers. One young person described the previous Bimberi manager at the time as *"a good bloke [who] had a lot of time for me,"* and the Bimberi manager who replaced him as *"a really nice lady, real caring"*.

All of the young people spoke about use of force. Around half did not have concerns about the use of force at Bimberi. Three young people said that they had never had force used on them by youth workers, and three other young people said they had not had force used on them recently. One of those young people also said that they had not witnessed any use of force on other young people that concerned them during the time they were in Bimberi. Another young person said that they had no concerns about the use of force when it had been used on them in the past. Comments made included:

"I had force used five or six times. It wasn't too bad – they're just doing their job."

"They used force when I wouldn't go to my room. They grabbed me and put me in my room. It was fine."

A young person who was no longer at Bimberi at the time of interviewing said that the first time force was used against them, they were twelve years old:

"Back then [before the review period], they would smash people ... but after then, there was more focus on building relationships and respect."

One young person who was at Bimberi in 2017 said that they felt safe there, and that *"there's not much use of force; that's why codes go for so long. Workers will negotiate with you all day"*. Another young person also said that young people *"have screaming matches all the time"* and that they saw a worker use force on a young person when they were trying to stab the worker with a sharpened pen, and that it was *"what I expected; nothing shocking, not excessive – would have expected more actually."*

However other young people did raise issues of concern. Where sufficient detail could be provided these allegations were investigated by the Commission, as set out below, however in most cases it was not possible to identify particular incidents referred to by young people.

One young person said that *"the force that is used [by workers] is more extreme than the fights."* Another young person said that *"staff don't let kids breathe, they squeeze them"* and they *"carry them to their room, instead of just separating kids"*.

One young person said they were being bullied by other young people in their unit and because they didn't want to return to their unit, force was used on them. They also described another incident where they had cuts and scratches on their face as a result of having their face "slammed into bark". The young person stated that:

"When they use force, they use it hard. ... They just slam you fucking hard on the ground 'cause they can't get back at you and are angry."

Another young person described being restrained on the ground and having their head "slammed" repeatedly onto the concrete. This young person also said that "most of the workers are good with use of force. They never go all out on you. Just one worker."

Another young person who was also no longer in Bimberi at the time of interviewing compared the force used at Bimberi with the force used at AMC, and said that at Bimberi use of force was more restrictive: "at AMC, they just grab you and remove you, whereas at Bimberi they full on tackle you and drive you to the ground".

Some young people felt that the time taken to resolve conflict and respond to incidents has an unfair impact on other young people who have not misbehaved. One young person said that:

"The way they deal with conflicts and punishment is shocking ... everyone gets locked down because of force used when someone consistently does the wrong thing."

This young person also spoke about being subject to an unprovoked assault by another young person and afterwards they were confined to their cabin "one hour in, one hour out" alternating with the other young person. They said that "I didn't get to go to school because I didn't want to mediate".

Interviews with staff

The Commission interviewed fourteen current and former Bimberi staff members. Those who spoke about use of force stated that they had not witnessed any uses of force by other youth workers that caused them concern or which they thought was inappropriate or excessive.

Comments from staff members included:

"Everyone tries not to use force except as a last resort, and it's very minimal."

"While use of force wasn't always textbook, there were no uses of force by other staff that concerned me."

"A culture of barrelling kids just doesn't exist. No one gets off on using force against kids."

"The good relationship between staff and kids is a hallmark of Bimberi compared with other jurisdictions."

Some staff also spoke about the use of force training they had received. There was some agreement that training was heavily focused on the rules and theory and that not a lot of time was spent practicing how force should be used. Others noted that they have not always been able to attend refresher training because they could not be released from their shift due to a lack of staffing on the day.

A number of Bimberi staff discussed concerns about their safety at work. Some noted that they felt safe when there were adequate numbers of staff to cover shifts, and that lack of staff made them feel unsafe. Some staff who had been at Bimberi for many years felt that safety had improved over time and following the 2011 Report:

"It's gotten a lot safer for staff over time. When I started I remember being alone on the oval with 14 kids. That wouldn't happen now. ... A good working crew also helps make it safer."

However, others noted that reduced staffing in the wake of the 6 May incident was problematic:

"Staff numbers are down after May 2016. Bimberi is not operating in a safe environment at the moment."

Some of the fourteen staff interviewed commented on the evolving profile and population of young people in Bimberi, indicating that recent cohorts have been more challenging for staff:

"Kids back then really wanted to improve. It's not like that now. They want to be a kingpin. They say it's their human right to stay here."

"The dynamics of young people now make it harder to build rapport. There's been a change in kids coming in over time – they're now younger, with more ice use [when they're in the community], getting into problems earlier, more family violence in the community. No respect for parents, for adults."

Some staff also suggested that a greater focus on reducing the use of force might mean that young people were more likely to misbehave, and that more serious intervention might happen later:

"There was a lot more physical intervention back then. Kids know you probably won't use force now, even if they spit in your face, so their behaviour will escalate."

"There's a massive reluctance on the part of staff to use physical restraints after the May 2016 incident ... So there's more physical intervention at later stages. Use of force becomes about self-defence ... My core business is keeping [myself] safe."

Experiences of METC staff

During the Commission's group discussion with education (METC) staff at Bimberi, METC staff commented positively on the relationship between young people and youth workers at Bimberi. One METC staff member stated:

"I didn't expect that relationship to be as nurturing as it is. Youth workers really know the young people in here. It continues to impress me. The youth workers are fantastic people."

Experiences of other interviewees

Staff from oversight bodies interviewed noted that they rarely hear concerns about use of force from young people in Bimberi although they speak with them regularly. One observed that that *"the biggest issue in Bimberi is young people fighting each other"*. When they have raised this with Bimberi management, they are advised that fights occur because young people know each other out in the community and have *"turf wars"*.

It was also noted by an oversight body that there has been a steady improvement over the last few years in the quality of reporting in the Use of Force Register. They observed an evident difference from 2016 to 2017 in the way force is used on young people, and suggested that the use of force in the past year or so is *"far more reasonable."*

Investigations of specific allegations

This section details the findings of the Commission in relation to allegations of particular incidents of use of force, based on available evidence.

Allegation: that after a violent altercation between a staff member and three young people, that staff member punched one of the young people in retaliation while the young person was handcuffed and restrained by other workers.

This allegation relates to the incident of 6 May 2016 which was the subject of a separate complaint to the Commission.

The Commission viewed the CCTV footage of the incident, which commenced on the oval where three young people were being supervised by two workers and a trainee. In the footage, one worker begins to escort one of the young people away. It appears that a verbal altercation starts between the remaining youth worker and two young people, which escalates quickly. The worker suddenly tackles one young person to the ground, while the young person who was being escorted runs back to the scene and all three young people then become involved in a serious and violent assault, kicking and punching the worker. At one point that worker gets up and moves away, but then goes back towards the young people and continues scuffling. The first worker is able to intervene and move one of the young people away and escort them back to the Unit. Other staff then become involved and bring the remaining two young people to the ground where they are restrained. One young person is handcuffed and escorted by two staff towards the Coree Unit. The worker who was assaulted is seen to follow after the group. The other young person remains restrained on the ground. There is no further CCTV of the incident.

Another Bimberi staff member reported witnessing the youth worker who had been assaulted catch up to group escorting the young person to the Coree Unit. The staff member reports that the youth worker suddenly threw a punch at the young person, who was restrained in handcuffs. The punch also connected with the head of another youth worker escorting the young person. This staff member who witnessed the punch states that they reported it to a Unit Manager, however, the Unit Manager and other staff who witnessed the punch did not initially report it to management or include it in the Use of Force report or incident report. The punch was also witnessed by another young person who was in the Coree Unit at that time.

Three workers were taken to hospital for treatment following the incident. The young people were reviewed by Health staff at Bimberi but did not require hospital treatment. All three young people were issued segregation directions following the incident. Two of the young people were segregated for 13 days but one young person remained in segregation in Coree for 39 days. Issues concerning segregation are discussed further in section 3.

The Commission met with the young people involved soon after the incident. The Commission later met with Bimberi and CSD management, and requested a range of information regarding the management response to the incident, any investigations being conducted, the access to health care by the young people, the decision-making process around placing the young people in segregation, the use of restraints, and the provision of independent legal advice to each of the young people.

CSD advised that an investigation had commenced into the incident and that senior management had also referred the matter to ACT Policing. ACT Policing obtained statements from Bimberi staff and offered interviews to the three young people, who declined. The Commission understands that after reviewing the available evidence, including statements and CCTV footage, ACT Policing decided not to proceed with any charges against the young people. In relation to the assault by the youth worker on one of the young people, that young person declined to provide a statement, and police decided not to proceed further.

In the meantime, CSD appointed an external investigator to conduct a workplace investigation in accordance with the Enterprise Agreement. The Bimberi employees who were the subject of investigation were notified of the findings and proposed outcomes, and final decisions in relation to their employment were made in October 2017. The Commission understands some employees have taken further legal action to challenge those decisions, and those processes are being finalised.

The Commission found evidence to substantiate this allegation. There is evidence that the young person was subjected to a retaliatory punch while restrained, where there could be no justification for this use of force, notwithstanding the earlier violent incident. The assault on the young person occurred in a CCTV blindspot. While it does not appear that any other staff were involved in or expecting the assault, it is concerning that several staff who witnessed this punch or became aware of it did not report this serious misconduct to senior management.

Nevertheless, the Commission is satisfied that once aware of the assault, senior management at Bimberi acted appropriately and immediately referred the matter for independent investigation. It is unfortunate that the resolution of the employment issues became protracted, as it appears that this created a very difficult environment for remaining workers at Bimberi. While senior management were required to keep some information confidential during the investigation, the absence of information about what had occurred, and why staff were suspended caused some staff to feel unsupported and mistrustful of management decision-making.

During the initial incident it is also apparent from the CCTV footage that two young people were restrained on the ground in a prone position (chest down), one for an extended period of time, which is not consistent with the Policy. The systemic issue of the use of prone restraint is discussed further below.

Allegation: that a young person who was restrained with handcuffs was thrown to the ground by youth workers and hit their head with force on the concrete floor. They were not offered medical treatment for the head injury.

The Commission was able to identify a specific incident which accorded with the details provided by the informant of the time and people involved in the incident.

The CCTV footage of the incident showed the young person being escorted to their room, wrists handcuffed behind their back, and physically resisting and struggling. The young person was taken to the corner of their room, still resisting. The young person and two workers then fall to the ground. It was not clear from the footage who hit the floor first, and how they fell, but it did not appear that the youth workers deliberately pushed the young person backwards; rather, it appeared that the young person in struggling fell backwards and that the workers lost balance and fell with the young person. It was not clear from the footage whether the young person's head hit the floor, or whether it was the workers that hit the floor first.

The use of force form for the young person says that the young person sustained “*minor abrasions*” and that the young person “*accepted offer of medical examination*”. The report form to CSD says that the young person “*has requested to seek medical attention, the Bimberi nurse has attended in the Coree Unit and dressed minor lacerations, on call doctor notified of the incident.*”

While it is possible that the young person hit their head with force on the cabin floor, the CCTV footage is inconclusive and it does not appear that any fall was deliberate. The young person did receive medical attention and was not assessed by the nurse as requiring further treatment. The Commission did not find evidence to substantiate this allegation.

Allegation: that a young person who had attempted self-harm was forcibly removed to another room and placed naked on a bed in a seated position with hands cuffed behind them. The young person was left naked for several minutes before being covered with a blanket.

The Commission was able to find the relevant incident report and safe room segregation direction and CCTV footage. It appears from the reports and footage that the young person had ripped up their clothing in an attempt to make a noose. Staff entered the room, removed the clothing and replaced it with a ‘non-rippable’ garment. The young person managed to tear up the ‘non-rippable’ clothing to make a rope, so they were then moved to a different room and again provided with a non-rippable garment. The young person again attempted to rip it up and began to make a rope. Staff attempted to negotiate to remove the clothing and the young person started to eat and swallow that clothing. A safe room segregation direction was issued, and the young person was restrained and handcuffed and moved to the safe room. The young person was held naked in the safe room in cuffs for several minutes seated on the bed before a blanket was found to cover them.

While holding a young person in a safe room naked in handcuffs even for a few minutes raises serious concerns regarding the intrusion on their rights to privacy and dignity, it appears that staff were reacting to a very difficult situation where the young person had repeatedly placed themselves at risk of serious harm using the clothing provided. Negotiations had been attempted with the young person before moving them using force. A blanket was found to cover the young person after a short delay.

Although the Commission was not able to interview the young person involved, the Commission reviewed the young person’s exit interview, where the young person was asked whether they felt the decisions made at Bimberi were fair, and their response was “*yes, I now understand staff were just trying to look after me*”. They were also asked whether they were happy with the support given by their key worker, and they said “*Very happy. [Youth worker’s name] understood me and communicated well. I was happy that [youth worker’s name] took time out for me.*” The exit interview suggests that the young person understood the reasons for the use of force and was satisfied with their treatment at Bimberi overall.

The Unit Manager’s comments on the incident report noted that they had investigated the incident, reviewed the CCTV footage, and spoken with the staff members involved. They determined that the actions taken were appropriate, and reasonable force was used to relocate the young person to the other room, as they had continually refused staff directions and requests. The Senior Manager’s report noted that the forensic mental health psychiatrist at Bimberi had reviewed the handling of the matter and was supportive of the approach taken by staff.

The Commission found evidence to substantiate the occurrence of these events, however, it appears that the use of force and approach taken by staff was not unreasonable as it was aimed at protecting the safety of the young person in these difficult circumstances.

Allegation: That a young person had been handcuffed and taken to their room, and was left there without the handcuffs being removed, rolling around on the floor crying and trying to break free, and ending up in the shower lying on their back as water from the shower washed over their body and face.

The Commission identified the relevant incident and reviewed the incident report and CCTV footage of the incident. While the CCTV footage does not show all of the events leading to the use of force, the incident form reports that the young person had made an insulting remark to a youth worker and was told that they would have a period of time-out. The young person began to kick the wall and door then barricaded themselves in the kitchenette area (which had been left unlocked) and became more agitated. Staff left the young person alone in the kitchenette and retreated, then made a decision to use force to extract the young person. Two workers used a 'bear hug' technique to restrain the young person and take them to the ground before applying flexicuffs to their hands held behind their back and physically escorting them to their cabin. While it is noted that negotiations were attempted, the total time from the insulting remark to the use of force was reported to be less than ten minutes. The incident report further notes that the young person was 11 years old and had a significant history of trauma.

The CCTV footage shows the young person struggling and resisting as they were being escorted to the cabin, and they appeared to still be agitated and struggling violently once in the room. Removal of flexicuffs was not attempted. The young person was left in the room alone and staff closed the door.

According to the incident report the young person was left with hands cuffed behind their back in the cabin alone for 36 minutes. The CCTV footage shows the young person appearing distressed then immediately walking into the shower area, which is not visible from the camera angle. They remain in the shower area for an extended period, and the footage shows staff doing observation checks through the door window 4 times during that period. The young person then walks out of the shower area and sits on the bench. During the time in which the young person was in the room alone and cuffed, another 12 observation checks were conducted by staff.

After 36 minutes the young person kneels in the corner at the direction of staff, and staff enter the room, remove the hand cuffs and again close the door. The young person then continues to walk around. During that time, they are checked another 7 times, including once when a worker opened the door and walked in to check on them, and then walked back out.

There was no visual indication from the footage that the young person was obviously wet, had tripped or fallen or had laid down under an open shower, however the footage does not show the shower area and the young person is out of camera view for an extended period. The incident report notes that the young person was later seen lying unresponsive on the shower floor, apparently after the handcuffs had been removed. Workers went into the room, checked the young person and left. The incident report states that the young person was later provided with dry clothes, which is consistent with the young person having become wet in the shower at some point during the incident.

This incident is concerning on a number of levels. While staff are entitled to be treated with respect, it appears that the insulting remark could have been dealt with in a way that did not lead to the escalation of a vulnerable young person and the use of force. There is no record of consideration being given to the very young age and significant trauma history of the young person in accordance with section 223 of the CYP Act which requires, as far as practicable, that force is not used on a young person in detention without first considering their age, sex, physical and mental health and any history of abuse. If the proposed force involves any restraint of the young person, the physical and developmental capacity of the young person must also be considered.

In this case force and restraint was used in a situation where there was no imminent risk of harm to any person, and where use of force did not appear to be the least restrictive option available to resolve the incident. It is also concerning that a distressed young person was left alone in their cabin with hands restrained in flexicuffs behind their back for an extended period (whether or not the young person tripped and fell as alleged, which is unclear). It is notable that in Report of the Northern Territory Royal Commission it is noted that *"directives since 1 January 2016 have provided that handcuffs should always be placed with the detainee's arms together in front of the body"* to reduce such risks.

It does not appear that any attempt was made to seek assistance from more experienced or skilled staff (for example from a case manager or staff of forensic mental health services) during the 36 minute period or afterwards, to talk with the young person and help alleviate their distress.

Management reviewed this incident and their comments on the incident report are critical of the young person being left alone in the kitchenette, and the insufficient attempt at negotiation before moving to use of force. It is noted by the Unit Manager that physical intervention at this point was not consistent with the Use of Force Policy which requires that force be used as a last resort. The Unit Manager was also critical of the length of time that the young person had been left in handcuffs in their room and noted that:

"Having a client handcuffed to the rear while secured in [their] room without staff to ensure safety can add an element of risk should the YP fall forward."

It was noted that the Operations Manager would follow up with staff involved and that selected staff with specific skills would be allocated to work with the young person. A referral was also made to forensic mental health services.

The Commission found evidence to substantiate parts of this allegation. Although the incident is disturbing and actions taken were inconsistent with legislation and policy, it appears that these breaches were taken seriously by management and that appropriate action was taken following the incident. The incident also raises systemic issues regarding the need for trauma-informed care and alternative therapeutic placements for primary school aged children with complex needs, discussed further below.

Allegation: That a youth worker had dragged a young person along a concrete footpath, and that another youth worker had placed that young person in a headlock until he went blue in the face.

The Commission was able to identify the workers and young person alleged to have been involved in these incidents. The team reviewed all use of force and incident forms relating to that young person on their client file, however no use of force or incident forms were identified that named either worker as being involved or witnessing an incident which might be related to these allegations. The young person was no longer at the Centre and we were not able to talk with them about the allegations. While it is possible that these incidents occurred, the Commission did not find evidence to substantiate these allegations.

Allegation: that three named youth workers badly beat a young person in the Coree laundry where there were no cameras.

The Commission was able to identify the young person concerned and reviewed all use of force forms and relevant records on that young person's file but found no report of any incident matching this description, nor any record of injuries to the young person that might be consistent with a beating. Unfortunately, we were not able to obtain further details from the informant regarding the time period in which the incident was said to have occurred. The Commission did not find evidence to substantiate this allegation.

Allegation: that a young person was thrown to the ground by three workers, and then continued to be kned in the face and body, resulting in a black eye.

The Commission was able to identify the young person involved and was provided with a time frame for the alleged incident. The Commission reviewed all use of force forms in the register in that range and beyond to identify a relevant incident, however nothing was located. There were no incident reports or relevant medical reports in the young person's client residential file. The Commission did not find evidence to substantiate this allegation.

Allegation: that a young person was restrained and had their head repeatedly slammed into the floor resulting in a black eye.

Several young people spoke to Commission staff about a young person having a black eye after a particular use of force incident, and the young person also mentioned this incident during an interview with Commission staff. The young person said that a code had been called that day and everyone was required to be locked down. They said that the youth worker who was locking them in their cabin winked at them, and goaded them verbally. The young person reported that they reacted to this provocation and moved towards the worker. The young person stated that after they were taken down onto the ground and their hands held behind their back, that a youth worker lifted their head (which was on the ground, turned to the side) and slammed it about five times against the floor while they were still being held on the ground, and the youth worker also flicked them on the nose.

The CCTV footage showed the young person with two workers, apparently refusing a direction to be secured in their cabin. The young person is seen moving quickly towards one of the youth workers, forcefully pushing the other youth worker out of the way. As there is no audio of the incident, it is not possible to determine whether the young person's movement was in response to verbal provocation. Reasonable force appeared to have been used by the two workers initially to restrain the young person using a 'bearhug' technique. All three ended up on the ground with the momentum of the young person resisting. After a period on the ground where there appears to be a lot of indistinct movement by one worker, the young person is assisted to their feet and there is another scuffle and the young person is brought to the ground again. It was difficult to determine exactly what had happened because the incident occurred towards the end of the corridor of the Unit that was furthest away from the CCTV camera. The footage is dark and the action far away, all three were facing away from the cameras and no audio was available.

The account given by the youth worker in the incident report states that:

"While I was holding [YP]'s shoulders [YP] has attempted multiple times to get up so I have had to hold [them] down firmly at times. [YP] has also attempted to spit on staff so I have placed my hands on the back of [YP]'s head using minimal force to stop [them] from spitting on staff..."

Their report goes on to state that when the young person was brought to their feet, they head-butted the youth worker and the young person was brought to the ground again and handcuffed. It goes on:

"[YP] also attempted to spit on staff while [they were] on the ground so I have held [their] head down using minimal force to stop [them] from spitting on staff."

