



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

STANDING COMMITTEE ON LEGAL AFFAIRS

(Reference: [Inquiry into Annual and Financial Reports 2023-24](#))

Members:

MR P CAIN (Chair)
MR T WERNER-GIBBINGS (Deputy Chair)
MR S RATTENBURY

PROOF TRANSCRIPT OF EVIDENCE

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MONDAY, 17 FEBRUARY 2025

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Secretary to the committee:
Ms K de Kleuver (Ph: 6207 0524)

By authority of the Legislative Assembly for the Australian Capital Territory

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APPEARANCES

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Amended 20 May 2013

The committee met at 4.05 pm.

ACT Inspector of Correctional Services

Minty, Ms Rebecca, Inspector of Custodial Services

Costello, Mr Sean, Deputy Inspector of Custodial Services

THE CHAIR: Good afternoon and welcome to the public hearings of the Standing Committee on Legal Affairs for its inquiry into annual and financial reports 2023-24. The committee will today examine the ACT Inspector of Custodial Services.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. We wish to acknowledge and respect their continuing culture and the contribution they make to the life of the city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today's event or watching online.

The proceedings today are being recorded and transcribed by Hansard and will be published. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that question on notice." This will help the committee and witnesses to confirm from the transcript questions taken on notice.

We welcome witnesses from the ACT Inspector of Custodial Services. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Could you please each confirm that you understand the implications of the statement and that you agree to comply with it?

Ms Minty: I acknowledge the privilege statement and agree to comply.

Mr Costello: I also acknowledge the statement and agree to comply with it.

THE CHAIR: We are not having opening statements, so we will proceed to questions. I will note the obvious: we are here for less than half an hour, so I will be pretty strict on time.

MS BARRY: Thank you for being present today. I note that your report on Bimberi made some really damning comments in there, and I am concerned that these issues have been raised multiple times and, really, there seems to be no progress in what is being done to address these issues. Commissioner, can you please tell me the extent of the issues and what we need to do urgently to address them?

Ms Minty: Yes, sure; thank you for that question. This was the second Healthy Centre Review of Bimberi that we recently conducted and tabled at the end of last year, so it was the second time that we have looked at all aspects of the treatment and care of young people at Bimberi.

As you say, it was incredibly disappointing to find that certain recommendations that had been made previously had not been implemented and, also, pretty concerning to

see some areas where human rights, in particular, were not really being integrated into decision-making.

The key area that we highlighted was in relation to physical contact between young people and their families at visits. This was an issue that we had raised early in the year, in January, and we continually raised it with management, and it was disappointing to see that it had not been addressed. I understand there has been some progress. It is a question for CSD as to what the status of that is. But I think it is not acceptable in the ACT, in my view, that we are not allowing kids to hug their parents, and we should not be having this conversation.

That said, there were some really positive aspects around the way Bimberi runs. With the centre and the facilities, although some parts of them are ageing—and as infrastructure ages it obviously needs attention—the decentralised layout is a positive, and it is good practice. We saw some really committed staff. We see a team with a therapeutic focus within Bimberi.

The tone of the review was that there are some real opportunities to bring a therapeutic focus. It is this tension between having a therapeutic focus in a custodial or corrective environment. It is almost like there is a bit of a fork in the road: with a little bit more focus, resources and attention towards the therapeutic, we believe that the decision-making around things like physical contact at visits will be better balanced and lead to better outcomes for the young people.

MS BARRY: Thank you very much. It is comforting to see that there is some movement around allowing children to hug their parents. You just mentioned that you would like to see more focus on therapeutic interventions than on punitive. The CSD recently advertised for a no-qualifications youth worker. Just bearing in mind the comments you just made around therapeutic focus, do you think that is appropriate? I understand there is a nine-week qualification process, and it is really rigorous and intensive, but, in your view, do you think that is sufficient, considering the amount of skill and expertise you would need in this space to move to that therapeutic focus?

