

Chapter 1: Introduction

1.1 Background to the Bimberi Review

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

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

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

1.2 The ACT Human Rights Commission

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

1.2.12 The Human Rights Commissioner is required to:

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

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

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

The review team

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

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

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

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

1.3 Legislative basis for the review

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

The inquiry

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

The audit

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

1.4 The report

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

Gathering evidence

- 1.4.3 For the purpose of this Review, the Commission:
- Researched national and international literature to understand the evidence base underlying the provision of services to young people in youth justice systems;
 - Interviewed 147 people, including:
 - 25 young people currently or formerly resident in Bimberi (19 young people also completed an 80-question survey designed by the Commission);⁴
 - five young people in the Alexander Maconochie Centre (AMC) with previous experience of the youth justice system, including Bimberi;
 - 34 current or former staff of Bimberi (18 current or former staff also completed a 90-question survey designed by the Commission, with an anonymous on-line version of the survey available)⁵;
 - 14 current or former staff of Community Youth Justice;
 - 18 executive and senior managers from the Community Services Directorate (CSD);
 - 18 current or former staff of other ACT Government agencies connected with the youth justice system or Bimberi; and
 - 33 non-government stakeholders.
 - Wrote to over 100 government and non-government stakeholders, inviting them to participate in the Review;
 - Received and reviewed 62 written submissions;
 - Requested material from the ACT Government, and examined 14 lever folders of documents that were provided in response;
 - Inspected records stored on site at Bimberi;
 - Distributed posters and surveys inviting community involvement in the Review at 16 locations across Canberra, including the ACT Children's Court, Legal Aid ACT, youth centres, and other venues accessible to young people and their families. The Commission received 74 responses to the survey;
 - Conducted four focus groups with 12 young people in Bimberi, exploring issues such as: early intervention and prevention, diversion, safety and security at the Centre, community connectedness, programming and support, relationships with staff, discipline, throughcare and aftercare and complaints handling;
 - Conducted a full-day community forum with 32 participants from a wide range of government and non-government service providers and stakeholders. The forum included workshops presented by experts in youth justice from the Australian Institute of Criminology (AIC), the University of Canberra, and headspace ACT;
 - With assistance from Northside Community Service, conducted an afternoon forum for parents and families of Aboriginal and Torres Strait Islander young people in the youth justice system. The forum was attended by 18 parents and family members, and represented the first such forum to be held in the ACT;
 - Conducted three 'drop in' sessions (in the City, Tuggeranong and Belconnen) for members of the community to share their views with the Commission;
 - Established a Young Persons Reference Group made up of eight residents of Bimberi. The Reference Group met on five occasions, to provide advice to the Commission about how we could best communicate with young people in Bimberi, and involve them in the Review process;
 - Formally engaged three expert consultants to provide advice to the Review in specialist areas; and
 - Participated in a Youth Justice Reference Group, established by the Youth Coalition of the ACT (YCACT) which brought together interested stakeholders and experts in the youth sector.
- 1.4.4 The Review was required to investigate and report on systemic issues in relation to youth justice in the ACT and Bimberi. In accordance with the Legislative Assembly's resolution, the Review did not make any direct findings in relation to the performance or conduct of any individuals.
- 1.4.5 A number of serious allegations were reported in the Legislative Assembly and media before and during the course of this Review. The Commission was also informed of these and other allegations from participants in this Review. CSD provided the Commission with details of the background and subsequent investigations of critical incidents, including whether they were subject to external scrutiny. In the most part, the Commission was satisfied with the level of scrutiny provided by other external agencies to these incidents. However, they do highlight some issues of concern that we believe warrant changes to policy and practice, and which are discussed in the report.

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

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

1.5 Participants

Young people

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

Staff of the youth justice system


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

Government agencies

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

Families and the community sector

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



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

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

Compelling information

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

Protecting participants

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

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

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

1.6 Duration of the review

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

1.7 Previous reports and inquiries

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

1.8 The youth justice system in the ACT

Community Youth Justice

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

Bimberi Youth Justice Centre

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

Legislative basis

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

Principles of the ACT youth justice system

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

7 Sue Robinson 'Positive Links' (2007)

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

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

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

Young people involved the ACT youth justice system

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

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

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

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

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

⁹ ACT Government submission

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

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

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

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

Population of Bimberi

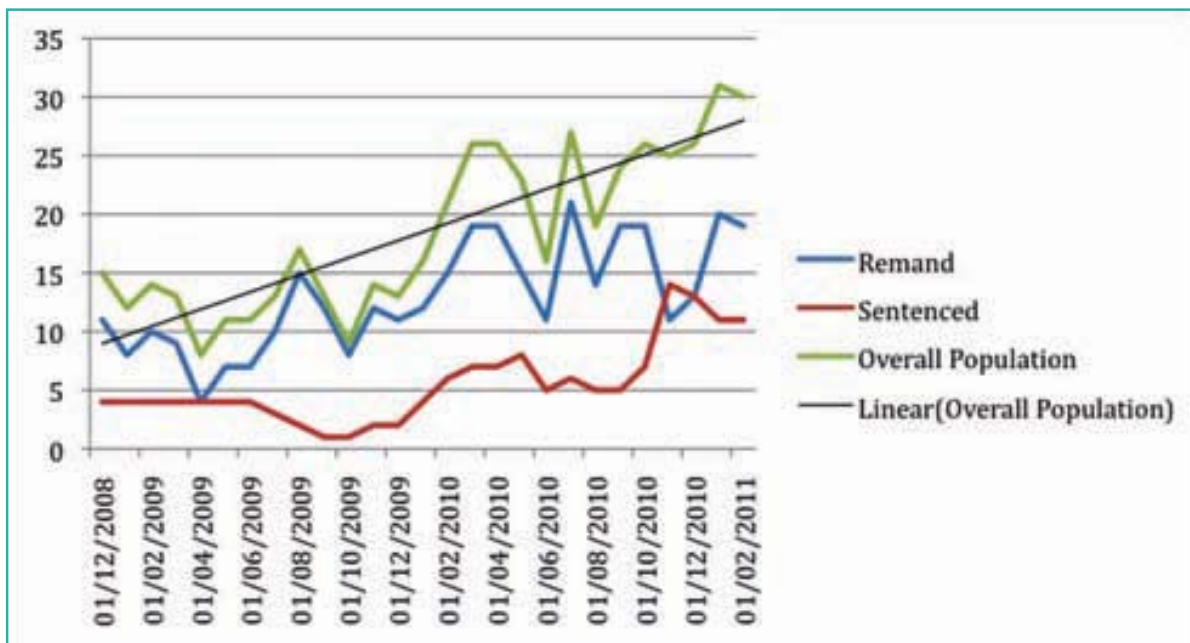
- 1.8.12 The number of young people living in Bimberi changes frequently. The group rarely stays the same for more than a few weeks, as some young people are released, and new young people are admitted. Some young people know they will be living in Bimberi for a defined period of time, as they have been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

¹⁰ ACT Government Submission

¹¹ ACT Government submission

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

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



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

The characteristics of young people in Bimberi

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

¹² ACT Government submission

¹³ ACT Government Submission

¹⁴ See Appendix A

¹⁵ See Appendix A

¹⁶ See Appendix A

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

Snapshot of young people in Bimberi on 30 June 2009

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

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

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

Snapshot of young people in Bimberi in early 2011

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

¹⁷ See Appendix A

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

Significant trends in the detention of young people in the ACT

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

18 ACT Government submission

19 See Appendix A

20 ACT Government submission