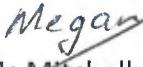


Ms Megan Mitchell
National Children's Commissioner
Australian Human Rights Commission
GPO Box 5218
Sydney NSW 2000
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Dear Ms ~~Mitchell~~

Information on the Optional Protocol to the Convention against Torture (OPCAT) in the context of Youth Justice Detention Centres

Thank you for your letter dated 22 March 2016, requesting information about the oversight and monitoring of children and young people in the youth justice centre in the ACT. I apologise for the delay in responding.

I am pleased to provide the information requested at Attachment A.

I understand this information will be compiled with other states and territories and reported in the National Children's Commissioner's Statutory Report to the Australian Parliament later in 2016.

I look forward to the findings of your report and progress made towards establishing an independent National Preventative Mechanism.

If you have any questions about the submission, please contact Dr Sarah Anderson on (02) 6207 1070 or at sarah.anderson@act.gov.au.

Yours sincerely


Dr Mark Collis
Executive Director
Office for Children, Youth and Family Support

27 June 2016

08:39 05/7/16 FINANCE

**ACT Community Services Directorate's information for the
National Children's Commissioner's Statutory Report to Parliament on the Optional
Protocol to the Convention Against Torture (OPCAT) in the context of
youth justice detention**

The ACT Community Services Directorate (CSD) has responsibility for a wide range of human services in the ACT, including the Bimberi Youth Justice Centre (Bimberi). Other areas of service provision include:

- early intervention services for vulnerable and at-risk children (birth to 12 years);
- children, youth and family support services, including child protection, youth justice and case management support services for families with children (up to 21 years);
- disability support services (currently being phased out as part of reforms under the National Disability Insurance Scheme);
- cultural services for the Aboriginal and Torres Strait Islander community;
- housing and homelessness services; and
- community participation services; targeting multicultural, women, ageing and LGBTIQ community members, and community disaster recovery.

CSD specialises in promoting participation and delivering services to the most vulnerable people in our community. This includes keeping vulnerable children and young people safe and supporting them to flourish and make valued contributions to our community.

1. Who has the legislated power to visit youth justice detention centres in the ACT?

Part 6.3 of the *ACT Children and Young People Act 2008* (CYP Act) allows for inspections at Bimberi by any of the following:

- a judge;
- a magistrate;
- a member of the Legislative Assembly;
- a human rights commissioner; and
- the ombudsman.

Under the CYP Act, these parties may enter and inspect Bimberi at any reasonable time (s153); inspect the register of searches and use of force (s195); and inspect the register of segregation directions (s222). The ACT Ombudsman may also support young detainees by receiving and responding to complaints.

In practice, the ‘ACT Public Advocate and Children and Young People Commissioner’ (referred to as the Commissioner¹) and ‘Official Visitors’ are primarily responsible for exercising powers of oversight and inspection at Bimberi.

The functions of the Official Visitor are set out in the *Official Visitors Act 2012* (the OV Act) and include attending ‘visitable places’, handling complaints and reporting on those matters. Part 2.3 of the CYP Act requires Official Visitors to exercise their functions at Bimberi. The Official Visitor reports to the CYP Act’s operational Minister, the Minister for Children and Young People (the Minister).

Service providers, lawyers, official visitors, human rights commissioners and the ombudsman are collectively referred to as ‘accredited persons’ in ACT legislation. Sections 141(g) and 178 of the CYP Act require that young detainees have reasonable opportunities to receive visits from accredited persons.

A copy of the CYP Act and other legislation in operation in the ACT is available from the ACT Legislation Register at www.legislation.act.gov.au.

2. *Of these, who is responsible for regularly monitoring and reporting on youth justice detention centres? Please describe the different roles of each oversight body in your jurisdiction. Is there an overlap between these bodies? How do they interact with each other?*

The Official Visitor, ACT Public Advocate and Children and Young People Commissioner are primarily responsible for regularly monitoring and reporting on Bimberi.

Official Visitor

Part 4 of the OV Act sets out the functions of the Official Visitor. Two Official Visitors have been appointed to exercise their functions in relation the CYP Act. The CYP Act sets the legislative framework for operations at Bimberi. Under relevant Acts, Official Visitors must:

- visit Bimberi, and places outside Bimberi where young detainees are, or have been directed to work or participate in an activity (s37, CYP Act);
- be available to receive and consider complaints or concerns from young detainees, and others on their behalf (s14, OV Act);
- report legislative non-compliance at Bimberi to the Minister (s16, OV Act); and
- report the number and kind of complaints made, and action taken, to the Minister (s17, OV Act).

¹ The ACT Public Advocate and Children and Young People Commissioner is referred to as a combined Commissioner role throughout the submission, reflecting structural changes which combined the ACT Human Rights Commission and Office of the Public Advocate ACT from 1 April 2016.

Further information about the Official Visitor's role is in the disallowable instrument, the *Official Visitor (Children and Young People Services) Visit and Complaint Guidelines 2015* (DI2015-284). Disallowable instruments are publicly available documents and can be found in the disallowable instrument section of the ACT Legislation Register at:
<http://www.legislation.act.gov.au/di/default.asp>.

In practice, the Official Visitor is an independent appointee who visits Bimberi once a fortnight to speak with young detainees and staff about any concerns they have regarding the care, treatment and living conditions of young detainees, or the operation of Bimberi.