Ms Minty: I might answer at a high level and then pass it to my colleague. I think these are the most vulnerable children and young people in our community in the ACT. It is a very difficult job. There is no taking away from that. I note that these youth detention officers—many of them care very deeply about young people, so it is no reflection on the staffing. But we have to think about who is providing that care for these young people.

The report looks at other models. It looks, for example, at the Diagrama model in Spain, which really, first and foremost, brings people such as educators, social workers and occupational therapists as the main people working in the centre, with only a few security guards. That is a very different model, but it is one that we, in the ACT, could move towards if there were the commitment, but there has to be a vision and that needs to drive it. In terms of the actual job description, I do not know if—

Mr Costello: To add to that is that in the report we try to grapple with an issue which has been discussed in previous reports about Bimberi, which is this inherent tension in the role that youth workers at Bimberi are asked to perform, which is, as Rebecca said,

both to undertake security functions and to provide that therapeutic focus for young people. The model that we look to overseas tries to separate those out so you do not have one person trying to, basically, do what, at times, might be competing priorities.

MR RATTENBURY: You reference things like young people being able to hug their parents. It seems like a modest reform in the scheme of things. What do you think has been the key barrier, then?

Ms Minty: I think there is an overtly risk-averse operational culture. In a sentence, I think it comes down to that. I think when you are worried about the risk of what could go wrong and that is driving decisions—when you are locking down a whole centre for a single code, even if it is a rolled ankle—that to me says the calibration of risk and aversion to risk is wrong.

MR WERNER-GIBBINGS: Your office drafted human rights standards for youth detention places and the specific expectations for the isolation of children and young people in detention. What is the status of those standards or those draft standards? Will they go beyond draft? Are there implementation timeframes or possibilities?

Mr Costello: They have all been finalised. There are two primary standards. They are standards that we use in our work, so it is attempting to provide some clarity for detaining authorities and for the community that, when we come to do our work, these are the standards that we will apply; these are the expectations we have about what we will see.

We have recently updated both our standards, for adult places of detention and youth places of detention. They are both finalised now. The third standard you referred to was quite detailed; they were used for a review of isolation we did at Bimberi in 2023, and we drilled a little bit deeper.

You can appreciate that these standards are drawing upon international best practice and United Nations guidelines. They tend to be quite high level. For that isolation review, we went a little bit further and really tried to provide some further detail about what we would expect to see with isolation. When we updated both sets of standards, we tried to reflect feedback we received from the community, but we also asked for feedback from the detaining authorities themselves, so that is reflected in where we have landed on those. We have got a healthy prison review of the AMC coming up this year; those updated standards are what will apply in doing that work.

MR WERNER-GIBBINGS: The difference between draft and finalised—was that the consultation or was consultation prior to the drafting?

Mr Costello: I think you might be referring to some interim standards for youth detention, which we used for our first review of Bimberi. They were finalised before this most recent review was done. And, yes, that was about reflecting feedback we had received over the years and the feedback from the detaining authority.

MR RATTENBURY: I wanted to ask you about the recent Integrity Commission report on Operation Falcon, which concerned the problems around observations and the subsequent falsification of records relating to medical observations. I wanted to ask

whether, in your role, you had seen any other examples of problems with records not being well kept, or the sorts of cultural issues that were attached to that report we have seen from the Integrity Commissioner.

Ms Minty: Thank you for that question. The answer is, yes, we have seen that, and we have reported on it in various reports. My office did a review of the death in custody and noted the same issue of irregular observations being recorded and, in fact, that then also came up through the coronial process, so it has come up through those reports. It has come up again in this Integrity Commission report.

We have also seen Corrections has transitioned, as you would all be aware, to a new online database, CORIS, which has now been operational for more than 18 months. I think we are beyond any sort of teething period for that, and we do want to see better record keeping, and we continually raise this with Corrections. They are quite receptive, and if we identify any concerns, they take them seriously.

We have got a healthy prison review this year; this will be a matter—record keeping. But we have got a number of spotlight topics it fits within and one of them is culture. Culture goes to what sorts of standards are allowed to persist; what sorts of management and supervision of staff; and what is acceptable practice. I think it is promising to see, in the wake of those coronial inquests, that there have been new procedures around observations put in place. I am not going to comment, at this point, as to how that is going in practice, but I absolutely think record keeping and observations are part of the culture piece for the AMC, and we will look forward to looking at it in the healthy prison review.

