



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

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 no 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.

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.