



ACT Government

HUMAN RIGHTS AUDIT OF QUAMBY YOUTH DETENTION CENTRE

Human Rights and Discrimination Commissioner
ACT Human Rights Office

30 June 2005



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Mr Jon Stanhope, MLA
Chief Minister and Attorney-General
ACT Legislative Assembly
GPO Box 1020
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Dear Mr Stanhope,

I present to you my report under paragraph 41(1)(a) of the *Human Rights Act 2004* reviewing the effect of the *Children and Young People Act 1999* in relation to human rights at Quamby Youth Detention Centre.

The report analyses operating procedures at Quamby, and highlights the need for the ACT Government to seriously consider the treatment of one of its most vulnerable constituents – children and young people detained at the institution. My findings at this particular point in time relate to issues that have developed over a succession of several governments, and would like to emphasise the positive contribution of the Office for Children, Youth and Family Support to this audit.

I support the ACT Government's commitment of \$40 million to build a new detention facility for young offenders by 2008. However, there are areas where I believe a review of policies now can improve the treatment of detainees before the new facility commences operation.

The recommendations in the report are designed to assist this policy development process. I sincerely welcome the announcement by Katy Gallagher, the Minister for Children, Youth and Family Support, that these recommendations will guide her Department's review. I have attached a second copy of my Report and would be pleased if you could forward it to her as soon as possible.

Yours sincerely,

A handwritten signature in cursive script that reads "Helen Watchirs".

Dr Helen Watchirs
ACT Human Rights and Discrimination Commissioner
30 June 2005

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Acknowledgments

This Human Rights Audit Report was researched and drafted by Victoria Coakley, Human Rights Legal Advisor of the Human Rights Office, and Jane Hearn, an expert human rights legal consultant engaged by the Department of Disability, Housing and Community Services.

The Human Rights Office would like to thank the residents, staff and management of Quamby for their openness and generosity with their time and willingness to participate in the audit. We would also like to thank the Office of Community Advocate, the Official Visitors, ACT Legal Aid Office, Youth Coalition of the ACT and the South-East Aboriginal Legal Service for their time and insights in the operations of Quamby and how policy and practice can be improved for young people detained there.

Executive Summary

This human rights audit by the Human Rights Commissioner under paragraph 40(1)(a) of the ACT *Human Rights Act 2004* ('HR Act'), of an ACT institution operating under the *Children and Young People Act 1999*, is measured against the relevant benchmarks contained in the HR Act. Under subsection 41(2) of the HR Act, this report must be tabled by the Attorney-General within six sitting days of it being presented to him on 30 June 2005.

The audit analyses operating procedures at Quamby Youth Detention Centre ('Quamby'), and highlights the need for the ACT Government to seriously consider the treatment of one of its most vulnerable constituents – children and young people detained at the institution. Anyone detained in a closed environment is vulnerable, but this vulnerability is compounded for children and young people who lack the maturity, skills, experience and resources to protect their own interests in such an environment.

This is not the first report presented to the Legislative Assembly to raise concerns about Quamby. However, many of the recommendations in previous Legislative Assembly Committee reports have not yet been implemented. This audit highlights where the outstanding recommendations require urgent implementation, and examines new areas of human rights concerns, including:

- Admission, classification and placement;
- The behaviour management system;
- Remissions;
- Searches;
- Use of video surveillance;
- Food;
- Recreational activities;
- Clothing;
- Visits and telephone access;
- Maintenance of family relationships;
- Record keeping;
- Information on rules, rights and obligations;
- Access to lawyers and the media;
- Communication with the outside world; and
- The complaints processes.

The ACT Government has recognised that Quamby is in urgent need of being replaced, and has committed \$40 million to building a new detention facility for young offenders by 2008.

The Commissioner was impressed by the level of commitment and professionalism of staff that were interviewed at Quamby. While it is true that Quamby has been limited in adequately addressing a number of human rights areas of concern due to the structural design of the facility, there are areas where the Commissioner believes a review of policies now can make a difference to the humane treatment of detainees

before the new facility commences operation. The recommendations listed in the report serve to assist this policy development process that Katy Gallagher, the Minister for Children, Youth and Family Support, has announced will guide her Department's review.

The main areas of concern highlighted in the audit include:

- The absence of disallowable rules governing the facility's operations that are compatible with the HR Act;
- The lack of a separate induction unit and, in general, the inappropriate mixing of detainees on the basis of age, gender and status (remand or under sentence);
- The lack of a specific legislative basis for the behaviour management system;
- Routine strip-searches;
- Segregation of detainees for disciplinary purposes;
- The use of the seclusion room without appropriate policies and procedures in place;
- Remission decisions are not being dealt with by an independent body;
- Searches of detainees' correspondence;
- The use of video surveillance in certain circumstances;
- The lack of enough appropriate recreational facilities;
- Discretion around approving visitors and the lack of privacy when making or receiving telephone calls, especially legal or calls to external complaint agencies;
- Lack of an electronic database for record keeping; and
- A complaints process that does not safeguard detainees' right to be heard before sanctions are applied for a disciplinary matter, and lack of adequate consultation and information about the outcome of other complaints.

List of Recommendations

General

A comprehensive set of disallowable Rules governing the operation of Quamby should be made under the *Children and Young People Act 1999* that are compatible with the HR Act. This is required as a matter of urgency.

High quality and skilled staff, ensuring gender parity, need to be recruited, paid commensurately and retained. Appropriate induction and ongoing training and development must be provided.

1. Classification and Placement

- 1.1 There should be a separate accommodation unit for new inductees.
- 1.2 There should be separate sleeping arrangements for female detainees. The special needs of female detainees should be recognized and staff should ensure there is a sufficient range of services despite relatively small numbers.
- 1.3 There should be appropriate separation of detainees on the basis of age group and status (remand or under sentence).

2. The Behaviour Management System

- 2.1 The behaviour management system should be comprehensively reviewed and given a specific legislative basis to ensure clarity and consistency in implementation.
- 2.2 Segregation as a disciplinary measure should be used as a last resort and for the shortest time possible, with intensive work by staff to facilitate the detainee's return to the full range of association and activities as soon as possible.
- 2.3 The seclusion cell should not be used until appropriate policies and procedures are in place.
- 2.4 Policies and procedures regarding the use of the seclusion cell should include, in addition to the video camera, log book and regular 5 minute observations:
 - a. Guidance to staff on a structured decision-making process as to when a detainee could be placed in the cell - it must not be more extreme than necessary to achieve reasonable disciplinary objectives, or protection of detainees and/or staff;
 - b. That all staff are trained in de-escalation techniques;
 - c. That fresh air is circulated into or within the cell;
 - d. Other detainees cannot observe its use;
 - e. The door can be opened quickly;
 - f. That the nurse, doctor or psychologist are on call to assist and examine at a minimum every hour in order to ensure the detainee is fit to sustain this punishment;
 - g. The Office of the Community Advocate is notified of the use of the cell to allow independent oversight after use for more than an hour and;
 - h. A cap of two hours is placed on the maximum time in a day that a detainee can be placed in the seclusion cell.

- 2.5 Decisions concerning remissions should be dealt with by an independent body. The behaviour management system should be completely separated from loss of remissions.
- 2.6 There should be a review of the current complaint system, and a clearer and separate process for dealing with disciplinary matters that ensure the right to be heard before a sanction is applied and a right of appeal, with representation of a detainee by the Office of the Community Advocate in any disciplinary procedure.

3. Personal (Strip) and Cell Searches

- 3.1 Strip-searches should only be conducted when there is reasonable suspicion that the detainee may have in their possession a thing that may cause serious damage or threaten the detainee or another person's life.
- 3.2 There should be an explicit requirement to take into account the characteristics of the individual concerned to prevent violations of the physical and mental integrity of the detainee.
- 3.3 There should be a clear policy regarding the searching of detainees' cells. If contraband is found, it should be a matter of structured discretion whether other detainees are strip-searched, on the basis of the type of contraband found and reasonable suspicion that the other detainee(s) may also have contraband. Only female staff should search female detainees' cells.

4. Searches of Correspondence

- 4.1 A clear policy should be developed on the searching of correspondence. It should be clear what content is inappropriate to justify a letter not being forwarded to a detainee.
- 4.2 There should be a consistent practice of forwarding letters to detainees even if sections with inappropriate content are deleted, unless the letter is offensive in its entirety.
- 4.3 Legal correspondence should not be opened and searched unless there is a reasonable cause for suspicion that legal privilege is being abused. If correspondence is opened to remove paper clips or staples, the contents should not be read by staff.
- 4.4 Detainees should be encouraged to choose the staff member they feel most comfortable with to explain the contents of legal or other correspondence.
- 4.5 Lawyers' property, including their briefcases, should not be requested to be submitted for a search upon entry, except if there is reasonable suspicion that they are concealing contraband or non-legal information that could threaten the safety and security of Quamby.
- 4.6 The policy should require that staff are not to read any legal or welfare material in detainees' cells when they are conducting cell searches, if the detainee is absent and if there is no reasonable suspicion of inappropriate content.

5. Video Surveillance

- 5.1 Ensure, to the extent possible, that there is a mixed gender of staff in the control room when female detainees are being monitored by video cameras.

6. Food

- 6.1 Employment of a chef should be fast-tracked. In the meantime, variety in the food provided should be improved, especially lunch.
- 6.2 A program for the older detainees to cook on the weekend should be re-instated with adequate supervision.

7. Recreation

- 7.1 There should be independent monitoring of the periods of lockdown, especially on the weekends.
- 7.2 An indoor multi-purpose recreation facility should be established as soon as possible, or alternately access should be allowed to an outside facility after 5:30pm.
- 7.3 All youth workers should be encouraged to create different activities for detainees, and detainees should be facilitated to develop new activities that they are interested in.
- 7.4 Detainees held in the 6-bed unit must receive adequate access to recreational activities. The cage should be dismounted and any alternative security measure that is established should ensure there is more room for activities.
- 7.5 Female detainees must receive the equivalent access to activities and trainings as males, for example cardio equipment could be installed in the gymnasium.

8. Clothing

- 8.1 There should be consideration given to changing the colour of the issued clothing (having the top or pants a different colour).
- 8.2 Whenever a detainee is leaving Quamby s/he must be wearing their own clothing.
- 8.3 Detainees should be given the option before leaving Quamby, for whatever reason, to go shopping for new clothes (especially if their clothes no longer fit). If there are security concerns, such as high risk of escape, then the family of the detainee should be contacted to organise appropriate clothing.
- 8.4 Quamby should allow, at regular intervals, some personal items of clothing to be worn, especially for detainees on remand.

9. Visits and Telephone Access

- 9.1 There needs to be flexibility and transparency in considering requests by detainees to approve visits and telephone contacts with friends, and other members of their community.
- 9.2 Ex-detainees, especially if they are family members, should not be automatically excluded from having supervised visits.
- 9.3 Lists of approved visitors and telephone numbers in the control room should be up to date for each detainee.
- 9.4 A telephone system should be installed that would allow detainees longer and more outgoing calls on their designated days.
- 9.5 Improvements should be made for protecting privacy when detainees are making or receiving telephone calls.
- 9.6 Protections need to be provided when detainees are making or receiving welfare or legal telephone calls.

10. Maintaining Family Relations

- 10.1 Primary caregivers should be allowed, whether on remand or sentenced, to maintain care and contact with their children up to pre-school age, where that is assessed as being in the child's best interests, and to make available parent education programs for both expectant mothers and other parents in Quamby.

11. Record Keeping

- 11.1 The file management process and procedures should be reviewed to ensure that information is comprehensive and up-to-date for all detainees and can be accessed easily and quickly when required. An electronic database should be established for this purpose.

12. Right to Information

- 12.1 The detainees' handbook must be updated as a priority;
- 12.2 Detainees must be informed of their rights and obligations, as well as the operating rules.
- 12.3 Staff must be given a copy of relevant international rules and standards regarding the protection of children and young people in detention.

13. Access to Lawyers

- 13.1 The South East Aboriginal Legal Service should be advised on entry to Quamby when detainees identify as Aboriginal and Torres Strait Islanders ('ATSI') and consent to notification.

14. Access to Media

- 14.1 Detainees should have controlled access to the media with appropriate safeguards in place.

15. Communication with the Outside World

- 15.1 Management should oversight videos and DVDs brought into Quamby to ensure appropriate content and classification.
- 15.2 Weekend newspapers should be delivered and made available to detainees.
- 15.3 Email accounts for detainees should be set up for external use with appropriate monitoring to ensure emails are only sent to approved contacts before being sent in bulk.

16. Complaints Process

- 16.1 The complaint forms should be numbered to ensure appropriate tracking.
- 16.2 The complaint form should separate general and serious issues regarding detainees' treatment, consequences and loss of remissions. In the latter case, the form should go directly to the Operations Manager.
- 16.3 Detainees should be consulted and informed throughout the process of dealing with their complaint. If there are several complaints on the same issue, all detainees should be informed at regular intervals about the progress of their complaint.
- 16.4 Complaints regarding the loss of remissions should be addressed by an independent body.

Introduction

The ACT *Human Rights Act 2004* ('HR Act') came into force on 1 July 2004 and is Australia's first Bill of Rights. The Human Rights Commissioner's mandate under section 41 of the HR Act is to review and report to the Attorney-General on the effect of laws on human rights. Copies of these reports must be tabled in the Legislative Assembly within six sitting days of the date of receipt. Under this power, the Commissioner decided, in discussions with the Executive Director, Office for Children, Youth and Family Support, to review the effect of existing Territory law, that is the *Children and Young People Act 1999* ('CYP Act'), governing the operations of Quamby Youth Detention Centre ('Quamby'), to ensure that the delivery of public services to young detainees in the ACT is consistent with internationally agreed human rights standards enshrined in the HR Act.