Another officer's report states that: "[Worker] has placed [YP] face onto the floor and has instructed [them] to stop spitting. [YP] continued to thrash about and spitting."

The Commission reviewed the relevant use of force report for that incident, which noted 'bruising on cheeks'. The medical notes also stated 'bruising to L eye'. The medical report and interviews with other young people corroborate the account of the young person that they sustained an injury to their eye area during the use of force.

Although there is a report that the young person head-butted the worker, it appears likely that the young person sustained the cheek and eye injury when their head and face was being held with force to the floor by a youth worker. To this extent the Commission found evidence to substantiate the allegation. It is not clear whether the youth worker lifted the young person's head (as alleged by the young person) or the young person lifted their head and thrashed around while their head was being held down forcefully against the floor. However, it is clear that applying force to a young person's head against a hard surface while the young person is agitated poses a serious risk of injury to the young person, and does not appear to be the least restrictive approach available.

While it appears that the initial decision to use force may have been justified to prevent an assault on staff, it is concerning that the management response to this incident does not question the approach of holding the young person's head and face forcefully against the floor to stop them spitting, or the injury sustained by the young person. Instead the report focuses on the young person's aggressive behaviour and the need for more intensive management of the young person. Senior management commend staff for their ongoing work to try to manage the young person safely.

Allegation: One young person said they had seen two young people tackled against a window by four or five workers, and that one of the young people was then picked up and "driven into the ground".

The Commission was able to identify the relevant incident. CCTV footage shows two young people walking outside with a youth worker. Two other young people who are in their unit appear to shout through the window to the pair outside, which went on for several minutes. The two young people outside then approach the Unit window and the Unit door and manage to kick in a panel near the door and also rip off the window frame from the outside. The workers try to get all the young people involved to walk away, but once the window frame is ripped off, more workers arrive and restrain the young people outside using force and placing them on the ground. This occurred in the shade and the footage was unclear but we did not observe either young person being picked up and dropped or pushed to the ground with force.

The Commission did not find evidence to substantiate this allegation. It appeared that some use of force may have been justified in this case to prevent serious property damage and possible risk of harm to young people inside the Unit. It is not clear what occurred once the young people were restrained. It is notable that workers attempted to negotiate with the young people for some time and asked them to move away before force was eventually used.

Allegation: that some youth workers had offered young people physical punishment: ‘taking a punch in the guts’ as an alternative to authorised behaviour management.

It was not possible to identify any particular incidents based on the details provided by the informant. There is no record of any complaint made by a young person about such a practice and no incident reports or use of force forms that relate to physical punishment by staff.

If such a practice had developed it is unlikely to have been reported by the staff involved and could have occurred in a CCTV blindspot. However, the use of physical punishment was not corroborated by any of the young people we spoke with who had been at Bimberi over different periods, suggesting that if it had occurred, it was not widespread. One young person who had been vocal in raising other issues about use of force at Bimberi said that: *“media reporting on being punched in the guts is bullshit.”*

The Commission did not find evidence to substantiate this allegation.

Allegation: that staff victimised certain young people and encouraged violence between young people, and that two workers ran a ‘fight club’ at Bimberi.

There were no records or complaints regarding workers encouraging young people to fight each other.

We spoke with young people about the allegation that youth workers encourage fighting between young people. Several young people said that youth workers do not encourage *“punch-ons”* and that the cause of most fights is *“kids not liking each other”*. It is clear from incident reports that fights between young people occur frequently at Bimberi, with little apparent provocation, and that youth workers are frequently called upon to intervene to protect young people from violent assaults, even when this means putting themselves at risk.

No young people corroborated allegations of an organised ‘fight club’. However, some young people who had been at Bimberi early in the review period did indicate that some of the youth workers had encouraged fights between young people. One said that they personally experienced this when they were punched in the face by another young person and some workers said: *“pump him”* and put both of them in a room to *“mediate”* and then walked out. The young person said that they decided not to engage in a fight as it *“wasn’t worth it”*. Another young person said that a youth worker had offered them lollies to fight a particular young person who had threatened the youth worker’s family. Neither of the young people had reported these issues at the time, and they did not want to provide further details about the workers involved.

Another young person said that *“some workers think it is funny when they use force and will tell kids when they are about to put someone in their room to ‘make sure you’re watching, it will be funny’”*. This young person also said that they had direct experience of some youth workers encouraging fights between young people when they were in Bimberi during the early review period.

The Commission was not able to substantiate any particular instance where a young person was encouraged to fight another young person. However, the accounts of some young people do corroborate the general allegation and indicate that in the earlier years of the review period some workers may have directly or indirectly encouraged young people to fight other young people who were perceived as challenging or were unpopular. Such behaviour is clearly unacceptable and a serious breach of the duty of care owed to young people by Bimberi staff.

The risk of such abuses occurring would be reduced with comprehensive CCTV camera and audio coverage, as discussed below, but it is also a cultural issue that needs to be specifically and proactively addressed with staff in training and briefings.

Allegation: that a youth worker used racist insults towards an Aboriginal young person.

The Commission located a complaint from a young person regarding a racist remark made by a staff member against them in front of other staff, early in the review period. Bimberi management and CSD had investigated this complaint and noted that the youth worker had acknowledged that they had made the remark and had apologised to the young person. We were provided with a copy of a letter sent by the Bimberi Manager to the responsible youth worker which condemned this behaviour and noted that the youth worker had been counselled under the terms of the Enterprise Agreement and that any repeated conduct would result in disciplinary action. The letter indicated the Bimberi Manager's intention to arrange for the youth worker to participate in 'working with Aboriginal and Torres Strait Islander people' and 'engaging with different cultures' training. The complaint register states that the complainant was offered support after the incident.

From interviews with young people, staff and visitors, it does not appear that racial discrimination is widespread or condoned at Bimberi. One Aboriginal person who regularly visits Bimberi said that they had "never heard any racist comments from staff" and that they "wouldn't tolerate it". They also mentioned that one of the Aboriginal people employed at Bimberi "has copped a few from one or two kids". Another Aboriginal person said the media reporting on workers using racial slurs towards young people was "very disappointing to read", and said that:

"Nothing racist out here is tolerated. Definitely not from the workers. Only from a few young people occasionally ... I wouldn't be quiet about it if there was any racism ... There's zero tolerance here for that."

The allegation of a racist remark made by a youth worker against a young person is substantiated. The Commission is satisfied that management responded to this incident appropriately. It does not appear that racist behaviour by staff is widespread or condoned at Bimberi.

Allegation: that Aboriginal and Torres Strait Islander young people were more likely than other young people to be transferred to the AMC when they turned 18.

CSD provided evidence that five young people had been transferred from Bimberi to the AMC during the review period, and only one of these young people identified as Aboriginal or Torres Strait Islander. The Aboriginal young person was 18 years old at the time of transfer, and had requested a transfer to the AMC.

Based on the evidence reviewed, this allegation is not substantiated.

Allegation: that a staff member inappropriately watched a young person in the shower.

CSD advised that the incident had been investigated after being reported to management. Commission staff reviewed relevant documentation related to the investigation of the incident and was satisfied that it had been handled appropriately by Bimberi management. The Commission was satisfied the observation of the young person by staff was appropriate in the circumstances but documentation about the incident was inadequate and did not meet the required standard.

Based on the evidence reviewed, this allegation is not substantiated.

Allegation: that there has been widespread drug use in Bimberi and that staff have brought drugs for young people in to Bimberi.

Claims in media reports in July 2017 to attributed former Bimberi detainees stated that drugs were readily available in Bimberi and had been brought in to the centre in some instances by staff. CSD noted that in response to allegations that guards had smuggled drugs in to Bimberi, KPMG was contracted to investigate those concerns in 2015. The KPMG report did not substantiate the claims. The interviews conducted by the Commission with staff, young people and former Bimberi detainees during this review did not support the claims that illicit drugs were available in Bimberi. It appears that changes in procedure and practice have addressed the concerns raised in 2015 about the availability of drugs in the centre.

Based on the evidence reviewed, this allegation is not substantiated.

2.4 Conclusions and systemic issues

From our review of numerous incidents and interviews with staff and young people, it is clear that the youth worker role at Bimberi is a challenging one, and that workers are often called upon to intervene in violent altercations and assaults between young people, or to step in to support other workers, even where this means placing themselves at risk of harm. These incidents can escalate very quickly and sometimes unpredictably, reflecting the complex needs and difficult backgrounds of some young people at Bimberi.

Overall, it appears that most workers at Bimberi are motivated to establish good relationships with young people and to support them in their rehabilitation. Many young people and others working at, or visiting, the Centre remarked on the caring and helpful qualities of most staff members. While the Commission found that some allegations of inappropriate use of force were substantiated, the Commission did not form a view that there is a widespread culture of violence at Bimberi, or that use of excessive force against young people is condoned at the Centre.

While this report focuses on the investigation of particular allegations spread over a four year period, in reviewing incidents the Commission saw many positive examples of the use of negotiation and de-escalation. For example, in one incident a young person pushed a youth worker and walked away. The young person then attempted to damage the kitchen cupboard doors. Workers could be seen trying to speak to the young person in what appeared to be numerous attempts to negotiate over a lengthy period of time, and allowing the young person space, before minimal force was eventually used to prevent damage. This young person was involved in a second incident later that day. The young person was refusing to go to their room, and after approximately fifty minutes of negotiation, youth workers took hold of this young person by their shoulders and walked them calmly to their room.

The Commission is reassured that where Bimberi management have become aware of incidents of excessive or unjustified use of force, or mistreatment of young people, that appropriate action has generally been taken to address the concerns, and that this action has ranged from speaking with staff to reinforce legislative and policy obligations and encourage the use of de-escalation strategies (for less serious issues) to referring matters for independent investigation and disciplinary action where serious misconduct has occurred.

However, the Commission has identified a number of systemic issues of concern relating to safety and security at Bimberi.

Inadequacies in CCTV camera coverage

It was apparent from viewing CCTV footage of incidents at Bimberi that the resolution of the images is of varying quality and this can make it difficult to determine exactly what happened during an incident. The limited camera angles mean that it is not always possible to see any detail and relevant action may be obscured. The lack of audio recording accompanying the footage means that important information is lost and it not possible to verify accounts regarding provocation and verbal aggression from either staff or young people.

Further, there are areas at Bimberi which are not within the view of any CCTV cameras, and many alleged incidents are said to have occurred in these 'blindspots'. Both staff and young people talked to the Commission about CCTV blindspots and it seems that the location of these areas is common knowledge in the Centre, which creates risk for both staff and young people.

The lack of adequate CCTV footage made it impossible to verify or refute some of the allegations raised with the Commission, and also means that Bimberi management are not able to fully oversee all operations within the Centre and ensure that workers are acting in accordance with legislative and policy obligations.

We understand that CSD is in the process of upgrading the current software and hardware at Bimberi to allow storage of higher quality footage, and is upgrading some CCTV cameras, however, this initial upgrade will not resolve issues of the lack of comprehensive audio recording, quality of footage and the need for improved coverage of the centre (to avoid blindspots).

An alternative to additional fixed CCTV cameras is body-worn video cameras. These cameras provide high quality footage and audio recording and provide a direct view of an incident as it occurs (from multiple angles where more than one worker is involved). The Northern Territory Royal Commission recommended the introduction of video and sound recording, in the form of body-worn video cameras, in youth detention centres to improve accountability and transparency.¹⁹

However, we note reservations expressed by some staff and management at Bimberi about the impact that body worn cameras may have on the positive and trusting relationships that staff work hard to develop with young people at Bimberi. It was pointed out that staff currently wear understated uniforms at Bimberi to emphasise that they are youth workers rather than correctional officers, however, if staff are required to wear vests to support the cameras this will make them look more authoritarian and *'more like police'*. It was also noted that if cameras are always recording then young people may be concerned about their day to day conversations with workers being monitored and this may stifle trust and openness. It may be that body worn cameras could be worn by Unit Managers or team leaders rather than all workers, and/or that cameras and recording only be turned on (possibly remotely from the control room) where an incident is in progress. We understand that modern body-worn camera technology allows for buffering, which automatically saves footage for a period preceding the camera being switched to record, allowing for the capture of initial stages of an incident.

We consider that the ACT Government should review and upgrade the security camera systems at Bimberi as a matter of priority to ensure comprehensive coverage of the centre and high quality footage of incidents. The utility of body-worn cameras should be considered in this review and both staff and young people should be consulted.

¹⁹ Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017), recommendation 21.1

In increasing camera coverage at Bimberi, it will be important to maintain appropriate levels of privacy for young people and staff in areas such as toilets, showers or other areas where they would have a reasonable expectation of privacy, such as the school area. As discussed further in this report, there are concerns regarding limitations of privacy in relation to young people using toilet facilities in cabins with CCTV surveillance, particularly in the Coree Unit and this issue should be considered in the review of security camera systems at Bimberi.

Recommendation 1:

That the ACT Government review and upgrade the security camera systems at Bimberi as a matter of priority to ensure comprehensive coverage of the centre and high quality footage of incidents. The review should ensure the privacy of young people is protected, in particular in sensitive areas such as bathrooms. The utility of body-worn cameras and privacy issues should be considered in this review and staff, young people at Bimberi, and key stakeholders such as METC should be consulted.

Least restrictive approaches

While we have observed a positive increase in the use of de-escalation techniques and negotiation at Bimberi following the 6 May 2016 incident, the Commission remains concerned that force and restraint is often part of a reactive approach to behavioural incidents, and this is not necessarily the least restrictive approach for an individual young person over time.

Young people at Bimberi present with a range of complex needs, including intellectual and psychosocial disability, trauma histories and cognitive impairments that affect their behaviour, understanding and impulse control. Forensic Mental Health Services provide helpful guidance and input to Bimberi staff regarding treatment and case management of young people with mental health issues, but these services could be complemented by staff or consultants with positive behaviour support expertise including the development of plans to identify behavioural triggers and to support young people to reduce incidences of violent or inappropriate behaviour over time.

We note that an Office of the Senior Practitioner (OSP) has now been created within CSD to lead the reduction and minimisation of the use of restrictive practices against vulnerable people across a range of ACT services, including disability services, education, and residential out of home care. While the OSP will not have a direct oversight function at Bimberi, the OSP will be an invaluable source of expertise and advice on best practice in positive behaviour support and alternatives to the use of restrictive practices such as force, restraints and segregation at Bimberi. A consistent approach to positive behaviour support plans will be particularly important for young people who may be detained at Bimberi for some periods but at other times reside in residential out of home care.

Recommendation 2:

That the ACT Government employ consultants or staff with professional expertise in positive behaviour support to build capacity at Bimberi to support young people with complex needs and challenging behaviours, and to reduce reliance on restrictive practices such as use of force and segregation.

Grounds for use of force

As discussed above, the permissible grounds for use of force set out in the Use of Force Policy were narrowed to implement the recommendation of the 2011 Report to prohibit the use of force to prevent a behaviour breach or to achieve compliance with a reasonable direction. However, the CYP Act has not been amended to remove these grounds for use of force in section 224. In reviewing the Use of Force Register and incident reports the Commission found many instances where some level of force had been used in response to a young person *'refusing a direction'* and sometimes for reasons such as *'disrespecting staff'* which is not consistent with the Policy.

In reviewing Bimberi induction training materials provided to the Commission we identified that the powerpoint presentation for new recruits titled *"Use of Force – Policy and Procedures"* does not reflect the narrowed grounds in the Policy, and states that force can be used to achieve compliance with a reasonable direction or to stop a behaviour breach.

In our view the inconsistency between the Policy and the CYP Act regarding the grounds for use of force creates understandable confusion for staff and management. It would be preferable for the grounds in the CYP Act to be amended to be consistent with human rights standards.

We note that the Northern Territory Royal Commission recommended that the grounds for use of force be further restricted in the Northern Territory youth justice system.²⁰ This recommendation was agreed to (in part) and has been implemented through amendments to section 154 of the *Youth Justice Act 2005* (NT), which now authorises use of force only where the force is necessary to prevent an imminent risk of a detainee inflicting self-harm, harming another person or seriously damaging property. Further, unless an emergency situation exists, all reasonable behavioural or therapeutic measures to resolve the situation must have been attempted and those measures must have failed to resolve the situation before force can be used.

This provision provides clear guidance to minimise the use of force and would be a useful model for amendments to the CYP Act.

Recommendation 3:

That the ACT Government introduce an amendment to the CYP Act to ensure consistency with the Use of Force Policy and Procedures by removing the grounds of authorisation for the use of force to achieve compliance with a reasonable direction or to stop a behaviour breach. The Act should be amended to specify that force may only be used where necessary to prevent an imminent risk of a detainee inflicting self-harm, harming another person or seriously damaging property.

²⁰ Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017), recommendation 13.5

Use of force and restraint techniques

From our review of numerous incident reports and CCTV footage, a pattern of practice was observed, particularly in responding to serious incidents, of young people being taken to the ground and restrained by workers in a prone, chest-down position.

In a number of incidents reviewed, the young person was initially restrained using a 'bear hug' technique. This technique involves a worker wrapping their arms around the young person's chest and arms from behind or from the side. Other workers then assist by restraining the young person's legs. Many incident reports state that the young person was 'lowered' to the ground following a bearhug restraint. From the CCTV footage we observed, this 'lowering' often happened very quickly and with some momentum.

The Commission observed that once on the ground, young people were often restrained in a prone position, surrounded by several workers, with some force applied by workers to the young person's shoulders, back and/or arms and legs to hold them in that position until they stopped struggling and appeared compliant with directions. On some occasions, the young person's hands were held with force behind their back so that flexicuffs could be applied. In one instance we observed a worker straddling the young person (although not apparently placing all their body weight on the young person) to restrain them. While the period of restraint in the prone position was sometimes very short, in other cases it extended for many minutes while the young person struggled and resisted the restraint.

While the Policy clearly states that youth workers, transfer escorts and escort officers must not restrain a young person using the prone position, it does not appear that this prohibition is being clearly conveyed to staff at Bimberi or reinforced by management. It is notable that the prohibition on prone restraint is not captured anywhere in the training powerpoint on Use of Force Policy and Procedure that is presented to youth workers during induction. This powerpoint has a slide entitled "Restrictions on Use of Force" that highlights the prohibition on pressure point holds, and goes into detail on other aspects of the Policy but does not mention prone restraint. The Commission did not see any comments from management on incident reports regarding the use of prone restraint, although management had clearly reviewed CCTV of numerous incidents where prone restraint had been used.

When asked about specific guidance provided to Bimberi workers about restraint techniques, the Commission was shown a copy of a NSW Juvenile Justice handout on restraint techniques, apparently provided to Bimberi workers during training, which does not reinforce the clear prohibition, but states: "Avoid prone restraint unless necessary – consider alternative methods of resolution."

The Commission raised concerns with Bimberi management and CSD about the use of the prone position during the course of this review. The following response was provided by CSD:

Staff are trained in techniques to ensure a young person is not lying flat on their chest and having pressure applied to their back during a use of force as this is considered the prone position. Standard practice is not to restrain someone on the floor unless it is necessary to gain control of the incident and ensure the safety of the young person and staff or if during res training the young person they fall to the ground. The role of the incident controller is to ensure at all times appropriate and reasonable force is being used, the safety of young people and staff including to ensure the young person's diaphragm or abdomen do not have pressure applied to them as this impairs breathing. If the young person is lying on their stomach on the ground, the incident controller ensures staff position the young person's body in such a way that they are not in the prone position, this includes having their body slightly tilted to the side.

The Commission notes that the prohibition on prone restraint in the Policy was introduced in response to a recommendation of the Commission's 2011 review, reflecting serious concerns that had been raised in the United Kingdom regarding the increased risk of positional asphyxiation and death associated with restraint in the prone position.

It is clear from the literature that 'prone restraint' refers to being restrained (held) on the ground or flat surface, in a chest down position, whether or not additional weight is placed on the person's back.

For example, the UK Care Quality Commission provides the following definition of prone restraint:

Prone restraint: (a type of physical restraint) holding a person chest down, whether the patient placed themselves in this position or not, is resistive or not and whether the person is face down or has their face to the side.²¹

The Independent Review of restraint in Juvenile Secure Settings defined prone restraint as follows:

The term prone restraint means to hold a child 'face down', when on the ground, usually with their head to one side²²

A key review conducted by Duxbury and colleagues in 2011 analysed deaths in custody from restraint in the United Kingdom from 1999 to 2010.²³ The review found that of 38 deaths in custody associated with physical restraint, positional asphyxia was implicated in 26 (68 per cent).

The review specifically addressed the risks of prone restraint, finding that:

When an individual is restrained or contained in a prone position, three things happen that compromise the body's ability to breathe:

- i) There is possible occlusion of the respiratory orifices (Belviso et al., 2003).
- ii) There is a compression by weights or restriction to movement of the ribs limiting their ability to expand the chest cavity and breathe (Parkes, 2000; Stratton et al., 2001).
- iii) The abdominal organs may be pushed up, restricting movement of the diaphragm and further limiting the available space for the lungs to expand (Parkes, 2000; Reay et al., 1992).

