

Chapter 3: Embedded In Community

A Quality Youth Justice System Is Embedded In The Wider Community

Relevant Human Rights Standards

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

3.1 Embedding youth justice

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

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

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

3.2 Role of the broad community

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

Tensions within the village

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

2 ABC 666 Canberra, Canberra Drive: 19 May 2011

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

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

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

Keeping young people connected to the village

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

Current role of the community

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

4 Appendix B

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

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

- 3.2.16 The absence of a clear and shared vision has impacted on the broader community and its ability to engage with the youth justice system, and has fuelled a gap between community expectations of the system and the outcomes it will actually achieve. As one participant noted:

'in some ways, all new detention facilities will have a level of expectation from the community...when a Centre has been 'spruiked' like Bimberi this became even more heightened.'

- 3.2.17 Similarly, the Commission believes the resources within the broader community have not been effectively deployed with a view to keeping young people connected to their 'village'. This is highlighted by the difference in levels of community engagement between the development of the Alexander Maconochie Centre (AMC) and Bimberi.

- 3.2.18 The recent reviews of the AMC by Knowledge Consulting (the Hamburger Review) and the Burnet Institute (the Burnet Review) document considerable community involvement in the oversight and operation of AMC. The reports are also indicative of the greater prominence and attention the AMC has drawn from the wider community. As the Hamburger Review noted:

*'It is also fair to say that it is unlikely that another correctional centre exists in Australia with the high level of community interest that the AMC has achieved.'*⁶

- 3.2.19 Unfortunately, in the Commission's view, the non-government sector engagement at the AMC has not been mirrored in the development of similar partnerships at Bimberi. As a result, the level of engagement, scrutiny and influence regarding AMC that was achieved by the broad ACT community was not achieved in a similar way for Bimberi.

- 3.2.20 Overall, in the Commission's view, the ACT community has not been engaged effectively or meaningfully in setting a vision for the youth justice system, or in playing a role in its ongoing operations. In Chapter 4 (vision) of this Report, the Commission makes recommendations on how this position could be rectified.

3.3 Role of the ACT Government

- 3.3.1 Government has a vital role to play in embedding the youth justice system in a supportive community. While all stakeholders have a role to play, no single stakeholder is empowered to achieve this outcome more than the ACT Government.

- 3.3.2 The relevant human rights standards reflect this obligation. Rule 8 of the POJ states that '*Authorities should increase awareness that the care of detained juveniles and preparation for their return to society is a social service of great importance*'. This is consistent with the Commission's view that the ACT Government should lead the community in a discussion about the purpose and desired outcomes of the youth justice system.

- 3.3.3 In leading this process, the ACT Government, as a whole and in its individual Directorates, must be mindful of its obligation as a public authority under the HR Act. Section 40B requires that public authorities act in a way that is compatible with human rights, and when making decisions must give proper consideration to human rights.

- 3.3.4 Many human rights are relevant to the Government's role in relation to the youth justice system, and in its functions of leading the community in a conversation about the system. However, of particular note are:

- Protection of the child and family (s.11 HR Act);
- Right to equality (s.8);
- Right to life (s.9);
- Protection from torture and cruel, inhuman or degrading treatment (s.10);
- Right to privacy (s.12);
- Freedom of expression (s.16);
- Right to liberty and security of the person (s.2.18);
- Humane treatment when deprived of liberty (s.19);
- Children in the criminal process rights (s.20);
- Right to fair trial (s.21); and
- Rights in criminal proceedings (s.22).