International standards support the independent monitoring of juvenile detention facilities by qualified inspectors.¹ Monitoring should take place within the framework of the United Nations standards and norms in juvenile justice, in particular the United Nations 1997 Rules for the Protection of Juveniles Deprived of their Liberty.² Inspectors should be required to submit a report on their findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of international law and recommendations regarding any steps considered necessary to ensure compliance with them.³

The Human Rights Office (HRO), headed by the Human Rights Commissioner, was supported in conducting this human rights audit of the operating procedures at Quamby by the Office for Children, Youth and Family Support in the Department of Disability, Housing and Community Services. In addition to the full-time Human Rights Legal Advisor from the HRO, Victoria Coakley, who performed the principal research and drafting of this report in May-June 2005, the Department funded an expert human rights legal consultant, Jane Hearn, for 18 days to assist in undertaking the audit.

At the outset of the HRO's research, the Human Rights Commissioner, upon reviewing the *Children and Young People Act 1999* ('CYP Act'), formed the preliminary view that, although it was clear that children and young people were held under court orders, there appeared to be no proper statutory basis for the operating procedures at Quamby. The Government Solicitor's Office (GSO) provided advice to the Department concerning powers under the CYP Act in respect of Standing Orders currently used at Quamby. Based on that advice, the Minister declared, on 19 May 2005, Quamby to be both a shelter and institution. Amending legislation to the CYP Act was presented in the Legislative Assembly on 21 June 2005 and is due to be debated on 1 July 2005 (after the date of this Report), declaring Quamby as a shelter and institution for the receipt of children and young people under relevant legislation

¹ Rule 72 of the UN Rules for the Protection of Juveniles Deprived of their Liberty (adopted by General Assembly resolution 45/113 of 14 December 1990) ('Protection of Juveniles').

² Rule 21 of the Guidelines for Action on Children in the Criminal Justice System (annexed to Economic and Social Council resolution 1997/30 of 21 July 1997 ('the Vienna Guidelines')).

³ Rule 74 Protection of Juveniles.

from the beginning of self-government in 1989.⁴ Standing Orders have also been given legal authority with retrospective effect, which has attracted adverse comment from the Standing Committee on Legal Affairs.⁵ Under section 25 of the HR Act only retrospective criminal laws are prohibited. The Standing Orders are required to be reviewed within three months, and the Minister for Children, Youth and Family Support has undertaken to redevelop them to ensure compliance with the HR Act, guided by the recommendations in this audit.

While remedying this legal vacuum in the operating procedures at Quamby is appropriate, many of these Standing Orders are incompatible with the HR Act. This audit highlights particular areas of concern – it attempts to give an accurate portrayal of the operational procedures at Quamby based on research and interviews, but in some cases conflicting information was received, which has been difficult to resolve in the short time available.

The Terms of Reference for the Audit

The terms of reference finalised by the Human Rights Commissioner are as follows:

The ACT Human Rights Commissioner will review the effect of existing Territory law governing the operations of Quamby Youth Detention Centre ('Quamby').⁶ The audit will focus on key areas of activity and assess the law, policy and practices of the institution against the benchmark of international human rights norms enshrined in the *Human Rights Act 2004* and relevant international standards [see Annex I].

The purpose of the audit is to provide information and analysis to inform the Government's review of the operational legislative and policy framework currently in place under the *Children and Young People Act 1999*, and to assist the process in ensuring that the new youth detention facility will operate in accordance with human rights standards.⁷

The audit will examine the current legal framework and operational practices in relation to high priority areas that engage fundamental rights, including:

- Humane treatment;
- Segregation;
- Privacy; and
- Information and communication.

The audit methodology will include a review of relevant legislative provisions and Quamby's Policy and Proceedings Manual and the Standing Orders.

⁴ The declaration made in 1988, under section 157 of the then *Children's Services Act 1986* which was subsequently repealed by the *Children and Young People Act 1999*, related to Quamby's earlier site on which it operated, not its current location which it has been operating on since March 1994.

⁵ See the Committee's Scrutiny Report Number 12 of 27 June 2005.

⁶ It is a function of the Human Rights Commissioner to review the effect of existing law and report to the Attorney General on any matter relevant to the operation of the *Human Rights Act 2004* (s.41(1)(a)(b)).

⁷ It is expected that the new facility will be operational by June 2008.

Consultation will be by interviews with a cross-section of the detainees, staff and management. Other stakeholders, including statutory office holders, non-government organisations, advocates, professionals and service providers will also be consulted where possible.

The audit is to take place during May-June 2005.

The Audit's Benchmarks

This human rights audit focuses on key areas of activity and assesses the law, policy and practices of Quamby under the CYP Act, Quamby's Policy and Procedures Manual, and Standing Orders against the benchmark of international human rights norms enshrined in the HR Act based on the UN International Covenant on Civil and Political Rights ('the ICCPR'). The following specific provisions of the HR Act have provided the main benchmarks for the audit.

Section 10(1): Prohibition on torture, cruel, inhuman or degrading treatment or punishment

Section 10 is relevant to the treatment of children and young people at Quamby, particularly in relation to the behaviour management system.

The prohibition on torture, cruel, inhuman or degrading treatment or punishment is absolute and no derogation is permitted even in times of public emergency. There is no strict dividing line between torture, cruel, inhuman or degrading treatment or punishment. It depends on the circumstances of the case and the degree of the severity of suffering as to which category the conduct might fall within.

The international community has elaborated the obligations of governments in the UN Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). The UNCAT defines torture as the deliberate infliction of severe pain or suffering, mental or physical, by a public official for a specific purpose such as to force a confession or punish a person. Other actions or omissions of lesser severity, whether intended or not, may be considered cruel, inhuman or degrading treatment or punishment. Some of the factors to take into account are the nature and context of the treatment, its duration and physical or mental effects and in some cases the sex, age and state of health of the individual. Case law around the world has considered issues under this right in relation to the treatment of people held in police cells, prisons, mental health facilities, other detention centres and hospitals. It is also relevant to the use of corporal punishment.

The Convention on the Rights of the Child also prohibits the use of torture, and cruel, inhuman or degrading treatment or punishment of children, and there are a number of United Nations Rules and standards concerning the detention of children and young people, which endorse this prohibition.⁸

⁸ Rule 67 Protection of Juveniles; Rule 31 SMR; and Principle 6 Body of Principles.

Section 10(2): No medical treatment without free consent

Children and young people that enter Quamby are required to have a medical and psychological assessment to assist in their appropriate placement and care requirements while they are held at the facility. Blood samples are taken as part of this process. No samples should be taken without consent of the young person, if they have capacity, or their parents or legal guardian. The parental right to determine whether or not a child below the age of 16 will or will not have medical treatment terminates if and when the child achieves sufficient understanding and intelligence to enable him to understand fully what is proposed (the ‘Gillick competence’).⁹

Section 10(2) protects a person’s right to autonomy and personal, mental and bodily integrity in the specific context of medical treatment. Consent to treatment must be free, that is, it must not be coerced, or gained through undue influence, lack of adequate information or trickery. Respect for the inherent dignity of the person requires that the autonomy of the individual take priority where medical treatment is concerned. It extends to all forms of health care and medical intervention, and means that a person can refuse treatment even though the decision may be considered by objective standards to be medically unsound or contrary to the person’s best interests. Traditional, historical, religious or cultural attitudes do not justify a violation of this right by, for example, enforced treatment, genital mutilation, abortion or sterilisation. Medical treatment without consent may meet the general definition of cruel, inhuman and degrading treatment when it causes suffering or degradation.

Limitations on this right may be acceptable in certain circumstances, such as lack of capacity due to mental illness, age, or in emergency situations. But exceptions must clearly be expressed in law and meet the proportionality test in section 28. Capacity to give valid consent depends upon the person’s ability at the time of making the decision and the type of treatment being proposed. A child is entitled to be actively involved in the decision-making process about his or her medical treatment, according to the evolving capacities of the child.¹⁰

Section 11(1): Protection of the family

Subsection 11(1) is relevant when examining Quamby’s policy concerning visits, correspondence and telephone access to family members.

The ICCPR and the HR Act recognise the family as the basic unit of society. This section is intended primarily to protect family relationships and is closely related to the right to found a family. The meaning of ‘family’ is to be interpreted broadly to take account of different cultures and changing social attitudes. Arbitrary and unlawful interferences with family life are prohibited by section 12 (privacy). However, this section is not a barrier to protect the family from legitimate interference, such as measures to combat domestic violence or care proceedings to protect a child from neglect or abuse.

⁹ See House of Lords decision *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112.

¹⁰ Art. 12(1) CRC states: States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Section 11(2): Protection of the child

Subsection 11(2) is relevant in examining all areas of treatment of children and young people at Quamby due to their inherent vulnerability being in a detention facility.

This right ensures that minors are entitled to special protection in recognition of their vulnerability because of their status as a child. This is not limited to the treatment within the family, but extends to treatment by others and by public authorities. The rights of the child are elaborated in the CRC, which deals with the civil, political, social, economic and cultural rights of children in more detail. While recognising the importance of the family unit and the primary responsibility of parents for the development and welfare of the child, it is recognised that in certain circumstances the best interests of the child may require state intervention. The best interests of the child are a paramount consideration in all actions affecting the child, whether carried out by legislative, judicial or administrative authorities.¹¹ Sections 19 and 20 of the HR Act also recognise special protections are required for children in the criminal process.

Section 12: Privacy and reputation

Section 12 is particularly relevant to the audit's examination of how searches are conducted at Quamby – of the detainees' bodies, cells, and correspondence. It is also relevant in examining the use of surveillance, and the effect of disciplinary measures on their physical and mental development.

This provision gives effect to article 17 of the ICCPR and protects individuals from unlawful and arbitrary interference with privacy, family, home or correspondence. An interference that is lawful may still be arbitrary if it is unreasonable or unjustified in all the circumstances of the case. The right to privacy applies to children and young people in detention.

Section 16: Freedom of expression

This section is relevant to examining whether children and young people at Quamby have the opportunity to make a request or a complaint. Also, whether they have the opportunity to be heard before, or appeal after, disciplinary sanctions have been applied.

Freedom of opinion and expression is of paramount importance in the preservation of individual liberty and the proper function of society in a liberal democracy. It is on the one hand a right to privately hold and give expression to one's beliefs and opinions and on the other a right to do this publicly. Freedom of expression covers a wide range of activities such as industrial action, artistic expression, political demonstrations, publications and whistle blowing. One can express views in ways that others may not like, disagree with or find upsetting. However, because of the nature of the right its scope is limited by the responsibility to respect the rights of others, such as the right to privacy and reputation. Freedom of expression may also be limited to protect the interests of a vulnerable party in judicial proceedings or to prevent disclosure of information received in confidence.

¹¹ Art. 3 CRC.

Section 19: Humane treatment of those deprived of liberty

Section 19 is relevant to children and young people deprived of their liberty through detainment at Quamby, whether on remand or under sentence.

Section 19(1): Those deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.

This right applies to adults and children equally and to any form of detention. Subsection 19(1) complements the prohibition on torture, cruel, inhuman and degrading treatment or punishment in subsection 10(1). Inhumane treatment within the meaning of this section requires a lower threshold than that within the meaning of subsection 10(1). It applies to all those deprived of their liberty in prison, hospital, health care institutions, correctional facilities or other forms of detention. It includes all individuals, including citizens, illegal immigrants and alleged or convicted offenders. No person in detention may be subjected to treatment that is inhumane, including unwanted medical treatment. They may not be subjected to any hardship or constraint other than that resulting from being lawfully deprived of their liberty. Everyone deprived of their liberty is entitled to respect for their dignity and their rights under the same conditions as for that of free persons, subject to the restrictions that are unavoidable in a closed environment.

In assessing whether a detained person has been treated with humanity, consideration will be given to the conditions, circumstances and purpose of the detention. Inhumane treatment cannot be justified on the ground of lack of resources or financial difficulties.

Sections 19(2) & (3): Segregation of accused from convicted prisoners and appropriate treatment

Subsections 19(2) and (3), read in conjunction with sections 10 and 12, are central in examining the admission, classification and placement process, and the behaviour management system at Quamby.

A person held on remand is entitled to be presumed innocent unless convicted and sentenced by the court. The principle of segregation is aimed at ensuring the safety of unconvicted detainees and that their treatment is appropriate to their status. Generally, this means that people on remand are entitled to a different treatment regime than convicted detainees.¹² Human rights law recognises that in some circumstances segregation will not always be possible or desirable and permits the mixing of different types of inmates in 'exceptional circumstances'. For example, where the person may otherwise be isolated for a prolonged period and can safely mix with convicted inmates for a specific purpose such as education and training or eating in common areas. However, contact between the two groups of detainees must be kept to a strict minimum.¹³

¹² Human Rights Committee, General Comments 9 (16th session, 1982), at para. 2, and 21 (44th session, 1992), at para. 9.

¹³ *Larry James Pinkey v Canada*, CCPR Communication No. 027/1997.

Section 20: Children in the criminal process

Section 20 underpins the examination of the admission, classification and placement of children and young people at Quamby.

Section 20 specifies the additional guarantees afforded to a child or young person under the age of 18 years who is held in detention in a corrections facility in the ACT. An accused minor must be detained separately from accused adults and be treated in a way that is appropriate to their age and status as an unconvicted minor. They must be brought to trial as quickly as possible rather than within a 'reasonable time'. Similarly, a minor who is convicted of a criminal offence must be treated in a way that is appropriate to their age and status. The CRC elaborates the rights of children who are deprived of their liberty in more detail, including the principle that detention should be a measure of last resort.

Section 27: Rights of minorities

This section is relevant to the audit's examination of the treatment of indigenous or children and young people from different ethnic, religious or linguistic minorities.

The UN Human Rights Committee has identified this right as being distinct from, and in addition to, other human rights. Section 27 is aimed at the long-term survival of the group and recognises the diversity of humanity. It is the right of those belonging to a minority group who share a common culture, religion or language to enjoy their own culture, to practise their religion, and speak their language. This right applies to everyone including those who are not citizens or permanent residents and includes an obligation to ensure effective participation of members of minority communities in decisions that affect them. However, such activities are subject to the law of the Territory and may be subject to reasonable limitations that meet the test of section 28.