21 UK Care Quality Commission, 'Brief guide: restraint (physical and mechanical)', October 2015 (revised April 2016), p 4.

22 Peter Smallridge and Andrew Williamson, 'Independent Review of Restraint in Juvenile Secure Settings' (Report, UK Ministry of Justice and Department for Children, Schools and Families), June 2008), p 35.

23 Frances Aiken, Joy Duxbury and Colin Dale, 'Deaths in custody: the role of restraint' (2011) 2 *Journal of Learning Disabilities and Offending Behaviour* 4.

Consequently, even without any other contributing factors, simply restraining an individual in a prone position may be seen as restricting the ability to breathe, so lessening the supply of oxygen to meet the body's demands.

The review notes that young people (under the age of 20) are more vulnerable to harm when restrained because of physiological immaturity, and a period of struggle or resistance prior to, or during, restraint also significantly increases risk. Other risk factors include pre-existing medical conditions, weight, and certain medications, as well as illicit drug use.

The review concludes that:

After reviewing the comparisons of restraint-related deaths in the UK from 1999 to 2010 with the literature available and then benchmarking the findings with expert opinion, it is evident that those in vulnerable groups when restrained in a prone position, or in a basket hold, for a prolonged period and who are agitated and resistive, are most at risk.

A more recent literature review of restrictive interventions in Victoria similarly concluded that:

The prone position (lying on the floor face down) and the flexion of the head or trunk toward the knees restrict the ability of the person to breathe and should be avoided.²⁴

Following the response provided by CSD regarding use of prone restraint, the Commission again reviewed CCTV footage of a sample of seven incidents at Bimberi which occurred during the review period, where a total of 10 young people were restrained on the ground. One young person was held on their side and one young people was held in the supine position (on their back). However, eight young people were restrained chest down.

In these eight instances Commission staff looked specifically for any indication of workers positioning these young people to tilt them slightly to the side or otherwise positioning them to avoid restraining them in a prone position. The Commission found no evidence of this practice. In each case the young person was restrained by multiple workers while flat on the ground in a prone position. Young people were restrained in a variety of ways including with workers' hands on their backs, shoulders and limbs and in one case being straddled by a worker.

The Commission acknowledges that all physical restraint techniques involve potential risks to young people and staff, and best practice in this area (where use of restraint is unavoidable) remains unsettled.²⁵ However, it is clear that the current use of prone restraint at Bimberi is not consistent with the applicable Policy, and has been considered to pose a greater risk of positional asphyxiation than other techniques such as restraining a young person in an upright position, or, if the young person has moved themselves to the ground, placing them on their side rather than flat on their chest.

24 McKenna, B., Furness, T. & Maguire, T. *A Literature Review and Policy Analysis on the Practice of Restrictive Interventions* (Report, Victorian Department of Health & Human Services, 2014)

25 The appropriate use of restraint remains contentious in the United Kingdom and is the subject of a current UK Parliamentary Joint Committee Inquiry: 'Youth Detention: Solitary confinement and restraint inquiry' <<https://www.parliament.uk/business/committees/committees-a-z/joint-select/human-rights-committee/inquiries/parliament-2017/youth-detention-solitary-confinement-17-19/>>

It is important that a clear and consistent approach is adopted in policy, training, practice and oversight. It is also vital that staff are made aware of the risks and warning signs that a young person may be having difficulty breathing while restrained and to address common misconceptions (for example that *'if you can talk you can breathe'*²⁶). It is particularly concerning that an approach that focuses on waiting until a young person stops struggling or resisting before restraint is released could lead to workers missing signs of breathing difficulty (which can also manifest as struggling) until it is too late.

We consider that CSD should immediately review the Use of Force Practice Guideline and training material provided at Bimberi to ensure that staff are being given clear, consistent and practical guidance on the safest techniques for restraint where the use of force is unavoidable. This training must emphasise the prohibition on prone restraint (which includes any holding of a young person on the ground in a chest down position) and the alternative approaches to be used by staff to manage violent incidents. It is important that training is tailored to the policy and legislative requirements of the ACT which are different from those in NSW.

Recommendation 4:

That CSD review the Use of Force Practice Guideline and training material provided at Bimberi, to ensure that staff are being given clear, consistent and practical guidance on the safest techniques for restraint where the use of force is unavoidable. This training must emphasise the prohibition on prone restraint (which includes any holding of a young person on the ground in a chest down position) and specify alternative approaches to be used by staff to manage violent incidents.

26 Taylor Fuller, Miles Herbert and Helen Davidson, 'If you can talk, you can breathe: the death in custody of David Dungay', *The Guardian* (online), 11 April 2018 – <https://www.theguardian.com/australia-news/2018/apr/11/if-you-can-talk-you-can-breathe-the-death-in-custody-of-david-dungay>

3: Segregation

This section examines concerns that were raised with the Commission regarding the use of segregation at Bimberi. A key concern was that segregation was being used in situations or for a length of time where this was not the least restrictive approach. It was also alleged that young people in segregation did not have adequate access to fresh air, exercise and education.

3.1 Relevant law and policy

Human Rights

Segregation limits a range of human rights protected under the HR Act, including the right to liberty and security of person, the right to freedom of movement, the right to privacy, and the rights of children to the protection needed because of being children without distinction or discrimination of any kind. Segregation will only be justified where it is necessary to achieve a legitimate objective, such as safety of the young person or others, and where it is the least restrictive option available.

International human rights standards prescribe that segregation should not be used as a punishment or disciplinary measure for young people. The United Nations Rules for the Protection of Children Deprived of Their Liberty (the Havana Rules) state 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.²⁷

The HR Act also specifically protects the right to education in section 27A and provides that every child has the right to have access to free school education appropriate to his or her needs. This right is enforceable to the extent that it ensures non-discrimination in the provision of education services.

Legislation

Segregation is defined under the CYP Act as *"the restriction or denial of the young detainee's opportunity to go into, or be in, a particular part of a detention place; or to associate with other young detainees."* This broad definition covers a range of levels of restriction, from limitations on a young person's movements within Bimberi to solitary confinement in the locked 'safe room'.

There are four categories of segregation authorised under the CYP Act: safe room segregation; segregation for safety and security; protective custody; and health segregation. The Act requires specific grounds to be satisfied for authorisation of each category of segregation, but no segregation of any type is authorised to be used for punishment or for disciplinary purposes. While there are very strict safeguards and time frames regarding the use of safe room segregation, the legislative protections in relation to segregation for safety and security are less robust and allow segregation directions for extended periods of up to 90 days.

During the review period, the only forms of segregation that were recorded as occurring at Bimberi were segregation for safety and security, and safe room segregation. The legal requirements for these forms of segregation are set out below.

²⁷ *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, GA Res 45/113, 45th sess, 68th plenary meeting, UN Doc A/RES/45/113 (adopted 14 December 1991), article 67.

Safe room segregation

The use of segregation by “separate confinement” in a safe room may be authorised only where the director-general believes on reasonable grounds that this is necessary to prevent an imminent risk of the young person harming himself or herself, and the decision-maker has: (i) tried less restrictive ways to prevent an imminent risk of the young person harming himself or herself but the less restrictive ways have not been successful; or (ii) considered less restrictive ways to prevent an imminent risk of the young person harming himself or herself but the less restrictive ways were not appropriate.²⁸

When considering whether to make a safe room direction, the authorised decision-maker must have regard to the young person’s age, sex, maturity, cultural identity, physical and mental health and any history of abuse.²⁹

A safe room segregation direction must be reviewed after it has been in effect for two hours; and at the end of every subsequent two hour period for which it is in effect. When reviewing a direction, the authorised decision-maker must seek the advice of a health practitioner about the action he or she should take and have regard to that advice in deciding what action to take. On review, the direction can be confirmed; another safe room segregation direction can be made if the grounds for making it exist; the direction can be revoked; or the young person can be transferred to a health facility.³⁰

Segregation for safety and security

The use of segregation for safety and security is authorised under the CYP Act where the director-general believes on reasonable grounds that the segregation is necessary or prudent to ensure the safety of anyone else at Bimberi, or the security or good order of Bimberi.³¹

When directing that a young person be put into segregation for safety and security, the director-general must also have regard, as far as practicable, to any relevant cultural consideration and the likely impact of segregation on the health or wellbeing of the young person.³²

Safety and security segregation directions must be reviewed by the director-general within seven days (the initial review), again within seven days of the initial review, and before the end of each subsequent period of 14 days while it remains in force. On review of the original direction, the decision-maker may: confirm the direction; make a further segregation where the grounds for such a decision exist; or revoke the direction. Section 217(4) provides that the director-general may make more than one further segregation direction after a review, thus allowing for rolling segregation orders.

The segregation direction must be revoked if the director-general believes on reasonable grounds that the segregations is no longer necessary or prudent to ensure safety of anyone else, or security or good order at Bimberi.³³

Under section 218, unless revoked sooner, a segregation direction ends 28 days after the day it is given, or if a further segregation direction has been given after review, 90 days after the date of the further direction.

28 *Children and Young People Act 2008* (ACT) s 209(1).

29 *Children and Young People Act 2008* (ACT) s 209(2).

30 *Children and Young People Act 2008* (ACT) s 211.

31 *Children and Young People Act 2008* (ACT) s 212(1).

32 *Children and Young People Act 2008* (ACT) s 212(2).

33 *Children and Young People Act 2008* (ACT) s 212(3).

If a segregation direction is given by the director-general, the director-general must prepare a notice which states the direction, why it was given, when it takes effect, how long it lasts, and that it may be reviewed or revoked.³⁴ A notice of the segregation direction must be given, as soon as practicable, to the young person, a person who has care responsibility for the young person or their nominated person, and the Public Advocate.³⁵

While there is provision in section 219 for a young person to apply for an external review of their segregation direction, this places the onus on the young person to be aware of this right and to exercise it. Section 207, which sets out what must be included in a notice of a segregation direction, does not currently require the director-general to inform the young person of their external review rights and how to exercise them. The Commission is not aware of any instance where this provision for an external review has been used.

Access to open air, exercise and education while in segregation

Section 206 of the CYP Act provides that segregation should not affect minimum living conditions. It states that:

- 1) The segregation of a young detainee under this division is not to affect the standards applying to the young detainee under section 141 (Detention places—minimum living conditions).
- 2) However, subsection (1) does not prevent the application of the standards in a way that is necessary and reasonable for the purpose of the segregation.

Section 141 relevantly provides that:

To protect the human rights of young detainees in detention at detention places, the director-general must ensure, as far as practicable (including during any emergency declared under section 149), that conditions at detention places meet at least the following minimum standards:

- a) young detainees must have reasonable access to the open air and exercise;
- b) young detainees must have reasonable access to news and education services and facilities to maintain contact with society;

In assessing what is 'reasonable access' for these purposes, the expectation for all young detainees in section 172(1) is that as far as practicable, young detainees have access to the open air for at least two hours each day and can exercise for at least two hours each day. These two requirements may be satisfied during the same two hour period on any day.³⁶ Section 176 requires the director-general to ensure, as far as practicable, that young detainees have reasonable access to education or training designed to meet the young detainee's individual needs.

The *Education Act 2004* (ACT) also regulates the education of some young people at Bimberi. For example, where a young person is subject to a care and protection order the director-general of CSD as parent has an obligation to ensure the child participates in the education course. Participation must be on a full-time basis³⁷ (that is, at least 25 hours per week³⁸), unless an exemption certificate is in force for the child in relation to the course that stipulates otherwise.³⁹

34 *Children and Young People Act 2008* (ACT) s 207(1).

35 *Children and Young People Act 2008* (ACT) s 207(2).

36 *Children and Young People Act 2008* (ACT) s 172(2).

37 *Education Act 2004* (ACT) s 10D(3).

38 *Education Act 2005* (ACT) s 10C(1)(b).

39 *Education Act 2004* (ACT) s 10D(3).

Furthermore, by virtue of section 27A of the HR Act, young people at Bimberi have the right to enjoy their entitlement to have access to free, school education appropriate to their needs and, where relevant, the entitlement to have access to further education and vocational and continuing training without discrimination.

Policy

The *Children and Young People (Segregation) Policy and Procedures 2018 (No.1)*⁴⁰ reiterates the legislative requirements for segregation. It also states a series of Operational Principles at 5.2, including that:

- a) segregation must not affect a young person's minimum living conditions... however, the conditions may be applied in a way that ensures the Segregation Direction is upheld.
- b) a young person's attendance at school is based on the concept of reasonable and appropriate adjustment and a young person subject to a Segregation Direction will be provided with educational materials in keeping with safety and security considerations.

We note that the Policy in 5.2 (f) appears to conflate the concepts of reasonable adjustment in the provision of education, and reasonable limitations on human rights.

The concept of reasonable adjustment usually relates to the positive obligation of education providers to make appropriate accommodation for the needs of individual students with disability in the way education is delivered.⁴¹ This obligation is important in the context of meeting the needs of young people at Bimberi who are likely to have higher incidence of disability, including learning disabilities, psycho-social disability and cognitive impairment, than the mainstream student population and require education services tailored to their needs.

However, it appears that the Policy is instead suggesting that it is reasonable to restrict the access of young people to teaching and support while in segregation and only to provide educational materials, regardless of the period of segregation.

As discussed further below, the Commission does not consider that the provision of educational materials to a young person in segregation is sufficient to satisfy the requirements of the right to education protected in section 27A of the HR Act, or the entitlement to education services guaranteed under section 141 of the CYP Act, particularly where the period of segregation extends for more than a few days. An appropriate education service for young people at Bimberi would generally require support and instruction from qualified educators.

Practice Guidelines

A *Practice Guideline for Segregation Directions* has been developed which provides a more accessible explanation of the legislation and policy relating to segregation. However, this Guideline does not provide any additional detail regarding the process for review of segregation directions or about the minimum entitlements of a young person in segregation and how these are to be met.

⁴⁰ Notifiable instrument NI2015-402

⁴¹ See for example *Disability Standards for Education 2005* (Cth) 3.4.

The *Practice Guideline for the Minimum Living Conditions of Young People* at Bimberi notes that all young people at Bimberi are entitled to minimum living conditions but states that:

While the standards are permanent, they may need to be applied differently at certain times to ensure the safety and security of young people, staff and visitors.

It also states that:

All young people at Bimberi are to be engaged in education or programs... However, a young person's access to education and programs is influenced by the length of time they will be at the Centre and whether they are on a segregation direction.

The Practice Guideline on minimum living conditions does not make reference to the specific requirement in the CYP Act that young people in segregation have reasonable access to open air and exercise each day.

The *Practice Guideline on Engaging a Young Person Restricted from Education or Programs* provides that the Sport and Recreation Officer should speak with the young person restricted from education or programs (usually because the young person is in segregation) and consider the young person's ideas and engage in their desired activities if safe and suitable to do so. A young person on segregation is to be provided with an education pack prepared by the METC and they may also receive individual support from teaching staff.

3.2 2011 Report recommendations

In its 2011 report, the Commission made a number of recommendations about the use of segregation at Bimberi. Unfortunately, it appears that key recommendations have not been fully implemented, and consequently many of the same concerns were identified in the review period.

In the 2011 report the Commission found that the review process for safety and security segregation directions was not sufficiently transparent and rigorous. It recommended that CSD develop a procedure setting out a structured and transparent process for the review of segregation directions, focusing on objective risk rather than the attitude of the young person while in segregation, and that mental health professionals be involved in each review to assess the effects of ongoing segregation on young people. The Government agreed in principle to this recommendation and indicated that a review of segregation directions was being addressed as a priority action at Bimberi.

As noted, a Practice Guideline has been developed regarding segregation directions, but has minimal content regarding reviews. The Guideline states simply that:

In reviewing any segregation direction the senior manager/executive Director must assess any ongoing risks and consider whether a segregation direction is the most appropriate way to address those risks.

The Commission also found:

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.

The Commission recommended that the ACT Government amend the CYP Act to grant the Official Visitors, the Public Advocate and the Commission authority to inspect the Bimberi incident reports when inspecting the other registers. This recommendation was noted but not implemented.

The Commission also criticised the lack of education provided to young people in segregation at Bimberi. It recommended that the Education and Training Directorate (ETD) and CSD ensure that young people receive equal access to education while in segregation.⁴² This recommendation was noted but not agreed to by the ACT Government. The Government response stated that *“The provision of equal access to education while in segregation must be reasonable within the circumstances of the young person and provided within given resources.”*

The Commission recommended that ETD 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 that young people’s right to education.⁴³ This recommendation was not implemented.

3.3 Allegations and concerns

Allegations were raised with the Commission that segregation was being used in situations or for a duration that was not justified, and that it was used to punish or discipline young people, which is not authorised by legislation. It was also alleged that young people were not receiving appropriate access to education or to fresh air and exercise while in segregation. These allegations did not relate to specific incidents, but to systemic practices.

Information reviewed

The Commission sought and reviewed a range of information in investigating these allegations. As discussed below, the Commission examined the Segregation Register and other Bimberi records and spoke to young people, staff and oversight agencies about segregation practices.

Segregation Register

Segregation directions and reviews are required to be recorded on a Register of Segregation Directions.⁴⁴ The Commission reviewed every entry (comprising both the initial ‘notice’ or ‘record’ of segregation direction form and any ‘review’ of segregation direction form) on the Segregation Register for the years 2014–2017 inclusive.

Data for segregation directions in the review period is summarised in the tables below. It is apparent that safe room segregation is used rarely (only once in the review period) but that the use of segregation for safety and security is more common. Some young people have been subject to multiple episodes of segregation.

2014

The segregation register for 2014 indicates that there were four segregation directions made in 2014, comprising three safety and security segregations and one safe room segregation. These four segregation directions related to three young people; that is, one young person was in segregation on two different occasions (entries 2 and 3 in the below table).

42 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011), recommendation 12.15

43 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011) 265.

44 *Children and Young People Act 2008* (ACT) s 222.

Table 1: 2014 segregation data

No.	Type of segregation	Duration (inclusive)	Young person identifies as Aboriginal and/or Torres Strait Islander
1.	Safety and security	15 days	No
2.	Safe room	2 hours	Yes
3.	Safety and security	12 days	Yes
4.	Safety and security	2 days ⁴⁵	No

2015

The segregation register indicates there were 15 instances of segregation in 2015, relating to nine young people. Six of the 15 young people were in segregation on two separate occasions throughout the year.

Table 2: 2015 segregation data

No.	Type of segregation	Duration	Young person identifies as Aboriginal and/or Torres Strait Islander
1.	Safety and security	2 days ⁴⁶	No
2.	Safety and security	7 days	Yes
3.	Safety and security	5 days	No
4.	Safety and security	7 days	No
5.	Safety and security	7 days	Yes
6.	Safety and security	4 days	No
7.	Safety and security	6 days	No
8.	Safety and security	5 days	Yes
9.	Safety and security	1 day ⁴⁷	No
10.	Safety and security	7 days	No
11.	Safety and security	5 days	Yes
12.	Safety and security	4 days	No
13.	Safety and security	7 days	No
14.	Safety and security	3 days	No
15.	Safety and security	6 days	No

⁴⁵ Note: The segregation at entry 4 of Table 1 was initially approved for a period of seven days, however ended after two days with the young person's transfer to the AMC.

⁴⁶ Note: The segregation at entry 1 of Table 2 was initially approved for a period of seven days, however ended after two days with the young person being granted bail.

⁴⁷ Note: The segregation at entry 9 of Table 2 was initially approved for a period of seven days, however ended after one day with the young person's transfer to the AMC.

2016

There were three instances of segregation in 2016, all of which occurred directly after and as a result of the 6 May 2016 incident. As Table 3 indicates, two of the three young people involved in this incident were in segregation for 13 days after the incident, and the third young person was in segregation for 39 days.

Table 3: 2016 segregation data

No.	Type of segregation	Duration	Young person identifies as Aboriginal and/or Torres Strait Islander
1.	Safety and security	13 days	Yes
2.	Safety and security	13 days	No
3.	Safety and security	39 days	No

2017

There were 16 instances of segregation recorded in the 2017 register, relating to 12 young people (two of whom were in segregation on two separate occasions and one of whom was in segregation on three separate occasions).

Table 4: 2017 segregation data

No.	Type of segregation	Duration	Young person identifies as Aboriginal and/or Torres Strait Islander
1.	Safety and security	3 days	Yes
2.	Safety and security	7 days	Yes
3.	Safety and security	4 days	No
4.	Safety and security	7 days	No
5.	Safety and security	6 days	No
6.	Safety and security	7 days	No
7.	Safety and security	5 days	No
8.	Safety and security	6 days	No
9.	Safety and security	16 days	No
10.	Safety and security	11 days	Yes
11.	Safety and security	20 days ⁴⁸	No
12.	Safety and security	11 days	No
13.	Safety and security	11 days	Yes
14.	Safety and security	11 days	No
15.	Safety and security	18 days	No

⁴⁸ Note that the segregation at entry 11 of Table 4 commenced at 8.30 AM on the first day and was revoked on 18:12 PM on the final day of the segregation, meaning that the segregation lasted for a total of 20 days and 9 hours. While we have rounded this down to 20 days, consistently with our approach to calculating the number of days other young people spent in segregation, we note that, given the time they were released, this young person effectively spent 21 days in segregation.