The Official Visitor provides the Minister and Director-General (CSD) with a written report each month, summarising the number and types of complaints received, and any complaints that have been referred to them from an investigative entity, e.g. the Police or Commissioner. To resolve a complaint, the Official Visitor may make enquiries about matters raised in the complaint and make recommendations to Bimberi management.

ACT Public Advocate and Children and Young People Commissioner

The Commissioner² is responsible for exercising the functions of the public advocate and the children and young people commissioner (sections 27B and 19B, of the *Human Rights Commission Act 2005*, respectively) following recent structural changes to the Human Rights Commission.

The Commissioner is one of four commissioners performing functions for the ACT Human Rights Commission under the *Human Rights Commission Act 2005* (HRC Act) and operates as an independent statutory office holder, within ACT Government.

When performing the role of public advocate, the Commissioner is responsible for advocating for the rights of children and young people, including by promoting the protections given to children and young people and fostering the provision of services to them.

In their capacity as Children and Young People Commissioner they are also required to:

- investigate complaints about service provision (in the youth, health disability and victims of crime sectors) or discrimination;
- provide training and community education about human rights; and
- provide advice to government and non-government agencies about laws, policies and practices affecting children and young people.

² The ACT Public Advocate and Children and Young People Commissioner is referred to as a combined Commissioner role throughout the submission, reflecting structural changes which combined the ACT Human Rights Commission and Office of the Public Advocate ACT from 1 April 2016.

In practice, the Commissioner:

- visits young people in Bimberi monthly, and upon request;
- provides advice, information and services for children and young people and their families;
- monitors how services are provided for the protection of children and young people;
- interacts with services on behalf of children and young people, including with disability;
- inspects the register of searches and use of force at Bimberi once every three months;
- receives notice of all young detainees segregation directions, as soon as practicable; and
- meets quarterly with Bimberi management to discuss identified trends and issues, and collaborate on areas that impact children and young people.

Is there an overlap between these bodies?

The Official Visitors and Commissioner both have a complaint handling function within their roles, regularly visit Bimberi, are able to resolve complaints and concerns about services for children and young people and give advice to government and community organisations about how to improve services for young detainees. These bodies have different powers to obtain information from Bimberi. The Commissioner can compel information while the Official Visitor can only request information.

How do these bodies interact?

An ‘Oversight Agencies Group’ including the Official Visitors and ACT Public Advocate and Children and Young People Commissioner meet on a monthly basis to coordinate oversight of complaint matters and discuss common issues and themes. In addition, input to annual reports is provided by the oversight bodies and provided to respective Ministers and the ACT Legislative Assembly.

3. Do these bodies have functional independence from the authorities responsible for the youth justice detention centres? Factors to consider include statutory independence, independence of personnel and financial autonomy. (OPCAT Article 18(1)).

The Official Visitors and Commissioner have functional independence from authorities responsible for Bimberi (i.e. CSD). This includes having statutory independence, personnel independence and financial autonomy from youth justice authorities in the ACT.

Remuneration levels, allowances and other entitlements granted to the Official Visitors and Commissioner are determined by the ACT Remuneration Tribunal. The Tribunal is an independent entity that determines remuneration, allowances and entitlements for ACT office holders, appointees and executives in the public service. The Tribunal is required to review salaries, allowances and entitlements for certain positions within the ACT, including ACT Part-Time Public Office Holder positions, on an annual basis.

Conversely, staff at Bimberi are recruited to perform functions under the CYP Act. Bimberi staff are employed and renumerated by CSD in the ACT Government.

4. *What are the recruitment processes for those bodies responsible for monitoring? Are they statutory appointments? Who is responsible for making these appointments and what criteria must candidates fulfil? (OPCAT Article 18(1)-(2))*

The Official Visitors and Commissioner are appointed by the Attorney-General. The Commissioner is appointed for a period of up to five years and Official Visitors are appointed for a period of up to three years.

Appointments are notified to the Legislative Assembly and are publicly available in the notifiable instrument section of the ACT Legislation Register at:
<http://www.legislation.act.gov.au/ni/default.asp>.

Appointment to these positions involves an expression of interest from members of the public and culturally diverse applicants are encouraged to apply. Appointees are recommended to the Minister and, if agreed, to the Attorney-General. This process involves Cabinet consideration of the preferred appointee and specific consultation with the Aboriginal and Torres Strait Islander Elected Body and the Community Participation Group (ACT Government).

5. *What formal powers do these bodies have in relation to monitoring youth justice detention centres; including conducting thematic reviews, conducting 'own motion' investigations, conducting system reviews, undertaking visits to or inspections of facilities, conducting investigations, responding to complaints, conducting audit's (OPCAT Article 19 (a)), free access to all areas of youth justice detention centres (OPCAT Article 20 (c)), free access to information and documentation regarding numbers of, location of, conditions and treatment of children held in youth justice detention centres (OPCAT Article 20 (a)-(b)), capacity to meet privately with detainees and others (OPCAT Article 20 (d)), confidential information is privileged (OPCAT Article 21 (2)), immunities for persons who communicate with the body (OPCAT Article 21 (1))?*

Any body that has the power to inspect Bimberi under Part 6.3 of the CYP Act has the legislative authority to enter all areas within Bimberi at any reasonable time, for the purpose of inspection. When inspecting Bimberi, these bodies must have access to the register of searches, use of force and segregation directions, as well as all youth detention policies and operating procedures (including those excluded from public access) made available to them. A register of all young detainees at Bimberi is also kept and maintained by Bimberi management and inspection bodies and the Official Visitor may access this document, as needed. The Official Visitor is also given authority to visit Bimberi, and receive and respond to complaints by young detainees and staff, by Part 2.3 of the CYP Act.