Annex 1

Annex I outlines the HR Act standards against international human rights standards on the treatment of children and young people in detention facilities. These standards are allowed to be considered under section 31 when interpreting these specific human rights of the HR Act and include:

- The UN Convention on the Rights of the Child 1989 ('the CRC');
- The UN Standard Minimum Rules for the Treatment of Prisoners ('the SMR'),¹⁴
- The UN Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules'),¹⁵
- The UN Basic Principles for the Treatment of Prisoners;¹⁶

¹⁴Approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

¹⁵Adopted by General Assembly resolution 40/33 of 29 November 1985.

¹⁶Adopted by General Assembly resolution 45/111 of 14 December 1990.

- The UN Guidelines for the Prevention of Juvenile Delinquency ('the Riyadh Guidelines');¹⁷
- The UN Rules for the Protection of Juveniles Deprived of their Liberty;¹⁸
- The UN Guidelines for Action on Children in the Criminal Justice System ('the Vienna Guidelines'); and¹⁹
- The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ('the Body of Principles').²⁰

The Audit's Methodology

This audit was conducted in May to June 2005 and examines the current legal framework and operational practices in relation to high priority areas that engage fundamental rights:

- Classification and placement;
- Searches;
- The behaviour management system;
- Monitoring;
- Record keeping;
- Information on rules and rights;
- The complaints process;
- Food;
- Recreation;
- Clothing;
- Visits; and
- Other forms of communication with the outside world.

Intensive interviews were conducted with a cross-section of detainees, staff and management between 31 May-10 June. They varied in length from 20 minutes to three hours. Participants were given information sheets about the audit, and signed confidential consent forms that were placed on file at the HRO (see Annex II for the staff and detainees' questionnaires). Other stakeholders, including the Office of the Community Advocate, the Official Visitors, the Ombudsman's Office, ACT Legal Aid, the South-East Aboriginal Legal Service, and the Youth Coalition of the ACT were also consulted throughout the period of the audit.

The audit does not include an exhaustive examination of Quamby's Policy and Procedures Manual and the Standing Orders, as they are clearly out-of-date, inconsistent with one another, and are to be reviewed. Many staff did not appear to know what was required by the Standing Orders. Instead guidance came primarily from Manager's Instructions issued when management decides more guidance is required on a certain issue. Other key areas such as sentencing issues, health, education, transition options, and reasons for recidivism have been addressed in previous reports by Legislative Assembly Standing Committees and other agencies, such as the Office of the Community Advocate. This audit focuses on central human rights issues relevant to the detention of children and young people.

¹⁷ Adopted by General Assembly resolution 45/112 of 14 December 1990.

¹⁸ Adopted by General Assembly resolution 45/113 of 14 December 1990.

¹⁹ Annexed to Economic and Social Council resolution 1997/30 of 21 July 1997.

²⁰ Adopted by General Assembly resolution 43/173 of 9 December 1988.

PART I BACKGROUND

Quamby is described as a low security facility that operates within the legislative framework of the *Children and Young Peoples Act 1999* ('the CYP Act').²¹ Quamby was not operating within the legislative requirements of this Act when this report was finalised on 30 June 2005, but amending legislation was due to be debated on 1 July 2005, that also provided retrospective effect to Quamby's operational procedures.

Quamby can accommodate up to 26 detainees on remand and committal (under sentence). A young offender may be committed to Quamby for a period ranging from 2 weeks to 4 years. Quamby accommodates male and female children and young people from the age of 10 to 17 years who have been refused bail and are held on remand pending trial, and those sentenced by the Children's Court. A young person aged 18 to 21 years of age may remain at Quamby to complete a sentence imposed by the Children's Court.

Table 1: Age profile by year²²

	10	11	12	13	14	15	16	17	18
2002-2003	0	1	8	17	53	45	70	54	9
2003-2004	1	14	15	30	58	60	50	66	4
2004-2005 ²³	0	2	12	23	26	43	41	46	1

Table 2: Client profile

	2002-2003		2003-2004		2004-2005 ²⁴	
	Remand	Committal	Remand	Committal	Remand	Committal
Total Population	231	26	274	25	174	19
No. Males	130	16	129	17	77	10
No. ATSI Males	31	3	54	2	46	5
No. Females	46	2	62	3	34	2
No. ATSI Females	24	5	29	3	17	2

²¹ See http://www.decs.act.gov.au/services/OCYFS_quamby.htm.

²² Data supplied by the Office of Children, Youth and Family Support, 29 June 2005.

²³ Information is up to and including 31 May 2005.

²⁴ *Ibid.*

Option of last resort

A review of the nature of juvenile offending and sentencing options in the ACT is outside the scope of this audit. However, the HRO shares the concern expressed by the Standing Committee on Community Services and Social Equity in its report, *The Rights, Interests and Well-Being of Children and Young People*,²⁵ that the principle that a young person may only be detained as a matter of last resort is not being implemented by judicial and police authorities.²⁶ As a general rule the deprivation of liberty must not be imposed unless the juvenile has been committed of a serious crime involving violence against the person, or of persistence in committing other serious offences, and unless there is no other appropriate response.²⁷ This rule is particularly important for children under the age of 12 years, and for minor breaches of bail conditions.

Age of criminal responsibility

The age of criminal responsibility affects sentencing options. The ACT amended section 71(1) of the CYP Act in March 2000 to raise the age of criminal responsibility from 8 years to 10 years.²⁸ It should be noted that the low age of criminal responsibility in Australia was criticised by the Committee on the Rights of the Child in its concluding observations on 10 October 1997 following its consideration of Australia's initial report under the Convention on the Rights of the Child.²⁹ While the Convention does not specify any particular minimum age of criminal responsibility, the general approach of the Committee has been to criticise jurisdictions in which the minimum age is 12 or less.³⁰ Section 22(3) of the HR Act provides that '[a] child who is charged with a criminal offence has the right to a procedure that takes account of the child's age and the desirability of promoting the child's rehabilitation'. It is questionable whether a detention facility is the most appropriate place for children aged 10 or 11 years. Two children aged 10 or 11 years were held at Quamby in the last year, and fifteen 10 or 11 year olds were held between 2003-2004 (see Table 1 above). Based on the Legislative Committee's observations and section 22(3) of the HR Act, the Government should consider reviewing and raising the age of criminal responsibility to 12 years old in the ACT. Countries that prescribe higher minimum ages of criminal responsibility include New Zealand, Canada, the Netherlands, France, Israel, Austria, Germany, Italy, Denmark, Finland, Norway, Sweden, Japan, Spain and Belgium.³¹

²⁵ Report Number 3, August 2003.

²⁶ *Ibid*, paras. 7.15-7.23. See section 68 (c) CYP Act, which incorporates Article 37 (b) CRC. See also Rules 1 and 2 Protection of Juveniles and Rules 13 (remand) and 19.1 (committal) Beijing Rules.

²⁷ See Rule 17 Beijing Rules.

²⁸ The CYP Act became operational on 10 May 2000. Section 71(2) of the Act provides that between the ages of 10 and 14 years, a rebuttable presumption operates to deem a child between the ages of 10 and 14 incapable of committing a criminal act. Only if the prosecution can rebut this presumption, by showing that the accused child was able at the relevant time adequately to distinguish between right and wrong, can a contested trial result in conviction.

²⁹ CRC/C/15/Add.79, at para. 11 found at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d744477ea59fdaf8025653200508bb8?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d744477ea59fdaf8025653200508bb8?Opendocument).

³⁰ For example, Hong Kong & Ireland. See Gregor Urbas, 'The Age of Criminal Responsibility', *Australian Institute of Criminology*, No. 181, November 2000.

³¹ Urbas, *ibid*, p. 2.

Representation of Aboriginal and Torres Strait Islander issues

Young Aboriginal and Torres Strait Islanders ('ATSI') offenders are disproportionately represented at Quamby, particularly females (see Table 2 above). The majority are held at Quamby for breaches of bail conditions.³² Quamby has an indigenous support manager and a number of ATSI youth workers. The three accommodation units were named by the Department to represent significant geographical locations in the ACT: Brindabella, Murrumbidgee and Ngannawall. Members of the community visit Quamby regularly, especially if ATSI detainees are being held there. A cultural area, consisting of a landscaped area, some benches and flag-poles flying the Aboriginal, the Torres Strait Islander, and Australian flags, was completed in May 2005, and cultural groups are encouraged to visit and give performances. There are a number of ATSI specific service providers to Quamby: the South East Aboriginal Legal Service; a medical practitioner from Winnunga Aboriginal Health Service; and Gungah Gulwan Youth Aboriginal Corporation.

Previous reports

Since the death of a detainee in custody at Quamby in 1996, and Coroner Somes' inquest into that death, there have been a number of Legislative Assembly Standing Committee reports addressing issues of concern at Quamby, including:

- The Standing Committee on Education, Community Services and Recreation Report No 10, *The Government's Response to Recommendations 1 to 3 of Coroner Somes' Inquest into a Death at Quamby*, August 2001;
- The Standing Committee on Community Services and Social Equity Report No 3, *Inquiry into the Rights, Interests and Well-Being of Children and Young People*, August 2003;
- The Standing Committee on Community Services and Social Equity Report No 6, *The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence*, June 2004; and
- The Standing Committee on Community Services and Social Equity Report No 7, *One-Way Roads out of Quamby: Transition Options for Young People Exiting Juvenile Detention in the ACT*, August 2004.

While many recommendations have been made in these reports, implementation has been slow. Outstanding concerns remain about:

- The mix of children and young people placed at Quamby in terms of age, gender and status (remand and those under sentence);
- Placement of children and young people with mental illnesses, and physical or mental developmental problems;³³
- Accommodation on induction;
- Recreational activities;
- Staffing issues;

³² Communications with the South East Aboriginal Legal Service, 28 June 2005.

³³ Quamby takes these issues seriously and has two psychologists, one registered nurse, one visiting medical officer, one GP, a link team after hours medical service, and three case managers to care for detainees.

- Maintaining contact with the outside world; and
- The quality of education and rehabilitative programs offered.

While this audit does examine some of these areas, a number of others are examined which have not been considered before. This is crucial for ensuring that Quamby is operating in compliance with the HR Act within the existing structural design challenges. These areas include:

- Searches;
- The behaviour management system;
- Remissions;
- Record keeping;
- Monitoring;
- Information about detainees' rights;
- Complaints process;
- Quality of food;
- Clothing; and
- Access to the media.

The Federal Government's reservation to segregation

The Federal Government has partial reservations to article 10(2)(a) and (b) of the ICCPR. These subsections provide that:

- (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
- (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

The Federal Government accepted the principle of segregating accused from convicted persons as an objective to be achieved progressively. Segregating accused juveniles and offenders from adults was accepted 'only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned'.³⁴ The Federal Government's reservation is only relevant to our international obligations. The ACT HR Act sets a higher standard and is based on the International Covenant on Civil and Political Rights (that is, without any reservations in respect of this provision). All departments and agencies operating under a legislative mandate in the ACT must act consistently with rights in the HR Act.

³⁴ Australia's reservation can be found at: http://www.ohchr.org/english/countries/ratification/4_1.htm.

Central Importance of Staff

Providing humane treatment to detainees is a central function of the staff at Quamby. Given that a detention facility is a coercive environment in which persons are held against their will, issues of security (preventing escapes) and good order are given a high priority in operational terms. However, Quamby is also entrusted to provide a rehabilitative regime that gives detainees opportunities to better themselves. There needs to be an effective balance which ensures that considerations of security and order do not become unduly oppressive, nor are misused to justify inhuman behaviour and treatment of detainees. To provide a balanced detention system that ensures adequate security and control within a guiding ethos of treatment with humanity is an immensely complex task, calling for highly developed professional skills and leadership. Staff are therefore a central element in any discussion about the humane treatment of prisoners.³⁵

The key feature for the success or failure of any detention system that is to be run in a decent and humane manner is the relationship between detainees and staff with whom they come into daily contact. There is a relationship of mutual dependency between and within detainees and staff. An essential element of making daily life in a detention facility tolerable for detainees is appropriate relationships with staff.³⁶

Great care needs to be taken in recruiting people who are able and comfortable with enforcing security, maintaining good order and facilitating the rehabilitation of detainees, in giving them proper initial training, and in ensuring that they continue to develop their skills throughout their career.

Staffing issues at Quamby

Most staff the HRO interviewed chose to work at Quamby for reasons ranging from a friend's recommendation, to wanting to work with young people and assist in their rehabilitation, to having a background in either juvenile justice, corrections, ATSI issues, or the military. All expressed their wish to do their work in a professional manner. Many interviewees said that some staff members were more discretionary than others in applying the behaviour management system, assessing individual detainees' particular attributes which influenced the way they sought to engage and deal with them. Most detainees stated that on the whole their relationships with staff members were good, with a few exceptions.

Major recruitment issues that affect the ability to attract and retain high quality staff, particularly women, is the level on which they are recruited, the shift work required and pay.³⁷ The Standing Committee on Community Services and Equity was told during the research for its 2003 report *The Rights, Interests and Well-Being of*

³⁵ See Andrew Coyles, *Humanity in Prison: The context of the development of a humanity audit*, (International Centre for Prison Studies, 2003), pps. 13-14.

³⁶ *Ibid*, pps. 76-77.

³⁷ See Rule 83 Protection of Juveniles which provides that '...personnel should be appointed as professional officers with adequate remuneration to attract and retain suitable women and men'. For international standards concerning personnel of detention facilities, see Rules 81-87 Protection of Juveniles, Rule 22 Beijing Rules, Rules 24-25 Vienna Guidelines, Rules 46-52 & 54 SMR, Principle 7(2) Body of Principles and articles 19 and 34 CRC.