No.	Type of segregation	Duration	Young person identifies as Aboriginal and/or Torres Strait Islander
16.	Safety and security	1 day	No

As set out below, the Commission reviewed control room duty logs, daily timetables and daily assessment sheets for young people in segregation in two sample periods from 1 October 2015 - 31 December 2015 and 1 October 2017 - 31 December 2017.

The Commission also asked young people, staff and oversight agencies about segregation practices and experiences.

Investigation of specific allegations

Allegation: That segregation was being used as punishment and was applied inconsistently, when it was not the least restrictive option.

Two former Bimberi staff members spoke to the Commission about their experience of segregation practices at Bimberi during the review period.

One told the Commission that they considered that there were, at times, inconsistent and inequitable approaches to decisions about issuing segregation directions, so that one young person might be put in segregation and another young person might not be for similar conduct, and that young people would notice these inconsistencies:

"Young people are sensitive to injustices – they would notice if other young people got segro or not for similar conduct."

In the Commission's review of all the segregation directions and segregation review documents relating to the review period, the Commission did not find any documents which on their face indicated that segregation had been used for an unlawful purpose, such as punishment.

However, the record-keeping in relation to segregation directions was inconsistent, with varying amounts of information available on the register regarding the reasons for the direction and any other factors that would justify a belief that the relevant criteria for segregation has been met.

For some segregation directions, there were detailed briefing documents attached to the initial record of segregation direction form explaining the background to and reasons for the segregation direction. For other entries, there were no separate briefing documents but instead some short descriptions of the background and reasons for the segregation direction on the form itself. Most of the segregation directions for 2017 had the 'incident report' box ticked with an incident report number included and no other summary or description of events immediately prior to the issuing of the direction, whereas for the majority of segregation directions prior to 2017 a short description of the events leading up to the direction were included. Incident reports are kept on a separate register at Bimberi.

The Commission's 2011 recommendation that the ACT Government amend the CYP Act to grant the Official Visitors, the Public Advocate and the Commission authority to inspect the Bimberi incident reports when inspecting the other registers has not been implemented.

The Public Advocate's office has indicated that they receive copies of segregation directions in a timely manner, however these do not include the relevant incident reports. We understand that in practice Bimberi management will provide the Public Advocate access to specific incident reports on request, but often there is very limited information to allow the Public Advocate to determine when incident reports should be sought.

The inconsistencies in record-keeping in relation to segregation and, in particular, the change in practice to provide no or minimal details on the segregation form of the events leading up to the segregation and the reasons for the segregation direction makes it difficult for oversight bodies, including the Commission, to determine the lawfulness of the direction. At a minimum, the form should provide a brief description of the preceding events and reasons for the segregation, even if there is an associated incident report. Further, the Commission understands that the record-keeping system at Bimberi is about to be replaced by an electronic record-keeping system. It is important that CSD ensure that the new record-keeping system allows oversight bodies to easily access any documents associated with segregation directions, including any incident reports.

The length of time some young people spent in segregation at Bimberi during the review period was concerning, notably the young person who was in segregation for 39 days after the 6 May 2016 incident, and the two young people who were in segregation for 18 and 20 days in 2017. As the duration of segregation increases, the impact on the young person of separation from their peer group becomes more significant and the limitation on their human rights becomes more serious.

In each of these cases further segregation directions were made following a review of the original direction. The Commission is concerned that the review process lacks accountability, and that CSD have not implemented the recommendation of the 2011 report to develop a procedure setting out a structured and transparent process for the review of segregation directions, focusing on objective risk rather than the attitude of the young person while in segregation, and that mental health professionals be involved in each review to assess the effects of ongoing segregation on young people.

It is also vital that Bimberi management have access to behaviour management expertise to provide structured support and assistance to young people to address behavioural concerns to allow them to be reintegrated with their peers.

The Commission did not find evidence to substantiate the allegation of segregation being used as punishment, however, the record keeping relating to segregation makes it difficult to determine whether segregation is being used only as a last resort. The Commission is concerned about the length of time young people have been held in segregation and the lack of transparency in the review process.

Allegation: That young people do not have reasonable access to open air and exercise while in segregation.

Of the 16 young people we interviewed, six reported that they had been in segregation during the review period. The periods the young people reported being in segregation for ranged from a few days to over two weeks. Different young people reported varying levels of access to fresh air and exercise while in segregation: some young people reported being able to go to the gym for an hour three times in the week they were in segregation; some reported being able to go to the gym once a week; and others said they were not able to access the gym at all.

One young person described their experience in segregation in the following way:

"Segro is shit. You sit in the unit, get to do nothing. Can't go outside. No courtyard, no fresh air. Can ask for school work if they have staff to do it. No TV - only at night in your room if you don't have a breach."

One former staff member stated that young people do not go outside while they are on segregation and, accordingly, do not have reasonable access to open air and exercise required by the CYP Act. Another former employee, when asked about whether young people got access to fresh air and outdoor spaces while on segregation, commented that their recollection was that: *"young people would get access to the gym for an hour, depending on their risk."*

Both of these former employees said that the main activity available to young people in segregation is to play cards with youth workers. However, one also stated that one Bimberi manager told youth workers they *"shouldn't play cards with young people on segro; they're meant to be bored"*. This is consistent with the allegation made by an informant that *"staff unintentionally view the YP [in segregation] as deserving of punishment so do not interact with them and give them only minimal attention."*

One of these employees spoke about the detrimental impacts they considered that segregation at Bimberi had on young people:

"The current practice [of segregation] just makes the kids worse. We should be getting them out for two hours a day to shoot hoops with staff. Shouldn't leave heightened kids in there for two weeks with no fresh air, no basketball."

The Commission asked CSD to respond to the allegation that young people in segregation are not being given reasonable access to open air and exercise. CSD stated in its written response of April 2018 that staff ensure young people in segregation have access to two hours of exercise and open air each day through implementation of a young person's 'daily program', and including in that programming access to the gym, basketball courts and the Coree courtyard on the residential side of the unit (only accessible when any young people housed in the residential side are not present in the unit).

CSD invited the Commission to review records of young people's daily programming data, control room logs and case notes. The Commission reviewed this information for young people in segregation during a sample of two three month periods (1 October 2015 - 31 December 2015 and 1 October 2017 - 31 December 2017). It was not possible to accurately determine from these records exactly how long young people in segregation spent outside or exercising, however, the records did not appear consistent with young people having access to outdoors and exercise for two hours each day.

The control room duty logs contain a record of all checks and movements within the Centre. It contains entries of the time at which a young person gets released from their room, secured in their room, or escorted to any place within the Centre. It was difficult from the logs to identify if and when young people in segregation were being allowed outside for open air or exercise, despite the Commission having been provided with the dates and names of young people on segregation during the relevant periods. Some of the entries only noted which rooms were being opened with no names of young people documented, and did not identify where the young person was going, or if they were only being released within the unit.

The daily timetables for Coree provide an indication of the main types of activities scheduled for any given day for each wing of each unit, for example: "10.30 AM to 11.30 AM – unit activities". On some days reviewed, there was only one hour scheduled for the gym, and the rest of the day was spent in Coree, including for a lunchtime lockdown. On one day, there was no gym or outside time scheduled at all.

The daily assessment sheets for a young person on segregation contain a table with the young person's name, date, room number, behaviour, school/program updates, interactions with staff and/or young people, visits and phone calls, concerns, issues and comments, and the name and signature of the person who prepared the report. There is no section which requires staff to report whether and for how long the young person was provided with access to open air or exercise.

In the section for school/program updates in the daily assessment sheets for one young person in December 2015, the comment was often "NA". A few included "passive rec [sic] due to segregation order" and "passive rec and unit cleaning". The comments in the behaviour section of the table included that the young person *"has kept himself busy playing cards and watching TV"*.

The daily assessment sheets for another young person on segregation in October 2015 stated that the young person: *"did not attend programs today as he was place [sic] on segregation but sent [sic] the day playing cards with staff"*. The rest of the entries for school/program updates were "NIL". One entry for behaviour stated:

"[H]e has spent most of the day in the unit apart from going to client services for evening meds. His day has comprised of playing cards, read newspaper and watch TV."

The daily assessment sheets for this same young person on segregation in December 2015 noted "NIL" for the section on school/program updates except for one day where it was written that the young person:

"Did not attend education still under segregation direction. Happy playing cards with staff most of the evening. Spent a half hour shoot hoops at Namadgi basketball court."

The daily assessment sheets for another young person also on segregation in October 2015 did record that the young person attended the gym on two days. The assessment sheet stated: *"we went to the oval and threw the football"* on one day, and on another day that the young person had *"basketball in the gym then b.ball and gridion on Namadgi basketball court"*.

In relation to the 2017 sample, it was not clear from some of the daily assessments sheets whether or not the young people on segregation were provided access to fresh air or exercise. For some of these entries, staff comments about the young person's responses segregation indicated that the level of activities was low, for example:

"He has expressed he feels caged up from being on segregation and wished he could get out to do more activities but has accepted the conditions that he is on."

On other daily assessment sheets, staff notes indicated that the young people remained in their unit for the whole day, without going to the gym or engaging in outdoor activities. Examples of such notes include: *"spent all day in unit"; "attended no programs", and "YP is becoming annoyed at not being able to leave the unit – would like to go to the gym"*. On other days, it was clear that the young person spent a period of time at the gym, although there were no positive indications from the 2017 data that young people on segregation engaged in outdoor activities. On one daily assessment sheet which indicated that the young person spent some time at the gym, a comment was recorded:

"[YP] has also voiced his concern that he does not get any time outside of the unit, he would like time out of the unit and not just in the gym."

The Commission found evidence to substantiate the allegation that in some cases young people in segregation are not having reasonable access to open air and exercise each day. At a systemic level the current record keeping arrangements do not enable management or oversight agencies to easily determine whether young people are receiving their minimum entitlements to open air and exercise while in segregation. Staff should be required to record the amount of time that a young person spends exercising and in the open air each day that they are in segregation. This could be included in the daily assessment sheet for the young person.

Recommendation 5:

That Bimberi Management review record keeping arrangements to ensure that a clear and accurate record is kept of the total amount of time each day that a young person has access to exercise and to open air while in segregation. These records should be made available to oversight agencies on request.

Allegation: That young people in segregation do not have reasonable access to education.

As indicated above, a policy has been adopted at Bimberi that education materials will be provided to a young person in segregation, but that a young person does not attend school and there is no structured requirement for teachers to provide instruction or educational support to the young person while in Coree.

Staff interviewed confirmed that teachers would bring down school work for a young person on segregation, but that *"sometimes the young person wouldn't have any work on the go, or they would refuse, or it was school holidays."*

All of the six young people who discussed their experience in segregation with the Commission stated that they did not attend school during the period they were in segregation. When asked whether they had access to teachers or school materials in their unit while in segregation, some said they did not have such access.

"Didn't go to school while in segro. I didn't have education materials, didn't ask for them."

Others said that they could ask for school work to do in segregation, but that access depended on whether there were enough staff on any given day to organise and deliver the materials to the young people in segregation. One young person said that the materials provided were not always suitable for them given their level of education.

"Teachers don't come down to Coree. I get brought educational materials when staff are able to."

"Given hard school work to do in segro. [The teacher] gives us work but doesn't help us, has a class to teach."

The Commission does not consider that the provision of written school work to young people in segregation amounts to reasonable access to educational services, particularly when the period of segregation is reviewed and extended for more than a few days.

The Education Directorate advised the Commission that wherever possible, face to face education services and materials are provided to young people in segregation. However, factors such as lockdowns and individual student engagement may impact this ability. Where staff cannot safely deliver face to face educational services to students in segregation, alternative educational materials are provided.

Young people in Bimberi are likely to have high needs for educational support due to lower literacy levels and issues such as cognitive impairment and learning disability. Many young people in Bimberi have become disengaged from education in the community and are unlikely to have the ability or motivation to effectively complete written work on their own, particularly if it is not tailored to meet their assessed needs. Denying these young people access to appropriate education while in detention is not consistent with their human rights, and can amount to a missed opportunity to re-engage them in education, which is an important factor in successful rehabilitation.

We consider that, at a minimum, where a segregation order is reviewed and extended, that arrangements must be made for a young person to be given face to face educational support, as well as access to educational materials each school day.

Recommendation 6:

That CSD and the Education and Training Directorate ensure that where a young person is in segregation or subject to separation or other management direction, that the young person be provided with face to face educational support, as well as access to appropriate educational materials, each school day.

3.4 Conclusions and Systemic Issues

The Commission is concerned that the legal framework under the CYP Act authorising and regulating the use of segregation sets a relatively low threshold for the use of segregation for safety and security that is not consistent with the HR Act and provides weaker protections for young people than similar provisions in other jurisdictions.

Under s 212 of the CYP Act segregation may be authorised if the relevant decision-maker believes on reasonable grounds that the segregation is either necessary or prudent to ensure the safety of anyone else or security or good order at Bimberi.

Under the HR Act human rights may only be subject to reasonable limitations which are necessary to achieve a legitimate objective. Given the significant limitation that segregation imposes on the human rights of young detainees it is not clear that ‘good order’ would be a sufficient basis for such a limitation, where there is no risk to the safety of any individual or security at the Centre.

Further, the threshold of *prudence* as a basis for segregation is likely to be inconsistent with the higher threshold in s 28 of the HR Act which authorises limitations only where these are reasonable and demonstrably justifiable in a free and democratic society. This test incorporates an assessment of proportionality and whether the approach is the least restrictive approach reasonably available to achieve the objective.

Section 212 of the CYP Act does not contain a requirement that segregation be used as a last resort; that is, that all other reasonable therapeutic or behavioural management options have first been attempted but have not been successful.

The Commission is also concerned that the time period of seven days set by the CYP Act in which a segregation direction must be reviewed is much longer than the review period set in other relevant jurisdictions, and there is not a structured and transparent approach to the review assessment.⁴⁹

The Royal Commission into the Protection and Detention of Children in the Northern Territory recommended that the existing Northern Territory legislative provision regarding segregation be repealed and a new provision be inserted in its place to have the following effect:

- 1) The superintendent may separate a detainee from other detainees where:
 - a) a detainee for good reason requests to be separated from other detainees
 - b) a detainee is ill and may be infectious
 - c) separation is reasonably necessary for the detainee's protection
 - d) separation is reasonably necessary either:
 - i) to protect the safety of another person or property but only after all reasonable behavioural or therapeutic options have been attempted and have not alleviated any threat to safety, or
 - ii) to restore order at the detention facility but only after all reasonable behavioural or therapeutic options have been attempted and order has not been restored, and
 - iii) no other course is reasonably available or practical.⁵⁰

The draft provision recommended by the Royal Commission also includes a range of safeguards, including that the separation must not continue for more than 24 hours without the approval of the Chief Executive Officer, and must be reviewed every two hours to ensure that the separation does not extend longer than required. In our view this draft provision provides a useful model for legislative reform that could be adopted in the ACT.

Recommendation 7:

That the ACT Government introduce amendments to the segregation provisions in the CYP Act to ensure consistency with the HR Act. In particular, s 212 of the CYP Act should be amended to remove the concepts of prudence and good order as grounds for segregation, and the safeguards regarding duration and review of segregation directions should be strengthened. The draft provisions recommended by the Northern Territory Royal Commission provide a useful model for reform, which could be adapted to meet the needs of the ACT.

49 For example, the Victorian Department of Health and Human Services 'Separation of Young People' practice instruction provides that the separation of a young person must be reviewed within 72 hours: see Liana Buchanan and Andrew Jackomos, *The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (Report, Commission for Children and Young People, March 2017) 21.

50 Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017), recommendation 14.1

Recommendation 7a:

That the notice of a segregation direction given to a young person include information about their right to seek an external review of the direction, and information on how to make that application for external review. That the ACT Government review and update the External Reviewer Appointment instrument issued under the CYP Act.

4. Time Out

This section considers allegations made that “time outs” are used frequently at Bimberi, and that there is no regulation or record-keeping of time outs. Time out is a behavioural management technique used at Bimberi which is not specifically regulated in the CYP Act. The Commission in its 2011 Report raised serious concerns about the lack of any policy framework or regulation of this practice which is a form of segregation. While the Act has not been amended, CSD has developed policies and procedures to regulate and record the use of time out.

4.1 Relevant law and policy

The *Children and Young People (Behaviour Management) Policy and Procedures 2018 (No 1)* defines time out as:

A behaviour management strategy that has a purpose to restore socially appropriate pro-social behaviour by withdrawing a young person from a situation in which they are demonstrating inappropriate behaviour.

The Practice Guideline on the use of time out provides that:

[T]ime out may occur anywhere in the Centre including in a young person’s residential room.

The Guideline specifies that where staff direct for time out to occur, the young person is escorted into the room and staff close the door behind them. Staff are required to check on a young person on time out no longer than 10 minutes after the young person is escorted into the room and determine whether the young person is calm and can provide a verbal commitment to behave appropriately. Staff are to re-enter the young person into the general program 10 minutes after such a verbal commitment is made.

The practice guideline states that where a staff member considers a young person is not ready for re-entry, staff are to repeat the check at a time consistent with the observations for that young person. Should the young person not be re-entered by 90 minutes after the commencement of the time out, staff must immediately notify the Unit Manager and Senior Manager. The Unit Manager and Senior Manager will then determine whether: the young person should be re-entered into the general program; the time out should be continued (for up to a further 90 minute period); or a segregation direction should be issued and an incident report generated.

Periods of time out are recorded in a Register and we understand that the Public Advocate and other oversight agencies are given access to inspect this Register on a regular basis.

4.2 2011 Report recommendations

In its 2011 report, the Commission stated that it appeared that although time out was being used at Bimberi at that time for both risk management and disciplinary reasons, segregation directions were not being issued when time out was used and no records were being kept of the use of time out. The Commission expressed concern that the use of time out was not reflected in the CYP Act regime for behaviour management and segregation and was not specifically authorised, monitored or regulated.⁵¹

The Commission recommended that:

[T]he ACT Government amend the CYP Act 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.⁵²

The Government agreed in principle with this recommendation but considered that legislative amendment was not required and that the practice could be regulated by policy and procedure.

4.3 Allegations and concerns

Allegation: that 'time out' was used frequently as a behaviour management strategy at Bimberi, and that there is no regulation or record-keeping of time outs.

Experiences of young people

Eleven young people spoke to the Commission about the use of time out at Bimberi. One young person who was no longer in Bimberi at the time of interviewing said they: "got time outs all the time, for 30 minutes or one hour" and that they considered time out was used by Bimberi staff as "reflection time"; that is, an opportunity for the young people to reflect on their behaviour or on the incident that had occurred.

Most of the other young people said that time outs are not used regularly at Bimberi:

"I've only ever seen one time out, and it was given by management. Youth workers don't give time outs. They don't take action because of repercussions. Don't want to get a bad name from kids. So they'll just say "stop it". They get abused by residents for breaching them."

However, there were some concerns expressed about how time out is used and some young people expressed difficulties with the lack of consistency and regulation of the practice:

Staff use time outs whenever they get pissed off – you get sent to your room for ten minutes or until you calm down.

They aren't consistent, it depends on how the worker is feeling.

Not every worker gives you time outs. Sometimes it's 10 minutes, other times its 40-60 minutes. The ones I've had were 20-30 minutes long. But I haven't had time outs since being in this time.

51 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011) 326-327.

52 Ibid 327.

Experiences of Staff

Staff interviewed expressed a consistent view that there had been changes in the use of time outs and other forms of behaviour management at Bimberi and that the use of time out was more tightly controlled:

"There are less consequences for young people's misbehaviour these days."

"The time out policy changed while I was there. After the change, we were able to use it less – there were more restrictions on use. It used to be a good circuit-breaker."

"If youth workers issue a time out, it is questioned by management."

One of these three staff members also stated that there are more restrictions on the duration of time outs now. They stated:

"You used to be able to secure them for 30 minutes to an hour. Now there's pressure to release them even when they're not calm yet, which means there's an increase in incidents."

While the staff interviewed viewed this tighter regulation of time out as frustrating, from a human rights perspective it indicates that the practice is being properly scrutinised, and only used where it is the least restrictive approach available.

Register material

The Commission inspected the time out logbooks for the three operative units across the four years of the review period. Below is a summary of the aggregate time out logbook data across the three units for each year. There were a number of entries where the time out commencement time was recorded but the time the young person was released was not recorded in the log book. Those entries were excluded from the calculations of the average time out duration.

