

Chapter 15: Management And Oversight

A Quality Youth Justice System Is Well Managed And Operated

Relevant Human Rights Standards

- Regular Oversight by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the facility (OPCAT, SMR rr.14, 72, 77, POJ rr.36, 55, BOP r.29, CROC art 14, RCIADC r.176
- Freedom from Torture, and Humane Treatment whilst in Detention (HR Act ss.10, 19)
- Freedom of Expression (HR Act s.16)

15.1 Introduction

- 15.1.1 This chapter concludes the Report by discussing issues of management and oversight.
- 15.1.2 The first part discusses the youth justice system as a whole. There are a range of stakeholders across the youth justice system, many of whom are independent from Government. It is essential that these stakeholders are involved in discussions about systemic issues, and the Commission makes several recommendations to encourage ongoing collaboration and coordination.
- 15.1.3 The second part of this chapter focuses on management of Bimberi, oversight of Bimberi by the Community Services Directorate (CSD), and oversight by external agencies including the Official Visitor (OV), Public Advocate (PA) and Human Rights Commission (the Commission). The Commission makes several recommendations to improve management and oversight of Bimberi.
- 15.1.4 The third part of this chapter examines complaints handling processes at Bimberi. The Commission recommends the complaints mechanisms be strengthened, to contribute to ongoing review and improvement at the Centre.

15.2 Management and operation of the youth justice system in the ACT

- 15.2.1 The 'youth justice system' is less a coherent entity than a series of complex interactions between young people and organisations, and between organisations themselves. The youth justice system in the ACT comprises a wide range of stakeholders, including:
- Children and young people;
 - Families;
 - ACT Policing;
 - Childrens Court;
 - Supreme Court;
 - Restorative Justice Unit (RJU);
 - Director of Public Prosecutions (DPP);
 - Legal Aid ACT;
 - Solicitors;
 - Community Youth Justice (CYJ);
 - Bimberi Youth Justice Centre;
 - Other government service providers, including the Education and Training Directorate and the Health Directorate; and
 - Community service providers.

- 15.2.2 Each of the above-listed agencies has different authority, functions and accountability structures. Some organisations operate under a legislative framework that guides their decision-making, and most possess statutory or institutional independence from Government. It is important to measure and describe the impact of agencies' actions on young people in the youth justice system.
- 15.2.3 Due to time and resource constraints this Review was not able to examine some fundamental aspects of the youth justice system in the ACT, which may have a significant impact on rehabilitation outcomes, including:
- Young people's access to legal advice and representation;
 - ACT Policing practice in relation to caution, bail, arrest, and charging;
 - Operation of the *Bail Act 1992* in relation to young people;
 - DPP practice in relation to prosecution decisions, and recommendations for bail and sentencing;
 - Childrens Court procedures and facilities;
 - The impact of the transition of sentencing provisions in the Childrens Court from the *Children and Young People Act 1999* to the *Crimes (Sentencing Administration) Act 2005*;
 - The impact of Magistrates' approaches to bail and sentencing decisions;
 - The operation of formal diversionary programs, such as RJU;
 - The operation of Ngambra Circle Sentencing Court;
 - The operation of informal diversionary practices, by ACT Policing, DPP, CYJ and the Childrens Court; and
 - Media representations of children, young people, and young people involved in the youth justice system.
- 15.2.4 The Commission suggests that these issues be examined in future legislative reform, review, research and/or policy work by the ACT Government. In the meantime, the Commission proposes action in three areas to contribute towards a more integrated youth justice system, and improved outcomes for young people:
- The Legislative Assembly Standing Committee should invite independent agencies in the youth justice system to provide advice on systemic issues
 - Relationship building between agencies in the youth justice system; and
 - An annual youth justice forum.

Legislative Assembly Standing Committee should invite independent agencies in the youth justice system to provide advice on systemic issues

- 15.2.5 The ACT Government is only one of several institutional stakeholders in the youth justice system. Independent agencies, including ACT Policing, the DPP, the Childrens Court, Legal Aid ACT and community organisations, have detailed and specialist knowledge about the operation of the youth justice system. The Commission encourages these agencies to participate in public discussion where appropriate.

Recommendation 15.1: The Legislative Assembly Standing Committee responsible for youth justice annually invite ACT Policing, the Director of Public Prosecutions, the Childrens Court, Legal Aid ACT and peak bodies in the community sector to raise issues of interest or concern about the youth justice system.

Relationship building between organisations

- 15.2.6 Organisations in the youth justice system interact daily in relation to individual casework. However, the Commission recommends that they also develop opportunities to meet and discuss systemic issues.
- 15.2.7 It is vital that that legislators and policy makers learn from the experience of young people, police, solicitors, prosecutors, court officials, magistrates, detention centre staff, and other support workers. Stakeholders in the youth justice system need to be provided with the time and resources to meet and articulate their case-work knowledge, and translate it into systemic knowledge.

Recommendation 15.2: ACT Policing, the Director of Public Prosecutions, the Childrens Court and Legal Aid ACT continue to develop partnerships to:

- Collect data and measure outcomes of the youth justice system
- Review practices across the youth justice system
- Review the legislative framework for the ACT youth justice system
- Identify and advocate for systemic improvements to the youth justice system.

15.2.8 The ACT Government should identify strategic opportunities to facilitate or assist these efforts.

Annual Youth Justice Forum

15.2.9 One way to bring stakeholders together is to convene an annual public forum on youth justice issues in the ACT. To assist organisations to build relationships and share knowledge, beginning in late 2011 the Human Rights Commission will coordinate an annual event, in partnership with other stakeholders in the youth justice system. The forum will:

- Address a specific issue or question in youth justice each year;
- Invite expert speakers to present new research and evidence;
- Invite stakeholders to participate in a facilitated panel discussion;
- Allow audience members to ask questions and propose solutions to problems; and
- Provide an opportunity for stakeholders to meet and discuss systemic issues.

Recommendation 15.3: The Human Rights Commission convene an annual Youth Justice Forum, in partnership with other stakeholders in the youth justice system

15.3 Management and operation of Bimberi

15.3.1 A large part of this Report has addressed the management and operation of Bimberi. The problems with staff shortages, staff training and support, program delivery, behaviour management and record keeping that are described in this report reflect the management and operation of Bimberi.

15.3.2 All workers at Bimberi are involved in management of young people and operations. However, the senior managers have primary responsibility for management decisions which impact on well being of staff and young people. The management structure at Bimberi is presented in Figure 15.1. This figure does not include the full accountability structure of Bimberi, in that it does not include the executive positions with ultimate responsibility for Bimberi. A diagram displaying the oversight structure for Bimberi within the CSD is presented in Figure 15.2, in section 15.4.

15.3.3 During the Review it has become clear that there are opportunities for improvement in the management of Bimberi in five areas:

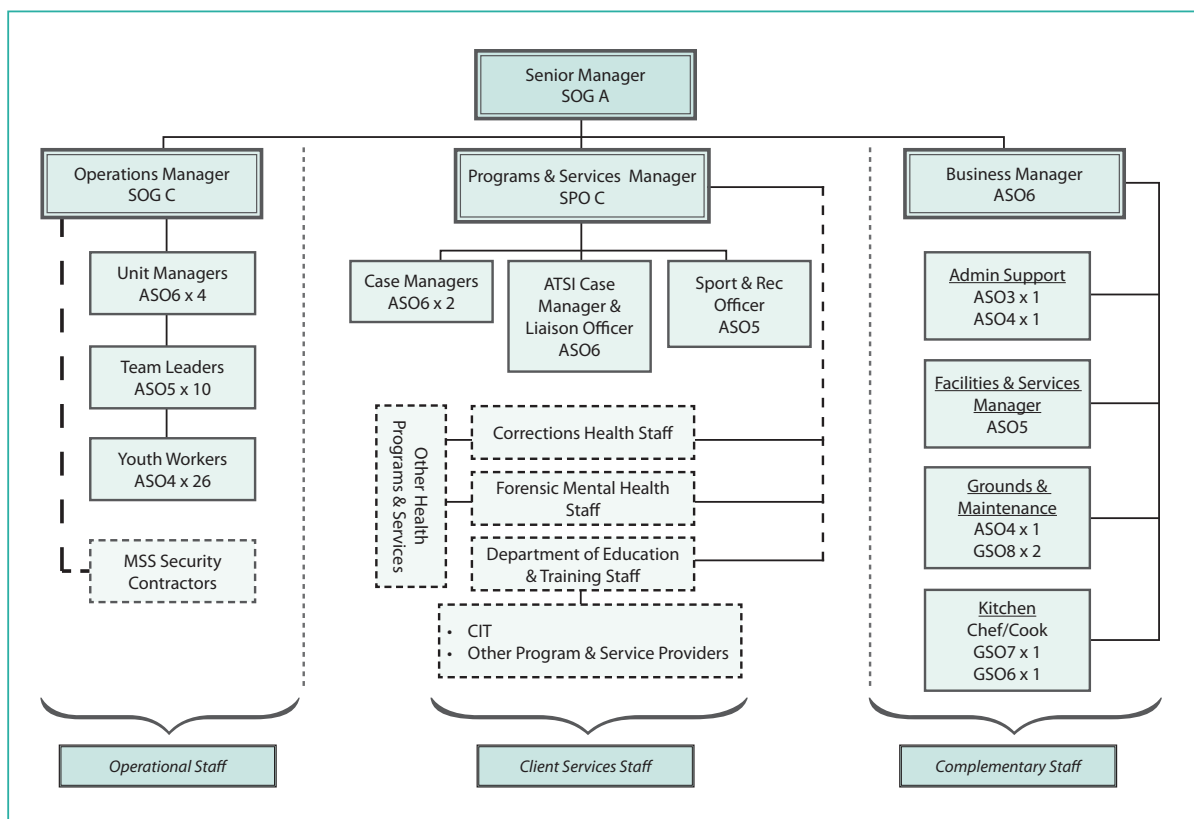
- Leadership and communication with staff and young people;
- Design, communication and review of operational procedures;
- Management of the facility and equipment;
- Ensuring appropriate action following incidents; and
- Transparent and evidence based decision-making.

15.3.4 Many of these issues are discussed in more detail in other chapters, but are summarised here to highlight underlying themes relating to management.