The CYP Act ensures that young detainees are given reasonable opportunities to receive visits from, or make contact with (by telephone or mail), accredited persons (ss141(g) and 178). This includes service providers, lawyers, persons with parental responsibility, Official Visitors, the Commissioner and the Ombudsman. In practice, young detainees are:

- advised of their right to contact and meet with accredited persons upon induction to Bimberi;
- advised on each occasion that an accredited person is in attendance at Bimberi for the purpose of meeting with the young detainee;
- provided with telephone access to these persons.

Several notifiable and disallowable instruments operate under the authority of the CYP Act to protect the communications with these bodies. Of note the:

- *Children and Young People (Visits, Phone Calls and Correspondence) Policy and Procedures 2015 (NI2015-401)* protects young detainees' access to accredited persons and prohibits restriction of access for disciplinary reasons;
- *Children and Young People (Visiting Conditions) Declaration 2008 (DI2008-231)* prohibits the monitoring or recording of communications between a young detainee and certain accredited persons, including lawyers, the Official Visitor, Commissioner or Ombudsman;
- *Children and Young People (Complaints Management) Policy and Procedures 2015 (NI2015-383)* protects a young detainee, visitor and staff member's right to make a complaint to an external oversight body and, if required, to have this process facilitated by Bimberi.

Further information about the types of monitoring or actions a monitoring body may take is found at question 6, below.

6. *In practise do these bodies undertake the following, and how frequently?*

- (a) *Thematic reviews;*
- (b) *'Own motion' investigations;*

The Commissioner can bring any matter of public importance to the attention of the Minister or the Attorney-General. The Commissioner can make a report of any commission or Minister-initiated inquiry or review and, in most cases, present the report to the ACT Legislative Assembly.

In December 2010, the Attorney-General directed the ACT Human Rights Commission to conduct an inquiry into the youth justice system and to undertake a Human Rights Audit of Bimberi. The findings of the inquiry are publicly available in the *ACT Youth Justice System 2011: A report to the ACT Legislative Assembly by the Human Rights Commission*.

In 2014/15, the Commissioner initiated an investigation under s48(1)(a) of the *Human Rights Commission Act 2005*, into criminal justice responses to mental health conditions, cognitive disability, drug & alcohol disorders, and childhood trauma. The 'own motion' investigation took place following concerns that children and young people with complex needs were not receiving optimal treatment within the ACT youth justice system.

(c) *Systemic reviews;*

Official Visitors and the Commissioner are able to discuss systemic issues and report these issues in their reports to Government and Executive of their respective Directorates. A number of systemic recommendations were provided to ACT Government in the *ACT Youth Justice System 2011: A report to the ACT Legislative Assembly by the Human Rights Commission*.

(d) *Visits to facilities;*

Official Visitors and the Commissioner undertake regular visits to Bimberi. The Commissioner visits young people in Bimberi monthly, and upon request. The Official Visitor visits young detainees and staff at Bimberi fortnightly.

(e) *Investigations;*

(f) *Responses to complaints;*

The Commissioner can visit Bimberi to conduct an inquiry or investigation in regard to any concerns that they may have that is relevant to their function. The Official Visitors and Commissioner can undertake visits to Bimberi and receive and respond to complaints. Information about the reporting of investigations and complaints can be found at question 9.

(g) *Audits;*

Official Visitors and the Commissioner are able to bring issues to the attention of the Minister or the Attorney-General. These issues may be forwarded to the ACT Auditor-General for formal audit investigation.

(h) *Access to all areas of youth detention centres;*

(i) *Access to information and documentation regarding numbers of, location of, conditions and treatment of people held in youth justice detention centres;*

(j) *Meetings in private with detainees and others;*

Information about access to areas of Bimberi, information and documentation, and meetings with young detainees can be found at question 5.

(k) Other monitoring activities (please specific).

The Director-General (CSD) may exclude information from a youth detention policy or operating procedure notified or available for inspection in accordance with section 143 of the CYP Act. The excluded information must be available for inspection, on request, by the Official Visitors and the Commissioner.

7. Do these bodies use standards/guidelines/frameworks for monitoring youth justice detention centres and conducting visits? If yes, please provide details.

8. Are the standards/guidelines/frameworks publicly available?

Yes. Standards and guidelines relevant to the operation of Bimberi are set out in Notifiable and Disallowable Instruments and are publicly available.

Under relevant instruments the:

- *Children and Young People (Visits, Phone Calls and Correspondence) Policy and Procedures 2015 (NI2015-401)* outlines young detainee's entitlements to visits and contact with accredited people.
- *Children and Young People (Visiting Conditions) Declaration 2008 (DI2008-231)* outlines conditions that apply to visits at the youth justice centre, including visits with accredited persons.
- *Children and Young People (Complaints Management) Policy and Procedures 2015 (NI2015-383)* outlines complaints procedures for young detainees, people with parental responsibility, visitors and staff, including referral to external oversight agencies (e.g. official visitors).