2014

Total number of time outs	Number of entries where no release time recorded	Average length of time outs in minutes	Common reasons for time outs
428	34	33.20	Inappropriate behaviour; disrespectful behaviour; threats; play fighting; horseplay; swearing; not following directions

2015

Total number of time outs	Number of entries where no release time recorded	Average length of time outs in minutes	Common reasons for time outs
177	14	27.21	Disrespecting staff; threats to others; aggressive behaviour; play fighting; swearing; refusing directions; refusing programs; horseplay; non-compliance

2016

Total number of time outs	Number of entries where no release time recorded	Average length of time outs in minutes	Common reasons for time outs
91	15	23	Disrespectful behaviour to other young people and staff; not following directions; slow to follow directions; refusing programs; horseplay; unsettled behaviour; escalating behaviour

2017

Total number of time outs	Number of entries where no release time recorded	Average length of time outs in minutes	Common reasons for time outs
93	3	21.46	Property damage; escalating behaviour; disrespecting staff; not following directions; non-participation; making threats; shadow-boxing staff

While the average duration of time out was relatively short, there were some instances of longer periods. The longest period of time out recorded in the review period was 200 minutes in 2015. The longest period in 2017 was 120 minutes.

Experiences of oversight bodies

One of the oversight bodies noted they had experienced some resistance in the past in being provided access to the time out registers, but stated this is no longer the case.

4.4 Conclusions

The log book data suggests that there was a reduction in the use of time out at Bimberi from 2014 (428 uses of time out) to 2015 (177 uses of time out), and then a further reduction in 2016, where there were 91 uses of time out. This level was maintained in 2017 (93 uses of time out).

Time out is used for behaviour management and de-escalation, to allow a young person who has become escalated or who is misbehaving to calm down and regulate their behaviour. It can be a tool to reduce conflict between young people and provide space to cool off. Time out does limit the human rights of young people who are subject to it, however it differs from segregation in the duration of the separation from peers and the greater control that a young person generally has over when the time out finishes, as it should end as soon as the young person is able to give a verbal commitment to behave appropriately.

While time out may be a helpful strategy in some situations, it has the potential to be abused, and to become an unofficial form of segregation. Accordingly, it is critical that the practice is carefully regulated, recorded and reviewed by oversight agencies. We are satisfied appropriate regulation, recording and oversight is now in place. On this basis the Commission considers that it is reasonable for Bimberi staff to impose short periods of time out, provided that the young person is able to return to their peers as soon as they commit to behave, and that the period of time out does not become protracted. It is important that individual considerations and vulnerabilities such as a history of trauma are considered in deciding whether to use time out as a strategy, and that young people subject to time out are closely monitored and supported.

The Commission did not find evidence during the review period to substantiate the allegation that time out was used unduly frequently at Bimberi, as the use of time out has decreased significantly since 2014. The Commission is satisfied that there is now appropriate regulation, record keeping and oversight occurring in relation to time out, and ongoing monitoring of the use of time out by the Bimberi oversight group will ensure its continued appropriate use and duration.

5. Lockdowns

This section considers allegations that young people in Bimberi were regularly locked into their cabins for long periods of time as a result of staff shortages during the review period and particularly in the wake of the 6 May 2016 incident.⁵³

Lockdowns impose significant limitations on the human rights of young people and have a range of negative impacts on their wellbeing and rehabilitation, particularly where the lockdowns are frequent and unpredictable.

The Australian Children's Commissioners and Guardians state that:

Children and young people in youth justice detention experience lockdowns as a form of isolation and as a form of punishment. Lockdowns can be counterproductive as a behaviour management tool, and may lead to unrest, and children and young people feeling frustrated and behaving poorly. Unscheduled lockdowns contribute to emotional instability in children and young people with histories of trauma, and are contrary to trauma-informed approaches to youth justice practices. Lockdowns can reduce children and young people's access to education and health services in youth detention centres, and can lead to visits with family being cancelled.⁵⁴

The use of lockdowns to manage to staffing shortages is a short term solution that potentially creates greater difficulties over the longer term, as it can exacerbate tensions between staff and young people and increase the likelihood of behavioural incidents which may in turn negatively affect staff morale.

5.1 Relevant law and policy

Human Rights

The rights in the HR Act that may be limited by the use of lockdowns at Bimberi are the same as those that may be limited by the use of segregation, namely: the right to liberty and security of person; the right to freedom of movement; the rights of children to the protection needed because of being children, without distinction or discrimination of any kind; the right to humane treatment when deprived of liberty; and the protections against being treated or punished in a cruel, inhuman or degrading way. Where lockdowns interfere with young peoples' ability to attend school and/or do school work, they also limit the young peoples right to education under the HR Act.

The *United Nations Convention on the Rights of the Child* 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.⁵⁵

53 Steven Trask and Michael Gorey, 'Alleged bashing sparks staff stoush with Bimberi management', Canberra Times (Canberra), 16 March 2017; Steven Trask, 'Staff fear detainee safety at Bimberi detention centre', Canberra Times (Canberra), 17 March 2017.

54 Australian Children's Commissioners and Guardians, Statement on Youth Justice Detention, November 2017, 22.

55 *United Nations Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), article 3.3.

Legislation and policy

There is no specific legal power enabling the use of lockdowns, as distinct from segregation, at Bimberi. While the broad definition of segregation under the CYP Act would cover lockdowns, lockdowns are not categorised as segregation by CSD or Bimberi management and are not recorded in the segregation register.

The *Children and Young People (Safety and Security) Policy and Procedures 2015 (No.1)* defines lockdown as:

The operational response that is an interruption to daily routine. Young people and other people are asked to remain in a particular place for a period of time in order to manage a risk to safety and security of young people or other people at a detention place (e.g. to manage a serious or life threatening injury or health complaint, a lockdown may be required to prevent the entry to, or exit from, a detention place by any person other than emergency response services). Lock down does not involve segregation.⁵⁶

Section 6.91 of the Safety and Security Policy and Procedures states:

If a youth worker suspects or becomes aware that there has been a failure to a safety or security system, the officer must do the following:

- a) immediately assess the situation with respect to the safety of young people, staff or others and the safety and security of the detention place
- b) immediately notify the Unit Manager or if unavailable, the most senior youth worker on duty
- c) make all attempts to keep young people, staff or visitors away from the area affected
- d) if appropriate or necessary, call the appropriate code and seek assistance, or direct the locking down of all young people and/or the securing of the detention place.

5.2 2011 Report recommendations

In its 2011 report, the Commission identified lockdowns as a significant concern and recommended that 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.⁵⁷

The Commission also recommended that CSD continue to over-recruit youth workers for Bimberi, operate a casual staff pool at Bimberi and, where possible, offer permanent employment to casual youth worker staff who currently work full-time.⁵⁸ The Commission recommended that CSD 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.⁵⁹

56 *Children and Young People (Safety and Security) Policy and Procedures 2015 (No.1)*, s 4

57 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011) 328 (recommendation 14.17).

58 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011) 122 (recommendation 5.5).

59 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011) 137 (recommendation 5.21).

5.3 Allegations and concerns

Allegation: that young people at Bimberi were subjected to frequent and unreasonable periods of 'lockdown' due to staffing shortages.

Information reviewed

Lockdown data

In response to a request from the Commission, CSD advised that there had been one operational lockdown in 2014; no operational lockdowns in 2015; six operational lockdowns in 2016 and a total of 125 operational lockdowns in 2017.

A table provided by CSD indicates that operational lockdowns began in February 2017 and increased until they were occurring on an almost daily basis from July until at least September 2017. Generally these involved a two hour lockdown of the whole centre during the middle of the day. The stated reason for most operational lockdowns was that the Centre was otherwise “unable to facilitate staff meal breaks and allow for appropriate emergency response”

CSD's response stated that:

“[T]he decision to undertake an operational lockdown can only be authorised by a member of senior management, is not made lightly, and is based on a daily assessment of the following factors: the number of young people in the centre; the cohort of young people in the centre including matters such as risk (classification); the presence of co-offenders, gender, age, victims and social dynamics; the number of operational posts required which takes into consideration the volume of daily activities and staff placement throughout the centre; the number of staff onsite; and the requirement for staff to have meal breaks during their 12 hour shifts.”

In explaining the dramatic increase in operational lockdowns in 2017, the response stated that:

“[T]he use of operational lockdowns commenced in February 2017, coinciding with a significant increase in the numbers of young people in custody. In late 2016 there were as low as four young people in custody and this increased during 2017 to as many as 20 young people in custody. This increase in young people in the Centre also coincided with staff vacancies; a small number of staff being stood down due to ongoing investigations and limited capacity in the casual pool of staff as a result of the inability to provide them with sufficient shifts when the numbers of young people in the Centre were low.”

“There has also been a higher than average unplanned staff absences during the course of 2017. Anecdotally, staff have indicated that the ongoing public scrutiny of Bimberi Youth Justice Centre and the impact of public reporting on their personal and professional reputations may be contributing to this.”

In addition to the high level of operational lockdowns, the response acknowledged that there may be occasions where young people are secured in their rooms for reasons other than for an operational lockdown, including where a young person is secured as part of an emergency response to a code being called.

The response noted that during the hours of 8:30am and 7:30pm, young people are generally released from their rooms and engaged in routine activities, appointments, and education and other programs. Where young people are secured in their rooms for reasons other than operational lockdowns, this information is recorded in the control room running log. Records are also kept in each Unit's observation register of when a

young person is secured in their room. However, it was not possible to obtain specific information regarding the number of times young people have been secured in their rooms as part of an emergency response to a code being called.

Experiences of young people

All of the young people interviewed at Bimberi in 2017 expressed concerns about the amount of time they spent in lockdown and the frequency of lockdowns, with a few young people describing lockdowns as “horrible”. They spoke about lockdowns affecting centre routines and their access to school. Young people who had previously been in Bimberi at other times noted a recent increase in lockdowns.

Young people spoke about lunch lockdowns of two hours to facilitate staff meal breaks and rolling lockdowns across the whole day due to staff shortages. They also noted lockdowns after codes are called and extended overnight lockdowns, from 7.30 at night to whenever they are let out in the morning, which is meant to be 8.30am but, we were told, is often later.

Young people confirmed that lunch time lockdowns occurred often during 2017 for a period of two hours. One young person told Commission staff that *“yesterday was the first day there wasn’t a lockdown – this [staff] line is good”*. The young people also discussed the impact of lunchtime lockdowns at Bimberi and often only getting to attend school for half a day. One young person said, in relation to the two hour lockdowns to enable staff to have a lunch break, that young people *“miss two classes over lunch, which is shit”*.

One young person commented that when lunchtime lockdowns occur, *“the routine is skewed for the day”*. Another young person told the Commission about the impact lockdowns have on their school day, stating that, during lockdowns, young people are placed in their rooms and just have access to TV. Young people can also ask for school work to do, but sometimes get told that workers cannot bring them their school work because there are not enough staff available to cover observations to allow another staff member to go collect the materials.

Another young person stated:

“I asked to get a pen or pencil because you need permission. I got my maths work, but no pencil.”

Most young people also commented on the length of time of the overnight lockdown, and said that it was too long. Young people said that they would sometimes get let out in the morning at 9.00am or 9.30am, but that more often they would be let out at 10am or later. One young person said, at the time of interview in late 2017, that one day recently the young people only had three hours out for the whole day. Others noted the impact on their mental health:

“Getting locked down at night is what does my head in.”

“14 hours is a long time to stay in one small room – too much time to think.”

Young people also spoke about lockdowns when codes get called, and expressed the view that the whole centre should not be locked down due to the actions of one person.

“Why should the whole centre get locked down for one kid refusing to go to their room or arguing, or younger kids getting into a fight?”

“A ‘code grey’ was called for a kid refusing to go to their room. The whole centre got locked down, and 20 workers come, including management. They call codes over the stupidest shit.”

One young person explained that the duration of such lockdowns varied depending on the nature of the incident and, particularly on whether force is used, but could be two to three hours in duration at times. Another young person suggested that young people should be let out as soon as the incident had been resolved rather than keeping them all in lockdown while staff completed paperwork:

"Why can't they do paperwork when we are sitting in the lounge room instead of in our rooms getting frustrated?"

One young person suggested creating a "response team" of three or four workers who are free to respond to codes to avoid the need for every unit to be locked down after a code is called.

Several young people spoke about understaffing and suggested that staff would sometimes call in sick due to morale issues rather than illness. One young person said that youth workers will say in the presence of young people that they "will call in sick as they're sick of this shit", and said that youth workers "call in sick often". Others raised similar issues:

"There were heaps of days when staff wouldn't rock up to work so we would need to be locked in as a result."

"They don't care about their job and just don't turn up. So us kids have to suffer because of that."

"I have heard youth workers say 'I'm going to call in sick tomorrow; I'm sick of this place'. And then they expect us to behave well!"

"Workers call in sick all the time, so kids get locked down. No one wants to work here."

"Lots of staff don't show up to work so kids get locked down as a result and we miss out on school."

When the Commission asked young people what they thought would improve Bimberi, most young people spoke about reducing or avoiding lockdowns and improving behaviour management:

"Longer time out during the day."

"You should get locked down to your unit only, not your room, so you can still socialise."

"9pm bedtime lockdown."

"Night time lockdown should be later than what it is now."

"A response unit – 3 workers who can just respond to codes so every unit doesn't have to get locked down."

"Not getting locked down every time a code is called."

"Not punishing kids for something someone else does."

"If I was in charge, I'd mediate more. Talk to all kids first. Sit in a room together, get everyone to agree, shake hands. So then everyone can get to eat in the kitchen at the same time."

"I would punish the people constantly misbehaving and causing codes individually instead of punishing everyone."

Experiences of staff

Nine of the twelve Bimberi employees interviewed spoke about lockdowns. Most noted that the increase in lockdowns was new, and that lockdowns had not been used often prior to 2017. They identified a lack of staff as the cause of the increase in lockdowns, with employees commenting that "operational lockdowns are due to staff being spread so thinly" and that "there are days where five, six, or seven people call in sick, so we need to have rolling lockdowns".

Bimberi staff acknowledged the impact lockdowns have on young people, stating that:

"Rolling lockdowns mean the kids are hard to work with. It's not their fault. But it's not really our fault either. We need more staff."

"Lockdowns are tough on kids, and a bit unfair on them. And there's a spike in incidents from the kids [as a result of being locked down]."

"Sometimes they can actually seem more settled in the afternoon after a lockdown – they've had down-time, time to sleep etc."

"Lockdowns are the one really unfortunate aspect of the centre. Young people can be put in their cells for most of the day due to no fault of their own."

One staff member noted that *"there's so much paperwork to do after an incident"* confirming that because all staff are required to respond to a code, young people remain locked down for longer while paperwork is being done.

Another staff member said that they believed that *"some of the youth workers request lockdowns for time out from the kids"*.

A staff member who had worked at an interstate juvenile justice centre noted that in that centre incidents occurring in one unit would not affect young people in other units, and only that one unit would be locked down to deal with the incident.

One employee said there should be a *"shorter overnight lockdown for young people"*.

Experiences of METC staff

METC staff confirmed the experience of young people that they lose at least two lessons on days when lockdowns occur. Teaching staff also stated that they lose momentum in engaging the young people at school, as they become frustrated after lockdowns.

Experiences of oversight bodies

The quarterly report of the Official Visitor for the third quarter of 2017 to the Minister noted *"Lockdowns continue to cause concern to the young people and the Official Visitors particularly when it affects their schooling and their access to planned activities."* This was again reiterated in the OV's quarterly report for the final quarter of 2017.

The Public Advocate's office noted that the increase in lockdowns was of significant concern to them, in particular because of the impact on young people, their access to education and other programs.

5.4 Conclusions and systemic issues

Staffing issues

Staffing levels

Most of the twelve Bimberi employees interviewed (including current and former youth workers and managers) reflected on the level of understaffing due to unplanned leave during 2017, as well as unfilled vacancies, and spoke about the need for more staff at Bimberi. One new employee interviewed in 2017 said that there is *"despair among current staff"* and that they *"need more workers"*.

Another staff member reflected that some youth workers may be finding they have to work harder due to an increase in young people in custody, and are therefore taking personal leave instead. They also suggested that an increase in unplanned leave may be in part a protest by employees against the actions taken by management against several employees in relation to the incident on 6 May 2016.

One former Bimberi employee reflected that some of the causes of understaffing were that people who were under-employed as casuals would then find other permanent jobs, as well as a lack of support and encouragement by management.

Staff suggestions for improvements at Bimberi included:

"More staff. Extra staff could go over to CSD when they're not required at Bimberi, and rotate round."

"We need a relief pool. And to keep them utilised as people take leave, use them for backfilling, and also for CSD Care and Protection."

In its written response of May 2017, CSD informed the Commission that there is no set staff to young person ratio at the Centre. It stated that Bimberi takes a risk-based approach to the allocation of staffing to young people in the Centre on any given day, which includes a participatory review process every morning, taking into account factors such as each young person's classification and behaviour.

CSD indicated that as at 11 September 2017 Bimberi had only two vacancies for permanent positions, both at Unit Manager level. However, it appears clear from the level of lockdowns due to staffing issues that there were insufficient staff during 2017, whether permanent, temporary, or casual, to cover planned and unplanned absences and to allow the Centre to function effectively.

The Royal Commission noted similar concerns in relation to the youth justice system in the Northern Territory and recommended that:

Youth detention centres be sufficiently staffed to ensure that: youth justice officers do not work extended shifts and are able to take annual leave, and detainees need not be locked down to enable youth justice officers to take necessary breaks during their shifts.⁶⁰

Measures have subsequently been taken by Bimberi management to improve the staffing situation and reduce lockdowns. In 2017 three recruitment rounds were undertaken, with 23 successful youth worker recruits commencing, and in the first half of 2018 a further two recruitment rounds resulted in 24 additional recruits. The Commission is satisfied that this concerted recruitment has rectified staffing levels and reduced lockdowns in the short term, however, it is not clear how this stability will be maintained over time to avoid further cycles of low staffing and lockdowns.

Supervision and support for staff

During the course of the review, concerns were raised with the Commission about the length of youth worker shifts, an absence of professional supervision, and a need for greater support for workers.

60 Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017), recommendation 20.8.

The issue of shift length and supervision was also considered in the 2011 report, where the Commission recommended that CSD review whether 12-hour shifts for youth workers at Bimberi best serve the interests of the residents and staff of the Centre.⁶¹ The Commission also recommended that CSD comply with its supervision policy and provide regular supervision sessions for frontline staff.⁶² The 2011 report also provided some suggested ways forward to improve staff safety and support at Bimberi, although it did not expressly state them as recommendations, including that:

*"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."*⁶³

Four Bimberi staff spoke about professional supervision, and said they couldn't remember the last time they had supervision sessions. One employee said that *"proper supervision should be mandatory"*, and another employee explained that:

"Supervision involves a manager speaking with youth workers about how work is going, but I haven't had supervision for over 18 months. Now there's no supervision, they don't talk to you, and no one knows what's going on with you."

Another employee said:

"There's supervision, but not really 'professional' supervision. It's difficult for team leaders to do supervision with staff members when the roster changes every three months. People rotate units so they don't get consistent supervision ... It's also difficult to manage underperformance [because supervisors change so often]."

Six employees spoke about 12 hour shifts, and said they would prefer 8 hour shifts instead because 12 hour shifts are *"tough"*, *"exhausting"*, and *"detrimental to people's abilities to do their job"*. A few employees noted that Bimberi used to have 8 hour shifts, but that changed in around 2009 to 12 hour shifts because there weren't enough staff to run 8 hour shift rosters. Staff said:

"More time at home is important. Plus, 12 hours is exhausting."

"People are getting tired and burnt out by 12 hour shifts."

"By the end of the shift, youth workers don't have the energy to pull kids up on things."

One staff member also noted that it could be hard having only a one hour break during a 12 hour shift, and not being able to eat outside of that one hour break because they are continually interacting with young people. They suggested there should be *"more meal breaks for youth workers"*.

Another employee said that 8 hour shifts would be better because it would allow handovers to occur in the morning and at night, and it would also mean that young people wouldn't need to be locked down for the night at 7.30pm but could instead stay up later, which would reduce the frustrations young people have expressed about being locked in for the night so early.

61 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011) 144 (recommendation 5.26).

62 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011) 133-4 (recommendation 5.20).

63 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011) 143.

One employee also commented on the impact of only having two shifts with respect to staff handovers:

"Handover is hard with split shifts. Kids are told one thing one day, and something else tomorrow. Casuals come in, and don't know what was promised to the kids yesterday."

One employee recommended Bimberi should:

"Change the rostering to 8 hour shifts. That will help with culture change, and it also means you can plan training on a regular basis."

When asked about any changes that would result in employees feeling more supported, two employees spoke about more flexibility in being able to swap shifts with other workers if they happen to be rostered on a day where they have family or other commitments. Employees mentioned that they used to be able to swap shifts, but that practice stopped some time ago.

They also indicated that not being able to swap shifts is one of the reasons why employees will call in sick – for example, if an employee has an outside appointment during the day, or has to pick up a child from school, they are not able to start their shift later, or finish earlier, so they have to take the whole day off.

Another employee mentioned that all youth workers get rotated every six months to a new area and that *"management don't negotiate with staff about their placements – they should negotiate with staff more so that they can work to their strengths"*.

When asked what would improve their working environment, one Bimberi employee said *"better communication between management, staff and young people"*, another said *"regular staff meetings"*, and another said *"train up good workers and give them whatever they need to thrive, including a work-life balance, and career progression"*.