Leadership and communication with staff and young people

15.3.5 As discussed in Chapter 4, the management team plays a critical role in shaping organisational culture.

Figure 15.1: Bimberi Youth Justice Centre organisational chart



- 15.3.6 As was noted in the Knowledge Consulting report in respect of the Alexander Maconochie Centre:
- 'The leaders are the custodian of the organisation's vision. The manner in which leaders communicate the vision and demonstrate their commitment to the vision through their actions in the work place is the most significant driving force in achieving alignment of staff with the direction of the organisation and commitment to the vision... Experience has shown that it is absolutely essential in the lead up to opening and in the six months post opening for the correctional centre Superintendent and the management team to be totally focused on leading and mentoring their staff and on monitoring operational performance and its impact on detainees. If they are distracted from this role the risk of serious incidents occurring increases significantly.'*
- 15.3.7 However, it is not clear that management at Bimberi fully appreciated the importance of regular communication with staff on the ground to shape the desired culture at Bimberi, and instead prioritised communication with external stakeholders. We understand that new management has been assisted by two new positions being created to allow for more consultation and communication with all stakeholders.
- 15.3.8 Rule 84 of the Rules for the Protection of Juveniles Deprived of their Liberty provides that:
- 'The administration should introduce forms of organisation and management that facilitate communications between different categories of staff in each detention facility so as to enhance cooperation between the various services engaged in the care of juveniles, as well as between staff and the administration, with a view to ensuring that staff directly in contact with juveniles are able to function in conditions favourable to the efficient fulfilment of their duties.'*¹
- 15.3.9 As described in Chapter 5 (staffing), historically the communication between Bimberi management and the operational staff (youth workers, team leaders and unit managers) may have been less than ideal. As one group of participants noted *'We only saw them when things went wrong'*. The same group of participants felt that the visibility of management had improved with the change of management. The Commission notes that the reported improvement in visibility coincided with an increase in the resources available at Bimberi, and may have been a contributing factor.
- 15.3.10 The Commission welcomes the range of initiatives recently introduced in the CSD 'Change Management Plan', including a daily briefing for youth workers, weekly staff newsletter, and weekly all-staff meetings. Many workers told the Review that the current management team has greater interaction with operational staff, and they expressed approval at this change.

1 Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre, ACT Corrective Services* (2011), 104.

15.3.11 Another challenge for Bimberi management is to facilitate communication between different staff groups. The different staff groups include:

- Youth workers, team leaders and unit managers;
- Teachers at Murrumbidgee Education and Training Centre;
- Health professionals employed by ACT Health;
- Corporate or administration staff;
- Facilities and grounds maintenance staff;
- Sport and recreation officer;
- Chefs;
- MSS security guards; and
- Visiting community service providers.

15.3.12 Due to their different roles, a 24-hour roster and a security system which restricts movement in the Centre, some staff inevitably become isolated in their roles, and disconnected from the people working around them. These issues are discussed in more detail in Chapter 5 (staffing), and the Commission makes several recommendations relating to staff communication and staff support. Communication between management and staff, and between staff groups, is a priority at Bimberi, and there are indications that current management is taking action in this area.

15.3.13 A third area of communication that requires attention is between Bimberi management and young people. This issue is discussed in further detail in later in this chapter, in the section on complaints. The Commission recommends that Bimberi put renewed effort into providing accurate and timely information to young people about issues to do with their care, explaining reasons for decisions, listening to young people's concerns, and involving them in decision-making wherever possible.

Design, communication and review of operational procedures

15.3.14 All the policies required by legislation were in place before Bimberi opened. These policies specifically acknowledge human rights standards and attempt to ensure compliance with human rights. However, despite formal legislative compliance, there are some serious shortcomings with the operational procedures at Bimberi.

- The policy documents are written at a high level and do not generally provide detailed operational or practical guidance for staff when interacting with young people;
- There are significant gaps in the procedures created to operationalise these policies. For example, the use of force policy and the behaviour management policy provide a good framework for the people writing procedures or designing training programs, but they do not provide enough operational guidance for youth workers on appropriate strategies to work with and communicate with young people;
- Staff report that policies and procedures are out of date, not regularly reviewed, and do not match practice on the ground. When gaps in procedures were recognised, procedures seemed to be established on the run, and without formal processes of transparency or accountability. In the past 'local operating procedures' and 'special management directions' were created to manage new or difficult situations. Youth workers have developed a practice of writing 'case notes' and circulating them to colleagues by email to advise youth workers how to respond to particular young people or units;
- Some regular practices are not documented in procedures at all. In particular 'time out' (or locking young people in their rooms) is regularly used by staff as a punishment for behaviour, a risk management strategy to separate young people, and/or to cope with staff shortages, however this is done without guidance or authorisation of formal procedures;
- Procedures are not fully integrated into induction training or ongoing staff training, with staff not being systematically informed and reminded of procedures. CSD informed the Commission that: *'Staff were provided training in policies and procedures at transition from Quamby to Bimberi. Staff are provided training in policies and procedures at induction. Staff have been re-issued with full pack of policies and procedures. Work is underway as part of the Bimberi Change Management and Implementation Strategy to provide plain English versions of policies and procedures.'* However, the Commission distinguishes between statements of 'policy', and operational 'procedures' which provide detailed or practical guidance for staff. We also distinguish between providing information about the content of policy documents, and providing comprehensive practical training on operational procedures.
- Incident reports indicate that some unit managers review practices with their staff following an incident, however this process could be more systematic and comprehensive, and be integrated with formal reviews of procedures.

Recommendation 15.4: The Community Services Directorate review and document all Bimberi operating procedures as a matter of urgency, and ensure staff are fully trained in procedures.

Ensuring appropriate action following incidents

- 15.3.15 One of the key functions of Bimberi management is to identify and respond to incidents when they occur, and assess the underlying causes of the incident to identify preventive measures that may avoid similar occurrences in future.
- 15.3.16 Best practice standards require Bimberi management and CSD to analyse incident reports to identify and understand patterns and trends.² The Commission recommends that Bimberi management and CSD adopt the practice of regular and frequent analysis of patterns and trends in incidents, to identify areas for preventive action and avoid similar incidents occurring again. Such analysis should examine:
- 'the total number of incidents, type of incident, whether incidents involve a range of children and young people or a small number, the location of incidents, the range of staff involved, and the injuries sustained'*³
- 15.3.17 The analysis should also include an examination of environmental factors, including staff resources.
- 15.3.18 For example, the Commission has reviewed all incident reports, and all available search registers and use of force reports created at Bimberi between September 2008 and December 2010. We identified 13 incidents that, according to witnesses' description of events, were directly caused by staff shortages. (This number does not include a wider range of incidents that may have been avoided or managed differently with increased staff resources.)
- 15.3.19 Unless senior managers happened to be present at the time of an incident, they are heavily reliant on the initial investigation by the unit manager to interpret events, and the way the unit manager gathers and reports evidence will inevitably characterise events in a certain way. Therefore, senior managers need to support unit managers to strengthen practice at this level.

Recommendation 15.5: The Community Services Directorate require Bimberi management to put renewed effort into analysing and responding to incidents, and:


- Ensure that unit managers conduct a thorough and impartial investigation of incidents, and provide all relevant information for review by senior management
- Analyse the wider background factors contributing to an incident, including staff shortages, staff fatigue at the end of a 12 hour shift, and environmental factors
- Analyse staff actions to ensure proper conduct, including fulfilling all legislative requirements before undertaking a search or use of force
- Make appropriate reports, including police reports or mandatory child protection report in cases of inappropriate use of force or other situations of assault by staff
- Engage young people in appropriate therapeutic services or support programs if there is concern that they are displaying self harming behaviour, or have difficulty managing emotions or interacting with other people
- Review policies, procedures and staff training in the light of particular incidents, to ensure staff have the skills, guidance and support they need to work with young people effectively.

Management of the facility and equipment

- 15.3.20 The built design of the Bimberi facility is a significant improvement over the former facility at Quamby and has been designed to reflect a normalised campus environment, which minimises the appearance of security features. The Government Submission to the Review sets out the design philosophy and features of the Centre.
- 15.3.21 However, since its opening, a number of operational issues have emerged in relation to the design of Bimberi. For example, the intention that the young people have relative freedom of movement within a secure perimeter has not been achieved.

² Her Majesty's Inspectorate of Prisons, *Criteria for assessing the treatment and conditions for children and young people held in prison custody* (2009) section 6.19 and 6.22.

³ *Ibid*, section 6.22.



The perceived risks involved in allowing most young people to move freely in a large open space with many bushes and trees have been regarded as too high, and so young people are routinely escorted around the facility. Several young people who remembered Quamby said they preferred Quamby to Bimberi, and one of the factors informing this view was the ability to move more freely within the grounds at Quamby. The Commission suggests this issue be examined, and that consideration be given to allow young people greater freedom of movement within the grounds at Bimberi. The future development of a transition unit might be one setting in which this could take place.

15.3.22 Other issues include:

- The space between buildings in the Centre increases staff isolation and the time taken for other staff to assist where there is an emergency;
- The design of cabins has not allowed an adequate view of young people while sleeping, which limits the effectiveness of observations in ensuring the safety of young people;
- Use of aluminium doorframes in the units which are not sufficiently strong and trigger alarms through shaking; and
- The roof is insufficiently secure and climbing points have been identified allowing young people to climb onto the roof.

15.3.23 Participants reported raising these issues with Bimberi management, and feeling concerned that insufficient action was taken to address these problems. We understand that funding has now been allocated to change the orientation of beds within cabins to improve observations, and to add further security to the roof.

15.3.24 In addition to these identified design issues, many participants raised concerns about the technical and security systems within the Centre. Knowledge about technical and security systems was limited to a small group of staff named the 'Sierra' team. Participants reported that this caused difficulties and delays when Sierra staff were not available to assist with matters such as putting credit into young people's accounts or registering approved phone numbers so a young person could make calls to friends and family. Participants also reported security concerns because of this limited knowledge, for example that a control room worker was once locked inside the control room alone, and did not have the knowledge to unlock the door.

15.3.25 Other reported concerns with security systems and equipment include:

- Faulty radios and duress alarms, which were reported as a serious safety concern by a number of staff in the staff survey. While observing night shift in the control room, the Review Team observed the testing of duress alarms which found that at least one was faulty and gave misleading information to control staff. It appeared that this was not regarded as unusual;
- Cameras allegedly not working in cabins or other areas and not being repaired promptly. One staff survey respondent claimed that in the admissions unit cameras *'freeze up or go down at least once a week. This is dangerous for new detainees or those in a fragile state. It is essential that these cameras are working and can be fixed immediately if needed. This does not happen;*
- Lack of cameras in particular locations, such as the laundry and program rooms within units, which are reported by staff and young people to be unsafe spaces where incidents are more likely to occur;
- A perimeter alarm system that is activated too easily, including by passing cloud shadows. There is a concern that staff can become complacent about alarms because there are so many false alarms;
- Screening technology and procedures at reception are inadequate to prevent the introduction of contraband. Staff identified particular gaps around the screening of night shift staff, screening of staff bags and inadequacies of the screening technology; and
- MSS staff not being given the same access to cabin keys as other night shift staff, and thus being unable to provide immediate assistance to a young person in the event of an emergency, which was a critical omission identified in the Inquest into the death of a young person at Quamby in 1996.⁴

4 The Coroners Court in the ACT, *Inquest into the Manner and Cause of Death of Mark Robert Watson* (1996).

- 15.3.26 While it is to be expected that some operational issues will emerge with a new facility and technology systems, it is important that such issues are addressed promptly when legitimate concerns are raised by staff and others. Documentary evidence and verbal reports from a range of participants suggests that there were a number of ongoing concerns that have not been addressed adequately and are yet to be resolved. It appears that the ongoing costs of maintaining the security systems had not been included in the operating budget for Bimberi, and that budgetary constraints may have limited the ability of management to effectively resolve these issues.⁵
- 15.3.27 The Government Submission states that a Queensland-based risk management expert from Your Enterprise Solutions Pty Ltd, has been engaged to undertake a Risk and Compliance Framework Gap Analysis at Bimberi. It is hoped that this analysis will more clearly identify and address issues with the facility and security systems, and that CSD will respond appropriately to any recommendations arising from the analysis.