If a matter is referred to an external agency, the following is publicly available:

- The Official Visitors' functions, visits and complaints management requirements in the *Official Visitor (Children and Young People Services) Visit and Complaint Guidelines 2015 (NI2015-284)*.
- The Public Advocate and Children and Young People Commissioner functions, visits and complaints management requirements in the HRC Act (Part 4).
- The ACT Ombudsman's complaints investigation function and associated powers in the *Ombudsman Act 1989* (Part 2, ss7-17).

9. After a monitoring activity, what is the reporting process? Are reported findings made publicly available? If yes, how frequently are such findings made public? (OPCAT Article 23)

Official Visitor

The OV Act requires the Official Visitors to report to the Minister:

- any reasonable belief that the care, service provision, living conditions, or detention of a person at a visitable place is not legally compliant (s16); and

- a quarterly summary of the number and kinds of complaints received, the action taken in response, and the number and kinds of matters referred by the official visitor to an investigative entity (s17).

Section 17 reports must be presented to the ACT Legislative Assembly at the end of each financial year. These reports are publicly available. Copies of the report may also be provided to the Director-General (CSD), the Commissioner and the Official Visitors Board.

Public Advocate and Children and Young People Commissioner

The HRC Act requires the Human Rights Commission to prepare a final written report when closing a complaint made to the Commissioner. The final written report must be provided to the complainant and the person complained about, except where the complaint investigation was commission-initiated (s80).

In addition to a final report, the Human Rights Commission may provide a:

- third-party written report if satisfied it is in the public interest and the third-party has acted inconsistently with a standard, the report is about matters of public policy, or the report is about matters the third party has an appropriate interest in (s83);
- Commission-initiated report to anyone the Human Rights Commission considers appropriate (s84);
- written report to the Minister about any matter of public importance related to the Human Rights Commission, the Commission's functions or a matter that may be complained about under the Act (s87).

The Minister may also, in writing, direct the Human Rights Commission to inquire into and report to the Minister about any matter that can be complained about under the HRC Act (s17).

Section 87 reports must be presented to the ACT Legislative Assembly within six sitting days of the day the Minister receives the report. These reports are publicly available.

Section 18(2) also gives the Minister discretion to present any other report that identifies, inquires or reviews issues relating to complaint matters to the ACT Legislative Assembly (e.g. section 17 reports). Reports presented to the ACT Legislative Assembly are publicly available.

ACT Ombudsman

Section 18 of the *Ombudsman Act 1989* requires the Ombudsman to report the findings of investigations undertaken to the agency concerned if satisfied:

- the agency undertook an action that was illegal, unreasonable, unjust, oppressive or discriminatory, or incorrectly exercised (or failed to exercise) a discretionary power; and
- further action should be taken about the matter.

The report must include reasons for the opinions formed by the Ombudsman, and any recommendations they make. A copy of the report must also be provided to the Minister.

Where adequate action to respond to a report recommendation is not taken by the relevant agency, the Ombudsman may provide a copy of the report to the Chief Minister (for a written response), or to the Speaker of the ACT Legislative Assembly (s19).

The Ombudsman may also, from time to time, submit to the Speaker a report of the Ombudsman's operations during the year, or a report about any matter related to the Ombudsman's functions under this Act (s21).

Reports given to the Speaker must be presented to ACT Legislative Assembly on the first sitting day after receiving the report. Where this occurs, the Minister must present a written response to the report to the ACT Legislative Assembly within three months of the report being presented. In these circumstances, the report and response are publicly available.

10. Do oversight and monitoring bodies in your jurisdiction have the statutory power to make recommendations and submit proposals concerning existing and proposed legislation? How often are these recommendations implemented? (OPCAT Article 19 (a)).

Legislation allows the ACT Ombudsman and the Human Rights Commission to make recommendations and submit proposals to the Minister in the form of reports (see question 9). If appropriate, these recommendations can relate to legislation.

As an ACT Government agency, the Human Rights Commission has the opportunity to comment on any proposed Bills and subordinate legislation being progressed by Government. The *Scrutiny of Bills Committee* also reviews proposed Bills and subordinate legislation to ensure they do not trespass on personal rights and liberties and are human rights compliant.

Official Visitors also meet regularly with relevant ACT Government directorates and are briefed about important information and upcoming changes. This can include changes to legislation and/or policy relevant to children and young people.

11. Which community-based organisations regularly visit youth justice detention centres in your jurisdiction? What is the purpose of these visits?

In accordance with the principles and framework established by the CYP Act, Bimberi supports programs and service delivery that:

- are based on a therapeutic approach;
- are client-centered and family-focused;
- are developmentally and age appropriate;

- strengthen young people’s connection to community and culture;
- strive to provide a normalised environment reflecting ‘what is in the community’;
- offer education and vocational training and programs;
- provide coordinated case management approach;
- build positive and stable relationships; and
- offer continuity of service delivery (throughcare).

Strategies and actions identified in the *Blueprint for Youth Justice in the ACT 2012-22*, aim to develop a youth justice response and intervention continuum that begins with prevention and early intervention and continues through diversion and prevention of repeat offending.