CSD informed the Commission that CYPs has implemented an Individual Performance Agreement and Supervision Guide which requires that staff have regular supervision opportunities. They note that the nature of shift work, the structure of the young people's daily routine, along with current resourcing issues, has made it challenging for Bimberi to implement the Supervision Guide, however, formal supervision sessions have been implemented during night shift. CSD indicated that the capacity to further embed formal supervision processes should be strengthened with the addition of newly recruited staff.

Conclusion

The Commission found evidence to substantiate the allegation that young people at Bimberi were subject to frequent and unreasonable periods of 'lockdown' due to staffing shortages.

The dramatic increase in lockdowns at Bimberi during 2017 is of significant concern, and appears to have imposed unreasonable limitations on the human rights and rehabilitation opportunities of young people at Bimberi. The recorded figures of 125 lockdowns across the year is alarming, and this does not include lockdowns in response to a code being called, or of extended overnight lockdowns (where young people are held in their rooms beyond 8.30am), so that the actual prevalence of lockdowns, if accurately recorded, would be much higher.

It is concerning that it is not possible to readily assess the total periods of lockdown to which young people have been subject at Bimberi, as lockdowns for codes and extended overnight lockdowns are not recorded in a way that is able to be regularly reviewed and monitored. This incomplete recording of lockdowns limits scope

for oversight of, and accountability for, limitations on the human rights of young people.

It is clear that the staffing issues leading to ongoing lockdowns are cyclical and are often triggered by a sudden increase in numbers of young people at Bimberi. There is a remarkable similarity between the circumstances leading to increased lockdowns in 2017 and those discussed in the 2011 report, where increased numbers of young people in the Centre were not matched by an increase in staffing, and staff morale suffered, leading to a cycle of unplanned absences. In both instances management resorted to lockdowns to manage staffing issues which in turn escalated tensions between staff and young people.

While the situation has been temporarily addressed by increased staffing in the short term, the underlying and more complex issue is how to ensure that staffing levels are resourced and maintained at a level to ensure capacity to respond to fluctuating numbers of young people, given the lead time in recruiting and training new workers.

Supporting staff effectively, providing professional supervision and maintaining morale through challenging periods (including where the Centre is subject to increased media scrutiny) is also an ongoing issue for Bimberi management. It is important that shift length and supports available to staff are included in a review of staffing arrangements and development of a long term staffing strategy.

Recommendation 8:

That CSD review staffing arrangements at Bimberi and develop and fully resource a long term staffing strategy to ensure adequate staffing to meet the needs of fluctuating numbers of young people at Bimberi. This review should consider how staff can be better supported and should include consultation with staff regarding changes to shift length.

Recommendation 9:

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

Recommendation 9a:

That CSD review protocols relating to Bimberi practices in response to emergency and operational codes to ensure Bimberi can provide a flexible, scalable response that does not necessarily require a whole-of-Centre lockdown.

6. Strip Searches

This section reviews the practice of strip searching at Bimberi. It considers allegations of the use of the 'squat and cough' procedure⁶⁴ during strip searches, and allegations reported in the media that young people at Bimberi were being strip searched on a routine basis upon re-entering the centre, such as upon return from court or medical appointments.⁶⁵

6.1 Relevant Law and Policy

Human Rights

Personal searches, and in particular, intrusive searches such as strip searches, can seriously limit human rights of young people, including the right to privacy, the protections against being treated or punished in a cruel, inhuman or degrading way, the right to humane treatment when deprived of liberty, and the rights of children to the protection needed because of being children, without distinction or discrimination of any kind.

Strip searching is a potentially humiliating and degrading practice, and is likely to be re-traumatising for young people who have experienced physical or sexual abuse.⁶⁶ Conducting strip searches of young people on a routine basis is not consistent with international human rights law. Rule 52 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) provides that strip searches of detainees should be undertaken only if absolutely necessary and that administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches.⁶⁷ Even greater caution and care is required in relation to strip searching of young people in detention due to their greater vulnerability.

Legislation

The CYP Act classifies searches into ordinary searches, scanning searches, frisk searches, strip searches and body searches. Section 248 provides that a person conducting a search of any kind (including a strip search) under the CYP Act must ensure, as far as practicable, that the search is the least intrusive kind of search that is necessary and reasonable in the circumstances and is conducted in the least intrusive way that is necessary and reasonable in the circumstances.

Under the CYP Act, a strip search is defined as a search of the young detainee, or of anything in the young detainee's possession, requiring the young detainee to remove all of the young detainee's clothing; and an examination of the young detainee's body (but not the young detainee's body orifices or cavities); and the young detainee's clothing.⁶⁸

64 Stephen Trask, 'Children degraded by 'cough and squat' strip searches, Bimberi staff say', *Canberra Times* (Canberra), 31 March 2017.

65 Stephen Trask, 'Children degraded by 'cough and squat' strip searches, Bimberi staff say', *Canberra Times* (Canberra), 31 March 2017.

66 Australian Children's Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraints, disciplinary regimes and other specified practices*, April 2016 at 63. See also Juan E. Mendez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/HRC/28/68 (5 March 2015), para 86(f).

67 United Nations Office on Drugs and Crime, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* UN Doc E/CN.15/2015/L.6/Rev.1 (17 December 2015).

68 *Children and Young People Act 2008* (ACT), s 246.

The CYP Act sets different criteria for authorisation of strip searches conducted as part of an initial assessment on admission, and for strip searches conducted in other situations.

The director-general may direct a youth worker to conduct a strip search of a young person on admission where the director-general believes, on reasonable grounds, that the strip search is necessary for an initial assessment of the young person to be completed. The purpose of initial assessment is to identify any immediate physical or mental health needs or risk (including any risks of self-harm) and any safety or security needs or risks.⁶⁹

In deciding whether to direct a strip search on admission, and whether a person with daily or long-term care responsibility should be present at a strip search of a young person, the director-general must have regard to the young person's age, maturity, developmental capacity and any known history.⁷⁰

Outside the admission process, young people at Bimberi may only be strip searched where:

- a) the director-general suspects on reasonable grounds that the young person has something concealed on the young detainee that—
 - i) is a prohibited thing; or
 - ii) may be used by the young detainee in a way that may involve an offence, a behaviour breach, a risk to the personal safety of the young detainee or someone else, or a risk to the security at a detention place; and
- b) a scanning search, frisk search or ordinary search of the young detainee has failed to detect the thing.⁷¹

A youth worker conducting a strip search of a young person at Bimberi (whether on admission, or otherwise) must conduct the strip search in a way that provides reasonable privacy for the young person and is appropriate, having regard as far as practicable, to the young person's sexuality and any known impairment, condition or history. The strip search must be conducted as quickly as practicable, and in a private area or an area that provides reasonable privacy for the young person.⁷²

A strip search of a young person must be conducted by a youth worker of the same sex as the young person. It must also be conducted in the presence of one or more other youth workers, each of whom must be the same sex as the young person unless the director-general believes on reasonable grounds that: there is an imminent and serious threat to the personal safety of the young person; and compliance with this requirement would exacerbate the threat.⁷³

69 *Children and Young People Act 2008 (ACT)*, s 254.

70 *Children and Young People Act 2008 (ACT)*, s 254(4).

71 *Children and Young People Act 2008 (ACT)*, s 258(1).

72 *Children and Young People Act 2008 (ACT)*, s 261.

73 *Children and Young People Act 2008 (ACT)*, s 260.

When a strip search is conducted at Bimberi, the director-general must ensure, as far as practicable, that a person who has daily care responsibility, or long-term care responsibility for the young detainee (if the young person is under 18 years old) or the young person's nominated person (if the young person is 18 years old or older) is 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.⁷⁴

Section 263 of the CYP Act provides that strip searches must not involve the removal from the young person of more clothes at any time than is necessary and reasonable for the search, nor the upper and lower parts of the young person's body being uncovered at the same time.

Policy

The Policy that applied during the review period was the *Children and Young People (Search and Seizure) Policy and Procedures 2015 (No 1)*.⁷⁵ This was recently repealed by the *Children and Young People (Search and Seizure) Policy and Procedures 2018 (No 1)*,⁷⁶ however, the substantive provisions regarding strip searching are unchanged. The Policy provides some guidance regarding the application of criteria for strip searching on admission and factors that may be relevant to consider. The Policy also sets out rules for all strip searches which include that:

A youth worker conducting a strip search must inform the young person, prior to the commencement of the search, whether the young person will be required to remove clothing, how the clothing is to be removed and why this is necessary. The search must not involve the removal of more clothes than is necessary and reasonable for the search at any time, including both the upper and lower parts of the young person's body being uncovered at the same time.⁷⁷

and

The Searching Officer must ensure that there is no more visual inspection of a young person's body than is reasonable and necessary to conduct the search and must not visually inspect the genital area, buttocks or female young person's breasts unless the officer considers it necessary to do so for the search.⁷⁸

The Policy does not otherwise provide guidance as to what may or may not be asked of a young person during a strip search and does not specifically prohibit the use of the 'squat and cough' technique.

⁷⁴ *Children and Young People Act 2008 (ACT)*, s 251.

⁷⁵ NI2015-397

⁷⁶ NI2018-448

⁷⁷ *Children and Young People (Search and Seizure) Policy and Procedures 2015 (No 1)*, s 6.37

⁷⁸ *Children and Young People (Search and Seizure) Policy and Procedures 2015 (No 1)*, s 6.40

6.2 Relevant 2011 report recommendations

The Commission did not report evidence of the use of the squat and cough technique in strip searches during the first review of Bimberi, and it appears that the practice may not have been used at that time, as it was not raised as a concern. The use of the 'squat and cough' procedure had been highlighted as a concern in an earlier report of the ACT Human Rights Office in relation Quamby Youth Justice Centre.⁷⁹ In that report, the Human Rights and Discrimination Commissioner stated in relation to 'squat and cough' procedure that:

The lack of a lawful basis on which to order such searches and the lack of adequate justification in individual cases renders the routine use of such orders, even where a security risk might be indicated (e.g., visits etc), inconsistent with the prohibition on inhuman or degrading treatment under s.10(1)(b), s. 19(1) (humane treatment), and the prohibition on the unlawful or arbitrary interference with privacy under s.12 of the HR Act.

In the 2011 report, the Commission made a number of recommendations about strip searches which are relevant to the allegations which have been made. It recommended that:

- > CSD direct Bimberi 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 and
 - Give proper consideration to whether a support person should be present or notified prior to a strip search;
- > CSD consider whether the best practice search method described in the Carlile Report⁸⁰ be adopted rather than the current strip searching method at Bimberi; and
- > CSD require staff to wait with a young person while a support person is called for a strip search (that is, where a support person is required or otherwise arranged in accordance with subsections 254(2), 254(3) or 255(2) of the CYP Act).

The Commission also recommended the removal of the ground of 'good order' as a justification for strip searching in the CYP Act, which was implemented through an amendment to the Act in 2012.⁸¹

79 ACT Human Rights Office, *Human Rights Audit of Quamby Youth Detention Centre*, 30 June 2005 at 48.

80 The Howard League for Penal Reform, *'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'* (Report of the Carlile Inquiry), 2006 – <https://howardleague.org/wp-content/uploads/2016/03/Carlile-Report-pdf.pdf>
This report noted that some secure training centres provided dressing gowns for young people to wear during strip searches which was seen to be more respectful of the dignity and privacy of young people.

81 *Children and Young People Amendment Bill 2012* (No 2).

6.3 Allegations and concerns

It was alleged that young people at Bimberi were required to 'squat and cough' during strip searches conducted in the review period.

It was also alleged that strip searches were occurring on a routine basis when young people returned to Bimberi after court or other appointments.

Information reviewed

CSD responses

In 2017, Commission staff met with the then senior manager of Bimberi and discussed allegations that Bimberi staff were asking young people to 'squat and cough' during strip searches. The senior manager confirmed that this procedure, although not specifically authorised in the Bimberi policies, was in fact happening in practice. After further discussion between the Commission and CSD, the senior manager of Bimberi issued an 'Instruction on Interim Strip Search Procedures' of 21 April 2017 which directed staff not to ask a young person to squat or part buttocks.

In its written response of May 2017, CSD stated that Bimberi staff do not, as a matter of routine, use strip searching to search young people upon induction or their return to the centre and that strip searching is used only after scanning, ordinary searches and frisk searches have been undertaken first. CSD also stated that it has clarified with all staff that 'squat and cough' is not authorised by the strip search policy or procedure at Bimberi. It further stated that young people strip searched at Bimberi are only ever required to remove the clothing covering the upper or lower half of their body at any given time. In relation to the privacy concerns raised in relation to CCTV filming of searches, CSD responded that the privacy of a young person being strip searched is protected by a privacy wall and only the observing staff member is monitored by a camera; the young person is not recorded.

CSD advised in April 2018, in response to additional questions from the Commission, that specific sessions on conducting strip searches have been included in the 2018 training calendar. These sessions reflect the procedures for strip searching as set out in the Senior Manager's direction issued in April 2017. CSD stated it is not aware of any young person who has been required to be fully naked during strip search procedures nor has this been raised as a concern by staff or young people. CSD reiterated that the procedures are clear about clothing remaining on half of the young person's body at all times, and that an observer is present for all strip searches to ensure the staff member undertaking the search is following correct procedure.

Experiences of young people

Fifteen of the sixteen young people interviewed spoke about searches, including strip searches, frisk or 'pat down' searches, and searches of their rooms. Six young people said that they had not been strip searched at all while at Bimberi. Nine young people reported being strip searched. Some said that they were not bothered by the procedure, but others reported feeling uncomfortable and degraded.

The use of the 'squat and cough' procedure was confirmed by three young people who had been at Bimberi during 2015 and 2016. Each reported that they had been subject to the 'squat and cough' procedure during strip searching.

Another young person who was at Bimberi in 2016 said they were strip searched at induction and at least once when they returned from court. The young person said:

"I was fully naked and they [youth workers] wouldn't let me cover half of my body. I had to throw my clothes out to them. It was very degrading."

The accounts of young people generally confirmed that the approach to strip searching had changed in 2017, with strip searching being used less frequently, and that they were no longer being asked to squat and cough.

A young person who was at Bimberi during 2017 said that they had been strip searched once (not on admission), but did not have to squat and cough. This young person also said that *"the only time they strip search is for a decent reason"* and that the only time they heard about a strip search being conducted was when a young person had *"smokes and a lighter but they didn't find it coz [the young person] flushed it down the toilet."*

Another young person noted that during previous periods at Bimberi they had been strip searched every time they attended court, but this was no longer occurring. They also confirmed that young people are no longer asked to squat and cough, and can cover up half of their body during strip searches.

Two young people spoke about refusing strip searches. One young person said they refused to be strip searched when they arrived at Bimberi, but that the youth workers *"said they would use force, so I had to do it"*. Another young person said *"the last time I refused a strip search was pretty horrible. They [the youth workers] just waited it out."*

Register material

The Commission inspected the strip search registers for 2014-2017 (inclusive), and looked in detail at reports for three-month sample periods from January to March in each calendar year.

From 1 January to 31 March 2014, there were 29 strip searches, whereas 42 strip searches were conducted in same three month period in 2015. In 2016 for the same period there were 21 strip searches and the number dropped to 11 for the same period in 2017. These figures are indicative of an overall decrease in strip searches of young people at Bimberi over the review period, but are also influenced by fluctuating numbers of young people at the Centre, so need to be treated with some caution.

In terms of yearly figures, the trend is clearer, with a total of 128 strip searches conducted in 2014, compared with a total of 45 strip searches recorded in 2017.

The Commission looked at three sample periods in more detail to examine the reasons given for searches and the level of detail in the register documentation.

Summary of searches from January-March 2014 (inclusive)

Over the period of 1 January 2014 - 31 March 2014, 29 strip searches were recorded in the Bimberi strip search register. The register indicates that 11 were conducted on admission and 10 were conducted on a young person's return from court. Eight strip searches were for other reasons.

Of the 11 strip searches conducted on admission, the register recorded that two were conducted solely on the basis that the young person was a new inductee, and three were conducted on the basis of a "suspicion of contraband," without any details being recorded to support the required belief, on reasonable grounds, that the strip search was necessary under s 160 of the CYP Act. In relation to the remaining six, some explanation of the

basis for the suspicion formed was recorded (examples include the young person having a history of bringing contraband into or possessing contraband in Bimberi or a history of self-harm).

In relation the 10 strip searches performed upon return from court, in two cases it was recorded that there was a “suspicion of contraband” but there were no details of the basis upon which such suspicion was formed. For the remaining eight, some brief details of the basis for the suspicion were provided and related to previous incidents of self-harm or previous possession of contraband.

In relation to the eight strip searches conducted in circumstances other than upon a young person’s admission or return from court, for two the suspicion was simply stated without any record of the reasons for or evidentiary basis of the suspicion; for three the reasons recorded past incidents or a history (of self-harm or possessing contraband) alone; and for three, the reasons provided were more specific and provided a stronger basis for the requisite suspicion under the CYP Act.

Prohibited items were found by Bimberi staff as a result of only two of the 29 strip searches recorded over this three month period in 2014, and in one of these two matters the item was only a piece of personal clothing rather than the prohibited item the young person was suspected of possessing. In a third case, a small plastic clip was found, but it unclear from the records as to whether this was a prohibited item.

Summary of searches from January-March 2017 (inclusive)

Over the period of 1 January 2014-31 March 2017, 11 strip searches were recorded in the Bimberi strip search register. The register indicates that eight were conducted on admission; one was conducted on a young person’s return from local leave; and one appeared to have been conducted in circumstances other than upon admission or return from court. It was unclear from the documentation for a further recorded strip search whether or not the search was conducted on admission.

In relation to the eight strip searches conducted on admission, the information recorded in the register indicated that five were conducted due to a history of self-harm, one was conducted due to the young person having a history of concealing items on their body, one was conducted due to the young person being “highly agitated” and the police having reported that the young person did significant damage to a padded police cell; and for one search, no reasons or factual circumstances justifying the search were recorded. In relation to the search where it is unclear from the documentation whether or not it was conducted on admission, the reason recorded was that the young person had a history of substance abuse.

This early 2017 data suggests that strip searches were no longer being conducted as a matter of routine on admission, which is commendable. However, the documentation for the three strip searches which were not conducted on admission still indicate deficits in record-keeping (i.e. inadequate recording of reasoning to satisfy the relevant legal threshold for the search). There was no reason given for the strip search conducted upon a young person’s return from local leave other than that the young person had been on leave. For another search, the only reason recorded was that the young person was “at risk”.

No contraband was found in any of 11 searches conducted during this period.

Summary of searches from October-December 2017 (inclusive)

The strip search register recorded a total of ten searches for the period October-December 2017 inclusive. Only two were conducted on admission, and none of the searches were conducted on a young person’s return from court.

In relation to the strip searches conducted upon admission, the recorded reasons indicate that one search was conducted because it was the young person's first admission to Bimberi and the young person was unknown to the centre and to staff; and the other search was conducted because the young person's offence in the community involved the possession of illegal drugs.

For the remaining eight strip searches, in five cases the recorded reason for the search recorded was "suspicion of contraband" and there were no details of the basis for the suspicion. In one case, it was noted that the young person involved handed over a sharpened toothbrush before the search began. No prohibited items were found in the course of the other four searches.

The other three searches were conducted in response to an incident where one young person lit a fire in their cabin and slid paper that was still alight into the hallway. A range of searches were conducted in relation to the young person responsible for the fire (an ordinary search, wand, frisk, strip and cabin search), as well as one young person in an adjoining cabin and another young person in the same wing. No explanation was provided as to the basis for the searches of the two other young people. During the searches of the young person responsible for the fire, the side of a matchbox (flint), a rock, and burnt paper/ash were found.

Experiences of Staff

Two former staff members who had commenced work at Bimberi prior to the review period said that they were explicitly taught during their induction training to ask young people to 'squat and cough' as part of the strip search process. One stated that:

"Squat and cough was horrible. We did them as quickly and respectfully as possible. We never found anything. ... I didn't ever see anything not done respectfully, but it was still degrading for the young person."

Experiences of oversight bodies

One of the oversight bodies described their review process of the search registers and noted that in the early part of the review period searches appeared to have been routinely conducted following a young person's return from court. Such searches appear to no longer be conducted in such a routine manner. They also noted that over 2017 the use of strip searches reduced significantly.

6.4 Conclusions

The strip search register and accounts of young people and oversight agencies confirm that there was a significant decrease in the use of strip searching at Bimberi over the review period. It is clear from the register that in 2017 strip searching was no longer being used on a routine basis on admission, or where a young person left the Centre temporarily to attend court or other appointments.

The move away from routine strip-searching of young people at Bimberi, even on admission, is a welcome and commendable development which is more consistent with the human rights of young people. It does not appear that this change in practice has had any negative impact on safety and security at Bimberi.

While it appears that strip searches are now being conducted only where there is justification and reasonable suspicion in each individual case, the recording of reasons for strip searches remains insufficiently detailed. To allow proper oversight of this intrusive form of searching, the reasons for conducting strip searches must be clearly recorded in the register, and must meet the statutory threshold for strip searches.