Transparent and evidence based decision-making

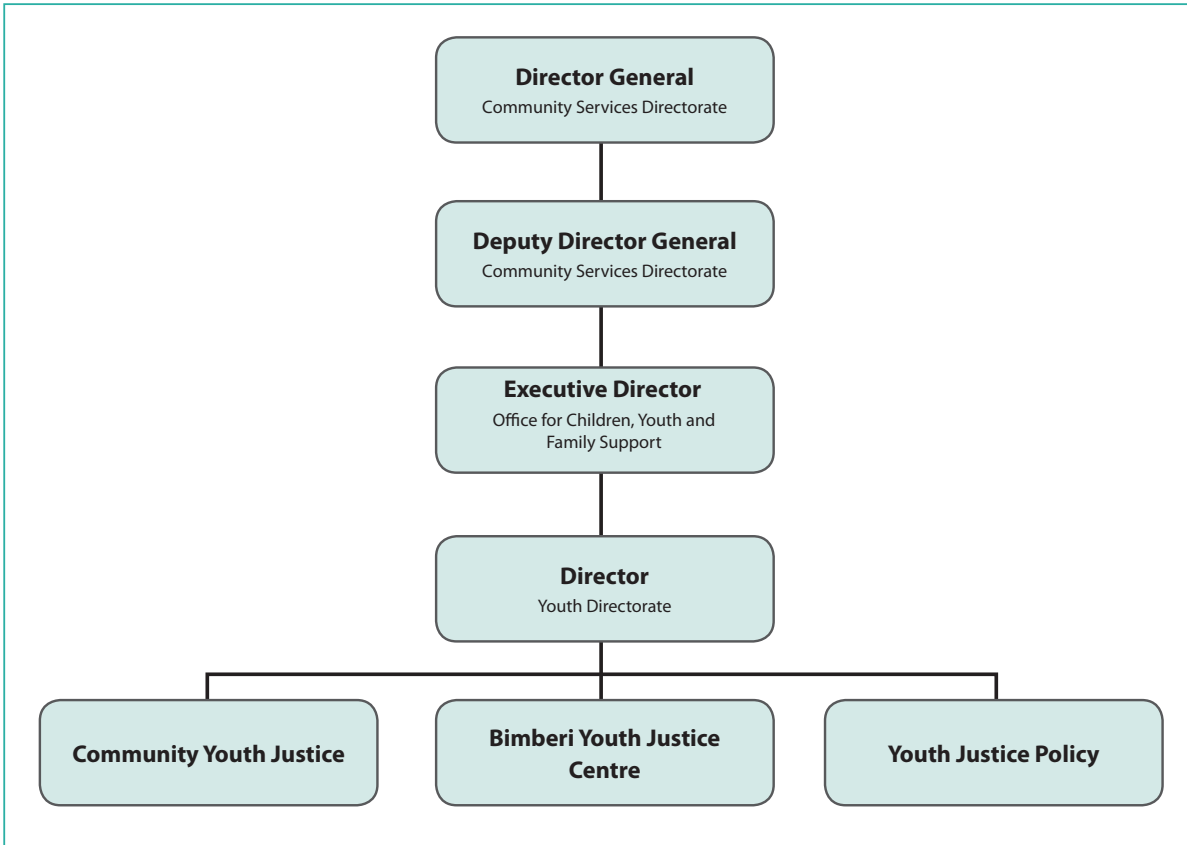
- 15.3.28 Bimberi management have significant control of young people's lives when they are in detention. Young people must make an application to have phone contact with their parents, to write letters to their friends, and even to attend the funeral of a sibling. Young people are classified into a particular category of 'risk', which determines the education and recreation activities they are able to participate in. If a worker views a young person's behaviour as inappropriate, they may undergo a series of disciplinary processes. Every day Bimberi staff make decisions which affect the lives of the young people living in the Centre.
- 15.3.29 It is clear to the Commission that young people do not always have full information about the criteria for decisions made at Bimberi; young people need decisions to be explained in an accessible way; and young people are not always aware of what they can do if they disagree with a decision. During the Review young people approached Commission staff to discuss concerns they had about decisions made by Bimberi staff. Some of the complaints raised with us included claims of:
- Refusal to grant leave to attend a friend's funeral;
 - Ongoing placement in segregation for a period of more than two months;
 - Inability to access education while in segregation;
 - Being required to participate in a particular education program;
 - Being denied access to music classes as a punishment for an incident that occurred outside school; and
 - Threats of transfer to the Alexander Maconochie Centre.
- 15.3.30 In Chapter 14 (conditions of detention) the Commission recommends that young people be provided access to an independent legal advice service to help them understand decisions, examine the legality of decisions, and provide assistance to appeal decisions. The ACT Government could fund one of the local Community Legal Centres or Legal Aid ACT to provide legal advice and minor assistance to young people at Bimberi. Legal Aid currently provides advice and representation to young people in Bimberi in the context of court proceedings, however, young people also need advice and assistance to appeal administrative decisions. Solicitors and paralegals could provide phone advice and a weekly visiting service, to help young people access information, and assist young people with applications and appeals in relation to classification, segregation, disciplinary processes, day leave, visits, phone contact or mail contact.

15.4 Directorate oversight of Bimberi

- 15.4.1 The executive and senior management of CSD has responsibility to provide support and accountability to Bimberi management. The current organisational structure is illustrated in Figure 2, overleaf.
- 15.4.2 The oversight of Bimberi by CSD Executives and Directors is a difficult task. They need to identify when it is appropriate to become involved, and to do so in a way which does not undermine the authority of Bimberi management.
- 15.4.3 The Commission suggests there are five areas where CSD Directors and Executives need to ensure they are informed, increase their involvement, and provide support for Bimberi management:
- Developing and reviewing operational procedures;
 - Budgetary decisions;
 - Scrutiny of incident reports;
 - Scrutiny of complaints from staff, young people and families; and
 - Independent advisory committee to assist Bimberi management.

⁵ Oakton consultants, *Bimberi Operations and Financial Performance Audit*, December 2009

Figure 15.2: CSD oversight of the Bimberi Youth Justice Centre.



Developing and reviewing operational procedures

- 15.4.4 Before the opening of Bimberi, the Youth Justice Policy unit of CSD drafted the youth justice provisions of the new *Children and Young People Act 2008* (CYP Act) and the policy documents in the form of regulations which governed the new detention centre.
- 15.4.5 The new legislation meant that, for the first time, the operation of the youth detention centre in the ACT was formalised under legislation, and there was a rapid increase in accountability and transparency. Drafting the legislation and policies was a significant amount of work, and the implementation of the new CYP Act should have been staged with the move from Quamby to Bimberi. Staff have expressed the view that the speed and breadth of the legislative change, combined with the move to a new facility, placed both policy and operational staff under significant stress. The Review was told that the Youth Justice Policy unit was under pressure to have all the policy documents prepared on time, and the timing was so tight that the first group of staff to go on the floor at Bimberi was not trained in the new legislation or policies.

Promising practice: It was a significant achievement to draft the new CYP Act and the policy documents governing the operation of Bimberi before the opening of the Centre in 2008.

- 15.4.6 However, once the policy documents were finalised and Bimberi opened there seems to have been a failure to:
- Design and institute the next layer of operational procedure documents underlying the policy documents, to provide practical guidance to staff;
 - Review the policy documents after a period of operation; and
 - Provide systematic quality assurance such as internal audits of the implementation of policies at Bimberi.

- 15.4.7 The Commission has been told it was the responsibility of Bimberi management to design procedure documents and communicate them to youth workers before the opening of Bimberi. The absence of comprehensive procedures, and the limited awareness of procedures by staff, has led to a series of problematic incidents at Bimberi, as discussed throughout this Report. It is unfortunate that CSD management did not provide sufficient oversight and direction in this context, and allocate additional resources if Bimberi management needed them to complete the task. As discussed above in the section on Bimberi management, the Commission recommends that procedures at Bimberi be reviewed, documented and properly communicated as a matter of urgency.

Budgetary decisions

- 15.4.8 CSD management has a significant role in determining the resources allocated to Bimberi. The Commission is concerned that the budgetary implications of a larger more complex facility were not adequately anticipated by CSD, and that management was expected to run Bimberi on a Quamby budget. As one participant said, *'the Government built a facility they could not afford to run'*.
- 15.4.9 The December 2009 audit of operations and financial performance of Bimberi by Oakton consultants found that: *'[o]perating and facilities costs have more than doubled when compared to Quamby. However, when you consider that the Bimberi facility is approximately four times the size of Quamby, this doubling in cost is not unreasonable.'*
- 15.4.10 Oakton notes that a significant annual maintenance fee for the security system at Bimberi was not budgeted for. It reported that management was taking a number of steps to reduce costs through limiting and monitoring consumables within units and using in-house maintenance personnel. The report concluded that *'CSD does not have sufficient funds allocated for ongoing operations of Bimberi, particularly if there is a significant increase in resident numbers'*. As discussed in Chapter 5 (staffing), Oakton also warned that Bimberi did not have sufficient permanent and casual staff to deal with an increase in residents.
- 15.4.11 There is some uncertainty about the extent to which the budgetary constraints that the Centre operated under were enforced by CSD, or whether Bimberi management did not actively seek additional funding. However, following the Oakton audit it would have been clear to CSD management that more funding was required for the operational and staffing budget. From July 2010 further funding was allocated for staffing at Bimberi and a policy of over-recruitment has now been adopted. For further discussion of these issues see Chapter 5 (staffing).

Scrutiny of incident reports

- 15.4.12 CSD management oversees incident reports and provides input to Bimberi management in relation to particular incidents. Incident reports are prepared by frontline staff, then submitted to the relevant unit manager who conducts an investigation into the incident and prepares a brief for senior management. The report and brief are then submitted to the programs manager at Bimberi, the senior manager at Bimberi, and the Director, Youth Directorate. Each of these senior managers has the opportunity to comment, and their comments are returned to Bimberi management. Youth workers may be verbally informed of the Director's comments 'if necessary'. This process is discussed further in the sections on Bimberi management and record keeping. It is a very important mechanism to ensure transparency at Bimberi. However, the Commission suggests that the Director be conscious of the fact that the incident reports only present the view of Bimberi workers, not young people who were involved in or witnessed incidents. The Commission makes several recommendations about incident reports in the section on record keeping.