Children and Young People,³⁸ that staff at Quamby are often paid at lower levels than their counterparts in other areas of juvenile justice and are required to do shift work. The Committee recommended the appropriateness of increasing pay and condition parity across units in juvenile justice.³⁹ The Government agreed to this recommendation in its supplementary response and stated that appropriateness of pay across units will be considered as part of negotiations for the New Certified Agreement.⁴⁰ The Department is currently reviewing the recommendations that a consultant has made regarding the reclassification of a range of positions at Quamby. The recommendations are also being discussed with the relevant union, the Community and Public Sector Union ('CPSU'). Not having gender parity in staffing directly affects operational procedures, particularly in the induction process and the monitoring of female detainees at risk. The presence of both male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention. While it is recognised that there are impediments in attracting high quality staff, Quamby was the recipient of the ACT Government Employer of the Year award in 2001.⁴¹

Once appropriate staff have been recruited, they need proper training. Quamby is the recipient of a 2002 National Training Authority award for excellence in training in a correctional environment.⁴² However, there was conflicting information from staff about the perceived quality of the induction training and ongoing training provided. It appears that most staff received two weeks theoretical training (although the policy and procedures manual and Standing Orders are out of date and Manager's Instructions have proliferated in an attempt to fill the gap), and two weeks of supervision on the floor.⁴³ It is a matter of urgency that the Policy and Procedures Manual and Standing Orders are updated to ensure that staff are clear about the operating procedures at Quamby. The lack of clarity among staff members about the operating procedures is most likely to be a major contributing factor to the widespread perception among detainees that they are treated unfairly, compared to their peers.

Of grave concern was that training on the use of reasonable force appears insufficient, given the nature of the operating environment. The Australian Federal Police ('AFP') provides a conflict de-escalation training every 12 months. However, such training should be mandatory before new staff are allowed on the floor, because of the potential for a situation requiring the use of force to result in serious consequences.⁴⁴ In addition, refresher courses on this training should be offered at regular intervals to all staff who are in daily contact with the detainees.

³⁸ Report Number 3, August 2003.

³⁹ *Ibid*, paras. 7.28-7.30.

⁴⁰ See ACT Government Supplementary Response to the ACT Legislative Assembly Standing Committee on Community Services and Social Equity, Report No. 3, *Inquiry into the Rights, Interests and Well-Being of Children and Young People*, Tabling Statement, August 2004.

⁴¹ ACT Department of Education and Community Services, *Annual Report 2001-2002*, p. 23. Quamby was also a national finalist in the Employer of the Year 2001.

⁴² ACT Department of Education, Youth & Family Services *Annual Report 2002-2003*, p. 25, along with the ACT Workcover Occupational Health and Safety Injury Management Certificate award. Other awards received include the 2002 National Immunisation Award and an award for leadership in the Injury Prevention and Management category 2003 (see ACT Department of Education and Training *Annual Report 2003-2004*, p. 56).

⁴³ Some staff participated in a five week induction course.

⁴⁴ For example, a 15 year old male detainee died in early 2004 while being restrained by staff at a centre in the UK. See the Howard League for Penal Reform website: www.howardleague.org.

Quamby does support and encourage staff who wish to participate in Certificate IV in Community Services (Child Protection, Statutory Supervision and Juvenile Justice) through the Canberra Institute of Technology. At the time of writing, the HRO was informed that approximately 89% of staff have completed the Certificate IV course. An initiative was introduced in 2001-2002 for the professional development of staff who wish to continue on from the Certificate IV to complete the Diploma of Community Services/Community Work.⁴⁵ This has the benefit of making the work the staff do at Quamby a more respected job, and more comparable with counterparts in other youth justice sectors.

There are a wide variety of skills that are specific to working with young detainees. It is recognised that often a much higher level of skill is required to work with volatile young offenders than adults.⁴⁶ The HRO was advised by Quamby management that a number of courses have already been offered this year, ranging from first aid, adolescent development and substance abuse, and more will be offered in the second half of 2005, for instance suicide and cross-cultural awareness, and report writing. However, interviews revealed that the system for ensuring staff are aware of, and can apply to attend training whether they are casual, contract or permanent, was unclear. All training should provide scenarios relevant to Quamby, and experts in juvenile criminal justice and mental health, academics, human rights lawyers and others should be invited to provide briefings to staff about specific areas.

Recommendation:

- **High quality and skilled staff, ensuring gender parity, need to be recruited, paid commensurately and retained. Appropriate induction and ongoing training and development must be provided.**

The Human Rights Act 2004

The *Human Rights Act 2004 (ACT)* ('HR Act') came into effect on 1 July 2004. The HR Act applies to all natural persons without distinction and children and young people are therefore entitled to all the rights protected by the HR Act, in addition to those which specifically mention them and the general right to special protection because of their status as children: section 8 requires that everyone has the right to equality before the law and equal protection of the law without discrimination; and section 11 protects the right of every child to the special protection because of their status as a child.⁴⁷

The purpose of the HR Act is to give legal effect to international human rights standards and ensure that Territory laws, policy and practices are consistent with

⁴⁵ ACT Department of Justice & Community Safety, *Annual Report 2000-2001*, ACT Corrective Services, p. 27.

⁴⁶ See Andrew Coyles, *Managing Prisons in a Time of Change*, (International Centre for Prison Studies, 2002), p. 86.

⁴⁷ Equality and recognition of the vulnerability of children are the fundamental principles underlying the Convention on the Rights of the Child. These principles are enshrined in Articles 2 and 25 (2) Universal Declaration of Human Rights and Articles 2 and 24 of the ICCPR. See also Rule 13.3 and commentary and Rule 27 Beijing Rules, which affirms that juveniles pending trial and under committal are entitled to all the rights and guarantees under the SMR and the ICCPR.

recognized human rights. From 1 July 2004 all decision makers are required to exercise their powers, duties, discretions and obligations under legislation that is interpreted consistently with human rights - section 30 of the HR Act supplements the general duty of public officials to act lawfully.⁴⁸ Under section 28 of the HR Act limitations on the enjoyment of rights must be prescribed by law and be reasonable and proportionate to achieve a legitimate aim.⁴⁹ Proportionality requires that there be a pressing need to justify the limitation, that it must be rationally connected to the objective and the minimum level of interference necessary to fulfil that need.⁵⁰

The HR Act is based primarily on the International Covenant on Civil and Political Rights ('the ICCPR'). Under s. 31 of the HR Act the scope and application of rights will be interpreted by reference to the wider body of international human rights law, including the case law of the European Court of Human Rights on the European Convention on Human Rights and Fundamental Freedoms and comparable national jurisdictions. The European Convention on Human Rights does not contain an equivalent to article 10 of the ICCPR (humane treatment). However, the court has held that a sanction that does not amount to cruel or inhuman treatment or punishment may nevertheless violate the right to physical and mental integrity.⁵¹ The right to physical and mental integrity is an element of the right to private life which also protects the right to personal development (equivalent to s. 12 of the HR Act).⁵² This approach is comparable to an analysis of the right to be treated with humanity and dignity in article 10 of the ICCPR, given effect in Territory law by s.19(1) of the HR Act.

The Convention on the Rights of the Child (the 'CRC') and a range of UN Rules and Principles are relevant to the interpretation of rights of detainees and particularly to children and young people. This body of international law is a source of binding legal obligations and a normative international consensus on the standards that apply to children and young people in detention.⁵³ The CRC and relevant UN Rules and standards are relevant to the interpretation of the HR Act because they have been adopted by the UN General Assembly (as required by the definition of 'international law' under s.31). In cases concerning the rights of children and young people under the UK *Human Rights Act 1998* the courts have held that these instruments are relevant 'insofar as they proclaim, reaffirm or elucidate the content, nature and scope of fundamental rights' guaranteed by the ICCPR and the HR Act.⁵⁴

⁴⁸ Section 9 of the *Public Sector Management Act 1994*.

⁴⁹ There is a large body of case law at the national, international and regional level which elaborates the test enshrined in section 28 of the HR Act. See for example, *R v. Oakes* (1986) 24 C.C.C. (3d) 321 (S.C.C.) the leading authority on this issue under the Canadian Charter of Rights and Freedoms.

⁵⁰ *R v Home Secretary, ex p. Leech* [1994] Q.B.

⁵¹ *R (BP) v Home Secretary* [2003] EWHC 1963 Admin, paras. 28, 33-34.

⁵² *Pretty v UK* [2002] 35 EHRR 11 at para 61.

⁵³ Rule 9.1 Beijing Rules affirms the application of the SMR and other standards that apply to the care and protection of the young.

⁵⁴ See *R (Howard League for Penal Reform) v Home Secretary* [2002] EXHC 2497 Admin ('Munby's case' 29 November 2002): This approach is consistent with the approach adopted, in relation to the UN Convention, by Lord Hope of Craighead in *R v Secretary of State for the Home Department ex p Venables* [1998] AC 407 at 530C, by Sedley J in *R v Accrington Youth Court ex p Flood* [1998] 1 WLR 156, by Thorpe LJ in *Payne v Payne* [2001] Fam 473 at 487 (para [38]) and by Lord Phillips MR in *R (P) v Secretary of State for the Home Department* [2001] Prison Law Reports 297, [2001] 1 WLR 2002 at para 85. It is also consistent with the approach adopted, in relation to the European Charter, by Advocate General Jacobs in his opinion in Case C-270/99P, *Z v European Parliament*, para [40], by

Conduct of public officials

It has been suggested that the lack of an application provision means that the HR Act does not apply directly to the conduct of public officials. The Irish and US Constitutions lack an application provision and have been interpreted as applying to all public officials.⁵⁵ Section 121 of the ACT *Legislation Act 2001* provides that all ACT legislation binds all governments, except to the extent that it expressly provides otherwise. There is nothing in Part 4 of the HR Act, which purports to exempt ACT officials from the application of the HR Act.⁵⁶ The lack of legal authority to make decisions and take actions in relation to detainees exposes ACT officials to litigation for violations of the HR Act, unless the decision or conduct can otherwise be justified under provisions of the CYP Act.

While the HR Act does not provide an independent cause of action in the Supreme Court, a human rights argument may be raised in actions for breach of duty of care and breach of statutory duty and provide a ground for judicial review of an administrative decision. All remedies under the general law are available. In addition, the Supreme Court may grant a declaration of incompatibility under s.32 of the HR Act if the conduct is lawful, but exercised under a Territory law which is inconsistent with human rights protected by the HR Act. A declaration of incompatibility must be tabled in the ACT Legislative Assembly and responded to by the Attorney General within six months under s.33 of the HR Act.

Human rights law and children and young people in detention

Human rights law recognizes the special vulnerability of people detained in a closed environment where all aspects of life are regulated by the institution. This vulnerability is compounded for children and young people who lack the maturity, skills, experience and resources to protect their own interests.⁵⁷ Evidence suggest that a large proportion of young people in custody have already suffered abuse, neglect or experience developmental or mental health issues, and many have been the subject of care and protection orders. A prison environment can both exacerbate distress and vulnerability and be a source of distress especially for first time detainees, people on remand, females, people with a history of developmental disability or mental illness or who have otherwise suffered abuse.⁵⁸ While Quamby is clearly not an adult prison it is a place of detention and shares some of the features of a prison environment.

Advocate General Tizzano in his opinion in Case [C-173/99](#), *R (The Broadcasting, Entertainment, Cinematographic and Theatre Union) v Secretary of State for Trade and Industry* [2001] All ER (EC) 647, paras 27-28, and by Maurice Kay J in *R (Robertson) v City of Wakefield Metropolitan Council* [2001] EWHC Admin 915, para 38.

⁵⁵ Equivalent provisions in the New Zealand Bill of Rights Act 1990 and the Canadian Charter of Rights and Freedoms are intended to narrow the scope of those instruments.

⁵⁶ See Andrew Butler, 'The ACT Human Rights Act: A New Zealander's View', (an edited and shortened copy of remarks made at a seminar to the ACT Law Society on 8 July 2004). Found at: <http://www.jcs.act.gov.au/humanrightsact/publicationsbor.htm>.

⁵⁷ 'Vulnerable Prisoners: Juveniles', *Good Prison Management and Human Rights Resource Kit*, Penal Reform International, p.1

⁵⁸ See Goldson B., *Vulnerable Inside Children in Secure and Penal Settings*, (The Children's Society, London, 2002).

Humane environment

Subsection 19 (1) of the HR Act requires that children and young people deprived of their liberty must be treated with humanity and the respect for the inherent dignity of the human person.⁵⁹ It complements the prohibition on torture and cruel, inhuman and degrading treatment or punishment in section 10(1) of the HR Act. Inhumane treatment within the meaning of section 19(1) requires a lower threshold than that within the meaning of section 10(1).⁶⁰ It also encompasses the positive obligation to protect and fulfil all the rights of detainees and it includes an emphasis on rehabilitation and reintegration.⁶¹

A detainee is entitled to the enjoyment of all the rights protected by the HR Act, subject only to restrictions that are unavoidable in a closed environment. Hardship and constraints that are inherent in the nature of incarceration are permissible, but beyond this, unlawful, unreasonable or disproportionate restrictions will give rise to a breach of the HR Act.⁶² Individuals who are detained must be provided with services that will satisfy their essential needs.⁶³ In assessing whether a detained person has been treated with humanity, consideration will be given to the conditions, circumstances and purpose of the detention, but lack of material resources or financial difficulties is not a justification for inhumane treatment.⁶⁴

Humane treatment and juvenile detention policy

In the field of juvenile detention a wide range of human rights are implicated in ensuring the humane treatment of children and young people. These sources of law and human rights norms provide the framework for this preliminary audit, for example:

- the right to be dealt with in a manner that is appropriate to the age and status of the child;
- protection from inhumane and degrading treatment or punishment;
- protection from unlawful or arbitrary invasions of privacy;
- the right to participate in decisions that effect their interests and to have decisions based on the best interests of the child; and
- the right of access to a just complaint and appeal procedures.

⁵⁹ This section gives effect to article 10 of the ICCPR and article 37(b) & (c) of the CRC.

⁶⁰ Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, NP Engel, 1993, p 186.