All programs that are offered to Bimberi are required to meet this criteria to ensure that the programs and services are best meeting the needs of the young people in Bimberi.

There are a number of community-based services that meet the program and services delivery requirements to Bimberi. These include:

- the Police Citizens Youth Club that provides a variety of sporting activities;
- Winnunga Nimmityjah Aboriginal Health Centre that provides sporting and health services to all young people with a focus on young people that identify as Aboriginal or Torres Strait Islander;
- Relationships Australia that provides a young men’s counselling program;
- Gugan Gulwan and Aboriginal service that provides an art and didgeridoo program and support;
- Family Tree House that provides a counselling and mediation service;
- Ted Noffs Foundation that provides specific alcohol and drug counselling;
- Big Bang Ballers that provides a basketball program;
- Royal Lifesaving that provides swimming lessons and the Bronze Medallion training;
- Tennis Australia that provides a tennis coaching program
- The Brumbies and Canberra Raiders that provides a sports and mentoring program;
- Nutrition Australia that provides a cooking programs; and
- Bricks and Blocks that provides a bricklaying program.

Bimberi also encourages any organisation working with a young person or their family in the community to continue to provide an ongoing service while a young person is detained in Bimberi. For example, if a young person was working with the Canberra Rape Crisis Service the service would be asked to continue supporting the young person to ensure continuum of care.

12. Do you think that oversight bodies that visit youth detention centres in your jurisdiction are OPCAT ready? Why or why not?

As a human rights compliant jurisdiction, the ACT Government supports the OPCAT and its implementation in relation to young people in detention. Consistent with the OPCAT articles, existing oversight bodies are functionally independent and collectively have the ability to:

- conduct reviews (including self-initiated reviews);
- undertake visits and inspections of Bimberi facilities;
- receive and respond to complaints from young detainees, parents and other visitors;
- conduct investigations; and
- make reports and recommendations to government that are publicly available.

Registers

13. Does your jurisdiction maintain registers for:

- ***Use of force and methods of restraint***
 - ***Solitary confinement and isolation;***
 - ***Critical incidents;***
 - ***Search; and***
 - ***Complaints.***
- a. **Are you required by legislation to maintain any of these registers?**
 - b. **What information is included in each register? Is any of this information publicly available?**
 - c. **Who is responsible for maintaining each register?**
 - d. **What reporting process applies to each register?**

Use of force and methods of restraint

Section 195(1)(b) of the CYP Act requires a register be kept of any incidents involving use of force, including restraints. The register must include details of each incident, including the circumstances, the decision to use force, the force used, and any other detail the Director-General (CSD) considers relevant.

Maintenance of the use of force register is the responsibility of the Director-General (CSD). In practice, this power is delegated to the Bimberi Senior Manager. The register must be available for inspection by a judge, magistrate, official visitors, a commissioner exercising a function under the HRC Act and the ACT Ombudsman. The Commissioner must inspect the register at least once every three months. These requirements also apply to the maintenance and review of the search register (see – Searches below).

Further policies and procedures related to use of force at Bimberi can be found in the *Children and Young People (Use of Force) Policy and Procedures 2015 (NI2015-400)*.

Searches

Section 195(1)(a) of the CYP Act requires a register of strip searches, body searches, searches of premises and property, and searches of young detainees' cells. The register must include the name of the young detainee being searched, the reason for the search, when and where the search occurred, the name of any persons present during the search, and the details of anything seized and use of force applied during the search (if applicable). For a body or strip search, the register must also advise whether a same-sex officer conducted the search and, if not, why this did not occur.

Further policies and procedures related to searches at Bimberi can be found in the *Children and Young People (Search and Seizure) Policy and Procedures 2015 (NI2015-397)*.

Solitary confinement and isolation

Section 222 of the CYP Act requires a register be kept of segregation directions given to young detainees. The register must include the name of the young detainee subject to the direction, the reason for the direction, the period for which the direction remains in effect, details of people notified of the direction (under s207), details of any force used to compel compliance with the direction and why it was applied, and details of any feedback provided where a segregation direction has been reviewed (under Div 6.6.3.5).

Maintenance of the segregation directions register is the responsibility of the Director-General (CSD). In practice, this power is delegated to the Bimberi Senior Manager. The register must be available for inspection by a judge, magistrate, official visitors, a commissioner exercising a function under the HRC Act and the ACT Ombudsman. There is no legislative requirement that the register be inspected by an external body. A quarterly summary report of all register information and critical incidents is provided to ACT Government executive staff for internal review. Further, a young detainee may request an external review of segregation directions (s219).

Further policies and procedures related to solitary confinement and isolation can be found in the *Children and Young People (Segregation) Policy and Procedures 2015 (NI2015-402)*.

Critical incidents

Bimberi is not legally required to maintain a register of reportable incidents. Internal policies and procedures require that all reportable incidents that occur in Bimberi are recorded in a critical incident form. Information recorded in the form includes background to the incident, the nature of the incident, the young detainee's view of the incident (if applicable), relevant medical advice (if applicable), parties to the incident, and all actions and decisions taken in response to the incident. Any incident or event that significantly affects (or threatens to affect) the security, operations or the routine of Bimberi; harms or threatens to harm the

personal safety of any individual at Bimberi; or involves drugs or violence is considered a reportable incident.