Scrutiny of complaints from young people, staff and families

- 15.4.13 There is a complaints policy at Bimberi, which is discussed in further detail in the section on complaints. The Commission makes several recommendations in that section of the report, including that record keeping and oversight of complaints be improved. The Director, Youth Directorate, should request a monthly report of complaints by young people, staff and families at Bimberi, including the issues raised in complaints, the process used to manage complaints, and the response provided to complainants. This information will assist the Director to understand the views of people outside senior management.

Independent advisory panel to assist Bimberi management

- 15.4.14 Bimberi management are called upon to make difficult decisions every day about the young people in their care. For example, if a young person has an altercation, or is upset, or withdrawn, they need to assess the needs of the young person, and the group as a whole, to determine an appropriate response. Bimberi management need expert advice to conduct such assessments and provide a response. The Director and other senior executives in CSD have a difficult role in knowing how and when to intervene or to provide direction or support to Bimberi management. One mechanism that may assist Bimberi management and CSD is a panel of independent advisors.

- 15.4.15 The panel might comprise experts or service providers in specialist areas, such as behaviour management, mental health, disability, and alcohol and drug counselling. Members of the panel might be called upon to assist Bimberi and CSD to establish effective procedures, design services, or create risk management processes. They might also provide individual advice to inform the response to particular incidents.
- 15.4.16 The Commission is concerned that currently Bimberi senior managers make decisions about risk management and service delivery without specialist advice, and behaviour management decisions are made without proper documentation and review. The Commission suggests Bimberi management obtain assistance from experts in mental health, behaviour management and drug and alcohol treatment when creating operational procedures. This issue is discussed further in Chapter 6 (evidence based).

15.5 External oversight of Bimberi

- 15.5.1 The people who live and work in detention centres are particularly vulnerable to mistreatment and violations of their human rights. Detention centres are closed residential institutions with restrictions on the people, material and information permitted to enter and leave. Some barrier to external involvement in Bimberi is appropriate and expected. However, throughout history we have seen that without robust mechanisms for transparency and accountability, closed residential institutions can become harmful and abusive.
- 15.5.2 There are several ways in which outsiders can enter Bimberi and gain some understanding of the centre. Judges, Magistrates and Members of the Legislative Assembly may enter and inspect Bimberi at any reasonable time.⁶ A lawyer representing a young person may visit them in Bimberi.⁷ Family members and friends can request permission to visit young people in Bimberi. Community or government service providers can request permission to visit young people in Bimberi. Investigative authorities may assist young people or staff at Bimberi in relation to specific complaints, for example the Ombudsman can receive complaints under public interest disclosure legislation, and the Victim of Crime Commissioner can assist young people who have been victims of crime.
- 15.5.3 The primary agencies with formal powers of oversight and inspection at Bimberi are the OV, the PA, and the Commission.
- 15.5.4 Under the CYP Act the OV, the PA, and the Commission may:
- Enter and inspect Bimberi at any reasonable time;⁸
 - Inspect the register of searches and use of force; and⁹
 - Inspect the register of segregation directions.¹⁰
- 15.5.5 The OV, the PA and the Commission also exercise additional functions provided to them under other legislation, as described below.

Official Visitor

- 15.5.6 The role of the OV in the youth justice system is established under the CYP Act. The functions of the OV are:
- To inspect:
 - detention places and places outside detention places where detainees are, or have been, directed to work or participate in an activity, and
 - therapeutic protection places, and
 - places of care (a residential care service approved under s.525 of the CYP Act);
 - To report to the Minister and the Chief Executive;
 - To receive and consider complaints from 'entitled children and young people', and others on their behalf; and
 - To be available to talk with 'entitled children and young people'.¹¹
- 15.5.7 'Entitled children and young people' are those who are detained in a detention place, confined at a therapeutic protection place, or accommodated in a place of care.¹²

6 Section 153, *Children and Young People Act 2008*.

7 Section 178, *Children and Young People Act 2008*.

8 Section 153, *Children and Young People Act 2008*.

9 Section 195, *Children and Young People Act 2008*.

10 Section 222, *Children and Young People Act 2008*.

11 Section 39, *Children and Young People Act 2008*; *Children and Young People (Official Visitor Complaint) Guidelines 2009 (No 1)*.

12 Section 37, *Children and Young People Act 2008*.

- 15.5.8 The OV must, if practicable, visit Bimberi at least once each fortnight. The OV may enter Bimberi at any reasonable time. Bimberi management must give the OV any reasonable assistance to exercise his/her functions.¹³
- 15.5.9 A child or young person in Bimberi (or someone on their behalf) may complain to the OV about any aspect of the child's or young person's detention, including the conditions of detention, the care provided to them, or the operation of the Centre. The child or young person may make the complaint to the OV personally or through someone else.¹⁴
- 15.5.10 If the OV receives a complaint about Bimberi, he/she must tell the Chief Executive in writing.¹⁵ The OV must try to resolve the complaint with Bimberi management. In doing so he/she may make enquiries about any matter raised in the complaint, make a recommendation about the complaint to Bimberi management, and give a report to the Chief Executive or Minister about the complaint.¹⁶
- 15.5.11 The OV must provide the Minister and the Chief Executive with a written report each month, summarising the number and kinds of complaints received, action taken on complaints received, and any matters referred to the OV by an investigative entity (such as the police, the PA or the Commission).¹⁷
- 15.5.12 The OV currently visits young people in Bimberi every second Tuesday. She speaks with all the young people present, as well as staff and Bimberi management. Young people can also contact the OV directly by phone from Bimberi.
- 15.5.13 There is currently one OV, but the legislation provides for more than one OV to be appointed, and in past years there have been two people exercising the role at one time.¹⁸

Public Advocate of the ACT

- 15.5.14 The PA is established under the *Public Advocate Act 2005*. The PA has a range of statutory functions in relation to children and young people, as well as adults with a mental illness or impaired decision-making ability who require protection from abuse, exploitation or neglect.
- 15.5.15 In the context of the youth justice system, the functions of the PA are to:
- Act as an advocate for the rights of children and young people and, in doing so;
 - foster the provision of services and facilities for children and young people,
 - support the establishment of organisations that support children and young people, and
 - promote the protection of children and young people from abuse and exploitation.
 - Monitor the provision of services for the protection of children and young people; and
 - Deal, on behalf of people with a disability and children and young people, with entities providing services.¹⁹
- The PA may:
- Listen to concerns from children and young people about the provision of services for the protection of children and young people, and investigate those concerns; or
 - Investigate complaints and allegations about matters in relation to which the PA has a function.²⁰
- 15.5.16 The PA visits young people on remand and committal in Bimberi each month and also on request. Young people are also able to contact the PA directly by phone from Bimberi.
- 15.5.17 The PA must inspect the register of searches and use of force at Bimberi at least once every three months.²¹
- 15.5.18 If a young person in Bimberi is placed in segregation, a copy of the segregation notice must be given to the PA as soon as practicable.²²

13 Section 39, *Children and Young People Act 2008*.

14 Section 44, *Children and Young People Act 2008*.

15 Section 46, *Children and Young People Act 2008*.

16 Section 47, *Children and Young People Act 2008*.

17 Section 58, *Children and Young People Act 2008*.

18 Section 38, *Children and Young People Act 2008*.

19 Section 10, *Public Advocate Act 2005*.

20 Section 11, *Public Advocate Act 2005*.

21 Section 195, *Children and Young People Act 2008*.

22 Section 207, *Children and Young People Act 2008*.

Human Rights Commission

- 15.5.19 The Commission is an independent statutory agency and was established in November 2006 to promote and protect the rights and well being of all people living in the ACT. The Commission is established under the *Human Rights Commission Act 2005* (HRC Act).
- 15.5.20 There are three separate Commissioners with different functions and areas of responsibility:
- Children & Young People Commissioner (CYPC);
 - Health Services Commissioner and Disability & Community Services Commissioner; and
 - Human Rights & Discrimination Commissioner.
- 15.5.21 The full role of the Commission is described in the introduction to this Report. In relation to the youth justice system in the ACT, the Commission's functions are to:
- Investigate complaints about a service for children and young people, a health service, or a disability service;
 - Investigate complaints of discrimination in designated areas of public life;
 - Provide training and community education in human rights, discrimination and related topics;
 - Promote improvements in services for children and young people;
 - Consult with children and young people about issues that affect their lives; and
 - Provide advice to government and non-government agencies about laws, policies, and practices affecting children and young people.²³
- 15.5.22 There are six types of complaints that may be made under the HRC Act, many of which are relevant to the youth justice context:
- Services for children and young people;
 - Disability services;
 - Health services;
 - Services for older people (not relevant in the context of the youth justice system); and
 - Acts of discrimination.
- 15.5.23 Depending on the type of complaint, different people are eligible to make complaints, complaints can be made about different people/organisations, and complaints can be made for different reasons (see Table 1, below, for further information).

Table 15.1: Complaints framework established under the *Human Rights Commission Act 2005*

Type of complaint	Who may make a complaint	When someone may complain	Who may be complained about
Children and young people service complaint Considered by the Children & Young People Commissioner	A child, a young person, their parent/carer, or someone acting as their agent.	If the service is not being provided appropriately; if the service has acted inconsistently with required standards; or if the service is not being provided.	A service provided in the ACT specifically for children, young people, both children and young people, or their carers. Some examples: care, respite care, transport, assessment or referral of support needs, education, training and skill development, information services, coordination, food services, case management and brokerage, recreation, advocacy, community access, accommodation support, rehabilitation, employment services, a service provided in relation to the use of premises for the care, treatment or accommodation of children, young people or their carers, or a service provided in relation to a detention place, therapeutic protection place or place of care under the <i>Children & Young People Act 2008</i> .

²³ *Human Rights Commission Act 2005*.