MR RATTENBURY: Yes, I do not want to pre-empt the review, and in some ways, you have gone to it, but I am interested, again, in your sense of what the barrier is to this. Is it one of culture and that, simply, it has not been given enough focus, or are there other barriers to proper record keeping?

Ms Minty: I do not want to pre-empt. I do not think I can really answer that. Put it this way: I am not aware of any other sorts of really big systemic barriers in terms of the systems, like the computer system. Sure, there are some—for example, in a critical incident review that we released in the reporting period, we identified that there were two concurrent record keeping systems. There was this new online database, CORIS, but then this unit diary that each of the units at the jail had, which was a Microsoft Word document, where people were just putting bits and pieces, and we found that was a risk point for Corrections, and they have accepted that recommendation, and they are looking at that. So, yes, there are a few structural things, and I think culture is part of it, but I will wait to see what the review reveals.

MR RATTENBURY: Thank you.

MR EMERSON: I have a question about the over-representation of Aboriginal and Torres Strait Islander children in youth detention. I know you indicate this is a significant issue in the review and that a lot of the kids coming through are out for a few days, and maybe they are back in for a night, and that sort of thing. Is there a difference between Indigenous and non-Indigenous kids in terms of the amount of repeat offending? Have you noticed that, or is it pretty much the same?

Mr Costello: I would not necessarily say for repeat offending. I think it has been well discussed: the over-representation rate, unfortunately, is both in the child protection system and the youth justice system. Potentially, that is one of those drivers and may be part of that cycling in and out as well. I should say that our work is very much focused at Bimberi and on the detention centre, so in the review, we have tried to take a slightly higher-level approach; obviously, we are seeing everything through that lens.

It would be difficult for us to comment on the offending behaviour in the community more broadly, because we are only seeing those that end up in detention. But if I were to hazard a guess at what one of the relevant drivers might be, it is probably that there is that over-representation across both systems. I am conscious that the Jumbunna Institute has been asked to do a piece of work looking more broadly at the over-representation across the system, so it may be that that report can shine further light on those issues.

MR EMERSON: You touched on the care and protection system. What do you see as the level of integration between that system and the youth justice system? It has been put to me that sometimes, maybe, kids have built up some supports in out-of-home care, and then they end up in contact with the youth justice system and those supports disappear. Is that an issue that you have observed? I know you are focused on what is happening in detention, but do you have any insights to share on that front, on whether there are opportunities to improve the integration of the two systems?

Ms Minty: I think CSD have undergone recent reform around how they integrate youth justice, and care and protection, so it was too early during the review period to really assess how that case-management model system was working. However, I would say, in general, and this is probably an overarching principle, that anything that can be done to keep those young people out of custody—because, as you said, and the report clearly points out about those short stays—whether it is coming from residential care or from the community, if we can stop those short stays in custody and provide the supports in the community, is really important. And we are really looking forward to seeing the throughcare, which has been talked about for a long time, and a model has been developed, I understand. I think that will be really important, because the throughcare, once a young person comes in, is about setting them up to stay out when they get released.

MR EMERSON: Along those lines, is it your sense that there is a kind of fracturing of that, of being part of the community, and kids going to Bimberi? Is that an opportunity for addressing the over-representation of First Nations children?

Ms Minty: Fracturing is absolutely right. Not being able to physically hug and so on during visits is a very stark example. The report details some work overseas around day release and opportunities to participate in programs in the community. We see very few of our young people in Bimberi being able to attend a program, a service or a community event. That has to be part of it. And it goes to that—

MR EMERSON: The risk-aversion point.

Mr Costello: One of the great opportunities you have with children and young people

compared to adults is the education piece. In the report, we talked about some positive practice around some young people—unfortunately, not the majority, but some—being able to maintain that connection with the same education provider while they are in Bimberi. We suggest there are some opportunities there that could be expanded. It is obviously a big opportunity to have that through-care for those young people, if they can remain engaged with education and the school they are at, while they are at Bimberi.