⁶¹ UN Human Rights Committee General Comment 21 (44th session 1992), para.3

⁶² UN Human Rights Committee General Comment 21 (44th session 1992), para.3, and section 28 HR ACT.

⁶³ *Kelly v. Jamaica*, (253/1987), 8 April 1991, Report of the HRC, (A/46/40), 1991; *Párkányi v. Hungary* (410/1990), 27 July 1992, Report of the HRC, (A/47/40), 1992. These essential needs include for example, food, washing and sanitary facilities, bedding, clothing, medical care, access to natural light, recreation, physical exercise, facilities to allow religious practice and communication with others including those in the outside world.

⁶⁴ Nowak M, *UN Covenant on Civil and Political Rights CCPR Commentary*, NP Engels Strasbourg, 1993, p.184. In detention a person is dependent upon the institution for all their requirements as to food, clothing, recreation, education and so forth. UN Human Rights Committee, General Comment 21 (44th session 1992), para.4.

The scope and application of human rights protections to juvenile offenders is elaborated in the Convention on the Rights of the Child and in the UN Rules and guidelines applicable to all people and those particular to children and young people in detention listed in Annex I. This body of human rights norms represents the elements necessary to ensure a humane and equitable environment for juvenile detainees that:⁶⁵

- ensures the best interests of the child are a primary consideration in all decisions and actions concerning the child;
- takes account of the vulnerability of the child;
- promotes the child's sense of dignity and worth;
- respects the right of the child to be heard;
- reinforces the child's respect for the rights and freedoms of others; and
- promotes their full development so the young person can ultimately assume their responsibilities within the community.⁶⁶

Legal and Policy Framework of Quamby

As stated above, all laws must comply with the HR Act. This audit was prepared under the Human Rights Commissioner's power under paragraph 41(1)(a) of the HR Act to review and report to the Attorney-General on the effect of laws on human rights. Copies of these reports must be tabled in the Legislative Assembly within six sitting days of the date of receipt. This audit reviews the effect of the *Children and Young People Act 1999* ('CYP'), a Territory law, on the operating procedures at Quamby. In exercising this power, the Commissioner must interpret section 30 of the HR Act which requires that all Territory laws must be interpreted, so far as possible, in a manner that is consistent with human rights. In the case of Quamby this means to ensure that the delivery of public services to young detainees in the ACT is consistent with internationally agreed human rights standards enshrined in the HR Act.

Children and Young People Act 1999

The CYP Act was intended to make extensive provision for the welfare of children and young people. It is common ground that the CYP Act covers too many areas compared to other jurisdictions in Australia. Significant aspects of the legislation relating to young offenders are out of date.⁶⁷ Before amending legislation was introduced and debated in 2005, serious questions were raised concerning the legality of personal searches, medical examinations, and the use of force.

⁶⁵ See Andrew Coyle, *Humanity in Prison Questions of Definition and Audit*, (International Centre for Prison Studies, London), 2003 p. 22; Commentary on Rule 27 UN SMR for the Administration of Juvenile Justice.

⁶⁶ Article 1 UDHR; Preamble, Article 3 and Article 40 CRC.

⁶⁷ The extensive and cumbersome nature of the CYP Act has been commented on by the Standing Committee on Community Service and Social Equity, and the Government has already undertaken to review the legislation. Standing Committee on Community Services and Social Equity, *Report of the Inquiry into the Rights, Interests and Well Being of Children and Youth People*, ACT Legislative Assembly tabled 28 August 2003. See also ACT Government Response and the Supplementary Response tabled by the Minister for Education, Youth and Family Services December 2003 and August 2003 respectively.

Objects and principles

The legislation sets out the general objects and important principles concerning decisions and actions involving a child or young person in Chapter 2 Part 2.1 and 2.2. These are supplemented by Part 6.2 which regulates, amongst other things, how young offenders in the criminal law system are to be dealt with by the Territory.⁶⁸

The general objects and principles reflect many of the principles of the CRC, but are incomplete in relation to young people in detention. In the forthcoming review of the CYP Act, it should be amended to express the rights of young offenders and detainees.⁶⁹ In particular the application of the welfare jurisdiction to children and young people in detention should be clarified in the substance of the Act, not just in the regulations and/or standing orders.

Lack of up to date policy and procedures

In addition to the fundamental problem of legality, it is also apparent that Quamby's Policy and Procedures Manual and the Standing Orders are out of date, inconsistent and not widely used. The absence of a clear and consistent legal and policy framework is a serious institutional weakness and the lack of up-to-date policies and rules increases the risk of a breach of human rights, especially those that have not been disallowable instruments (including Manager's Instructions).

The failure to maintain and promulgate a comprehensive set of rules was implicated as a contributing factor in the death of a detainee in custody at Quamby in 1996.⁷⁰ While improvements to the Manual and the production of the Standing Orders and Manager's Instructions have occurred since, the benefit of those efforts to guide the actions of staff has now been eroded.

Recommendation:

- **A comprehensive set of disallowable Rules governing the operation of Quamby should be made under the *Children and Young People Act 1999* that are compatible with the HR Act. This is required as a matter of urgency.**

⁶⁸ Section 68 sets out six principles that must be adhered to when making a decision concerning a young offender.

⁶⁹ *Mumby J in R (Howard League for Penal Reform) v Home Secretary* [2003] Prison Law Reports 128, [2003] 1 FLR 484 para 65-69; applied *R (BP) v Home Secretary* [2003] EWHC 1963 Admin paras 25-27. In *Munby's case* the House of Lords dealt with the application of the welfare jurisdiction under the UK *Childrens Act 1989* to young people in detention and laid out a set of important principles designed to avoid breaches of Articles 3 and 8 ECHR and the important principles contained in the UN CRC. In summary, finding that the welfare jurisdiction applies the Court said it is the responsibility of the institution to ensure a juvenile detainee is:

1. treated with humanity, with respect to their inherent dignity and personal integrity as a human being and not in such a way to humiliate or debase them;
2. not subjected to torture or to inhuman or degrading treatment or punishment by fellow detainees or other behaviour by fellow detainees which impacts adversely and disproportionately on their physical and psychological integrity; and that
3. measures must strike a fair balance between competing interests of the particular young person and the general interests of the community as a whole but always having regard to
 - a. the best interests of the child are at all time a primary consideration; and
 - b. secondly, to the inherent vulnerability of the juvenile detainee.

⁷⁰ Coroner Somes' Inquest into the Manner and Cause of Death [at Quamby], 28 June 1999, p. 63

Part II THE HUMAN RIGHTS AUDIT

A. Admission, Registration, Classification and Placement:

A preliminary review of the admission process indicates that practices for the reception of a new detainee are generally consistent with accepted standards, but a number of practical difficulties, mainly due to the structural design of the institution, reportedly affected the assessment, classification and placement of detainees. The issue of strip searching is dealt with below in personal searches. It is common for a young person to be brought to Quamby by police in the early hours of the morning and limited information about them may be available. In some instances a young person may remain for a single night or few days before returning to the Children's Court and subsequently being released on bail.⁷¹

A 'resident action sheet' is completed with details of identity, fact and reason and authority for commitment, day and hour of admission, details of known physical and mental health, including drug and alcohol abuse.⁷² The family is notified of detention by the young person or staff.⁷³ Many detainees are subject to a care and protection order, however Quamby may not be informed of this and has experienced difficulty obtaining this information. There is a medical examination generally within 24 hours of the person on admission.⁷⁴

Examination and Assessment

A medical and psychological assessment to identify any physical or mental health issues, risk of self harm or suicide is conducted. It was reported that on occasions this may not be complete for up to three days after arrival. Consequently, physical and mental health problems, including drug, alcohol and sexual abuse, or other indicators of self harm or risk factors may not be fully known to management and operational staff.⁷⁵ The charges and offences committed by the child or young person, and other case information, informs decision-making regarding the needs of a child or young person detained at the facility. However, it is possible, for instance, for male sex offenders to be held in the same unit as female detainees during the short period of assessment and induction.

⁷¹ Evidence to the Standing Committee on Community Services and Social Equity indicated that the detention of young people is not a measure of last resort and that children and young people are detained in Quamby for minor criminal activity, breaches of bail conditions and because of the lack of appropriate alternative facilities. See the Standing Committee on Community Services and Social Equity, *Rights, Interests and Well-Being of Children and Young People*, Report No.3 August 2003, p.74

⁷² Rules 20 and 21 Protection of Juveniles requires all such details to be kept in relation to each juvenile received. Rule 92 SMR and Rule 23 Protection of Juveniles require that full reports on a personal situation and circumstances of each juvenile must be made available to the administration as soon as possible after reception.

⁷³ Principle 16 Body of Principles; Rule 22 Protection of Juveniles.

⁷⁴ Rule 27 Protection of Juveniles.

⁷⁵ Rule 27 Protection of Juveniles requires that a psychological and social report be provided to the director for the purposes of determining the most appropriate placement.

As a preventative measure the current practice is to treat all new detainees as high risk and place them in the Brindabella (6 bed) unit under constant video monitoring and a series of 5 minutes observations until the assessment is complete. All staff should be aware of the physical and mental health attributes of the detainees, and any medication they are on, as this affects their mood, responsiveness and behaviour.

It is unclear whether the medical examination involving a physical assessment or treatment is ever conducted without the consent of the child. Section 10(2) of the HR Act requires that medical treatment only be carried out with the free consent of the individual. A physical examination to ascertain the health status of the young person without consent will be unlawful under the general law and inconsistent with s.10(2) HR Act. Detainees state they were asked to consent to a blood sample being taken during the examination. If the child or young person does not have capacity to consent, then this needs to be obtained from his or her parent(s) or legal guardian.

Placement Decisions

The current facilities provide for three units: Brindabella, a six bed unit for new inductees, special needs and disciplinary segregation; Murrumbidgee, an eight bed unit housing females and young males from age 10 to 14 years; and Ngannawall, a 12 bed unit which houses young males from 15 to 21 years. The initial placement of a young person is therefore determined largely by age and gender, unless there is also a risk of self-harm.

Classification and placement

Under the HR Act children on remand or committal are entitled to:

- Special protection because of their vulnerability as a child (s. 11(2) and 20);
- Treatment that is appropriate to their age and their status (ss. 11(2) and 20(2) and (4)); and
- Segregation of accused from convicted persons, except in exceptional circumstances (s. 19(2)).

The best interests of the child requires that classification and placement should take full account of the particular needs, status and special requirements according to age, personality, sex and type of offence, as well as mental and physical health.⁷⁶ The principal criteria for separation of different categories of children and young people should be the provision of the type of care best suited to their individual needs and the protection of their physical, mental and moral integrity and well being.⁷⁷

Quamby is currently unable to guarantee that it can meet the standards of the HR ACT and UN rules on classification and placement, primarily due to the physical limitations of the facility and the small number of detainees.

⁷⁶ Rule 27 Protection of Juveniles. Rule 8 SMR; Principle 8 Body of Principles;

⁷⁷ Rule 28 Protection of Juveniles. See also Rule 27 Beijing Rules, which focuses on the varying needs specific to their age, sex, personality of the individual; s 12 HR Act & art. 17 ICCPR. See also case law on equivalent article 8 ECHR.

Placement decisions appear to be based on the ‘best interests’ of the child. Although efforts are made to achieve this in individual cases the classification and placement of detainees presents a serious challenge to Quamby management and staff. There is no provision for the segregation of a young person who has been refused bail by the police or remanded in custody by the Children’s Court, from those who have been convicted and are serving a custodial sentence. There is also no provision for separating females of any age from young males (10 to 14 years), or classifying any detainee according to the seriousness of the offence. Placement is essentially made according to age, gender and risk of self-harm, but this rudimentary system is further compromised by the low number of detainees and the inadequacy in the current building design. The population mix fluctuates daily and Quamby is unable to predict or plan for new arrivals. The Government has negotiated to secure a demountable from the Queensland Government, which will hopefully assist in separating some groups that are currently mixing inappropriately.⁷⁸

1. Brindabella (6 bed) unit

Brindabella is used for new inductees and detainees with special needs who require a high level of monitoring, and detainees on disciplinary segregation. A recently refurbished seclusion room is located near the entrance to the Unit. The multipurpose use of the unit means that it holds a complex mix of males and females of all ages (i.e. 10 – 18, and possibly 21 years), young people on remand, new committals, those at risk of suicide and other forms of self harm. In addition, detainees held in the seclusion room or in the unit for disciplinary segregation are also in this unit.

Under these conditions, vulnerable children and young people will be potentially exposed to harmful influences and placed at risk. This is a matter of serious concern, particularly for first time detainees and female or male victims of sexual assault and young people with a developmental or mental health problem. The use of Brindabella for seclusion and other disciplinary segregation also exposes those detainees to a greater likelihood of embarrassment and humiliation as they are clearly visible by other detainees if they are in the caged area. While efforts are made to keep the period of detention for inductees to a minimum (48 hours) current arrangements are clearly unsatisfactory.

The HRO supports the recommendation made in the 2001 report of the 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*, that a separate accommodation area for new inductees be developed.⁷⁹ This would alleviate most of the inappropriate mixing that is occurring in the unit and would also assist in reducing negative interaction between new and current detainees. If new demountables are secured then this accommodation should be prioritized.

2. Murrumbidgee (8 bed) unit

This unit holds all female and young males (10 -14 years). While mixing of females and young males during education or recreation is not necessarily detrimental and

⁷⁸ Ben Doherty, ‘Report to detail breaches of human rights at Quamby’, Canberra Times, 1 June 2005.

⁷⁹ Report Number 10, August 2001, see paras. 2.20-2.22.

may have beneficial effects in replicating a normal environment, the special needs of females are not adequately catered for by shared sleeping quarters. The risk of invasion of privacy is exacerbated by the room design, which includes a vertical window providing a direct line of sight to the shower and toilet area as well as the room. Staff use an external curtain to protect privacy, but this is not always successful. Interviewees stated that there have been incidents of male detainees lifting the curtain to look inside female detainees cells.