Table 15.1: Complaints framework established under the *Human Rights Commission Act 2005*, continued

Type of complaint	Who may make a complaint	When someone may complain	Who may be complained about
Disability service complaint Considered by the Disability & Community Services Commissioner	Anyone	If the service is not being provided appropriately; if the service has acted inconsistently with required standards; or if the service is not being provided.	A service provided in the ACT specifically for people with a disability or their carers. Some examples: home help, personal care, home maintenance or modification, food services, respite care, transport, assessment or referral of support needs, education, training and skill development, information services, coordination, case management and brokerage, recreation, advocacy, community access, accommodation support, rehabilitation, employment services, or a service provided in association with the use of premises for the care, treatment or accommodation of people with a disability.
Health service complaint Considered by the Health Services Commissioner	Anyone	If the service is not being provided appropriately; if the service has acted inconsistently with required standards; or if the service is not being provided.	A service provided in the ACT for: assessing, recording, maintaining or improving the physical, mental or emotional health comfort or well being; or for diagnosing or treating an illness, disability, disorder or condition. Also, a service provided specifically for carers.
Discrimination complaint Considered by the Human Rights & Discrimination Commissioner	The aggrieved person or someone acting as their agent	Unfavourable treatment on the basis of certain personal attributes: Sex, sexuality, gender identity, relationship status, status as parent/carer, pregnancy, breastfeeding, race, religious or political conviction, disability, industrial activity, age, profession, trade, occupation or calling, spent conviction, or association with a person with one of these attributes.	People or organisations acting in certain areas of public life: Employment, education, access to premises, goods, services and facilities, accommodation, clubs.
Other complaints	<p>Sexual Harassment – sexual harassment is unwanted conduct of a sexual nature which reasonably makes another person feel offended, intimidated or humiliated.</p> <p>Vilification – vilification is a public act that incites hatred, serious contempt or severe ridicule of a person or group of people because of their race, sexuality, gender identity or HIV/AIDS status.</p> <p>Health records privacy or access – breach of privacy or failure to allow access to health records under the <i>Health Records (Privacy and Access) Act</i>.</p>		

- 15.5.24 In general, a complaint made under the HRC Act must be in writing. However, a complaint may be made orally if the Commission is satisfied on reasonable grounds that exceptional circumstances justify action without a written complaint. In most circumstances a complaint must include the name and address of the person making the complaint. However, in some circumstances the Commission may consider a matter on its own initiative.
- 15.5.25 There is currently no authority for the Commission to investigate complaints about breaches of civil and political rights under the *Human Rights Act 2004* (HR Act), although many complaints relating to human rights issues are made to the Commission in the form of a complaint about a service for a child or young person, a disability service, a health service, or a discrimination complaint.
- 15.5.26 Young people are also able to contact the Commission directly by phone from Bimberi. The Commission has visited Bimberi periodically since its opening in September 2008, but has not previously established a schedule of regular visits to Bimberi.

Coordination of external oversight agencies

- 15.5.27 The roles and functions of the OV, the PA and the CYPC intersect, and it is difficult to describe the difference between the agencies in a way that is meaningful for young people. There seems to be significant confusion among young people; sometimes they think different workers are from the same organisation, or they are unsure which agency they have previously spoken with.

- 15.5.28 The similarities between the agencies are fairly apparent. They each provide external oversight and raise concerns about Bimberi, and do so with small staff teams and limited resources. The CYPC comprises the Commissioner and two part time advisers (or 1 FTE position). The office of the PA comprises the Public Advocate, a principal advocate, and a senior advocate. As mentioned above there is currently one person appointed as OV.
- 15.5.29 The differences between the agencies are not always obvious to young people, but they are fundamental. They:
- *Engage with different groups of young people.* The OV works with young people in detention at Bimberi and Marlow Cottage; the PA works with young people in contact with the child protection, youth justice and mental health systems; the CYPC works with all young people in the ACT;
 - *Have different role when working with young people.* The PA has an advocacy role, and acts in the best interest of the child or young person. The CYPC has an impartial role; providing assistance to young people who wish to make a complaint, while remaining impartial when investigating and conciliating complaints. The OV has a more mixed role, raising concerns with Bimberi management, the Director-General and the Minister on behalf of young people, but also seeking information from Bimberi management and forming an assessment about the complaint; and
 - *Have different power to obtain information from Bimberi.* The Commission can compel information, while the PA and OV can only request information.
- 15.5.30 Due to the intersection between the agencies, it is particularly important that they have a collaborative approach to complaints at Bimberi. Young people are less interested in the jurisdictional boundaries between the agencies than in receiving responses to their concerns.
- 15.5.31 The Commission recommends that the OV, the PA and the Commission adopt a 'first door is the right door' approach, and negotiate procedures for 'warm transfer' to the relevant agency when a young person's complaint falls outside the receiving agency's jurisdiction, or could be better handled by another agency.

Recommendation 15.6: The Official Visitor, the Public Advocate and the Human Rights Commission ensure they practice a 'first door is the right door' approach when speaking with young people in Bimberi, and negotiate procedures for effective referrals to the relevant agency when a young person's complaint falls outside the receiving agency's jurisdiction.

- 15.5.32 Complaints made to the OV, the PA or the Commission are confidential. However, in certain circumstances the agencies have authority to communicate with each other in relation to individual complaints or concerns, and to refer matters when appropriate.
- If the OV receives a complaint, and believes it would be better dealt with by an investigative entity they may refer the complaint to that entity.²⁴ If the OV becomes aware of a matter that may be the subject of a complaint to an OV, but no complaint is made, the OV may tell the Director-General and/or refer the matter to an investigative entity;²⁵
 - The PA must refer systemic matters relating to children and young people to the Commission for consideration;²⁶ and
 - If the Commission receives a complaint relating to a child or young person, and the Director-General has parental responsibility for the child or young person, the Commission may refer the complaint (or part of the complaint) to the PA for advocacy if it is in the best interests of the child or young person.²⁷ If the Commission considers that the act or service to which a complaint relates is a matter that could have been complained about to another statutory office holder, the Commission may refer the complaint.²⁸
- 15.5.33 In practice, the three agencies refer matters between them as appropriate. A complaint made to the CYPC about a service for children or young people may also include an issue that requires advocacy, and the CYPC will obtain the young person's consent to inform the PA. If the OV is not satisfied with the response from Bimberi management to a young person's concern, she will inform the PA, and they work on some issues together to avoid duplication. The OV provides a copy of her monthly report to the CYPC. The PA refers matters to the CYPC for investigation if they are outside their jurisdiction.

²⁴ Section 49, *Children and Young People Act 2008*.

²⁵ Section 57, *Children and Young People Act 2008*.

²⁶ Section 11, *Public Advocate Act 2005*.

²⁷ Section 51A, *Human Rights Commission Act 2005*.

²⁸ Section 52A, *Human Rights Commission Act 2005*.

- 15.5.34 During the Review, some people within CSD management expressed the view that external oversight agencies are unhelpful, and should be advocating for systemic improvement across the youth justice system:
- 'External oversight bodies were regarded as appropriate and necessary to ensure [government] agencies, including the youth detention centre, were accountable and open to scrutiny. However most of the managers who took part in these consultations expressed a view that, in spite of the relatively large number of oversight bodies in Canberra, there was a lack of advocacy for system wide change including the need for whole of government, whole of community approaches to improving life outcomes for these children.'*
- 'There tends to be a focus on things like haircuts, newspapers and visitors.'*
- 15.5.35 *'Our focus has been on complying with human rights without concern for what happens when they come out. Human rights should be business as usual.'*
- 15.5.36 *'Oversight bodies have not tended to see advocacy for wider systemic change as their role such as the need for more diversionary processes. Rather there is a tendency to focus on complaints and to give feedback about what the department is doing wrong. We have been frustrated by a lack of willingness to go beyond the responsibilities of this department to deal with issues.'²⁹*
- 15.5.37 The OV, the PA and the Commission have statutory obligations to respond to individual complaints, and it is expected that these three agencies will continue to communicate in relation to individual complaints when appropriate. However, the Commission recommends that, in addition, the OV, the PA and the Commission establish a regular meeting schedule to discuss systemic issues at Bimberi and more widely across the youth justice system. We also recommend that the OV, the PA and the Commission schedule joint meetings with Bimberi management at least twice a year to discuss systemic issues. Following these meetings the agencies could provide a report to the Minister if there is a particular issue that needs to be addressed.

Recommendation 15.7: The Official Visitor, the Public Advocate and the Human Rights Commission:

- Establish a regular meeting schedule to discuss systemic issues at Bimberi and more widely across the youth justice system
- Periodically schedule joint meetings with Bimberi senior management to discuss systemic issues.


- 15.5.38 While the Commission does not have a formal schedule of oversight visits within Bimberi, during 2010 the CYPC visited Bimberi on a number of occasions to undertake consultation and community engagement activities with the residents, as well as to meet with individual young people to discuss issues of concern. In doing so, the CYPC heard reports of incidents and negative developments at Bimberi. The CYPC raised these concerns with CSD executives, including the Director-General, during meetings and phone calls. The Commission is aware of a number of steps taken by the Director-General, and other executives, to address issues of individual and systemic concern. These processes were beginning to result in visible improved outcomes for young people and staff by the time this Review commenced in late 2010.
- 15.5.39 In March 2010, the Human Rights & Discrimination Commissioner visited Bimberi and met with Bimberi management and the Director-General of CSD. She also wrote to the Director-General outlining her concerns about staff shortages, and the unlawful use of mechanical restraints on young people in Bimberi. The Director-General responded in writing, advising that the unlawful use of mechanical restraints had ceased.
- 15.5.40 In November 2010, both Commissioners wrote to the Minister for Children and Young People raising a number of issues, including on-going concerns about staff shortages. In January 2011, the Minister responded in writing advising of a number of current and proposed initiatives to address the Commissioners' concerns.
- 15.5.41 The OV and the PA have held regular meetings with Bimberi management and CSD management.

A way forward: improving external oversight of Bimberi

Inspection of 'search register' and 'use of force register'

- 15.5.42 As mentioned above, the OV, the PA and the Commission have authority to inspect a limited range of documents at Bimberi; the segregation register, use of force register, and search register. However in conducting this Review, the Commission has found that the information provided in these registers is inadequate and does not facilitate proper external oversight.

²⁹ Gail Winkworth and Michael White, 'Report to the ACT Human Rights Commission on Structures and Organisational Arrangements to Support Reform in ACT Youth Justice' (2011); see Appendix B.



This view was informed by accessing a wider range of documents, including incident reports and several investigation reports. Due to shortcomings with the design of the registers, and the record keeping practices of Bimberi staff, any descriptive background information about a search or use of force is contained in the 'incident report', but not the 'use of force register' or 'search register' that relate to the same incident.

15.5.43 In particular, the registers do not give adequate explanation of:

- the reason for the search or use of force;
- the circumstances leading to the search or use of force;
- the justification for the decision to undertake a search or use force; and
- the manner in which the search or use of force was carried out, and the actions taken by staff to fulfil their statutory obligations during a search or use of force (such as whether they offered a young person the opportunity to have a support person present, and what steps they took to avoid the use of force).

15.5.44 Therefore the registers cannot be properly audited without reference to the incident reports. The Commission has serious concerns about the record keeping systems and practices at Bimberi, and further discussion and recommendations on this topic are contained in the section on record keeping.

Recommendation 15.8: The ACT Government amend the *Children and Young People Act 2008* to grant the Official Visitor, the Public Advocate and the Human Rights Commission legislative authority to inspect Bimberi incident reports when inspecting the other registers, and to require that the Public Advocate receive a copy of all incident reports as soon as practicable. The Public Advocate should receive additional resources from the ACT Government to enable them to monitor incident reports.

Notification of abuse of young people in Bimberi

15.5.45 Under the CYP Act the Director-General of CSD must inform the PA of any appraised reports of abuse of children or young people in out of home care.