MR EMERSON: What would that look like? Would that mean taking kids more often out of detention to go and do things, while supervised, or the other way around—bringing teachers in—or a bit of both?

Mr Costello: It could be that. With the model that we talk about, flexible education is part of the Education Directorate. For those young people that have already found their way there prior to going to Bimberi, they were doing a lot of work in maintaining that connection. That did not necessarily mean leaving Bimberi to go to flexible education, but the youth worker that works at flexible education maintained that contact and relationship with the young person; and, when it came time for release, ensuring that they went back to school on the first day they were released. Even those small steps can be significant in maintaining that connection with education.

MS MORRIS: I have a couple of questions on critical incidents. I note in the 2023-24 report that you have identified 12 potential critical incidents. How many have you received since that reporting period?

Ms Minty: Just to clarify, in the annual report for the reporting period, there were 12 matters that were brought to our attention by corrections. Of those, five were considered to be critical incidents. Of those, I believe that, for two, a review has been, or is being, conducted. Do you mean in the current reporting period?

MS MORRIS: Yes, if you have those figures.

Mr Costello: It is a little difficult for us. We anticipated that we might be asked that question today. Corrective Services are proactively bringing many things to our attention, which may or may not be critical incidents, and leaving it at the inspector's discretion. It is difficult to give you a hard number. We have had notifications of around 14 or 15, but they would not all constitute critical incidents. We will have to do some work on assessing which of those falls into that determination.

MS MORRIS: That determination is in your hands, as to whether or not it is a critical incident?

Ms Minty: Yes. Under the act, I have discretion as to whether or not to do it. We do have an operational procedure on our website that gives some more information about how I make that decision around whether or not to review a critical incident.

Mr Costello: It is becoming a two-step process. One is: do we consider that it does meet the definition under our act? The other is the discretion to then do the review.

MS MORRIS: What is the requirement on Corrective Services or otherwise to refer a potential critical incident to you?

Ms Minty: We have an MOU with corrections, and we are working on updating that. Generally, it is anything that might fall broadly in that definition that is in the act. In the definitions section, there are about six different incidents. Some of them are black and white, such as an assault resulting in someone being admitted to hospital. It is not always that clear as to what constitutes an admission, but that is a fairly clear thing. There are other things, like a fire causing significant damage. Obviously, there might be some subjectiveness in that.

As I said, corrections have been very open in the last couple of years in saying, “This has come to us; what do you think?” I really appreciate that approach.

MS MORRIS: Sadly, we had an unwell detainee who passed away in custody last week. I probably speak on behalf of everyone here when I say that we offer our condolences to that detainee’s family. Has that incident been referred to you for potential review?

Ms Minty: Also, I would like to express condolences. It is a very tragic situation, regardless of the circumstances, when someone passes while in custody. A death in custody is one of the critical incidents in the act that I have the discretion to review. It is a complex area. I do not think that, when the act was drafted, anyone fully anticipated how, for my organisation, as an independent statutory office holder, that critical incident review function sits alongside coronial functions. Obviously, the coroner has a requirement to conduct reviews of deaths in custody.

I could go into some technical legal details around parliamentary privilege and other things but suffice it to say that it is not straightforward. I am in conversation with the coroner and with corrections to make sure that we do not overlap, duplicate and get in anyone’s way, while having a timely, independent method to identify any further risks.

MS MORRIS: Okay; so it has been referred to you for consideration?

Ms Minty: Yes.

MS MORRIS: But you are reserving your decision until—

Ms Minty: Yes, I have not yet commenced a review, because, under the act, if I commence a review, I must table it in the Assembly. I must table it publicly. At the moment I have not yet commenced a review into that matter.

MS MORRIS: Will you await the outcome of a coronial investigation before making a decision?

Ms Minty: It is a continual assessment process. I do get preliminary information, so I can conduct an initial desk review as to whether there would be value in my office assisting the coronial process. That is guaranteed and that must happen. I am not trying to be obtuse; it is just—

MS MORRIS: No. Will you confirm one way or another whether that will proceed or not proceed?