The issue of securing females' privacy was raised by a majority of interviewees who expressed concern about the inappropriate nature of these arrangements. It is clear that the likelihood of a serious violation of the right to privacy is a foreseeable consequence in these circumstances. The general practice of holding females in the same sleeping quarters as males needs to be urgently addressed. Section 12 of the HR Act prohibits arbitrary or unlawful interferences with privacy.⁸⁰

3. Ngunnawal (12 bed unit)

This unit accommodates the older male detainees aged 15-18 years, and possibly 21 years if the young person is convicted and sentenced before s/he turns 18. International standards provide that regardless of status (remand or sentenced), juvenile detainees should be separated from adult detainees.⁸¹ This is given effect by sections 19(2) and 20(1) of the HR Act: section 19(2) provides an accused person must be segregated from convicted people, except in exceptional circumstances; and, section 20(1) provides that an accused child must be segregated from accused adults. The inappropriate mixing of detainees on remand or under sentence in this unit is further compounded by potentially having young people 18 years and over. During the period of the audit, there were two males aged 18 years in this unit. In addition, younger detainees from Murrumbidgee (8-bed) unit are, at times, moved to this unit (see below).

Constant movement of detainees

The requirement to continually reassess placement decisions to accommodate the changing population, meet individual needs of detainees and the security, expenditure and staffing requirements of the institution results in a high level of movement, especially of younger detainees, between units. This leads to uncertainty and instability in their living arrangements and raises question about the safety of detainees and their well being. The issue was raised by interviewees who generally recognized the unsatisfactory nature of these arrangements. The HRO regards the depersonalizing effect of being moved between units and cells, and the potential for increased risk of bullying and harassment if placed with a different age group, as a matter of concern.

During the audit period a number of instances were observed that illustrate the complexity of placement decision-making and the risks that young people are exposed to:

⁸⁰ Section 12 is based on Article 17 of the ICCPR.

⁸¹ Article 10(2)(b) ICCPR. See also Rule 29 Protection of Juveniles (juveniles should be separated from adults, unless they are members of the family), Rule 26.3 Beijing Rules, Principle 8 Body of Principles, and Rule 86 SMR.

1. A 14 year old boy was placed with older males in Ngunnawal (12 bed) unit because there were no other detainees in Murrumbidgee (8 bed) unit. The consequence of this decision was to expose him to the risk of bullying and harassment. He was subsequently returned to Murrumbidgee when two new detainees arrived (one female and one young male).
2. An older male under segregation was moved temporarily to Murrumbidgee (8-bed) unit to avoid contact with a newly arrived young female undergoing initial assessment in Brindabella (6 bed) unit.
3. A first time female arrival at high risk of self-harm was held in Brindabella (6 bed) unit at the same time that a young male from Ngunnawal (12 bed) unit was held there on disciplinary segregation for violence against another detainee.

Recommendations:

- **There should be a separate accommodation unit for new inductees.**
- **There should be separate sleeping arrangements for female detainees. The special needs of female detainees should be recognized and staff should ensure there is a sufficient range of services despite relatively small numbers.**⁸²
- **There should be appropriate separation of detainees on the basis of age group and status (remand or under sentence).**

B. The Behaviour Management System

It is a fundamental principle of justice and the rule of law that any sanction, whether classified as disciplinary or criminal, must be clearly expressed and publicly accessible. The principle of legality is reflected in section 28 of the HR Act which requires any restriction on HR Act rights be set out in Territory law. This requirement applies to the internal management of a correctional facility.⁸³ In the context of imprisonment, whether of adults or juveniles, disciplinary measures must be established by law and set out:

- Conduct constituting a disciplinary offence;
- Type and duration of disciplinary sanction that may be applied;
- The authority competent to impose the sanctions; and
- The authority competent to consider appeal.

No juvenile detainee should be subject to disciplinary sanction except in strict accordance with the terms of the law and the regulations in force that meet these basic criteria.⁸⁴

⁸² See Youth Coalition of the ACT Supplementary Paper to the Standing Committee on Education, Community Services and Recreation, *Inquiry into the Government's Response to Recommendations 1 and 3 of Coroner Somes' Inquest into a Death at Quamby*, 26 July 2001.

⁸³ Nowak M, *UN Covenant on Civil and Political Rights CCPR Commentary*, p.171

⁸⁴ Rule 70 Protection of Juveniles; Rule 20 SMR.

A report of the misconduct should be presented promptly to the competent authority, which must decide on it without undue delay, following a thorough examination of the case.⁸⁵ The detainee has the right to be informed of the offence alleged against them and the right to be heard and given a proper opportunity to present their defence before disciplinary action is taken.⁸⁶ There is also the right to have such action reviewed by an impartial and independent authority.⁸⁷

Disciplinary measures and procedures should maintain the interests of safety and order of the life within the institution, but must also uphold the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the rights of other people.⁸⁸ Punishment that is cruel, inhuman or degrading is absolutely prohibited.⁸⁹ In particular, closed and solitary confinement or other punishments that may compromise the physical or mental health of the juvenile concerned are prohibited.⁹⁰ This could potentially breach sections 10(1)(b) (inhuman or degrading treatment), 12 (privacy) and 19 (1) (humane treatment) of the HR Act.

Quamby's Behaviour Management System

The rules and sanctions that may be applied for breaches of discipline by Quamby detainees are set out in an internal policy statement described as the 'Behaviour Management System' ('BMS'). In the absence of clear and up to date Rules the current BMS policy statement has been developed by Quamby management as a guideline for Youth Workers, Team Leaders and Unit Managers based on a system of incentives and a hierarchy of penalties for breaches of the code on detainees conduct.⁹¹ It has already been noted that the Standing Orders will be granted a statutory basis in the near future. Consequently, except in so far as the BMS may be supported by section 127 CYP Act concerning remissions, the lawfulness of sanctions may be called into question.

Markdown, fines and loss of remission

The BMS assesses detainees' conduct in relation to participation in programs, behaviour and chores and provides an incentive by allowing a detainee to earn up to \$1.50 per day with a \$1 bonus if full marks are earned, a total of \$2.50. A proportion of the earnings are automatically deposited in a 'savings account'. This is maintained despite the loss of earnings or fines that may be imposed. The calculation of remissions (days off their sentence, if detainee is under sentence) is based on a requirement to earn points (expressed in dollars and cents) for each day of good behaviour, and is affected by penalties imposed for breach of the rules of conduct. Conversely, a markdown will result in a loss of earnings, and the loss of a \$1 bonus

⁸⁵ Rule 69 Protection of Juveniles;

⁸⁶ Rule 30.2 SMR.

⁸⁷ Rule 67 Protection of Juveniles; Principle 30.1 and 30.2 Body of Principles; Rule 29 SMR.

⁸⁸ Rule 66 Protection of Juveniles.

⁸⁹ Article 7 ICCPR, Section 10 HR Act; Article 3 ECHR; Rule 31 SMR; Principle 6 Body of Principles; Article 39 CRC; Rule 66 Protection of Juveniles.

⁹⁰ Rule 66 Protection of Juveniles; Article 8 ECHR, Article 17 ICCPR.

⁹¹ Code and Conduct and Behaviour Management System p.14.

and a fine will reduce the balance of points already earned for previous good behaviour. Penalties such as disciplinary segregation will also attract a loss of privileges and loss of remission (see below). A loss of remissions means that release is postponed and ‘additional days’ are served in detention under the authority of the original sentence. A detainee cannot lose remissions gained, but can fail to earn further remissions.

Clearly while the BMS of earnings for good behaviour and remissions is a system of incentive for good behaviour and provides savings, and cash to purchase small items, it is also a system of punishment for breaches of the rules and can result in significant consequences for the individual. Fines, segregation for disciplinary reasons (further explained below) and loss of remissions are clearly both disciplinary and punitive in nature.⁹² Segregation involves a significant loss of association, and an automatic loss of privileges and loss of remission, which cumulatively have a significant impact on the individual detainee.⁹³ Even at the lower end, the combination of earning, markdowns and fines automatically translates into a calculation of remission days and may impact significantly on the individual. Detainees who have lost remission days through loss of points may nevertheless be able to work them off by performing chores around the facility. The HRO notes that a high degree of discretion is exercised by management.

It was common ground that the BMS is a guideline and that flexibility is expected to take account of individual circumstances, however, detainees raised concerns about the lack of consistency in approach in how the BMS is applied. What is perceived as inconsistency may in part be explained by genuine efforts of staff to take account of individual circumstances, such as age and maturity and to ensure a sanction is proportionate in the circumstances of a case. Three trends emerged that may be summarized as:

- Some staff apply the harsher penalties quickly (no graduated approach);
- Others use a graduated use of sanctions to allow an opportunity for a detainee to remedy their action; and
- Others use a system based on reward for good behaviour rather than punishing bad behaviour.

These variations are consistent with the experience described by detainees and appear to be the sources of some frustration within the institution generally. The relationship between BMS and rehabilitation and development of personal responsibility and life skills, is of crucial importance and goes to the heart of the purpose of incarceration of a child or young person. There are two aspects of the BMS that warrant particular consideration – segregation and remissions.

⁹² The dual nature of sanctions for breaches of prison discipline was accepted by the UK Home Office in *Ezeh and Connors v. the United Kingdom* (Applications nos. 39665/98 and 40086/98) 2003 unpublished 3727, paras. 93 and 98.

⁹³ *R v Secretary of State for the Home Department (Al Hasan) and r v Secretary of State for the Home Department (Carroll)* [2005] UK HL 13 – Mr. Carroll received two additional days detention, ten days cellular confinement and ten days stoppage of earnings; Mr. Hassan received 15 days stoppage of earnings and forfeiture of certain privileges. For example, Standing Order 6 para 6.7.3 asserts that special supervision is not punitive although it clearly involves segregation and loss of privileges for a breach of discipline.

Segregation for disciplinary purposes

Segregation of a detainee for disciplinary purposes takes place in Brindabella (6 bed) unit. Segregation is used at Quamby for continued display of unacceptable behaviour. This may range from persistent failure to follow instructions, complete duties in agreed time frame, showing disrespect to others, using aggressive language threats, disrupting other work, or other behaviour that disrupts the groups, or actual assault of staff or other detainees.⁹⁴ A major incident, escape or attempted escape, or assault on staff will attract a 14 day period of segregation. Assault on a detainee will attract a 7 day period of segregation. However, the Standing Orders provide for segregation for up to 3 days by the Unit Manager, and up to 7 days under the authority of the Centre Manager. It is unclear whether staff are operating entirely under the BMS, or may also have recourse to the Standing Orders and Manager's Instructions.

Segregation involves a significant loss of association with others with whom the young person usually resides and is a form of closed confinement. The detainee must pursue his/her education program alone, there is no participation in normal recreational activities, and loss of privileges applies automatically. This isolation from other detainees appears to be routinely applied as part of the segregation process. Exercise is taken at a separate time with a staff member, although time spent in the 'cage' exercise area in the 6-bed unit may necessarily involve some interaction with detainees moving between areas. This raises other problems of potential humiliation and degradation.

Detainees consistently complained that they are often not informed of how long they will be held in segregation and the indeterminacy of the 'sentence' added to their frustration and anxiety. Management explained that individual circumstances will be taken into account, and a penalty lessened if the detainee behaved well while on segregation.

The segregation of a child or young person from others is an inherently harsher penalty than when applied to an adult, even for a short period of time. It is for that reason the UN Rules provide that closed or solitary confinement should be prohibited for juveniles. Having regard to these rules, the HRO finds that the 'segregation' of juveniles involving a significant loss of association with others plus other loss of privileges is a *prima facie* breach of the prohibition on inhumane treatment under s.19(1) of the HR Act.⁹⁵ In the absence of persistent disruption or threats or actual violence against other detainees or staff it will be difficult to justify the use of 'segregation'.

Loss of association

As a general rule the right of association with others is not absolute and may be limited by security considerations, prevention of disorder, and the protection and rights of others.⁹⁶ Consequently, loss of association for a disciplinary purpose is not

⁹⁴ BMS p.8 and 14.

⁹⁵ And article 10 of the ICCPR.

⁹⁶ *Re Fulton's Application for Judicial Review* [2001] H.R.L.R. paras 5 and 27.

per se a violation of the prohibition of inhuman or degrading treatment under s. 10(1)(b) of the HR Act.

Loss of association may be imposed as a penalty for a lesser breach of the rules on acceptable conduct, such as contraband (cigarettes, mobile phones). However, the authorities must base their decisions on the ‘best interests’ of the child and take account of the inherent vulnerability of the child. In these circumstances the additional loss of access to the normal routine of centre life, participation in joint education programs, recreation and access to reading material cannot be justified on the grounds of preservation of the order and is arguably incompatible with sections 10(1)(b) (inhuman or degrading treatment), 12 (privacy) and 19(1) (humane treatment) of the HR Act.⁹⁷

The UK Youth Offender Institution Rules permit the removal of a person less than 18 years old from the living unit, but removal from education, training, work and physical education of a detainee is prohibited. Importantly, confinement as used at Quamby, is only permitted for those over 18 years. The Code of Practice in relation to young offenders under 18 years states:

The traditional concept of ‘segregation’ plays no part in separating a young person when circumstances recommend. The use of...cellular confinement, in which exercise is the only ‘activity’ and when little or nothing is done to address the causes of segregation is inappropriate. While it will be appropriate to remove a young person from taking part in activities with others, it will be an exceptional measure. Furthermore, such separation must be accompanied immediately by work with the young person to enable their return to the full range of daily activities.

The HRO considers these standards to be more in keeping with the HR Act and recommends a review of the current segregation policy at Quamby. While removal may be appropriate in certain limited circumstances, segregation in its current form is likely to be unreasonable and disproportionate in a number of cases. If segregation is used as a disciplinary measure it should be used for the shortest possible time. Intensive work by staff should begin immediately to ensure the young person returns to the full range of association and activities as soon as possible.