It is concerning that the intrusive and degrading 'squat and cough' strip search procedure was used during the review period, despite the concerns raised about this practice in the Quamby Report, and the unjustifiable limitations this procedure imposes on the human rights of young people. There is no explicit authorisation for this procedure in the CYP Act, or the Search and Seizure Policy and Procedure, and it not consistent with s 248 of the Act which provides that a person conducting a search of any kind (including a strip search) must ensure, as far as practicable, that the search is conducted in the least intrusive way that is necessary and reasonable in the circumstances.

However, the Commission is pleased with the immediate response once the issue was brought to the attention of CSD and Bimberi management. On 21 April 2017 Bimberi management issued an 'Instruction on Interim Strip Search Procedures' directing staff to not direct young people to 'squat or part buttocks' during strip during searches.

To ensure that this degrading practice does not re-emerge, it would be helpful for the prohibition on the 'squat and cough' procedure to be specifically included in the Search and Seizure Policy and Procedure (rather than being contained in a separate instruction), and that staff training reinforce this prohibition.

Recommendation 10:

That CSD amend the Search and Seizure Policy and Procedure to specifically prohibit the use of 'squat and cough' procedures during strip searching.

Recommendation 11:

That Bimberi management ensures that training for staff at Bimberi reinforces the prohibition against the use of 'squat and cough' procedures during strip searching; and provide greater guidance and support to staff regarding the record keeping requirements for strip searching, including the need for detailed reasons for each search.

7. Coree Unit

This section examines allegations made about the operation and conditions within the Coree Unit, particularly relating to mixing of different categories of young people and the privacy of young people.

7.1 Background

Coree is used for induction of young people into the Centre and for segregation or management of young people who present safety risks to others. The two wings of the Coree Unit are called the 'holding side' and the 'residential side'. Admissions procedures are conducted in the holding side. When inductions occur late at night, and where it is otherwise considered necessary, newly inducted young people may stay overnight or for a longer period in a room in the holding side of Coree.

Both wings of Coree have individual cabins. The residential side has access to a small courtyard, while there is no courtyard or access to the residential side courtyard on the holding side. The cabins on the residential side have their own bathrooms, while the rooms on the holding side have an external, communal bathroom.

Bimberi management informed the Commission that the current practice is for a security classification to be conducted on the first business day after the young person arrives at the Centre. Most young people are then moved to a room in the residential side of Coree for a period of time after admission. The period is influenced by factors such as the young person's circumstances and the demographics and dynamics of young people in the Centre at the time.

The Coree Unit has a higher level of supervision than the other units. Staff observations of young people in Coree are more regular than in the other units (approximately every 5-15 minutes), and all cabins in the unit (the four rooms on the residential side and the three rooms on the holding side) have cameras.⁸² The cabins in the holding side of Coree are also commonly used to accommodate young people in segregation.

7.2 Relevant Law and Policy

Human Rights

Under the HR Act, young people on remand are entitled to segregation of accused from convicted persons, except in exceptional circumstances. Placement decisions may also engage rights to equality and to humane treatment while in detention.

The *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty* (the Havana Rules) require that 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 young people 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.⁸³

These Rules also provide that in all detention facilities young people should be separated from adults, unless

82 Bimberi management informed the Commission that the other two operational units (Majura and Namadgi) have one room with a camera per wing; that is, Namadgi has three rooms with cameras and Majura has two rooms with cameras.

83 *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, GA Res 45/113, 45th sess, 68th plenary meeting, UN Doc A/RES/45/113 (adopted 14 December 1991), Rule 28.

they are members of the same family. Under controlled conditions, young people may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the young people concerned.⁸⁴

Young people also have rights under the HR Act not to have their privacy unlawfully or arbitrarily interfered with;⁸⁵ and not to be treated or punished in a cruel, inhuman or degrading way.⁸⁶ Young women also have the right to equality, which includes protections against indirect discrimination on the basis of their gender.⁸⁷ The Havana Rules provide that “sanitary installations should be so located and of a sufficient standard to enable every juvenile to comply, as required, with their physical needs in privacy and in a clean and decent manner.”⁸⁸

Legislation

The CYP Act imposes requirements on the director-general and her or his delegates with respect to the placement of young people at Bimberi. The obligations are to ensure that: young remandees are separated from other young detainees; males are separated from females; and young people under 18 years old are not placed with adults.⁸⁹ However, these requirements do not apply if the director-general believes on reasonable grounds that another placement will be in the best interests of all affected young people.⁹⁰

The CYP Act also requires the director-general to consider a number of other factors when deciding where to place a young detainee, including:

- > the young person’s needs and special requirements because of their age, sex, emotional or psychological state, physical health, cultural background, vulnerability or any other relevant matter;
- > if it is proposed that a young person be isolated, whether the isolation is in the best interests of the young person;
- > the desirability of the care provided to a young detainee 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.⁹¹

Further, when deciding where to place a young detainee, the director-general may also consider any security classification given to the young person.⁹²

84 Ibid Rule 29.

85 *Human Rights Act 2004* (ACT) s 12.

86 Ibid s 10

87 *Human Rights Act 2004* (ACT) s 8.

88 *United Nations Rules for the Protection of Juveniles Deprived of Their Liberty*, GA Res 45/113, 45th sess, 68th plenary meeting, UN Doc A/RES/45/113 (adopted 14 December 1991), Rule 34.

89 *Children and Young People Act 2008* (ACT) s 166(2).

90 *Children and Young People Act 2008* (ACT) s 166(3).

91 *Children and Young People Act 2008* (ACT) s 166(4).

92 *Children and Young People Act 2008* (ACT) s 166(5).

7.3 Relevant 2011 report recommendations

In its 2011 report, the Commission noted that:

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.

The Commission recommended that Bimberi “segregate young people in a residential unit other than Coree where practicable ... and that young people who are not on a segregation direction be managed within their residential unit as far as practicable.”⁹³

7.4 Allegations and Concerns

Concerns were raised about mixing of different categories of young people in the Coree Unit, including that young people aged under 18 are sometimes accommodated in this Unit with young adults aged 18 and over and that boys are sometimes accommodated with girls. Concerns were also raised about the impact of mixing young people who are being inducted into Bimberi with other young people who are held in Coree on segregation or due to risks associated with their behaviour.

Concerns were also raised regarding the interference with privacy of young people in Coree Unit due to CCTV cameras in their cabins. It was alleged that cameras had a view of young people using toilets and showers which affected their privacy and dignity and had a particular negative impact on young women during menstruation.

Information reviewed

The Commission conducted an inspection of the Coree Unit and reviewed CCTV footage from the Unit. We spoke with management, staff and young people about their experiences in the Unit and reviewed records including the register of complaints.

93 Alasdair Roy and Dr Helen Watchirs OAM et al, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission* (Report, ACT Human Rights Commission, 28 July 2011) 340 (recommendation 14.27).

Investigation of Specific Allegations

Allegation: that the dual use of the Coree Unit involves inappropriate mixing of different groups of detainees and that vulnerable young people on admission are mixed with young people on segregation or for high risk.

CSD response

CSD advised that the Coree Unit is “used on admission and when a young person requires additional supervision because of a risk of safety to themselves or other young people.” CSD stated that the Coree Unit was designed to be both an induction and residential unit. The response noted that young people in Bimberi are generally housed in like-gender and age groupings. However due to the generally low number of young adults at Bimberi, there are times when young adults will be housed with older (16 or 17 year old) young people to avoid isolation.

CSD reported that young men and young women are generally placed in separate wings of units at Bimberi and brought together for education, programs, and socialisation during the day. Coree Unit is an exception to this practice as young women and young men may be accommodated in separate rooms within the same wing. It was noted that young people in Coree have a high level of supervision and monitoring for safety and security reasons. CSD indicated that placement decisions take account of classification ratings, gender and age rather than simply gender.

Experiences of young people

Several young people who spoke with the Commission raised concerns about their experiences at Coree on admission to Bimberi.

One young person said, during the time they were in Coree after their admission, there was a young person in there who was “kicking the door and not behaving” so “I got moved out [of Coree] to get me away from that kid.”

Another young person, who was in Coree for five days when they first arrived, told the Commission that they were informed by Bimberi staff that Coree would be different to the rest of Bimberi. This young person told the Commission that youth workers “made the point that it would be segregated from the rest of the facility and it would not be a fun time.”

Another young person said:

“I wasn’t in a good mental state when I arrived. Being stuck in Coree is bad. There is nothing welcoming about it. Makes it seem like Bimberi won’t be a good space..I’ve got ADD. It’s hard for kids like me to sit around in Coree.”

Other young people talked to the Commission about their experiences being accommodated in Coree for segregation or behavioural reasons:

“It makes you mentally insane, you don’t get nothing ... no school, no TV until 3pm, no other kids to talk to, only talk to the youth worker, go to the gym once a day for an hour, can’t go to the oval, no kitchen for meals”.

“You get sent to Coree for getting into a fight or if you’ve been bad. They tell you, you won’t be in there for long, but they don’t tell you when you’re going to get out”.

“I was kept in Coree for 3-4 weeks, but I wasn’t told why, just that I’m high risk. I kept on asking to get out. I didn’t do anything wrong to get there. But they wouldn’t move me. I hate Coree. There’s only a tiny courtyard to walk around in.”

“There should be easier goals to meet to get out of Coree”.

One young woman commented that “it was awkward mixing with boys in Coree” and told us that she would often worry, when showering, that the boys could open and look through the observation window on the door. However, she also noted that she was the only girl there at the time and would have felt isolated if they had separated her from the boys altogether. She said that Bimberi workers were “always there”, monitoring interactions between young people in Coree.

Experiences of staff

Some staff interviewed by the Commission expressed concerns about the mixing between young people there for induction and those there for other reasons:

“There should be separation between new kids in Coree and kids in Coree for behaviour management purposes”.

“Coree is used for induction but also used as a segregation unit. That can make it hard – you have bad kids in there with a 13 year old new induction.

“Mixing in Coree is a big issue, you have girls and boys mixing and young and older kids.”

“Inductees and other young people in Coree interacted a lot. Different ages and sexes. I always thought this was bad practice – mixing new people with the most seasoned young people who had been misbehaving. The new arrivals would be in Coree residential for at least a few days. They would go to court and get their medicals too. I saw intimidation and young people wording up new inductees on tricks, which put staff on the back foot.”

Conclusion

The Commission considers that there is evidence to substantiate allegations regarding the inappropriate mixing of different categories of young people in the Coree Unit, including the mixing of young men and young women and young people on remand and sentenced young people. It does not appear that these placements are in the best interests of all young people affected. The Commission is concerned about vulnerable new admissions being placed in Coree with other young people who are there on segregation or to manage violent behaviour.

Allegation: That the camera placement and view of areas in Coree Unit unreasonably limits the privacy of young people, and has a particular negative impact on young women.

CSD Response

In initial conversations with Bimberi management, the Commission was informed that the cameras in the rooms in the Coree Unit did not capture the toilet and bathroom areas. However, in subsequent conversations, the Commission was told that Bimberi staff will try to protect young peoples’ privacy when they are staying in rooms with cameras by temporarily looking away from the screen in the control room when young people tell them they are about to use the toilet.

Review of CCTV footage from Coree rooms

The Commission viewed the CCTV footage of several incidents which occurred in the Coree Unit. From viewing this footage, the Commission ascertained that while the cameras in the Coree rooms did not capture the shower area, they captured part of the toilet, and that the camera view would limit the privacy of any young person using those facilities.

Experiences of staff

A former staff member reported that:

“Young girls feel uncomfortable as the camera covers the toilet area. Uncomfortable going to the toilet, inserting tampons etc while being watched. Some young people would cover camera when going to toilet and some staff would turn a blind eye, but others wouldn’t.”

Internal complaints register

There was one complaint on the internal complaints register for the review period, made in early 2016, which dealt with privacy concerns about Coree. The young person complainant stated that they were in a room with a camera and that it made them uncomfortable. The young person stated that they were now on 30 minute observations and so considered that they did not need a camera. The young person also expressed that they were uncomfortable going to the toilet in the room. It was recorded that the complaint was withdrawn by the complainant, so no further action was taken by Bimberi management.

Conclusion

The Commission considers that there is evidence to substantiate the allegation that the camera placements in the Coree Unit unreasonably limits the privacy of young people using toilet facilities in their cabins, and this may cause particular concerns for young women who are menstruating.

7.5 Conclusions and systemic issues

The same concerns identified in the 2011 report regarding the dual use of the Coree Unit continued to be evident during the review period. The mixing of young people being inducted into the Centre and young people being accommodated at Coree for segregation, or due to their risk profile, appears to have a negative impact on young people entering the Centre. This is of particular concern for those young people at Bimberi for the first time, who are likely to be anxious and vulnerable.

While the dual use of Coree may be a practical approach to maximise limited staffing resources, it is not consistent with human rights principles regarding separation of remandees and sentenced detainees, adults and young people and young men and young women. It is not clear that these placement decisions can be justified under s 166 of the CYP Act as it does not appear that there are reasonable grounds for a belief that such a placement is in the best interests of all affected young people.

It would clearly be preferable for different Units to be used to manage induction and segregation processes. If this is not viable, more consideration is required to minimise the impact of this arrangement on vulnerable young people being inducted into the Centre and to ensure compliance with the CYP Act. Wherever possible young people being inducted into the Centre should be moved out of Coree as soon as initial admission procedures are completed.

Recommendation 12:

That Bimberi management review the dual use of the Coree Unit for induction and segregation and determine whether another Unit could be used for segregation purposes to reduce inappropriate mixing of young people. If this is not possible, measures should be implemented to reduce the negative impact of the dual use of Coree on vulnerable young inductees.

While surveillance may be necessary in some cabins to ensure safety of young people who are at risk of self-harm, this should not require young people to be filmed while using toilet facilities. Requiring young people to tell staff when they are using the toilet so that staff can look away is undignified and provides them with no certainty that their privacy is protected. Less restrictive solutions to this issue (for example translucent privacy screens) should be considered in Coree (and any other cabins which have CCTV cameras).

We have recommended (in recommendation 1) that privacy issues, which would include the placement of cameras in cabins, should be reviewed as part of the broader review of CCTV cameras in Bimberi to ensure that privacy and dignity of young people is protected as far as possible while protecting safety.

8. Other issues

During the course of the Commission's investigation of specific allegations, a range of additional issues and concerns were raised by staff and young people. While it was not possible to conduct a detailed review of these concerns, the Commission identified some key issues that require further consideration by the ACT Government, CSD and Bimberi management.

8.1 Health services

Concerns were raised with the Commission in relation to primary health care, forensic mental health care, and the administration of medications. These concerns included young people not always receiving daily medication at the proper time or at all, young people missing scheduled appointments with specialists outside Bimberi due to staffing issues, and limited opportunity for an engaged, ongoing relationship between health staff and young people during their time at Bimberi.

In its 2011 report, the Commission recommended that ACT Health and CSD "consider nurses being able to see young people in their units where this is in the best interests of the young people". This had not yet been implemented in 2017 when the Commission first spoke with Bimberi staff. The Commission understands this was trialled in 2018.

The Commission expressed concern in its 2011 report about prescription medications being administered to young people by youth workers rather than by ACT Health staff at Bimberi and recommended that ACT Health consider in the medium to long-term the need to increase nurse staffing at Bimberi and that, as a short-term measure, ACT Health and CSD ensure that only youth workers who are properly trained by Justice Health distribute medication.

The Commission understands youth workers continue to administer medication to young people when nursing staff are not on site. While outside the formal review period the Commission was informed that from November 2017 to November 2018 there were 15 "medication incidents" recorded, which included young people not receiving the evening dose of their medication and medication administration procedures not being followed by Bimberi staff leading to medication administration errors.

During the review the Commission interviewed health staff involved in service delivery for Bimberi. Concerns were identified that Bimberi's processes for delivering young people to Health staff for medication and appointments could be improved to better utilise clinical staff availability. We understand it has been suggested that given the small number of young people in Bimberi nursing staff could do rounds of the units each day to visit young people and administer medication in the units, or, as an alternative, move multiple young people to the health building at one time. This may require additional clinical resource to be available at Bimberi given the fluctuating numbers of young people.

We were advised that the healthcare model at Bimberi is generally an episodic, one-off health care model and that there is little opportunity for Justice Health to develop ongoing health care relationships with the young people and to deliver preventative health services such as health education and literacy.

The Commission considers that all youth workers should undergo training delivered by the Health Directorate on administering medication, including undertaking annual refresher training. There may be benefit in nursing staff accompanying Bimberi staff on a more regular basis to ensure medication administration is undertaken correctly.

Recommendation 13:

The review currently being undertaken by CSD and Canberra Health Services of the practices of administration of medication at Bimberi to ensure young people safely receive their medication as prescribed, in an environment that is safe and protects each young person's personal health information, be provided to the Bimberi Oversight Agencies Meeting for endorsement.

8.2 Drug and alcohol and other rehabilitation services

During the course of the investigation, concerns were raised with the Commission from multiple sources that young people do not have adequate access to drug and alcohol rehabilitation programs and services at Bimberi. Concerns were also raised about the adequacy of programs to address other underlying psychological and behavioural issues which contribute to the young peoples' offending behaviours.

Drug and alcohol services

Thirteen young people who were interviewed by the Commission spoke about drug and alcohol services. Ten of those young people stated that they were not aware of any drug and alcohol counselling or programs available to them at Bimberi although they were aware of some external services.

Three young people mentioned that someone from the Ted Noffs Foundation would come out once a fortnight. One of those young people said that the Ted Noffs Foundation workers *"check how you are going"*. Another said that the Ted Noffs workers talk to young people about programs the young people can do with Ted Noffs in the community once they have been released from Bimberi. Another young person noted that *"there's always people coming in from Winnunga - they ask if you want to do drug and alcohol programs"*.

Several young people who had now left Bimberi commented on the value and benefits they believe they would have received from engaging in a drug and alcohol program during their time at Bimberi. One young person said *"I was a bad user when I went into Bimberi and I would have really benefitted from drug and alcohol counselling"*. A different young person said that they had *"learnt more about drugs and alcohol at the AMC"* than while they were at Bimberi, and that they thought that staff at the AMC were more proactive in organising help and support for drug and alcohol issues.

Two young people who were at the AMC at the time of interviewing expressed the view that Bimberi should have a *"rehab program in-house, like the AMC has"*. One of those young people said that *"rehab would have been the best for me... [Bimberi] didn't teach anything to stop me doing what was wrong"*. This young person also said the relative who picked them up when they were released from Bimberi *"got me drunk in the first ten minutes of being out"*.

Parents of young people at Bimberi also spoke about their perception of a lack of drug and alcohol services at Bimberi. One parent stated that: *"I did ask about [drug and alcohol] services available but I wasn't given a clear answer"*.

Another parent stated:

"What rehabilitation? You can't get rehabilitated if you're getting locked down all the time ... what are they doing about [my child's] drug use? Smoking? They don't do anything about it... They should provide serious

rehabilitation, especially for people addicted to drugs. You can sow some really good seeds in three months."

Bimberi management noted that many young people admitted into Bimberi are affected by the drug 'ice' and that the Centre has to manage their withdrawal. Those interviewed estimated that up to 90% of young people at Bimberi have had involvement with drugs in the community. It was noted that there are gaps in rehabilitation and other drug and alcohol services for young people in the community and that this contributes to young people coming to Bimberi.

CSD advised the Commission that:

Most of the young people entering Bimberi who require drug and alcohol services are already clients of Child and Youth Protection Services (CYPS) and have often already been referred to drug and alcohol services prior to entering the Centre. In keeping with the principles of single case management and throughcare, the young people continue with the services they were working with in the community.

CSD further stated that if young people do not already have a relationship with a drug and alcohol service, their case manager, in consultation with their care team, will refer the young person to the most appropriate service provider and Bimberi will facilitate appointments. CSD advised that the criteria for referral to drug and alcohol services is self-disclosure, the fact the young person has committed offences under the influence of substances, or the results of drug-testing conducted in the community.

CSD also stated that the ACT Health Youth Drug and Alcohol Program (YDAP) and the Ted Noffs Foundation have fortnightly sessions with the young people in Bimberi, and that Winnunga and Gudan Gulwan also provide culturally-specific drug and alcohol programs as required, based on their assessment of a young person's needs.

ACT Health advised that YDAP provides young people at Bimberi short-term counselling focused on specific problems or immediate crisis through to long-term, in-depth psychotherapy to address significant psychosocial issues typically associated with chronic relapsing substance misuse. It advised that young people may refer themselves to YDAP or be referred by any adult with the young person's knowledge.

The Commission understands that ACT Health Alcohol and Drug (AOD) Services is currently resourced to provide one counsellor for half a day per fortnight, which does not appear to be adequate or sufficient to provide an effective or comprehensive service. Justice Health Services (JHS) has advised that this level of resourcing does not allow for complex assessments nor for complex care management, is insufficient for relationship building with each young person, and group programs are not possible.

While the Commission is satisfied that there are some external drug and alcohol services accessible to young people at Bimberi, there is a strong perception of unmet need for in-house drug and alcohol rehabilitation programs or more regular drug and alcohol counselling for young people. It appears that more proactive approaches could be taken to assisting young people to address drug and alcohol dependence issues while at Bimberi.