Ms Minty: I would probably be in a position further down the track to do that, yes.

MR WERNER-GIBBINGS: You can take this on notice, if you like, and come back to me. With your role in that situation, how do you add value? What layer of investigation or information do you bring—

Ms Minty: It is a really good question.

MR WERNER-GIBBINGS: that a coronial inquiry does not, or that assists? I would be really interested in that.

Ms Minty: It is a really good question, because the coronial process is well established, and all jurisdictions around Australia do that. Interestingly, other jurisdictions in Australia do not have independent inspectorates that also have critical incident review functions. When a death in custody occurs, it may vary from jurisdiction to jurisdiction, but they may have an internal review body that sits slightly separate, or it might be the justice department. They do have that body that may not be fully independent, but it does a timely review of initial risks.

My office can complete reviews probably in a more expedited way compared to a coronial inquest. For the death in custody in 2022, our review was completed and tabled publicly within six months. The coronial process takes longer, for very important reasons. There is also a workload that they are grappling with. The timeliness and the independence from government are the two principles where I think my office can potentially contribute.

THE CHAIR: Are you taking on notice providing a bit more on that?

Mr Costello: I am not sure that there is too much more that we can provide.

MS MORRIS: Will you confirm whether or not you will undertake a review?

Ms Minty: In the matter of the death last week?

MS MORRIS: Yes.

Ms Minty: I have not yet seen the preliminary material, so I cannot confirm at this point.

MS MORRIS: When you have seen that, will you publicly announce whether or not you will undertake that review?

Ms Minty: I am hesitating because more information can come to hand beyond what corrections provide to me. I would not want to give a final answer one way or another.

THE CHAIR: I think you said that, when you commence a review, you have to table it.

Ms Minty: Correct.

THE CHAIR: So we will know then, I guess.

Mr Costello: Yes. The latest point when that decision could be made, I suppose, is, as you alluded to, when the coronial inquest findings come down. There may be an issue—for example, the coronial inquest may have looked at a particular point in time, maybe there are broader systemic issues that we feel remain, and it might be at that point that the inspector says, “Okay, let’s have a look at the broader issues,” when the coronial inquest is finished.

MS BARRY: To what extent do mental health professionals contribute to management plans at Bimberi?

Ms Minty: Justice health services, which is part of Canberra Health Services, provide forensic mental health services in Bimberi. They are probably well placed to talk about the extent to which they contribute to plans. Certainly, in our review, we saw that they were very active. They were continually seeing young people in Bimberi and were very engaged with both Bimberi and the Education Directorate. There was some good collaboration in that space.

Mr Costello: CSD has its own client services team based at Bimberi, and they will also develop plans to assist everybody who works with young people. We saw that as a positive practice at Bimberi.

MS MORRIS: I am interested in what we were discussing before. Could you expand on your observations, given your oversight of Bimberi and AMC, and any potential systemic issues that may or may not be at play, in terms of seeing young people graduate, for lack of a better word, to AMC.

Ms Minty: Yes, that is a really good question. We are uniquely situated, in having oversight of both. One thing that we will be doing with this adult review of AMC is to look at, to the extent we can, the young people that have come through Bimberi, because we have not seen records around that. Plenty of research shows that the earlier you enter the youth justice system, the more likely you are to end up in the older, adult system. The raising of the age of criminal responsibility is really positive in contributing to keeping young people out, so that they do not graduate to AMC.

Mr Costello: I reiterate the point that the more investment that can happen earlier, whether that is in the care and protection system or other supports for young people, when they are younger, the more dividends that yields down the track.

THE CHAIR: Thank you, everyone. On behalf of the committee, I would like to thank our witnesses who have assisted the committee through their experience and knowledge. We also thank broadcasting and Hansard for their support. If a member wishes to ask questions on notice, please upload them to the parliamentary portal as soon as possible, and no later than five business days from today. This meeting is now adjourned.

The committee adjourned at 4.35 pm.