15.5.46 The provisions refer to narrow circumstances where:

- The child or young person is under daily care responsibility of the Director-General;
- The child or young person is living in out of home care (ie. foster care, kinship care, or residential care);
- A child protection report is made in relation to the carer's treatment of the child or young person; and
- The allegation is sufficiently serious that Care and Protection Services carry out a child protection appraisal.

15.5.47 In this situation the Chief Executive must give the PA a report about the incident and what action (if any) the Director-General has taken as result of the appraisal.³⁰ The PA has expressed the view to the Director-General that they should also receive such reports in relation to young people at Bimberi. Young people living in Bimberi are also in the care of the Director-General, even if this is so under the youth justice provisions of the CYP Act, rather than the care and protection provisions. Currently CSD only notifies the PA of incidents of abuse in Bimberi when the young person also happens to be subject to a care order. The Commission agrees that the PA, as the independent advocate for young people in Bimberi, should be informed if there is an allegation of abuse of a young person in Bimberi.

Recommendation 15.9: The ACT Government amend the *Children and Young People Act 2008* to extend the provisions of s.507 to include young people placed in Bimberi, and require the Public Advocate be informed as soon as practicable if there is an allegation of abuse of a young person in Bimberi. The Public Advocate should receive additional resources from the ACT Government to enable them to monitor allegations of abuse in Bimberi.

Inadequate notification of significant incidents

15.5.48 The PA is the independent advocate for young people in detention in the ACT. As mentioned above, the legislative authority granted to the PA to access information relating to children and young people in Bimberi is restricted to immediate

³⁰ Section 507, *Children and Young People Act 2008*.

notification when young people are placed in segregation, and access to the search register and use of force register every three months.

- 15.5.49 This is not comparable with the child protection context, where legislation requires that the Director-General provide the PA with copies of:
- Application for appraisal order; (ss.377, 379)
 - Application for extension of appraisal order; (s.386)
 - Application for family group conference agreement; (s.390)
 - Notice of registered family group conference agreement (s.392)
 - Notice of emergency action; (s.408)
 - Application for emergency application release order; (s.419)
 - Application for care and protection order; (s.427)
 - Application to revoke or amend interim care and protection order; (s.435)
 - Application for assessment order; (s.445)
 - Application for extension of assessment order; (s.452)
 - Application for extension amendment or revocation of care and protection order; (s.469)
 - Annual review report for a care and protection order; (s.497)
 - Information relating to abuse of young people in care; (s.507)
 - Application for therapeutic protection order; (s.541)
 - Review of therapeutic protection order; (s.556)
 - Extension application for therapeutic protection order; (s.560)
 - Application for amendment or revocation of therapeutic protection order; (s.567)
 - Application for transfer of child welfare order to another State or Territory; (s.648)
 - Notice of transfer of a child welfare order to another State or Territory; (.s646)
 - Application for transfer of child welfare proceedings to another State or Territory; (s.658)
 - Application for removal of a party to child protection proceedings; and (s.706)
 - Order made under care and protection chapter in CYP Act. (s.720)
- 15.5.50 In addition under the CYP Act the PA:
- May request copy of a therapeutic protection plan; and (s.631)
 - Has access to inspect therapeutic protection register (s634) and must inspect the therapeutic protection register every three months (s.635)
- 15.5.51 Without access to equivalent information in the youth justice context, PA cannot properly assess the treatment of young people in Bimberi, or advocate for their best interests. During 2010 there were several serious incidents at Bimberi that affected the well being of young people, but which were not documented in the segregation register, use of force register, or search register. These include:
- Some young people were routinely placed in hand cuffs and ankle cuffs to move between buildings inside the grounds at Bimberi;³¹
 - Two young people accessed medication that was not prescribed to them; and
 - One young person attempted suicide.
- 15.5.52 These incidents clearly affect the safety and wellbeing of young people in Bimberi, and the PA should be informed of such incidents as soon as practicable after the time they occur. However, currently Bimberi is not required to provide this information under the CYP Act.
- 15.5.53 As discussed above, the Commission also recommends that the OV, the PA and the Commission be granted authority to inspect incident reports, in order to ensure serious incidents are transparent. The Commission also recommends that copies of certain other documents be provided to the PA as independent advocate for young people in Bimberi.

31 Since mid 2010, on advice from the Human Rights Commission, Bimberi have changed their procedure and now record the use of mechanical restraints on the use of force register.

Recommendation 15.10: The ACT Government amend the *Children and Young People Act 2008* (CYP) to require that the Public Advocate, as the independent advocate for young people in detention, receive copies of the following documents as soon as practicable. The Public Advocate should receive additional resources to enable them to monitor these documents.

- Incident reports at Bimberi
- Classification decisions and reviews of classification decisions under s.190 of the CYP Act
- Behaviour management plans made under Children and Young People (Behaviour Management Framework) Policy and Procedures 2008 (No 1)
- Charge notice of behaviour breach issued under s.296 of the CYP Act
- Matters referred to the AFP or DPP for criminal investigation (including copies of the allegation report and any reports the administrator has of investigations already made about the alleged behaviour breach) under s.295(4)(d) and s.295(6) of the CYP Act
- Disciplinary action taken under s.302 of the CYP Act
- Behaviour management consequence imposed under s.317 of the CYP Act
- Notice of disciplinary review under s.324 of the CYP Act
- Record of proceedings of disciplinary review under s.329 of the CYP Act
- Notice of disciplinary hearing under s.330 of the CYP Act.

Location of the Official Visitor

15.5.54 In 2004 the ACT Government reviewed and amended the system of statutory oversight agencies, complaint handling agencies, and advocacy agencies.³² As a result of this process the CYPC was established, and the Commission was created. One of the recommendations from this process that is yet to be enacted is for the OV to be co-located with the PA. The ACT Government publicly announced the decision that:

*'The ACT Public Advocate will also assume responsibility for Official Visitors. It is considered that the similarity of functions and availability of collegiate support provide advantages to locating Official Visitors within the office of the ACT Public Advocate.'*³³

15.5.55 The role of the OV is a difficult one to perform, particularly when only one person is appointed to the position. Structurally the OV should be placed in an agency which is independent from CSD, and where they can receive professional support and administrative support.

15.5.56 The Commission recommends that the commitment made by the ACT Government in 2004 following the review of the system of statutory oversight authorities be fulfilled, and that the OV be placed administratively with the PA.

Recommendation 15.11: The ACT Government fulfil the commitment made in 2004 following the review of the system of statutory oversight authorities, and place the Official Visitors for children and young people, mental health and corrections administratively with the Public Advocate.

Aboriginal or Torres Strait Islander Official Visitor

15.5.57 In previous years there have been two people appointed to the position of OV. In light of the fact that a high proportion of young people in Bimberi are Aboriginal or Torres Strait Islander, the Commission recommends that the CYP Act be amended to require the Director-General to appoint at least two people to the position of OV, at least one of whom is Aboriginal or Torres Strait Islander.

³² ACT Government, *The Right System for Rights Protection: An ACT Government Position Paper on the System of Statutory Oversight in the ACT* (2004).

³³ *Ibid*, 18.

Recommendation 15.12: The ACT Government amend the *Children and Young People Act 2008* to provide for an Aboriginal or Torres Strait Islander Official Visitor at Bimberi.

Phone contact with young people in Bimberi

- 15.5.58 As mentioned above, young people have access to a restricted phone system in their rooms and certain common areas of Bimberi. The phone allows them to contact a limited range of people, including their solicitor, support worker, a parent or family member, and the OV, the PA and the Commission. Therefore young people are able to contact external oversight agencies if they wish.
- 15.5.59 However, external agencies are not able to contact young people using the same phone system. The agencies must call Bimberi administration and leave a message for the young person. It would be preferable if the external oversight agencies, and other authorised persons such as the young person's solicitor, could call Bimberi and be transferred to speak with the young person by phone, to enable them to communicate between face to face visits.

Recommendation 15.13: The Community Services Directorate upgrade the Starnet phone system to allow external oversight agencies and a young person's solicitor to call Bimberi and be connected to speak with a young person.

15.6 Human Rights Act 2004

- 15.6.1 The ACT was the first jurisdiction in Australia to enact a Human Rights Act, which provides a statutory basis for respecting, protecting and promoting civil and political rights.
- 15.6.2 The following rights are protected under the HR Act, and they reflect Australia's international human rights obligations under the International Covenant on Civil and Political Rights.
- Recognition and equality before the law;
 - The right to life;
 - The right not to be subject to torture and cruel, inhuman or degrading treatment;
 - The right not to be subject to medical treatment or experimentation without consent;
 - The right to privacy and reputation;
 - Rights of the family and children;
 - Freedom of movement;
 - Freedom of thought, conscience and religious belief;
 - Freedom of peaceful assembly and association
 - Freedom of expression;
 - The right to participate in public life;
 - The right to a fair trial and rights in criminal proceedings;
 - Right to compensation for wrongful conviction;
 - Protection against double jeopardy;
 - Protection against retrospective criminal laws;
 - Freedom from forced work; and
 - Rights of minorities to enjoy their culture.
- 15.6.3 Under the HR Act, Public Authorities in the ACT are obliged to act compatibly with human rights, and give proper consideration to relevant human rights when making decisions.³⁴ A Public Authority is generally an ACT government agency or an agency performing ACT government functions. In some circumstances, this might include a private or community sector organisation, funded by the ACT Government.
- 15.6.4 The legislation, standing orders and policy documents applying to Bimberi were created in compliance with the HR Act. On its website and in policy documents CSD frequently claims that Bimberi is a 'human rights compliant' detention centre.

³⁴ Section 40B, *Human Rights Act 2004*.

- 15.6.5 However, during the Review it has become apparent that attention is needed to a wider range of issues than just the legislation and policies to ensure human rights compliance. As discussed in the section on management and operations, the operational practices at Bimberi do not consistently conform to policy and procedure documents. Indeed, some practices have become widespread, but there is no formal procedure governing their use, such as use of 'time out' in response to non-compliance by young people. Operational practices have a significant impact on the rights and well being of both young people and staff. Further, human rights compliance is not something that is achieved once and for all; it requires an ongoing process of review and improvement. Regular reviews of policies, procedures and practices at Bimberi will help ensure ongoing compliance with human rights standards.