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

Current role of the ACT Government

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

Leading a balanced debate and managing expectations

- 3.3.7 The Noetic Report suggests that the Government's responsibility includes *'ensuring that there is a balanced and informed debate on issues that attract community attention'*. The Report notes that juvenile justice is an area that often attracts ill-informed comment by a wide range of stakeholders. In particular, Noetic cites several NSW studies and surveys that have found that the community overestimates the possibility and extent of juvenile crime. There is potential for this overestimation to be even more pronounced in the ACT, as it is a small jurisdiction in which several media outlets seek to report on local news. Matters before the courts, particularly crimes involving young people, are frequently the subject of such reports. Noetic points out that although a large number of young people may commit offences, they do not offend very often. As discussed at Chapter 7, the recidivism rates for young people in custody in 2009-10 were 27%, and 37% for those on community based orders:

*'This misconception then plays an important role in shaping the law and order policy debate as the often misleading negative views of young people and their involvement in crime focus public thinking. This wrongly diverts the policy discussion towards more punitive approaches, rather than what is suggested by the substantial evidence base.'*⁷

- 3.3.8 Noetic identifies that *'developing and maintaining a well informed and rational public debate is a key challenge in building a safer community and better juvenile justice system'*. The Noetic Report tasks Government with conducting community forums to educate the community about all aspects of the youth justice system. It suggests this should be coupled with positive media strategies to shape public knowledge and understanding.
- 3.3.9 While the Commission can understand Noetic's desire for the ACT Government to 'correct the record' on media reports that may unreasonably represent the issues of concern, it is perhaps unrealistic to expect MLAs to do so, particularly given the high volume of media reports and the at times sub judice nature of them. Commentators frequently include proximity, conflict and emotion as major factors in determining what is newsworthy.⁸ As such, stories about youth crime and Bimberi are likely to remain permanent features in the ACT media.
- 3.3.10 Winkworth and White note, *'One of the key issues with regard to the operation of Bimberi has been the lack of a common view throughout the Government, the Department and the ACT community more broadly, of its purpose and role in the overall response to young people at risk'*. A better approach might then be to ensure that the community's expectations about what the system and Bimberi can achieve are realistic.
- 3.3.11 Dr Allan Hawke AC's *Governing the City State: One ACT Government – One ACT Public Service* (the Hawke Report) cautions against the ACT Government seeking to raise community expectations about perfect solutions:
*'In a democracy, successful community engagement, consultation and collaboration should not aim to achieve an outcome where everyone will be happy. Processes that seek to achieve that outcome are doomed to fail, or to never end.'*⁹
- 3.3.12 Human rights, Bimberi and the wider ACT youth justice system are intersecting issues where managing expectations will always be a challenge for Government. For example, strong statements that an institution is now, and in perpetuity, human rights compliant can create high expectations in the community about what the goal of these institutions are, and what investments such as new buildings can achieve. The Commission played a role in the planning and construction of Bimberi, and we are acutely mindful of how unique it was for an independent human rights body to play a role in shaping the design, construction and procedures underpinning a new youth justice centre. We are not disputing that human rights played a central role in the development of Bimberi, or that it is a unique facility. However, for the goals articulated by Government to be achieved there must be corresponding investment, support and oversight. Human rights compliance is not a static state, and relies on regular auditing. In short, while a major capital investment goes a long way to addressing these needs, the construction of one building alone cannot achieve these goals.
- 3.3.13 A number of human rights instruments, most particularly the Optional Protocol to the Convention Against Torture (OPCAT), recognise that closed environments must be regularly reviewed and assessed against human rights standards. Inevitably

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

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

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

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

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

Whole of Government approach

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

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

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

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

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

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

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

Transparency

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

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

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

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

Role of executive government

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

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

3.4 Role of the ACT Legislative Assembly

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

¹¹ See Appendix B

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

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

3.5 Working with the corporate sector

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

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

3.5.2 Corporations can engage with human service systems in a number of ways. They can:

- Promote inclusive workplaces that enable vulnerable groups to find and sustain employment;
- They can develop business ventures that aim to improve the lives of community members; and
- They can create philanthropic and charitable ventures that can support community organisations to assist within their local areas.

3.5.3 A leading example of corporate engagement in youth justice in Australia is 'Serving Time' – a small T-shirt printing business operated in partnership with Toll and the Penhyn Youth Unit at Victoria's Port Phillip Prison. T-shirts are designed, manufactured and marketed by young people with all profits being donated to charities that support vulnerable children and young people. Serving Time is offered as part of a small-business education program with objectives to develop skills, reduce risk of reoffending, and assist young people to become positive and productive members of the community.¹⁶

3.5.4 The Commission was pleased to hear about partnerships that were being developed with local businesses and corporate groups: families spoke positively about employers who had given their children 'a go' by offering them apprenticeships, job mentoring and ongoing employment assistance; organisations spoke about grants they had received from local clubs; and the Commission is aware of sporting teams that visited young people while incarcerated, to offer advice and inspire confidence. A number of staff who participated in the Review said that these ventures were some of the most effective in supporting young people in the system.