The Commission understands that JHS considers the preferred model for AOD service provision to be one developed in partnership with JHS and the services co-ordinated through JHS to allow for an integrated service provision. The Commission understands JHS welcomes the opportunity for better integrated service provision between JHS and ADS, and for JHS and ADS to review and develop a service that is fit for purpose.

Recommendation 13a:

That ACT Health review the drug and alcohol services and programs currently available to young people at Bimberi and consider how more pro-active support could be provided to young people while in detention to assist with rehabilitation from drug and alcohol dependence. Consideration be given by the ACT Government to increasing the youth drug & alcohol counselling resources available from Canberra Health Services and ACT Health to increase availability of drug & alcohol services in Bimberi.

Other Rehabilitation Programs

Eight of the young people we interviewed discussed and outlined the general services and programs available at Bimberi. All eight of the young people described programs involving sports such as the program run by footballer Alan Tongue, arts, including aerosol art and cultural arts programs. When asked whether they had heard about or participated in any courses or programs at Bimberi aiming to deal with reasons for offending behaviours, none of the young people mentioned having heard about or participated in such programs.

One young person who was in Bimberi during the review period but was in the AMC at the time the Commission interviewed them in late 2017 stated that, while there were a lot of programs involving sports and similar activities at Bimberi, there were no programs centred on dealing with problematic attitudes and behaviours and *"making us better"*.

Another young person, when asked whether they were aware of any programs and services at Bimberi designed to reduce the likelihood of reoffending, stated that there were no such programs and that: *"The only remotely rehabilitating thing you do here is school."*

Three parents interviewed expressed the view that there was a lack of services and programs at Bimberi to assist their children with rehabilitation and to reduce the risk of reoffending. Two parents said that parents were not kept informed and were not aware of what programs were available to their children in Bimberi.

A number of Bimberi staff also suggested that the current services and programs do not address the young people's criminogenic behaviours and risk factors:

"We're not helping them, not addressing the negative behaviours. We're just moving them around in the system."

"[The programs manager] does a great job planning programs but we don't talk to young people about what they did and what it would be like to have that done to you"

"We keep them safe and feed them, but we don't deal with criminal behaviour or relationship issues ... There should be a lot more focus on their families, backgrounds of abuse and neglect, involving their families more, and a lot more awareness of young people as victims [as well as offenders]."

"Kids need better rehab classes, like anger management, respectful relationships. Not just footy and school."

"Continued development of a program base out at Bimberi, including challenging kids around their offending behaviour would be helpful."

Some staff spoke about the frustration of not being able to address a young person's criminogenic needs if they are on remand, because they must be presumed innocent of any offence for which they are remanded in custody.⁹⁴ This was of particular concern given the significant periods of time some young people spend on remand at Bimberi. One former staff member stated:

"Young people on remand is an issue. Most young people in Bimberi are remandees. It's a very slow process in getting things to a conclusion. They should be circulating through quicker. Sometimes they are remanded as there is no other option, they have nowhere else to go."

One employee, when asked what would improve Bimberi, said "move young people through the system faster". Another employee suggested it would be good to:

"Get in more people who could inspire the young people in here, like ex-AMC inmates who've gotten out and rebuilt themselves after traumatic experiences."

A consistent message coming from both the young people and staff was that the programs available do not sufficiently focus on or address the young peoples' criminogenic needs. However, this is complicated by some young people spending considerable time on remand, which is not within the control of Bimberi staff or management.

The oversight bodies observed they did not have a sense of holistic programming being conducted for the young people at Bimberi, and there appeared to be an absence of programs focused on living skills, relationship skills, general health and sexual education, and employment skills. They also observed that evenings are an underutilised opportunity where small group programs could be run with the young people if evening lockdown were to be deferred by an hour to 8.30pm.

Recommendation 13b:

That CSD review the availability and range of rehabilitation services and programs at Bimberi, and consider what programs could be made available to young people in the evening.

8.3 Transition and throughcare

During the course of the investigation, concerns were raised with the Commission about a lack of systematic throughcare at Bimberi and young people not being offered adequate pre-release preparation nor post-release support. The closing of the transition unit at Bimberi was also raised as a concern by several sources.

In its 2011 report, the Commission recommended that CSD 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

⁹⁴ *Children and Young People Act 2008 (ACT)*, s 139.

Building relationships with supported accommodation service providers to strengthen communication and partnerships.⁹⁵

Progress was made following the 2011 Report in developing the Bendora Transition Unit at Bimberi which was operational during the early part of the review period.

However, we understand that Bendora was decommissioned when numbers of young people at Bimberi decreased significantly in 2016 and has not been re-opened. Bimberi management suggested that while the Unit is no longer operating, transition from other units is available:

"Bendora is more of a program than a place. You have to be eligible – a long term remandee or sentenced, low level security classification so that you can attend recreational and vocational activities on day leave, and use sharp knives for cooking etc."

However, management also indicated that the program has not been operating because the demographics and characteristics of young people at Bimberi since that time meant that they were not eligible.

Young people who had been at Bendora spoke positively of their experiences. One young person noted that as a result of this program they were able to obtain some educational qualifications and start a panel-beating apprenticeship, for which they obtained external leave approval. This young person also mentioned that some of the METC staff would visit them after their release and provide them with support and assistance, including making copies of and distributing their CV and calling up employers on their behalf.

Two other young people who were no longer in Bimberi at the time of interviewing spoke highly of their time in the Bendora Transition Unit. One of those young people said:

"Bendora was a mad program. It was what encouraged me to be good while I was there. If people encouraged me to fight or breach I would say "nup, I am going to Bendora". I would see the kids from Bendora wearing their "Respect" shirts and going out on leave to see movies and it was a big incentive for me to behave well. Bendora is a key part of Bimberi working well."

This young person considered that the Bendora Transition Unit should also be accessible to young people on remand *"who have worked their way to get there and have low classifications"*.

Several young people who had been in Bimberi more than once told the Commission that they were not offered any kind of transition support or counselling before they left Bimberi last time, and *"just got let out"*. Two other young people indicated they were not aware of any extra transition support but they had not yet gone through the process of approaching their first release from Bimberi.

Other young people did speak about support available for young people prior to release and assistance available in getting ready for work. One young person said that they received transition support from their CYP case manager, who would visit a few times a week in the lead-up to their release date.

When asked what they thought would improve the transition process, one young person said *"more work experience opportunities"*, and another young person said *"more incentives for kids to do good and improve"*.

Oversight agencies raised concerns about the level of support available pre-release and after young people have left Bimberi. One interviewee asked: *"why do we have throughcare for adults, but not for kids?"*

95 Alasdair Roy and Dr Helen Watchirs OAM et al, *'The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly by the ACT Human Rights Commission'* (Report, ACT Human Rights Commission, 28 July 2011) 252 (recommendation 11.8).

The quarterly reports of the Children and Young People Official Visitor consistently reflect on the need for ongoing support of young people after they leave Bimberi:

"In my own opinion, staff at Bimberi go out of their way to accommodate the needs of the YP and the services that visit do the same. It's the lack of support by family and others on release that seems to be the biggest issue why so many continue to return... It would be good to put some efforts into where YP go on release, monitor, provide them with a mentor etc, this may stop several returning." (2014)

"I continue to be impressed with the great work that is done by all of the Bimberi staff. I have more concerns however about when the YP are released and not receiving the same level of supports that they get from Bimberi, so more needs to be done in this area or these YP will continue to return to Bimberi." (2015)

"It is very pleasing to note that number of young people in residence [at Bimberi] remains low and this has been a pattern for many months. The 'out of hours bail service' is proving to be an important strategy as well as the 'transition unit' operating at Bimberi to assist and support the young people as they integrate back into the community." (2015)

"A piece of work that would be worthwhile to undertake is the 'transitioning of the young people when they leave Bimberi and return to the community'. Ongoing support is necessary to ensure their welfare and wellbeing." (2017)

The Education Directorate advised the Commission that, in order to ensure effective educational transition for young people leaving Bimberi, all young people have a formal transition/pathways plan that is completed with them through the dedicated education Transition Officer. The Transition Officer will prepare schools to re-engage with a returning student, and will also organise employment and training opportunities as appropriate.

However, the Education Directorate also advised the Commission that the current security classification system for young people limits vocational learning opportunities and pre release planning. Security classification can limit access to programs (typically in woodwork, horticulture and metalwork) at Bimberi and the ability to obtain leave from Bimberi. Leave allows METC to provide work experience opportunities, access to classes at the Canberra Institute of Technology (CIT) or universities, and participation in Australian school based apprenticeships, and traineeships/apprenticeships.

Providing structured support, with the presence of the Transition Officer or a youth worker, in a work environment increases the likelihood of successful engagement when the young person leaves Bimberi. The Education Directorate has advised that some sentenced young people are not allowed to go on day leave from Bimberi even within the several months before their sentence is complete.

The Directorate commented that there have been incidents where a sentenced young person's accommodation has still not been finalised a couple of days before their release. Finalising the accommodation of sentenced young people at least a couple of months before they leave Bimberi would better enable the Transition Officer to work with local employers, trainers or schools to prepare for a young person.

Education staff at Bimberi noted that the Bendora Transition Unit has not been operational for some time, and that in their experience the Bendora Unit provided a useful opportunity for young people to learn some independent living skills and to obtain regular leave from Bimberi to participate in external education opportunities, work experience and apprenticeships.

Bimberi staff also commented on transition issues:

"There is not really much pre-release stuff... [Bimberi] needs a proper transition unit... for kids in Bimberi to prepare for the outside."

"There's a big lack of support once they leave"

"Release preparation is difficult... Sometimes Bimberi will call young people after they leave. But it's up to Youth Justice to follow up with the young person."

"Need more options in the community for housing for young people after they leave Bimberi". Need a proper transition unit"

It appears from the information provided to the Commission that there are gaps in the pre-release support for young people at Bimberi to prepare them for an effective transition to the community, to assist them in finding stable accommodation well before their release, and to facilitate their participation in important aspects of public life such as education and employment once they are released.

From all accounts Bendora Transitional Unit played an important role in encouraging young people to improve their behaviour and in preparing young people for release, and it is unfortunate that this program is no longer being provided at Bimberi.

A focus on securing accommodation earlier and more regular reviews of classification would assist METC staff in their role in facilitating aspects of the transition process.

It is notable that the ACT's adult correctional facility has a more structured throughcare program for adult detainees leaving custody which has been the subject of favourable evaluation.⁹⁶ A greater focus on throughcare for Bimberi is likely to assist in reducing recidivism and subsequent incarceration in adult prison.

CSD has advised the Commission that reopening the Bendora Transition Unit on an ongoing basis would not be sustainable due to population fluctuations and cohort characteristics. The Commission understands there is also no current allocated funding to resource the unit.

Recommendation 14:

That the ACT Government consider the reopening of the Bendora Transition Unit or that it implement a systematic program of throughcare at Bimberi similar to that previously offered through the Bendora unit. CSD should consult with young people, the METC, and key stakeholders including members of the Bimberi oversight group, in developing such a program.

8.4 Detention of children and young people aged under 14

Finally, many interviewees raised concerns about primary school aged children being detained at Bimberi, and that this was not consistent with the use of detention as a last resort. In the course of investigations the Commission also reviewed several incidents of use of force and restraint at Bimberi involving children and young people under fourteen, some of whom had histories of trauma or abuse and who were also involved in the care and protection system.

⁹⁶ Andrew Griffiths, Fredrick Zmudzki, Shona Ba: *Evaluation of ACT Extended Throughcare Pilot Program Final Report Prepared for: ACT Corrective Services*, January 2017

In the last quarter of 2017, around a third of young people at Bimberi (19 of 57) were aged between 10 and 14 years old. Of those 19 young people, six were Aboriginal.⁹⁷

In some cases it appears that these children and young people were detained at Bimberi because of a lack of appropriate facilities in the community where they could receive appropriate support for high and complex needs, including violent behaviour.

In December 2017 ACT's Chief Magistrate expressed concerns at the lack of options to manage an eleven year old child, as reported in the Canberra Times:

Chief Magistrate Lorraine Walker acknowledged the choice was between releasing the girl, who had demonstrated mental health problems, into the community where there was the risk of further violence, or sending her to Bimberi.

She said while Canberra's children and young people laws referred to a "therapeutic place", no such place existed. The magistrate said if the "promise" of the law was fulfilled, there would be a place to send the girl that was both safe for her and those who cared for her.⁹⁸

The Commission is satisfied that Bimberi staff and management do their best to meet the needs of this very young cohort, however these children and young people require therapeutic care and behavioural support. A youth justice facility that also accommodates much older young people and young adults is not the best place to support the complex needs of children and young people under 14.

The Commission notes that the CYP Act provides for therapeutic protection orders, but that years after the introduction of these provisions the ACT still does not have a designated therapeutic protection place where children and young people could be supported on such orders. It is time for this issue to be reconsidered.

Raising the age of criminal responsibility would also help to ensure that children and young people with offending behaviour are provided with intervention and support in the community rather than through the criminal justice system.

The Commission notes that the Northern Territory Royal Commission recommended that the age of criminal responsibility be raised to 12 years, and that this recommendation was accepted in principle by the Northern Territory Government.

Recommendation 15:

That the ACT Government consider developing a flexible therapeutic protection place or other suitable therapeutic placements in the community to better meet the needs of children and young people aged under 14 who engage in harmful conduct and come into contact with the youth justice system.

⁹⁷ Bimberi Headline Indicators Report, March 2018

⁹⁸ The Canberra Times, 'Frustrations after girl, 11, charged with assault a third time in three weeks', 4 December 2017.

9. Implementation

It is apparent that many of the issues and concerns raised in this report were also raised in the 2011 Report. While many aspects of Bimberi have improved since that comprehensive review, there are areas where the implementation of recommendations agreed by the Government has fallen short of expectations, or initial improvements have been lost over time.

The Commission requests that the ACT Government provide an initial response to the 16 recommendations made in this report within sixty days, and then to provide an update to the Commission on a six monthly basis over two years, regarding the implementation of agreed recommendations.

The Commission considers that the re-establishment of an oversight agency meeting with Bimberi management consistently on a monthly or bimonthly basis would also assist to monitor the implementation of these recommendations on an ongoing basis. This meeting should involve relevant oversight agencies, Bimberi management, Official Visitors, Justice Health and other appropriate people and organisations.

Finally, the Commission welcomes the appointment in the ACT of an Inspector for Custodial Services, and the extension of the mandate of the Inspector to Bimberi, commencing in late 2019. We consider that the Inspector will play a vital role in supporting and sustaining ongoing improvement at Bimberi and will help to ensure compliance with legislation and human rights standards through regular monitoring and reviews.

Appendix A: Summary of Allegations and Findings

Allegation	Findings
That after a violent altercation between a staff member and three young people, that staff member punched one of the young people in retaliation while the young person was handcuffed and restrained by other workers.	There is evidence that the young person was subjected to a retaliatory punch while restrained, where there could be no justification for this use of force, notwithstanding the earlier violent attack.
That a young person who was restrained with handcuffs was thrown to the ground by youth workers and hit their head with force on the concrete floor. They were not offered medical treatment for the head injury.	CCTV footage is inconclusive and it does not appear that any fall was deliberate. The young person did receive medical attention and was not assessed by the nurse as requiring further treatment. The Commission has made a recommendation regarding the upgrading of CCTV security camera system.
That a young person who had attempted self-harm was forcibly removed to another room and placed naked on a bed in a seated position with hands cuffed behind them. The young person was left naked for several minutes before being covered with a blanket.	The Commission found evidence to substantiate the facts of this allegation, however, it appears that the use of force and approach taken by staff was not unreasonable, as it was aimed at protecting the safety of the young person in these difficult circumstances.
That a young person had been handcuffed and taken to their room, and was left there without the handcuffs being removed, rolling around on the floor crying and trying to break free, and ending up in the shower lying on their back as water from the shower washed over their body and face.	The Commission found evidence to substantiate parts of this allegation. It appears that these breaches were taken seriously by management and that appropriate action was taken following the incident. The incident raises systemic issues regarding the need for trauma-informed care and alternative therapeutic placements for primary school aged children with complex needs
That a youth worker had dragged a young person along a concrete footpath, and that another youth worker had placed that young person in a headlock until he went blue in the face.	No evidence was found regarding this alleged incident.
That three named youth workers badly beat a young person in the Coree laundry where there were no cameras.	No evidence was found regarding this alleged incident.
That a young person was thrown to the ground by three workers, and then continued to be kneed in the face and body, resulting in a black eye.	No evidence was found regarding this alleged incident.
That a young person was restrained and had their head repeatedly slammed into the floor resulting in a black eye.	It appears likely that the young person sustained a cheek and eye injury when their head and face was being held with force to the floor by a youth worker.
That two young people were tackled against a window by four or five workers, and that one of the young people was then picked up and “driven into the ground”	CCTV footage was unclear but did not show either young person being picked up and dropped or pushed to the ground with force. There was evidence of negotiation by staff before use of force to prevent serious property damage.
That some youth workers had offered young people physical punishment: ‘taking a punch in the guts’ as an alternative to authorised behaviour management.	No evidence was found regarding this alleged incident.

Allegation	Findings
That staff victimised certain young people and encouraged violence between young people, and that two workers ran a 'fight club' at Bimberi.	The Commission did not find evidence to substantiate any particular instance where a young person was encouraged to fight another young person. However, the accounts of some young people do corroborate the general allegation and indicate that in the earlier years of the review period some workers may have directly or indirectly encouraged young people to fight other young people who were perceived as challenging or were unpopular.
That a youth worker used racist insults towards an Aboriginal young person at Bimberi.	The allegation of a racist remark made by a youth worker against a young person is substantiated. The Commission is satisfied that management responded to this incident appropriately. It does not appear that racist behaviour by staff is widespread or condoned at Bimberi.
That a staff member inappropriately watched a detainee in the shower	It appears this incident occurred as part of welfare observations and was not an inappropriate observation of a young person. Appropriate management action was taken to address inadequate documentation regarding the event.
That there has been widespread drug use in Bimberi	No evidence was found regarding this alleged practice
That Aboriginal and Torres Strait Islander young people were more likely than other young people to be transferred to the AMC when they turned 18.	The records of transfers to AMC do not support this allegation.
That segregation was being used as punishment and was applied inconsistently, when it was not the least restrictive option	The Commission did not find evidence to substantiate the allegation of segregation being used as punishment, however, the record keeping relating to segregation makes it difficult to determine whether segregation is being used only as a last resort. The Commission is concerned about the length of time young people have been held in segregation and the lack of transparency in the review process.
That young people do not have reasonable access to open air and exercise while in segregation	The Commission found evidence to substantiate the allegation that in some cases young people in segregation are not having reasonable access to open air and exercise each day. At a systemic level the current record keeping arrangements do not enable management or oversight agencies to easily determine whether young people are receiving their minimum entitlements to open air and exercise while in segregation.
That young people in segregation do not have reasonable access to education.	The Commission does not consider that the provision of written school work to young people in segregation amounts to reasonable access to educational services, particularly when the period of segregation is reviewed and extended for more than a few days.
Time Out	Findings
That 'time out' was used frequently as a behaviour management strategy at Bimberi, and that there is no regulation or record-keeping of time outs.	The use of time out has decreased significantly since 2014. The Commission is satisfied that there is now appropriate regulation, record keeping and oversight occurring in relation to time out.

Allegation	Findings
That young people at Bimberi were subjected to frequent and unreasonable periods of 'lockdown' due to staffing shortages.	The Commission found evidence to substantiate the allegation that young people at Bimberi were subject to frequent and unreasonable periods of 'lockdown' due to staffing shortages, particularly during 2017. The dramatic increase in lockdowns at Bimberi during 2017 is of significant concern, and appears to have imposed unreasonable limitations on the human rights and rehabilitation opportunities of young people at Bimberi.
That young people at Bimberi were required to 'squat and cough' during strip searches conducted in the review period.	It is concerning that the intrusive and degrading 'squat and cough' strip search procedure was used during the review period. However, the issue was immediately addressed once identified through a management direction to staff to cease this practice.
That strip searches were occurring on a routine basis when young people returned to Bimberi after court or other appointments.	The strip search register and accounts of young people and oversight agencies confirm that there was a significant decrease in the use of strip searching at Bimberi over the review period. It is clear from the register that in 2017 strip searching was no longer being used on a routine basis on admission, or where a young person left the Centre temporarily to attend court or other appointments.
That the dual use of the Coree Unit involves inappropriate mixing of different groups of detainees and that vulnerable young people on admission are mixed with young people on segregation or for high risk.	The Commission considers that there is evidence to substantiate allegations regarding the inappropriate mixing of different categories of young people in the Coree Unit, including the mixing of young men and young women and young people on remand and sentenced young people. It does not appear that these placements are in the best interests of all young people affected.
That the camera placement and view of areas in Coree Unit unreasonably limits the privacy of young people, and has a particular negative impact on young women.	Camera placements in the Coree Unit appear to unreasonably limit the privacy of young people using toilet facilities in their cabins, and this may cause particular concerns for young women.