The Bimberi Senior Manager is responsible for ensuring reportable incident forms are completed and a quarterly report of all reportable incidents is provided to ACT Government executive staff for internal review.

Further policies and procedures about reporting and investigating allegations in Bimberi can be found in the *Children and Young People (Reporting and Investigating) Policy and Procedures 2015 (NI2015-395)*.

Complaints

The *Children and Young People (Complaints Management) Policy and Procedures 2015 (NI2015-383)* requires that a database be maintained for all formal complaints made about Bimberi. The database must include details of issues raised by a complainant, staff named in a complaint, complaint outcomes and the time taken to respond to a complaint.

The Bimberi Programs and Services Manager is responsible for database maintenance. A report of database information is provided to the Bimberi Senior Manager on a monthly basis and a quarterly summary report is provided to ACT Government executive staff for internal review.

Complaints

14. In your jurisdiction, what is the internal process for making and considering complaints in youth justice detention centres? What legislation or policies govern the internal complaints process?

Internal Bimberi guidelines – complaints and feedback

Policies and procedures about complaint management at Bimberi can be found in the *Children and Young People (Complaints Management) Policy and Procedures 2015 (NI2015-383)*.

Internal practice guidelines have also been developed to support staff to respond appropriately to complaints and feedback received about Bimberi and its operations. The practice guidelines require that:

- staff acknowledge complaints made by any young detainees, family members or visitors about standards of care, accommodation, or treatment received at Bimberi;
- complaints be accepted whether they be in writing, verbally, or made on someone else's behalf; and

- staff inform young detainees of their right to engage with external oversight bodies (e.g. the Official Visitor) and support young detainees to engage with these bodies appropriately.

Complaints made about Bimberi and its operations are classified and responded to by staff in relation to the following four levels of escalation:

Level One	<p>This is a complaint that can be managed and resolved by staff at Bimberi. It includes complaints received by an Official Visitor or the Commissioner in the course of their official duties, if they relate to minor matters that can be resolved by Bimberi staff.</p> <p>A level one complaint does not need to be formally recorded on the Complaints and feedback form.</p>
Level Two	<p>A level two complaint is a complaint that cannot be resolved as a level one complaint because:</p> <ul style="list-style-type: none"> • the complexity of the issue; • the complainants' dissatisfaction with the outcome provided by Bimberi staff; • the complaint involves more than one business unit; • the complaint is referred directly to the executive staff; • the complaint is requested to be handled outside of Bimberi staff; and • the complaint is referred by the Director-General (CSD) to someone other than Bimberi staff. <p>A level two complaint is to be formally recorded on the Complaints and feedback form.</p>
Level Three	<p>A level three complaint is a complaint that cannot be resolved as a level one or two complaint because:</p> <ul style="list-style-type: none"> • the complaint is forwarded from an external oversight body; • the complainant requests an independent or external review; • the complaint is referred directly to the Director-General (CSD); and • the complaint is referred directly to the Regulation Oversight and Quality Service within CSD. <p>A level three complaint is to be formally recorded on the Complaints and feedback form.</p>
Level Four	<p>A level four complaint is a complaint that has been found to be vexatious. Executive level staff are responsible for determining if a complaint is vexatious.</p>

For complaints (other than level one complaints), a formal written response must be provided to the complainant about the outcome of their complaint.

Regardless of the level of complaint, staff are required to contact a complainant within three working days of receiving the complaint, to keep them informed of:

- receipt of their complaint;
- the action being taken;
- who is investigating or actioning the complaint; and
- when a response can be expected.

By mutual agreement, Bimberi and the Commissioner have agreed that five to seven days is a reasonable timeframe for responding to complaints raised. As reported above (see – question 13), a quarterly summary report of all formal complaints received by Bimberi is provided to ACT Government executive staff for regular internal review.

Where a complainant is not satisfied with the response to their complaint, the complaint may be escalated (e.g. level 1 complaint escalated to level 2) and the response reviewed to ensure that due process was followed.

Internal ACT Government guidelines – complaints and feedback

Complainants that do not want to lodge a complaint with Bimberi or an external oversight body, may refer their concerns to CSD (ACT Government). CSD is responsible for Bimberi and its operation. The Child and Youth Protection Services Complaints Unit and the Regulation Oversight and Quality Service Unit respond to complaint matters received by CSD in accordance with the Directorate's Complaints Handling and Management Policy. This policy is available at:

http://www.communityservices.act.gov.au/_data/assets/pdf_file/0009/678195/CSD-Complaints-Handling-and-Management-Policy.pdf.

15. Which external bodies handle complaints about youth justice detention centres? What is the process for children and young people to make an external complaint? How are these external bodies administered and how is their independence guaranteed?

In addition to Bimberi or CSD complaints processes, there are a number of statutory bodies that provide support, advocacy and complaint arrangements for children and young people in Bimberi and their families. The primary oversight bodies are:

- the Official Visitors;
- the Children and Young People Commissioner (Human Rights Commission); and
- the Public Advocate.

To facilitate young people's access to support, advocacy and compliant mechanisms, the contact details for these services are provided to all young people in Bimberi and are common numbers on their telephone accounts. Young people are able to utilise the telephone system regularly in order to seek support around concerns.

The Official Visitors and Commissioner have a complaints handling function within their oversight roles. A child or young person can make a complaint to either of the oversight bodies in person, via the telephone, or in writing.