15.7 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

- 15.7.1 The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international agreement which builds on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). It was adopted by the international community in 2002 and entered into force in 2006. The aim of OPCAT is to prevent the mistreatment of people in detention. Places of detention include prisons, youth detention centres, immigration detention centres, and other places where people are deprived of their liberty, such as mental health facilities and dementia units in aged care facilities.
- 15.7.2 Australia is a party to CAT. The Australian Government signed OPCAT on 19 May 2009, but has not yet ratified the agreement. A proposal for ratifying OPCAT is under consideration by the Australian Government. By signing OPCAT, Australia has agreed to allow inspections of places of detention by:
- An international body, the United Nations Subcommittee on the Prevention of Torture;
 - A national independent authority, to be called a National Prevention Mechanism (NPM); and
 - Local independent authorities based in each State and Territory, in association with the NPM.
- 15.7.3 The Commission welcomes the Australian Government's commitment to establish greater oversight and inspection of places of detention. Once the Australian Government ratifies OPCAT, the ACT Government will be required to participate in regular annual inspections or audits of Bimberi. The Commission recommends that CSD adopt a practice of scheduling regular internal and external audits of Bimberi, to develop good practice in preparation for the future ratification of OPCAT. The Western Australian Office of the Inspector of Custodial Services has created a Code of Inspection Standards which is compliant with OPCAT, which may assist CSD in developing audit standards for use at Bimberi.

Recommendation 15.14: The Community Services Directorate adopt a practice of scheduling regular internal and external audits of Bimberi, to develop good practice in preparation for the future ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- 15.7.4 As detailed throughout this Report, the Commission is mindful that ongoing human rights compliance is not a static state, a fact reflected by OPCAT's requirement for on-going monitoring. If the ACT Government wishes to achieve such a state, it must provide adequate resources for the Commission to periodically audit closed environments against human rights standards. Many of the issues identified by this Review could have been mitigated if the Commission had the resources, and Government support, to audit Bimberi more frequently.

Recommendation 15.15: The ACT Government fund an independent statutory agency to undertake periodic human rights audits of closed environments.

15.8 Complaints handling system at Bimberi

- 15.8.1 Complaints processes are an important part of any organisation. They provide an opportunity to obtain feedback, and identify areas for improvement. A detention centre is a particularly important place in which to have a robust complaints process. Bimberi should welcome comments, questions and complaints from young people, staff, families and external workers who attend the Centre.

Bimberi complaints handling policy

- 15.8.2 The complaints handling system at Bimberi is established in the regulations to the CYP Act. It is a two-tier process, where in the first instance a complainant may speak with a staff member, and if their concerns are not resolved, they may make a formal written complaint for investigation by the Programs Manager.

'Complaints by a Young detainee, Family Member, Significant Person or Visitor (Level 1 Complaint)

The complaint handling stages are:

1. *a young detainee or a family member, significant person or visitor makes contact with a staff member; the staff member will address general concerns – the young detainee, family member, significant person or visitor indicate they are satisfied;*
 2. *if the young detainee, family member, significant person or visitor are not satisfied, a staff member will assist and support the young detainee or family member to complete a complaint form. This form is located on the Department's Intranet;*
 3. *the young detainee or the other complainant will be kept informed of the progress of their complaint and will be advised of the process to be followed and by whom and when they can expect a response;*
 4. *the Program and Services Manager is responsible for maintaining a Level 1 complaint data base and must give every completed complaint form a reference number;*
 5. *the Program and Services Manager assesses the complaint, taking into account any indication by the complainant of the outcomes sought by the complaint. These may include: an explanation, a wish to express their concern, seeking an apology, changes to decisions taken, including any view expressed about what the decision should have been. If the Program and Services Manager considers it is more appropriate for the Operations Manager to undertake these tasks, the Program and Services Manager must refer the complaint to the Operations Manager;*
 6. *all level 1 complaints are to be acknowledged formally within 3 working days of receipt of the complaint and a response provided within 5 working days;*
 7. *feedback will be provided to the complainant on the progress and outcome of their complaint;*
 8. *the review will be a staged process, with the appropriate manager reviewing the process and response, seeking approval of both by the Senior Manager and giving feedback to the young detainee/family or visitor as approved by the Senior Manager;*
 9. *the young detainee /family/visitor indicate that they are satisfied;*
 10. *if the young detainee/family/visitor are not satisfied the matter will be referred to the Director for review as a Level 2 complaint; and*
 11. *the manager will ensure that the young detainee, family and visitors are treated with respect and sensitivity and that the complainant is not stigmatised during this process. Decision-making will be fair and consistent with relevant legislation, policy and procedures.³⁵*
- 15.8.3 Unlike other policy documents in the regulations there is no template complaint form attached in a schedule to this policy, therefore it is unclear whether and how staff and young people are able to access it.

Problems with the complaints handling system at Bimberi

- 15.8.4 During the Review the Commission requested access to inspect all records of complaints made in the last 12 months by young people and staff at Bimberi. In response we received several untitled spreadsheets. We used this information, and the comments of young people, staff and families, when examining the complaints handling system at Bimberi.
- 15.8.5 In England and Wales, the independent agency responsible for inspection of prisons, HMIP, has developed eight criteria for assessing the responsiveness of detention centres to complaints by young people, based on international and UK human rights standards.³⁶ These standards view 'complaints' in the same context as 'applications' and 'appeals against decisions'. They also require that detention centres establish mechanisms to communicate with young people and respond to their views and requests.

³⁵ Bimberi Youth Justice Centre 'Provision of Information, Review of Decisions and Complaints Policy and Procedures' (2008).

³⁶ Her Majesty's Inspectorate of Prisons, *Criteria for assessing the treatment and conditions for children and young people held in prison custody* (2009).

- 15.8.6 At Bimberi, young people currently make application for phone contact with family members or friends, visits from family members or friends, purchasing certain items using incentive points, and day leave to attend an important event in the community. There are also processes for young people to appeal decisions about classification, segregation, behaviour breaches, and disciplinary processes.
- 15.8.7 The Commission used the eight human rights standards as articulated by HMIP to assess the complaints systems at Bimberi and identify areas for improvement.

Information about applications and complaints is reinforced through age appropriate notices and posters that are easy to read and that are produced both in English and other languages and displayed across the establishment.

- 15.8.8 The Commission reviewed documents, spoke with staff and young people, and conducted physical observations onsite, all of which indicated that information about complaints, applications and appeals was not readily accessible to young people. There were no posters in the centre on these topics. An admission handbook was designed for young people, but only one of the young people interviewed during the Review recalled receiving the handbook. Further, it is doubtful that a handbook in itself would provide accessible information to this group of young people; staff should be available to explain the information contained in the handbook, perhaps repeatedly throughout the young person's detention. Young people are more likely to absorb information at a time when it is directly relevant to them. We hope that workers inform young people of their appeal rights when explaining reasons for decisions, however, there is no quality assurance process to ensure that this happens.

All applications and complaints, whether formal or informal, are dealt with fairly and promptly. Responses are written in an understandable and respectful manner and clearly address the issues raised with either a resolution or a comprehensive explanation of future action. There is a quality assurance system in place to monitor responses to complaints.

- 15.8.9 Best practice requires agencies to document the complaints received, and the response provided to complaints.³⁷ On this standard, the record keeping system for complaints is inadequate. The Commission requested access to all complaints made at Bimberi, and we received no documentation to indicate that Bimberi management routinely collate all verbal and written complaints in a register or centralised database. According to the information provided to the Commission, most complaints relating to Bimberi were made to the Director's office, not through the internal Bimberi complaints process. Therefore, it seems likely that verbal complaints made onsite at Bimberi are not recorded.
- 15.8.10 CSD were able to provide records of the responses made by the Director to complaints submitted to that office. However, they were unable to provide information to indicate how Bimberi management respond to complaints received onsite. Therefore, we cannot be confident that all complaints were responded to adequately. Indeed, it is most concerning that several people claimed that some records of complaints 'were destroyed', 'were not investigated' or 'went missing'. While these allegations are not corroborated by independent information, we note that a strong record keeping system for complaints at Bimberi would enable CSD to dispute any accusations of complaints going missing.
- 15.8.11 A poorly designed complaints process, and poor record keeping prevent the Commission from properly evaluating the effectiveness of the complaints system at Bimberi. However we can report the perceptions of young people and staff on this question. Many young people told us that making a complaint was not easy, and that when complaints were made they were not dealt with fairly. The staff survey asked respondents for their opinion as to whether 'complaints from staff were generally treated seriously by management at Bimberi', and most respondents stated they believed they were not (see Appendix 5).

Children and young people are encouraged and helped to solve areas of dispute informally, although they are not deterred from making formal complaints, and advocates are available to assist.

- 15.8.12 The majority of people who responded to the staff survey felt that young people are encouraged to make a complaint if they are unhappy with their treatment at Bimberi. During the Review many young people seemed willing to voice their concerns, both to the Commission and to staff members that they trust. Some young people told the Commission that there were certain staff members that they trusted to assist them. However some young people also said they would not bother putting their complaint in writing using the formal complaint process, because they did not believe anything would happen. According to the records provided to the Commission, most complaints at Bimberi were submitted by staff not young people. The Community and Public Sector Union submitted a number of complaints to the Director on behalf of staff, so it appears that workers have access to advocates to assist them if needed.

37 Commonwealth Ombudsman, *Better Practice Guide to Complaints Handling* (2010).

Consultative committees or equivalent consultation processes are held at least monthly when children and young people are able and encouraged to present any areas of grievance or dissatisfaction directly to senior members of staff.

- 15.8.13 This is a fundamental absence, and it is an area in which the Commission recommends urgent action. There could be significant improvement to the communication channels between Bimberi management and young people, staff and families. This issue is discussed further below.

Children and young people can and do access and submit application and complaint forms easily and in confidence and without fear of punishment or recrimination.

- 15.8.14 Both young people and staff reported fear of recrimination if they made a complaint. Young people told the Commission they do not bother making a formal written complaint because nothing will happen or they will get treated badly. Workers reported feeling harassed by management for making complaints. Some reported that they felt there was a culture of 'we don't complain'. According to the interviews and survey conducted by the Commission, there is also a perception or feeling among some staff that those who make complaints are not promoted.
- 15.8.15 The Commission does not have sufficient information to assess the accuracy of the above perceptions, however we note that the existence of such perceptions (even if inaccurate) would undermine the effectiveness of the complaint handling system.
- 15.8.16 It is not clear to the Commission that young people have access to the complaint form mentioned in the complaints policy. The summary of complaints provided by CSD did not include a copy of the Bimberi complaint form. The Commission has only seen one copy of a complaint form, and this was found in a young person's administration file, in the behaviour management section. This complaint was not included in the list sent to us by CSD, which indicates either poor record keeping or failure to acknowledge and respond to this complaint at all.

Children and young people know how to appeal against decisions and appeals are dealt with fairly and responded to within seven days.

- 15.8.17 The complaints process intersects closely with administrative decision making processes conducted within Bimberi. If a young person wishes to make a complaint, it may relate to the outcome of a decision made by Bimberi staff. During the Review young people approached Commission staff to discuss concerns they had about decisions made by Bimberi staff. Some of the complaints raised included claims of:
- Refusal to grant leave to attend a friend's funeral;
 - Ongoing placement in segregation for a period of more than two months;
 - Inability to access education while in segregation;
 - Being forced to participate in a particular education program;
 - Being denied access to music classes as a punishment for an incident that occurred outside school; and
 - Threats of transfer to Alexander Maconochie Centre.
- 15.8.18 From the Commission's review of documents, and interviews with young people, it is not clear that young people are aware of how they might appeal decisions relating to segregation, classification, day leave, behaviour management or phone/email contact. It is also not clear that appeal processes are designed in a way that is accessible to young people. The Commission has concerns about the transparency of the processes used to make some decisions affecting young people. Further discussion about transparent and evidence based decision making is contained earlier in this chapter, and in Chapter 14 (condition of detention). In Chapter 14 the Commission recommends that Legal Aid ACT or a Community Legal Centre be funded to provide legal advice and minor assistance to young people in Bimberi in relation to internal applications and appeals.