3.5.5 The Commission heard about a young person involved with Community Youth Justice whose parents had organised an apprenticeship in a local trade. Although the young person sometimes found it difficult to maintain his enthusiasm for the work, his boss and co-workers provided him with encouragement and 'pulled him into line' when he came to work under the influence of drugs or missed shifts without explanation. His co-workers also invited the young man to play in their sporting team and to socialise with them and their families, thus developing his support network and his sense of belonging. His sporting talents resulted in him being offered coaching work and mentoring a group of children, a task that he thoroughly enjoyed and which brought him positive recognition and personal pride. When the young man reoffended and was placed back in detention, his employer held his job for him and co-workers kept in contact so that positive relationships could be sustained.

3.5.6 Such stories, while largely positive, are often ad hoc and uncoordinated, and frequently rely on individuals using personal connections to establish relationships with the corporate sector. The Commission encourages the creation of links between the youth justice system and the corporate sector, broadly, and between individual young people and businesses, in a narrower sense, and hopes that such relationships occur more strategically and systematically so that positive outcomes are achieved for larger numbers of young people.

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

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

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

16 See: www.servingtime.org/

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

3.6 Working with the ACT youth and community sector

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

The nature of the sector

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

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

18 Run at the Frank Baxter Juvenile Justice Centre, NSW

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

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

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

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

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

Systems-level limitations

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

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

Governance

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

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

Program development and delivery of support

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


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

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

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

At the individual level

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



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

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

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

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

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

3.7 Role of family

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

Best practice

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

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

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

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

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

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

Current experience of families in the youth justice system

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

Prior to engagement with the system

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

While in the system

At Court

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

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

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

At Bimberi

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

Needs of families

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

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

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

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

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

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

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

3.8 Youth participation

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

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

- 3.8.3 Effective youth participation requires a commitment by adults, services and systems to enable active participation and obliges them to ensure that young people have the information, resources, skills and assistance to fully understand, engage in and change processes. According to the Nacro CYMRU Youth Offending Unit:

*'Full and meaningful participation by children and young people helps them to be active citizens and to develop skills, experience and self-confidence as well as to gain access to opportunities. From the perspective of the adult or service it must also mean that the opinion being expressed is taken seriously and into account in order for genuine as opposed to tokenistic participation to occur.'*³²

- 3.8.4 Young people who are involved in the youth justice system have the same rights and participation needs as other young people in the community, although sometimes these are limited by the court-sentenced loss of liberty. Article 12 of the United Nations Convention on the Rights of the Child (the CROC) states that:

'Children have a right to say what they think should happen, when adults are making decisions that affect them, and to have their opinions taken into account.'

- 3.8.5 In the context of youth justice, the CROC continues and states:

'For this purpose, the child shall in particular be provided with the opportunity to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.'

- 3.8.6 In 2007, the UN Committee on the Rights of the Child provided in their 'General Comment No 10 Children's Rights in Juvenile Justice' (General Comment Number 10) further information on how this should be interpreted in the administration of juvenile justice.³³ The comment indicates that children and young people should be free to express their views in all matters that affect them at every stage of the criminal justice process.

- 3.8.7 This right to be heard is an important aspect of young people's participation and is fundamental to their best interests and their fair treatment in criminal justice proceedings and within the youth justice system more broadly. This right should underpin all young people's engagement in the justice process starting at the pre-trial stage where there is the right (in accordance with the presumption of innocence) to be silent or to be heard by the police, prosecution and the courts. General Comment Number 10 asserts that to be able to effectively participate in proceedings, children and young people need to be informed about the charges against them, the process that will occur and any potential outcomes and penalties. It recognises that this active engagement can have positive results.