Loss of ‘privileges’

In addition to physical segregation the Standing Orders require an automatic loss of other privileges for a person placed on disciplinary segregation. This approach is also reflected in the BMS which indicates automatic loss of privileges and loss of remissions in certain cases. Notwithstanding the rules/policies, the actual practice of loss of privileges in cases of segregation remains unclear.⁹⁸

⁹⁷ In *R (BP) v Home Secretary* [2003] EWHC 1963 Admin the High Court held that the authorities must base their decisions on the best interests of the child and take account of the inherent vulnerability of the child. In that case confinement for 4 and subsequently 5 days for possession of a mobile phone and the failure to allow participation in the normal routine breached the UK Young Offender Institution Rules 2002.

⁹⁸ According to Standing Order 6 the automatic loss of privileges are as follows:

- Entitlement to a maximum of 2 hours exercise outside each day;

Loss of privileges directly affects the physical and mental health of the child. The cumulative effect of loss of privileges in addition to the higher degree of segregation is likely to be disproportionate, unless the case is exceptional. Loss of ‘privileges’ which cannot be justified on the basis of preservation of order at Quamby, and which are applied in addition to segregation, are therefore likely to contribute to an incompatibility with s. 19(1) of the HR Act (humane treatment).⁹⁹

The HRO is particularly concerned that under Standing Order 6, loss of privileges for a person on disciplinary segregation includes reduced exercise to 2 hours a day and loss of access to family. As noted above, the removal from routine recreation cannot be justified unless there are clear safety reasons for doing so. Further, access to family is a right, not a privilege, and can never be justified for a child or young person in detention. The HRO has been assured that this aspect of the Standing Order is not implemented, and there were no reported cases of suspension of family visits during the audit period by detainees.

Vulnerable young people and disciplinary segregation

Under s. 19(1) (humane treatment) of the HR Act the Territory is under an obligation to protect the health of persons deprived of liberty.¹⁰⁰ For younger children, or in cases where there are indicators of self-harm or other additional vulnerabilities, it will be difficult to justify segregation or removal for a disciplinary purpose. In cases of children with developmental delay or mental illness, their inability, in some cases, to complain coherently, or at all, about how they are being affected by any particular treatment must be taken into account.¹⁰¹

For example, in a UK case the prison authorities were found not to have fulfilled their obligation to protect a male detainee from treatment or punishment, by the imposition of segregation for disciplinary purposes immediately prior to his death.¹⁰² Although he was designated as at risk, his suicide was not indicated immediately before his death, because he presented as relaxed and happy. Nevertheless, the Court held that treatment of a mentally ill person may be incompatible with the standards imposed by the European Convention of Human Rights in the protection of fundamental human

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- Telephone calls are restricted to legal and welfare calls and visits only (i.e. loss of family visits);
 - No television, radio or cassette player;
 - Canteen purchases restricted to writing materials only;
 - No personal possessions except a small quantity of reading and educational material;
 - Other conditions that may be applied by the Operations Manager.

⁹⁹ The cumulative effect of loss of privileges and other hard conditions of detention may reach the high threshold of inhuman and degrading treatment in some cases: *T v UK* [1983] 49 D R 5.

¹⁰⁰ See for example *Hurtado v. Switzerland*, Comm. Report 8 July 1993, Series A no. 280, p. 16, 79.

¹⁰¹ *Herczegfalvy v. Austria* judgment of 24 September 1992, Series A no. 244, 82; the *Aerts v. Belgium* judgment of 30 July 1998, *Reports* 1998-V, p. 1966, 66. This principle is reflected in the UK Code of Practice, which states that: Prisoners at risk of suicide or self-harm must not be routinely held in segregation units.

¹⁰² Mark Keenan was suffering from a chronic mental disorder, which involved psychotic episodes and feelings of paranoia. He was also diagnosed as suffering from a personality disorder.

dignity, even though that person may not be able, or capable of, pointing to any specific ill-effects.¹⁰³

Recommendations:

- **The behaviour management system should be comprehensively reviewed and given a legislative basis to ensure clarity and consistency in implementation.**
- **Segregation as a disciplinary measure should be used as a last resort and for the shortest time possible, with intensive work by staff to facilitate the detainee's return to the full range of association and activities as soon as possible.**

Use of seclusion for disciplinary purposes

The use of seclusion beyond a certain period can constitute solitary confinement. In relation to the exclusion of an adult prisoner from the prison community, this does not in itself constitute inhuman or degrading treatment.¹⁰⁴ The period, and cumulative effect of repeated periods, of solitary confinement will be relevant in determining whether it is justifiable and proportionate under section 28 of the HR Act.¹⁰⁵ The courts have held that prolonged solitary confinement is undesirable, particularly when the prisoner is in detention on remand, but also when he is detained after having been lawfully convicted. Prolonged solitary confinement of an adult might, in certain circumstances, raise an issue *inter alia* under s. 10(1)(b) of the HR Act (inhuman or degrading treatment).¹⁰⁶ Even a short period of solitary confinement of an adult may nevertheless breach the requirement for humane treatment and respect for the inherent dignity of the human person under the lower threshold of s. 19(1) of the HR Act (humane treatment).

The imposition of seclusion on a child or young person is a serious matter of concern. Seclusion is a serious interference with the physical and psychological integrity of the person. It is difficult to see how seclusion can ever be in the 'best interests' of the child or young person or serve the rehabilitation objectives of detention.

Whether the use of seclusion constitutes a breach(s) of the HR Act would need to be determined on a case-by-case basis using the proportionality test under section 28 of the HR Act. The three main elements of the proportionality test are: that there is a rational connection to the objective; there is minimal impairment of the right; and there should be an overall balance or proportionality between the benefits of the limits

¹⁰³ *Keenan v UK* (2001) 33 EHRR 38. The Court held that while the severity of suffering, physical or mental, attributable to a particular measure had been a significant consideration in many of the cases decided by the Court under Article 3, there are circumstances where proof of the actual effect on the person may not be a major factor.

¹⁰⁴ UN HRC, General Comment 20 (40th session, 1992) concerning the prohibition of torture and cruel treatment or punishment, provides that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7 of the ICCPR ((para. 6). See Applications Nos. 7572/76, 7586/76 and 7587/76, *Ensslin, Baader, Raspe v. the Federal Republic of Germany*, Decisions and Reports 14, p. 64.

¹⁰⁵ *R v Denmark*, App.No.10263/83; *Hauschildt v Denmark*, App.No.10486/83; (1990) 12 EHRR 266; and *McFeeley v UK*, App.No.8317/78.

¹⁰⁶ *Reed v UK*, App.No.7630/76; 19 DR 113; (1981) 3 EHRR 136.

and its deleterious effects. Given the acute range of potential social, medical, and psychological problems facing young people in detention, the use of seclusion cells can be highly damaging.¹⁰⁷ Therefore, depending on the context and particular attributes of the detainee, the use of the seclusion cell could potentially breach the prohibition on inhumane or degrading treatment, and the physical and psychological integrity of the person under sections 10(1)(b) (inhuman or degrading treatment), 12 (privacy, in terms of physical and psychological effects), and 19(1) (humane treatment) of the HR Act.¹⁰⁸

The seclusion cell at Quamby was refurbished early in 2005 (by installing padding) and is placed at the entrance to the Brindabella (6 bed) unit. Policies and procedures regarding the use of the cell are being finalised. However, according to staff, the cell is currently being used as a measure of ‘last resort’. There is a video camera in the cell to monitor the detainee and its use is recorded in the seclusion room log book. This was corroborated by detainees, as only a few stated that they had been in the seclusion cell since it has been refurbished, and generally it was for a short period of time (less than an hour with a few exceptions - one detainee alleged he was held there for up to five hours). Use of seclusion is reportable to the Centre Manager, and the Department stated that no case of seclusion for five hours has been reported to the Manager during the past ten years. The HRO considers that the seclusion cell should not be used until policies and procedures regarding its use are in place.¹⁰⁹ Relevant stakeholders should be involved in finalising the draft policies and procedures regarding the use of the seclusion cell.

Recommendations:

- 1. The seclusion cell should not be used until appropriate policies and procedures are in place.**
- 2. Policies and procedures regarding the use of the seclusion cell should include, in addition to the video camera, log book, regular 5 minutes observations:**
 - Guidance to staff on the decision-making process as to when a detainee could or should be placed in the cell - it must not be more extreme than necessary to achieve reasonable disciplinary objectives or protection of the detainee from other detainees (or from other detainees from the detainee), and the decision to discipline a detainee must be arrived at by a controlled process of decision-making, rather than being the result of arbitrary or even vindictive behaviour by youth workers;¹¹⁰**
 - That all staff are trained in de-escalation techniques;**
 - That fresh air is circulated into or within the cell;**
 - Other detainees cannot observe its use;**
 - The door can be opened quickly;**

¹⁰⁷ See Chris Cunneen and Rob White, *Juvenile Justice: Youth and Crime in Australia*, (OUP, 2002), p. 311.

¹⁰⁸ Articles 7 and 10 ICCPR, Rule 67 Protection of Juveniles, Rule 32 SMR for all Prisoners, and Principle 7 Basic Principles.

¹⁰⁹ Principle 30 Body of Principles.

¹¹⁰ See Nigel Rodley, *The Treatment of Prisoners Under International Law*, (2nd edition, OUP, 1999, pps. 295-6).

- **That the nurse, doctor or psychologist are on call to assist and examine at a minimum every hour in order to ensure the detainee is fit to sustain this punishment;**
- **The OCA is notified of the use of the cell to allow independent oversight after use for more than an hour and;**
- **A cap of two hours is placed on the maximum time in a day that a detainee can be placed in the seclusion cell.**

Remissions

Section 127 of the CYP Act empowers the Chief Executive (or her delegate) to reduce the period of a young person's committal by up to one third of the sentence unless the Children's Court has ordered otherwise. Remission is discretionary and based on an assessment of good conduct and 'industry' as described above, or any other special circumstances rather than as statutory right.¹¹¹ However, there is in practice a presumption that early release will be the norm and an expectation by detainees that this will be the case unless something significant occurs that would jeopardize their return to the community. The principle of incentives and early release is consistent with the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty.¹¹² However, children and young people are also entitled to procedural safeguards, including the right to be heard before a sanction is applied and the right of appeal.¹¹³

The loss of remissions is a significant penalty for disobedience which frustrates the expectation of release after two thirds of the sentence has been served.¹¹⁴ If the policy of discretionary remission is to be retained it is necessary to ensure that loss of remissions is proportionate to the misconduct and that procedural safeguards are reviewed. In particular, the Territory should review how loss of remissions is calculated. Misconduct that warrants postponement of the earliest date of release should be clearly identified in Rules, and not left to an informal system of guidelines.¹¹⁵ In comparable jurisdictions the imposition of 'additional days' through the loss of remissions is now regarded as a further deprivation of liberty, which attracts the minimum guarantees for a fair trial.¹¹⁶

Recent judicial trends affirm the application of the principles of a fair trial under s.21 of the HR Act to remission decisions. In a landmark decision in 2003 the European Court of Human Rights in *Ezeh and Connors*, the UK Government held that 7 days

¹¹¹ Aside from the requirements of the HR Act a decision about remission may also be regarded as a general public law decision. There is a legitimate expectation on the part of a detainee that remissions will be applied and an entitlement to procedural fairness.

¹¹² See Rules 28 and 79 respectively.

¹¹³ Principle 30(2) Body of Principles.

¹¹⁴ *R v Governor of HMP Frankland, Ex P Russell* [2000] H.R.L.R. 3 512 at 526;

¹¹⁵ The Centre Manager is responsible for the administration and safety and security of the facility and cannot be regarded as an independent arbiter over decisions on remissions.

¹¹⁶ *Re Fulton's Application for Judicial Review* [2001] H.R.L.R. 11; *Greenfield v Secretary of State for the Home Department* [2001] EWHC Admin 129; [2001] H.R.L.R. 35 later conceded. See *R v Secretary of State for the Home Department (Al Hasan)* and *R v Secretary of State for the Home Department (Carroll)* [2005] UK HL 13; *Ezeh and Connors v. the United Kingdom* (Applications nos. 39665/98 and 40086/98) 2003 unpublished 3727. *R (BP) v Home Secretary* [2003] EWHC 1963 Admin.

loss of remission for a breach of discipline constituted a penalty involving a further deprivation of liberty and raised a presumption that the procedural safeguards applied.¹¹⁷ Following this case, the UK Government also conceded that lack of legal representation in a review of a disciplinary procedure, involving a penalty of twenty-one additional days for failing a drug test, breached a prisoner's right to a fair hearing before an independent and impartial tribunal.¹¹⁸ In 2005, the House of Lords vitiated a prison hearing to review the lawfulness of an order to squat with a penalty of two additional days, on the grounds of apparent bias under common law principles of procedural fairness.¹¹⁹

The HRO notes that in theory judicial review by the Supreme Court is available. However, in our view, this alone is not a sufficient safeguard in disciplinary procedures that apply to children and young people in detention. The authority to make a remission decision should either be removed from the role of Quamby management and placed under the jurisdiction of an independent body, such as the Sentence Administration Board, or otherwise be subject to external review.¹²⁰

Recommendation:

- **Decisions concerning remissions should be dealt with by an independent body. The BMS policy should be completely separated from loss of remissions.**

Authority to make disciplinary decisions and right of appeal

Under the current system a markdown may be imposed by youth workers, but a fine must be authorized by a Unit Manager who issues a fine notification. The detainee is required to sign the form as an acknowledgement that they have been notified. During interviews there appeared to be some confusion about this part of the process. Some interviewees understood that the signature meant that a detainee was agreeing to the penalty.

A decision to segregate a person is formally taken by the Operations Manager who may refuse a recommendation by the Unit Manager that segregation be imposed. A Unit Manager may take the decision to segregate in an emergency but the decision

¹¹⁷ The ECHR applied the criteria set forth in *Engel v The Netherlands* [No.1] [1976] 1 E.H.R.R. 647. See also *Campbell and Fell v United Kingdom* [1984] 7 E.H.R.R. 165. Note Article 6 ECHR is equivalent to Article 14 ICCPR (right to fair trial).