Staff are responsible for facilitating a young person's contact with people in these oversight roles (e.g. by ensuring that young people are aware when an Official Visitor is in Bimberi; and by ensuring that all young people are provided with information about their rights at induction).

All young detainees are provided information about their rights and the complaint making process through the Residents' Handbook and/or induction DVD - A Young Person's Guide to Bimberi. Official Visitors and the Commissioner advise young detainees of the complaints process during their visits to Bimberi.

A copy of the Residents' Handbook is available at:

http://www.communityservices.act.gov.au/_data/assets/pdf_file/0013/43042/A-Youth-Persons-Guide-to-Bimberi-Youth-Justice.pdf

16. Are children and young people able to communicate confidentially with complaint handling bodies? If so, how is the confidentiality of these communications guaranteed?

All young people are able to contact any of the oversight bodies and have a private and confidential conversation. The telephone numbers for the oversight bodies are provided as part of a young person's approved contacts. Young people are also able to meet with any of the oversight bodies in the visitor's area or in a private room of the visitor's area if required.

17. In 2014/15 how many internal complaints were received, investigated and resolved in your jurisdiction? Is this publicly reported?

In 2014/15 there were five internal complaints received by Bimberi, three from one young person and two from different young people. All complaints were resolved to the satisfaction of the young person concerned.

In 2014/15, CSD also received one complaint from a parent of a young detainee at Bimberi. This complaint was later withdrawn by the parent before the OCYFS Complaints Unit had finalised the matter.

All complaints are kept on a registrar and are available for viewing by oversight bodies such as the Official Visitor and Commissioner.

18. What were the nature of the complaints handled in the internal process? Is this publicly reported?

Of the five complaints received in the last financial year, two related to the behaviour management system, two involved complaints about interaction with staff members and one complaint related to the use of the telephone system and maintenance issues. Details of the complaints are kept on a registrar and are available for viewing by oversight bodies such as the Official Visitor and Commissioner.

The complaint received by CSD from a parent was about interactions with a staff member.

19. What demographic information is recorded about children and young people whose complaints are handled internally, including age, gender, Indigenous status, cultural and linguistically diverse background, disability, LGBTI? Is this information publicly available?

Bimberi does not record demographic information on the complaints register. However, demographic information can be deduced from the detainee register if a complainant provides their name on the compliant. Complainants have the option to remain anonymous.

20. In 2014/15, how many external complaints were received, investigated and resolved in your jurisdiction?

In the 2014/15 financial year, there were three formal complaints made to the Commissioner in their capacity as Children and Young People Commissioner. These complaints were resolved to the satisfaction of the Commissioner.

21. What demographic information is recorded about children and young people whose complaints are handled by an external body, including age, gender, Indigenous status, cultural and linguistically diverse background, disability, LGBTI? Is this information publicly available?

Please refer to the response provided at Question 19.

22. How are the internal and external complaints processes communicated to children and young people and their families or guardians? Is this information available in a child-friendly format?

On induction into Bimberi, the rules, expectations and rights of the young person are communicated to the young person by a Youth Detention Officer. Each young person is given a copy of the Bimberi resident's handbook – *A Young Person's Guide to Bimberi* (the Guide), which sets out the young person's rights on remand or sentence into Bimberi.

The Guide also includes Bimberi rules and responsibilities, visiting and communication guidelines, and information on how to seek help. Additionally, the Guide explains how a young person can make a complaint and what the complaint process requires. Each young person is given a copy of the handbook on admission.

A video, similar to the Guide, has also been produced that talks about young people's rights and expectations when in Bimberi. The video has been produced to assist those young people who have poor literacy or no literacy skills.

In addition, the Official Visitors and Public Advocate advise young people of their role, the complaints process and how young people can be assisted at their visits.

Bimberi has pamphlets available for families or guardians that are displayed in the visitor's area of the Centre and are easily accessible. If any family member approaches a staff member with a complaint, they are then provided with the Complaints Policy, talked through the process by a staff member and assisted to make the complaint.

23. What feedback mechanisms are in place about how children and young people experience complaint processes and, where relevant, the work of community visitors?

Bimberi provides feedback to young people on the status of their complaints verbally and in written form. The information is provided in a language the young people and their families can understand and interpret.

Feedback from young people on the programs provided in Bimberi by community based organisations is provided through exit interviews, client surveys and feedback from oversight agencies. Oversight agencies seek feedback from young people through group meetings, individual consultation, and surveys.

GENERAL

24. Has your jurisdiction placed a child/young person under 18 years in an adult facility between 2014 and 2016? Why was the decision to this taken? What legislation provides for it? Are there legislated monitoring and reporting requirements in situations where this happens? If not, how are these placements monitored?

No child under the age of 18 was placed in an adult facility in the ACT between 2014 and 2016. There are no legislative provisions that allow for a young person less than 18 years of age to be detained in an adult facility in the ACT.

25. Please describe how the rewards and sanctions system operates in youth justice detention centres in your jurisdiction?

Behaviour management strategies are implemented with young people in detention to promote pro-social attitudes and behaviours. Strategies are broadly proactive or reactive. Bimberi staff are trained to manage challenging behaviours and in the use of proactive and reactive strategies.