- 3.8.8 For young people who are incarcerated, participation means being provided opportunities to feed into decision-making processes (including the identification of needs and goals, the development of case plans, and determining what and how supports are provided); to provide feedback on programs and raise concerns and complaints where necessary; to maintain links with their communities; and to actively play a part in the life of the Centre.

*'Whether the youth justice system works for individuals effectively can depend on their involvement in assessment, planning, implementation and review. The more that participation principles are adhered to, the better the chance of success.'*³⁴

- 3.8.9 The Wales Youth Justice Board also notes that participation offers real benefits to children and young people in the youth justice system in that:

- *'It can ensure that children and young people understand the processes and procedures they are involved in whether in the police station, court, while on a court order or in custody;*
- *It can encourage children and young people to play a part in planning the interventions they are going to be subject to and to share their views on what may or may not work for them and so be relevant in helping to reduce and prevent reoffending;*
- *It can promote engagement and compliance by involving and consulting children and young people with regard to the decisions and outcomes that will affect them;*
- *It can help children and young people to achieve their potential and gain confidence and self-esteem; [and]*
- *It can provide children and young people with the opportunity to give feedback about the interventions and services they have received – what they perceive to be a good quality service and discussion of any difficulties experienced – in order to increase knowledge about what is and is not effective from their perspective.'*³⁵

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

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

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

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

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

- 3.8.10 Hart and Thompson³⁶ recognise that participation in youth justice while incarcerated includes some important key elements, such as:
- **Active engagement:** that adults will attempt to build rapport with young people, to create a trustworthy and respectful relationship in which young people can ask questions, to raise fears, worries and concerns and provide feedback without fear of retribution. This engagement should ideally be with a team of adults, at a minimum, at least one trusted adult.
 - **Provision of information:** that young people understand their rights, how they will be treated, how to raise concerns when these rights aren't being met, what expectations the Centre has about them and what ramifications will come into play if they don't meet these expectations.
 - **Assessment and planning:** that young people will be involved in identifying what they need and want and, alongside adult-driven assessments, be given opportunities to determine priorities and preferred strategies for addressing them.
 - **Delivery of service:** that young people's needs and interests, learning styles and preferences be considered when supports and services are being delivered. As Utting and Vennard note: *'Programmes work best when they are carefully structured and the learning styles of individual offenders and the staff working with them are well-matched. The learning styles of offenders tend to require active, participatory methods of working.'*³⁷
 - **Restorative justice:** that young people are afforded opportunities to participate in restorative justice programs which allow young people to make meaningful reparation for their actions in an environment characterised by respect and fairness. As Crawford and Newburn note: *'At the heart of the restorative justice philosophy lies a concern with a particular mode of participatory conflict resolution. This is concerned with consensus building ... Restoring a sense of control to the central parties is a key aspect of the restorative process.'*³⁸
 - **Evaluations and feedback:** that young people are actively involved in evaluating the effectiveness of programs and providing feedback on the achievements of the Centre and their treatment within it. And, that robust complaints mechanisms are in place to resolve ongoing tensions and concerns.
- 3.8.11 Although they recognise the value of encouraging participation, Hart and Thompson concede that participatory processes are often inaccessible to some young people in the youth justice system due to a number of barriers:
*'...including political ambivalence about whether young offenders 'deserve' a say; staff culture and commitment; knowledge and skills in effective methods; the duality between the enforcement and enabling functions of the youth justice system which can inhibit young people's willingness to be open.'*³⁹
- 3.8.12 Thomas from the Welsh Nacro CYMRU Youth Offending Unit reported similar findings from young people in youth detention who felt that their participation was sometimes limited because:
- *"They have experienced difficulties in their lives and may therefore lack the confidence to take part;*
 - *They have problems in communicating;*
 - *They may be less motivated if their views have not been taken into account in the past;*
 - *They may mistrust the intentions of adults;*
 - *They have been subject to negative assumptions and stereotypes;*
 - *Information is not always provided in a language or way they understand;*
 - *Meetings can be held in places where they feel uncomfortable or at times that are inconvenient;*
 - *They may not be aware of how they can get involved; and*
 - *They have not been provided with feedback when they have been involved.'*⁴⁰
- 3.8.13 There is a view, therefore, that participatory processes need to include strategies for responding to these challenges and the ambivalence that some adults, decision makers and program staff have in relation to the value of effective and respectful youth participation.