All children and young people know how to contact the Official Visitor, Public Advocate, Human Rights Commission, or their solicitor, and are helped to pursue any grievances with the help of senior managers within and outside the centre.

- 15.8.19 Young people are able to use the Starnet phone system to call the OV, the PA and the Commission from their room without charge. The OV visits every second Tuesday and makes herself available to every young person in Bimberi. The PA also visits monthly. The Commission viewed documents, and heard reports from young people, which indicate that at least some staff are willing and able to assist young people to make contact with external complaints and advocacy agencies.

There is a monthly analysis of complaints (both formal and informal, upheld and not upheld) for patterns or trends, paying particular attention to potential discrimination. This management information is used appropriately to identify areas for improvement.

- 15.8.20 Another fundamental shortcoming of the complaint system at Bimberi appears to be a failure to conduct systemic analysis of complaints. As discussed above, poor recordkeeping and lack of accountability systems mean CSD was unable to provide the Commission with precise or detailed information about how many complaints have been made at Bimberi, and whether they have been responded to adequately. The Commission requested access to all records relating to complaints at Bimberi, and we did not see any documentation to indicate that Bimberi management or CSD analyse complaints for the purpose of systemic improvement.

A way forward: improving responses to complaints

- 15.8.21 The Commission recommends improvement to the complaints handling system at Bimberi in five areas:

- Create a culture of listening to young people, workers and families;
- Pre-empt complaints by establishing communication channels;
- Review and improve the design of the complaints process;
- Record and analyse complaints; and
- Identify common themes in complaints and address systemic problems.

Create a culture of listening to young people, workers and families

- 15.8.22 Bimberi and CSD should regularly ‘ask themselves if there are barriers to complaining that need to be dealt with.’³⁸ Bimberi management should take steps to create a culture of positive attitude towards complaints, and promote the message that complaints and feedback are welcome. Bimberi management should demonstrate positive attitude when responding to complaints, and encourage staff to emulate this practice. Management can create a culture in which complaints are valued, and give reassurance that there will be no adverse repercussions for people who come forward.
- 15.8.23 Under the HRC Act Bimberi must display accessible information for young people and their families about their right to make a complaint, and how feedback may be given to Bimberi management.³⁹ Posters and flyers are one way to fulfil this obligation. It may be helpful to design similar visual messages for staff.
- 15.8.24 During individual conversations when young people express concerns or complaints, staff should explain their options for making a complaint, and what will happen in response. To do this effectively, staff will require training in responding to complaints.

Pre-empt complaints by establishing communication channels

- 15.8.25 By informing staff and young people about centre operations and the reasons for decisions, and providing them opportunity to comment, Bimberi could address concerns early and reduce the need for complaints.
- 15.8.26 Three circumstances in which a young person is more likely to make a complaint are following an incident, disciplinary action, or application. When unit managers conduct their investigation into incidents, they should invite young people to provide witness statements, or describe their recollection of the incident, in the same way staff are able to record their version of events. When responding to applications (for day leave, visits, mail or phone contact) or implementing decisions about segregation, classification, behaviour breach or disciplinary charges, it is both a legal requirement and good practice to fully explain decisions, answer questions, and provide support if a young person wants to appeal a decision.
- 15.8.27 The Commission recommends Bimberi put renewed effort into providing information to young people, explaining reasons for decisions, listening to young people’s concerns, and involving them in decision-making wherever possible. When young people were surveyed during the Review, 60% reported that they had little say on the way things were run at Bimberi, and most asked for more input into recreational activities, education programs, mixing practices, rewards systems, searches, phone calls and visits and preparation for return to the community.

38 Commonwealth Ombudsman, *Better practice guide to complaint handling* (2010), 12.

39 Section 95, *Human Rights Commission Act 2005*.

- 15.8.28 The Commission recommends Bimberi begin to hold regular meetings with young people to listen to their concerns and their suggestions. Staff could conduct weekly unit meetings, to facilitate a conversation about what young people are concerned about. They could write down young people's concerns and questions, to follow up and report back the next week. In doing so they should maintain a log book of comments/questions and the response provided. By engaging with the young people as a group to listen or provide information, Bimberi could minimise young people's frustration, and contribute to a more settled environment.
- 15.8.29 Similar efforts need to be made to communicate with staff. For further discussion of this issue see the sections on staff communication and Bimberi management.
- 15.8.30 In Chapter 3 the Commission recommends Bimberi strengthen communication with family members of young people. It might be helpful to nominate one or two youth workers in each unit as family liaison officers, whom parents can call if they have questions or concerns. A unit manager could be placed on duty in the reception building during peak visiting times (after school and on weekends) to greet parents, and answer questions. There should be posters and flyers available in the reception area to provide basic information and answer frequently asked questions.

Recommendation 15.16: The Community Services Directorate require Bimberi management and staff to:

- Put renewed effort into providing information to young people, explaining reasons for decisions, listening to young people's concerns, and involving them in decision-making wherever possible
- Hold regular meetings with young people to listen to their concerns and suggestions.

Review and improve the design of the complaints process

- 15.8.31 There are several manuals and guidelines which outline good practice in complaints handling. In the Australian context these include the NSW Ombudsman's *Effective Complaint Handling*, and *Guidelines for dealing with youth complaints*, and the Commonwealth Ombudsman's *Better practice guide to complaint handling*.⁴⁰ The Commission recommends that CSD and Bimberi management review the complaints handling policy, design more detailed complaints handling procedures, and institute suitable record keeping systems, using these manuals as a guide.
- 15.8.32 Overall the current two-tiered structure for responding to complaints is suitable; young people or parents can discuss their concerns verbally with a youth worker in the first instance, then make a formal written complaint if their concerns are not resolved. It is likely that many young people and family members will be more comfortable raising their concerns verbally rather than in writing, so a formal written process should not be the first response to complaints in Bimberi. However, there needs to be changes to the design of the two-tier process to ensure quality control.

Recommendation 15.17: The Community Services Directorate, in consultation with Bimberi residents and staff, review the complaints handling policy and design more detailed complaints handling procedures using the manuals and guidelines provided by the Commonwealth Ombudsman and NSW Ombudsman.

First response to complaints: frontline responsive problem solving

- 15.8.33 *Complaints from young people.* Bimberi policy should specify that a complaint may be disclosed to a youth worker, case manager, or health professional at Bimberi, and all staff have responsibility to listen to young people if they have a concern. The worker should attempt to resolve the issue informally, or connect the young person with a worker who can. The worker should record the complaint in writing, to ensure the matter will be followed up, and invite the young person to confirm the written record by adding their signature. When complaints are made to staff in the residential units, there could be a log book in which complaints, questions or concerns can be recorded. At weekly unit meetings workers could examine the log book to ensure a response has been provided to the young person.

⁴⁰ NSW Ombudsman, *Effective Complaint Handling* (2011); NSW Ombudsman, *Guidelines for dealing with youth complaints* (2008); and Commonwealth Ombudsman, above n 33.

15.8.34 *Complaints from workers.* Several current and former staff told the Commission that in the past they were not comfortable raising concerns with Bimberi management. The Commission suggests CSD ensure staff are aware of the range of options available to them if they have a complaint at work, including raising the matter with the Director of the Office for Children, Youth and Family Support, contacting the union, approaching the human resources unit within CSD, approaching the Consumer Quality and Advocacy Service within CSD, or approaching the Senior Manager responsible for business integrity, management and risk under the *Public Sector Management Act 1994*.

15.8.35 *Complaints from families.* As discussed in Chapter 8 (case management), a unit manager on duty in the reception area during peak visiting times (after school and weekends), could be available to build relationships with family members and discuss any concerns.

Second response to complaints: formal investigation

15.8.36 The Bimberi complaints policy needs to provide more detailed guidance on the second stage of the complaint process. As mentioned above, various guidelines and manuals offer a structured framework to ensure good practice, and Bimberi can review the current policy using these resources. Once the formal investigation process is designed, it needs to be better communicated to young people, workers and families, both verbally and in writing.

Record and analyse complaints

15.8.37 Even if a complaint is provided verbally it needs to be documented. Staff should be trained and provided with a simple efficient process for recording basic information in a complaints database, including:

- Date;
- Name of the person making the complaint (complainant);
- Complainant's position (young person, staff member, family member);
- Complainant's contact details;
- Complainant's preferred method of contact;
- The issues raised in the complaint;
- Complainant's desired outcome;
- The name of the staff member who received the complaint;
- The name of the staff member with responsibility for responding to the complaint;
- The date a response was provided to the complainant;
- The nature of the response;
- Complainant's level of satisfaction with the complaint process; and
- Complainant's level of satisfaction with the complaint outcome.

15.8.38 Bimberi should be provided with a formal electronic database for registering complaints, from which information cannot be deleted. Records of complaints should not be stored on staff email accounts or their personal computer drive where they are inaccessible to others. The database should provide Bimberi management with the capacity to track and monitor the progress of complaints and to analyse complaint data. Bimberi management should monitor complaints to ensure responses are provided in a timely way.

15.8.39 Bimberi management should set both qualitative and quantitative measures for assessing their complaint handling systems. For example, they might report on the length of time taken to respond to complaints, and the reported level of satisfaction by the complainant.

- 15.8.40 CSD management should request a monthly report of complaints by young people, staff and families at Bimberi, including the issues raised in complaints, the process used to manage complaints, and the response provided to complainants.

Recommendation 15.18: The Community Services Directorate provide training to Bimberi management and staff on responding to complaints and improved record keeping for complaints.

Identify common themes in complaints and address systemic problems

- 15.8.41 Complaints provide an opportunity for Bimberi management to identify areas for improvement in centre operations. They should monitor the narrative of each complaint to identify systemic problems and underlying causes of complaints. They should also monitor trends in complaints across time. Above all, CSD and Bimberi management need to demonstrate willingness to improve Bimberi and make changes. The Commission has been told that CSD commenced a 'change management program' at Bimberi during 2011. However despite requests for further information, we have not received details of any changes that have taken place under the program.

Recommendation 15.19: The Community Services Directorate analyse complaints data to identify areas for improvement in the operation of Bimberi and Community Youth Justice.

Recommendation 15.20: The Executive of the Community Services Directorate be provided with a monthly report of the issues raised in complaints relating to Bimberi and Community Youth Justice, the process used to manage complaints, and the response provided to complainants.