Proactive strategies include positive reinforcement or feedback, incentives, and rewards aimed at increasing particular behaviours that include compliance with requests, polite and respectful interaction, and appropriate problem solving.

Reactive strategies focus on decreasing specific negative or anti-social attitudes and behaviour such as abusive, threatening, non-cooperative, disrespectful and harmful actions. The range of strategies employed can include cautions or warnings, loss of privileges, discipline, the imposing of restrictions, and in some instances may require the application of force.

Child and Youth Protection Services provides case management and service coordination for all young people supervised on a community-based order or detained at Bimberi, as well as transition planning for young people serving periods of detention. Evidence-based practice is applied in the case management of young people involved in the youth justice system, supported by the application of 'What Works' literature and the Youth Level of Service/Case Management Inventory (YLS/CMI). The YLS/CMI is a strengths-based risk assessment tool that predicts a young offender's risk of re-offending and identifies target areas for rehabilitation.

For young people who present with persistent, problematic or challenging behaviour, a key strategy is the development of a Behaviour Management Plan. The plan provides a consistent approach to the management and change of identified behaviours. Behaviour Management Plans are created through the active involvement of the young person, operational staff, the young person's case manager, health professionals and, at times, their family. The management plan provides a consistent approach for all staff, including operations, case management, health and education, in the management of the young person's behavior.

Bimberi's Behaviour Management Policy includes an incentive scheme based on a 'token economy'. The scheme is a system of rewards where young people can earn points for demonstrating positive behaviours and achievements; these points can then be exchanged for different rewards and privileges.

The incentive scheme aims to:

- establish behavioural standards for young people in Bimberi;
- ensure that young people are aware of the behavioural expectations while in Bimberi;

- increase the likelihood of positive behaviour and decrease the likelihood of negative behaviour;
- improve the relationships and rapport between young people and Bimberi staff through access to attention;
- assist the young person in achieving their case plan goals;
- provide all young people with an opportunity to identify personal goals and earn rewards and privileges for achieving these goals;
- provide young people with the opportunity to learn strategies and to reflect on choices;
- provide young people with the opportunity to discuss constructive feedback and advice in a supportive environment;
- map the progress of young people; and
- allow staff to actively participate in the change process with young people.

The incentive scheme has four levels with an identified standard of behaviour and achievement for each level. The standard expected from young people increases with each level from one to four. The choice of rewards and privileged items available for the young person to earn also increases as they progress through the levels.

Young people enter the incentive scheme on level one following their induction into Bimberi. The focus of level one is for the young person to settle into Bimberi routine and learn the rules and procedures. In order to progress to the next level or remain in their current level, the young person must meet specified targets.

26. How are children and young people informed of their rights in youth justice detention centres?

The CYP Act sets out principles that must be considered by all decision-makers under the Act, with the key principle being when making a decision in relation to a particular child or young person, the decision-maker must regard the best interests of the child or young person as the paramount consideration.

As discussed in the response to Question 22, the rules, expectations and rights of the young person are communicated to the young person by a Youth Detention Officer on induction into Bimberi. Each young person is given a copy of the Bimberi resident's handbook – *A Young Person's Guide to Bimberi* (the Guide), which sets out the young person's rights on remand or sentence into Bimberi.

A video, similar to the Guide, has also been produced that talks about young people's rights and expectations when in Bimberi. The video has been produced to assist those young people who have poor literacy or no literacy skills.

27. *What training is in place for management and staff in relation to children's rights?*

All staff at Bimberi undertake an eight week induction program. As part of the induction program, staff are required to familiarise themselves with the operation of the facility and engagement practices with young people at Bimberi. The staff induction program also includes information about a young person's rights while in Bimberi. Staff are required to have an understanding of the rules and regulations and be able to explain these in a way that ensures the young person can understand their rights and obligations. The Human Rights Commission also provides training to Bimberi staff about human rights understandings and obligations.

28. *In your jurisdiction, are there special provisions for monitoring the transportation of children and young people held in police/court custody?*

The *Children and Young People (Escorts) Policy and Procedures 2015* (No 1) notifiable instrument sets out the legislation and policy requirements for escorting young people in detention in the ACT.

The policy and procedures allows for the effective and efficient management of detention services for young people. The policy and procedures establish the legal authority and obligations for transporting young people between places, i.e. a court or correctional centre, the arrangements for such transport, and the functions of an escort officer. The functions of an escort officer are to ensure the safe and secure custody of a young person while they are being escorted in accordance with the CYP Act and the instrument.

The following international human rights standards apply in the ACT and are relevant to this policy and procedures:

- (a) United Nations Convention on the Rights of the Child;
- (b) United Nations Standard Minimum Rules for the Administration of Juvenile Justice;
- (c) United Nations Rules for the Protection of Juveniles Deprived of their Liberty
Standard Minimum Rules for the Treatment of Prisoners;
- (d) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and
- (e) United Nations Declaration on the Rights of Indigenous People.

ACT Corrective Services manage adult prisoners and also have responsibility for the management, through the Court Transport Unit, of the transport of young people from the Court to Bimberi. Under the CYP Act, Custodial Officers within the Court Transport Unit become Youth Detention Officers whilst transporting young people. A young person (under 18 years) must not be transported with an adult who is under detention and a young person must not be placed in a room with an adult who is under detention.