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

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

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

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

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

Youth participation in the youth justice system

System-wide participation

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

Provision of information

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

Participation in the court system

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

Participation in assessment and case planning

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

Participation in program development and delivery

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

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

Restorative Justice

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

Evaluations and feedback

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

A way forward

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

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

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

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

3.9 Victims of crime

The human rights of victims of crime

Definition of victims of crime

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

Rights of victims of crime

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

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

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

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

44 Article 39, CROC

45 VOC, s.4

46 VOC, s.5

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

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

The impact of crime on victims

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

- 3.9.7 The experience of crime affects different people in different ways. The effects of crime may fall into the following categories:
- Physical;
 - Material;
 - Financial;
 - Emotional or psychological; and
 - Social.
- 3.9.8 Not all victims will have the same response to the same crime. For example, the impact of ‘less serious’ crimes such as burglary is sometimes underestimated, and not all victims of assault will be affected for a long time.⁴⁹ However, many victims of crime do experience some degree of trauma, and should be provided with support and assistance.

Victims’ position within the legal system

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

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

Engagement with victims of crime during the Review

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

Responses and protections for victims of crime in the ACT

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

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

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

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

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

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

52 VOC, s.3B

Victims of Crime Commissioner

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

Victim Support ACT

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

Victims Advisory Board

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

Victims services levy

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

Financial assistance

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

Support within the legal system⁵⁷

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

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

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

55 VOC Act, Part 4A

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

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

Other services for victims in the ACT

- 3.9.19 A range of other government and community organisations provide services to victims of crime, including:
- Domestic Violence Crisis Service;
 - Canberra Rape Crisis Centre;
 - Service Assisting Male Survivors of Sexual Assault (SAMSSA);
 - Victims of Crime Assistance League (VOCAL);
 - Forensic and Medical Sexual Assault Care (FAMSAC);
 - Child at Risk Health Unit (CARHU);
 - Emergency accommodation services; and
 - Restorative Justice Unit.

Some victims of crime feel disempowered by the legal system

- 3.9.20 Victims of crime have limited standing in criminal proceedings, other than their role as a witness for the prosecution and their ability to provide a victim impact statement. Some victims feel they receive less than adequate support and information. Victims of crime can contact the VoCC to complain about their experiences within the criminal justice system. The VoCC commonly hears people allege they experienced:
- Lack of information about victims' rights;
 - Lack of information about victims' role within the criminal justice process;
 - Inadequate follow-up by police;
 - Lack of information from police and the DPP about the status of the case;
 - Perception that the investigation has been cursory or inadequate;
 - Inadequate contact with the DPP, including insufficient information about appeal processes;
 - The process of charge negotiation is often determined without consultation with the victim;
 - Lack of information about court, and lack of support at court;
 - Long periods of time taken to finalise a matter at court;
 - Perception that the victim's voice is not heard at court, and their interests are not represented;
 - Mixed views about the adequacy or inadequacy of sentences imposed;
 - Lack of information about the consequences of the court outcome;
 - Discourteous, inappropriate and unprofessional remarks to victims; and
 - Lack of notification about escapes from custody or changes to an offender's management.⁵⁸
- 3.9.21 In relation to the youth justice system in the ACT, when the alleged offender is aged under 18 years, participants raised two areas of concern:
- In the Childrens Court the victim is not allowed to attend court proceedings except as a witness, and receives limited information. This compares unfavourably with the Restorative Justice Unit, where the victim finds out more information about the offender; and
 - In some situations of assault, victims are sometimes students at the same school as the alleged perpetrator, and often the victim feels they must move schools when the perpetrator returns to the school.

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

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

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

Victims and offenders come from largely overlapping populations

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

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

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

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

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

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

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

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

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