¹¹⁸ *Greenfield v Secretary of State for the Home Department* [2001] EWHC Admin 129; [2001] H.R.L.R. 35 later conceded.

¹¹⁹ See *R v Secretary of State for the Home Department (Al Hasan) and R v Secretary of State for the Home Department (Carroll)* [2005] UKHL 13, para 24. The facts of the case took place before commencement of the UK HR Act and were therefore decided on common law principles.

¹²⁰ The HRO notes that the power of a 'Governor' of adult prisons to make decision concerning remissions on an ongoing basis in response to behaviour has been abandoned in Scotland and is reported to not have had a significant effect on prison discipline. See *Ezeh and Connors v. the United Kingdom* (Applications nos. 39665/98 and 40086/98) 2003 unpublished 3727; *R v Secretary of State for the Home Department (Al Hasan) and R v Secretary of State for the Home Department (Carroll)* [2005] UK HL 13; [20035 H.R.L.R. 12. The role of the Board of Visitors in the UK of reviewing remission decisions has also been changed because of the inherent conflict with the role of the official visitor in general complaint handling and this function is now performed by an independent adjudicator.

must be ratified by one of the three senior managers. A segregation decision is communicated verbally to the detainee, who may complete a complaint form if he or she wishes to challenge the decision.

It is appropriate in a youth detention environment to ensure that the reasons for a penalty are fully explained and understood. The implementation of the sanction and any conflict over the fairness of the penalty need to be resolved quickly. However, the opportunity to be heard is essential to fair treatment which is a part of the rehabilitative process and plays an important part in preventing unnecessary grievances.¹²¹

Under the current system 'right of appeal' is exercised by completing a complaint form which is reviewed by the Operations Manager and may subsequently be dealt with by the Official Visitor, the Office of the Community Advocate (OCA) or the Ombudsman. Neither the Official Visitor, OCA, or the Ombudsman has the power to set aside a decision of management made under the BMS.

Detainees consistently complained that there was little point in challenging a 'consequence' and felt that the complaints system did not work. They claimed that they are often not told of the outcome of their complaint, and believed that their complaint form often did not reach the Operations Manager. These claims were corroborated by other interviews. The current practice appears to rely too much on individual officers, and lacks an explicit guarantee of the child or young person's right to be heard before the sanction is applied, although this may take place in practice.

If sanctions for disciplinary breaches are not applied within a lawful and principled framework, which is transparent and understandable, it will generate a perception of injustice, unfairness and lack of legitimacy. Whether justified or not, this perception is likely to have a negative effect on the rehabilitation of offenders whose experiences of neglect and abuse may be reinforced by what they experience as institutionalized arbitrariness.¹²²

Recommendation:

- **There should be a review of the current complaint system, and a clearer and separate process for dealing with disciplinary matters that ensure the right to be heard before a sanction is applied and a right of appeal, with representation of a detainee by the Office of the Community Advocate in any disciplinary procedure.**

¹²¹ *R (SP) v Secretary Home Department* [2004] EWCA Civ 1750.

¹²² Empirical research indicates that a significant contribution to prisoner distress, and therefore suicide, is made by the uneven experiences of unfairness, disrespect and lack of safety they experience while in prison. Alison Liebling, Linda Durie, Annick Stiles and Sarah Tait. Draft Chapter 8 *Revisiting Prison Suicide: the role of fairness and distress* [schedule for forthcoming publication July 2005].

C. Personal and Cell Searches

The audit revealed a frequent and widespread practice of personal searches of detainees which raises a number of significant concerns.

Personal (strip) searches

Strip searching is inherently degrading and a significant affront to the dignity of the person. It therefore potentially engages principles of human rights, in particular sections 10(1)(b) (inhuman or degrading treatment), 12 (privacy), and 19(1) (humane treatment) of the HR Act. Treatment is degrading when it arouses feelings of fear, anguish, inferiority and is debasing regardless of the intention of the policy or the conduct of the individual officer.¹²³ It must attain a minimum level of severity before a breach arises but the assessment of this minimum is relative and depends on all the circumstances of the case, including the sex, age, and state of physical and mental health of the person.

The requirement to treat a person humanely and with respect for the inherent dignity of the person is absolute and, although the expectation of privacy in the prison environment is considerably lower, it is not expunged. The right to be protected from unlawful or arbitrary interferences with privacy includes personal, physical and mental integrity (s.12 of the HR Act). In the case of all rights interference must be lawful, rational and proportionate for a legitimate aim such as prevention of self-harm and protection of the safety of others (s. 28 of the HR Act).

When individuals enter a prison population, there is a need to ensure that they are not concealing weapons or illegal drugs on their person, which may place themselves or the security of others at risk. In these circumstances the conduct of a strip search on arrival is not *per se* a violation of the right to privacy and the prohibition on inhuman or degrading treatment.¹²⁴ Similarly, the courts have held that a detention facility is a unique place fraught with serious security dangers and, balancing the significant and legitimate security interests of the institution against the private interests of the inmates, the practice of conducting strip searches of inmates upon reasonable suspicion that contraband has been passed by visitors, for the purpose of ensuring security and order at the institution, does not *per se* constitute an unreasonable search.¹²⁵ However, to subject an adult to routine strip searches for general security purposes (in addition to incidences where a search is justified e.g. visits, exit and re-entry), has been held to be a violation of the prohibition on inhuman or degrading treatment.¹²⁶

The judicial consideration of strip searches has been in relation to adults in an adult prison, many of them maximum security facilities and has been measured against the higher threshold of inhuman and degrading treatment and punishment. The question

¹²³ *Costello-Roberts v UK* (1993) 19 EHRR 112; *Ireland v UK* (1978) 2 EHRR 25 para 162; *Tyrer v UK* (1978) 2 EHRR 1; *Soering v UK* (1989) 11 EHRR 439 para 100.

¹²⁴ *R. v Golden* [2001] 3 SCR 679, 2000 SCC 83.

¹²⁵ *Maltby et al. v. A.G. Saskatchewan et al.* (1982), 2 C.C.C. (3d) 153 (Sask. Q.B.); appeal dismissed (1984), 10 D.L.R. (4th) 745 (Sask. C.A.).

¹²⁶ *Van der Ven v the Netherlands* (2004) 38 EHRR 3 & *Lorse v the Netherlands*, (2004) 37 EHRR 3.

arises as to whether the same security justifications and the same standards apply to children and young people, many of whom have been subject to abuse, and whose vulnerability is such that compulsory invasive measures are likely to have a greater adverse impact on their physical and mental integrity.¹²⁷

Sections 399 and 400 of the CYP Act regulate personal searches. Section 399 requires that the Chief Executive must have a reasonable suspicion that (i) the child or young person is in possession of something dangerous, and (ii) the dangerous thing can only be recovered as a result of a personal search. Both sections provide that a personal search will not involve a search of his or her body cavities (s. 399(1)(b) and s. 400(1)(g)). To the extent that sections 399 and 400 deal with the issue, the existing CYP Act provisions are consistent with sections 10(1)(b) and 12 of the HR Act, except there is no authorisation for the practice of ‘squat and cough’ (see below).

‘Squat and cough’

The use of the ‘squat and cough’ procedure must be based on law (which it is not currently), and cannot be justified unless there is reasonable suspicion that items have been hidden in the anus. Such searches should only be used on the basis of proper procedure and within a structure that protects the detainee from a wrongful exercise of the power.¹²⁸ The lack of a lawful basis on which to order such searches and the lack of adequate justification in individual cases renders the routine use of such orders, even where a security risk might be indicated (e.g., visits etc), inconsistent with the prohibition on inhuman or degrading treatment under s.10(1)(b), s. 19(1) (humane treatment), and the prohibition on the unlawful or arbitrary interference with privacy under s.12 of the HR Act.

Current practice

The practice at Quamby is that strip searches are carried out on arrival, after visits, before leaving Quamby for court or other reasons, and on return to the facility. If a child or young person appears severely traumatised by the possibility of a strip search, this will not occur. On these occasions, the youth worker will counsel the child or young person and take them to their room to shower and change, and closely monitor the person for a period of time.

Where contraband is found during a cell search the person is usually strip-searched. In these circumstances it is a matter of discretion as to whether other cells or strip searches of detainees are carried out. For example, when a weapon or other implement is alleged to be missing and its whereabouts cannot be ascertained. The need to protect other people is paramount. The HRO heard conflicting evidence about practice in this regard (see cell search section below). It is also the policy of Quamby to routinely conduct a ‘squat and cough’ procedure as part of every strip search as detainees have hidden contraband in their anuses.

¹²⁷ Ann Owers CBE Home Office Chief Inspector of Prisons, *BIHR Human Rights Lecture: Prison inspection and the protection of human rights*, 22 October, 2003.

¹²⁸ *R. (on application of Carroll) v Secretary of State for the Home Department; R. (on the application of Greenfield) v Secretary of State for the Home Department* [2001] H.R.L.R. 6 1381

The rationale for the current strip search policy is to prevent contraband, and unauthorized items that may jeopardize the safety and security of the institution. The uniformity of the policy is said to prevent the victimization of detainees who may otherwise be pressured to carry contraband or unauthorized items into the facility. Although Quamby is described as a low security facility it is required to take a wide mixture of detainees and has adopted practices which may otherwise be indicated in a medium or high security environment.

Detainees consistently complained about the frequency of strip searching and that the policy of searching on entry, exit and re-entry, after visits and during cell searches (if contraband is found) was applied inflexibly, and regardless of individual circumstances. For example, interviewees related that in the past a female detainee was strip-searched every day when she left and returned to Quamby while attending a Canberra Institute of Technology course for a number of weeks. This was despite the detainee having an escort on each occasion. The HRO therefore remains concerned that the current practice of frequent and routine searches exceeds situations in which there is reasonable suspicion. Given the age and vulnerability of the detainees this is particularly problematic from a human rights point of view.

The manner of conducting searches

The manner in which a personal search is conducted is of paramount importance. Practices that humiliate or expose the person to a greater degree of inspection than is strictly necessary will breach the prohibition on inhuman or degrading treatment in section 10(1)(b) of the HR Act. For example, all strip-searches should be done with the detainee being half undressed and staff should not observe detainees redressing.

Strip searches at Quamby are carried out in a specially designated search room divided into two areas. The search is conducted by a staff member of the same gender as the detainee, but the witness (who observes the officer conducting the search) may be of the opposite gender. The HRO has inspected the area and is satisfied that the positioning of the witness outside the room observing at a distance means there is no line of sight to the young person. Video camera surveillance of the room does not include that part of the 'shower room' used for undressing, and detainees generally shower in their own cell after admission.

Differing accounts were given as to whether the young person is strip searched fully, that is, required to be fully naked or is searched in stages. There was one allegation of a direct observation by an officer of a young male while fully naked after clothing had been checked. There was no other indication that the searches were not being carried out with sensitivity and with respect by staff. The HRO heard of no incidences where a detainee was strip-searched by someone of the opposite gender. Low-level searches may be conducted by someone of the opposite gender, but when this occurs detainees are generally asked to turn out their pockets rather than being frisked.

Recruitment and retention of female youth workers is a persistent problem and management cannot guarantee that female youth workers will be rostered on for all shifts, or that female youth workers will be present when a female detainee is inducted. In these cases the Australian Federal Police (AFP) are asked to provide a female officer to conduct the search, or if possible a female youth worker may be

called on duty if no appropriate AFP staff is available. If no female officers are available and the female detainee is assessed as high risk of self-harm, the door to her cell remains open throughout the night and she is under five minute observations until a female staff member arrives. There does appear to be more discretion exercised over the strip-searching of female detainees, and they are not required to ‘squat and cough’ when they are menstruating.

Recommendations:

- **Strip-searches should only be conducted when there is reasonable suspicion that the detainee may have in their possession a thing that may cause serious damage or threaten the detainee or another person’s life.**
- **There should be an explicit requirement to take into account the characteristics of the individual concerned to prevent violations of the physical and mental integrity of the person.**

Cell searches

Searches are conducted to prevent the concealment of contraband, for example, drugs, weapons and cigarettes, and material likely to endanger Quamby’s security, or the safety of others, or which would contribute to criminal activity within the facility. Case law establishes that generally detainees should be present during cell searches in low to medium security facilities, and may be absent in high security facilities.¹²⁹ In the latter case, cell searches may be conducted in detainees’ absence due to intimidation of staff by the detainees, and in the interest of preventing detainees from becoming knowledgeable about general and individual search techniques.¹³⁰ However, this is an interference in the detainee’s right to privacy (s. 12 of the HR Act) so needs to be subject to the proportionality test in section 28 HR Act.

Quamby staff conduct routine cell searches at frequent, but irregular intervals. The searches are carried out either with the detainee in the room or in their absence (while they are at education or playing sport). If the detainee is present at the time of the search, according to Standing Order 15, the detainee is also to be searched after which they will be instructed to stand at the cell door. It is unclear whether this means that the detainee is to be subjected to a low-level (frisk) or a high-level (strip) search. There was conflicting information from the interviewees. Some stated that whenever contraband is found in a cell, not only is the detainee of that cell strip-searched, so are all other detainees at Quamby (not just in the unit where the contraband was found). Others stated that it was a matter of discretion as to whether any other detainee(s) were strip-searched. Whatever the case, the policy is unclear on this point and does not provide proper guidance on the correct procedure for staff to follow. Discretion should be exercised on whether other detainees are strip-searched. Factors such as the articles found, and the risk indicators of individual detainees should be considered. Reasonable suspicion that a detainee is concealing contraband should guide the exercise of this discretion.

¹²⁹ See *R(Daly) v Secretary of State for the Home Department* [2001] 2 AC 532, at 541-2 and 544-5.

¹³⁰ *Ibid*, at 542.

It would be preferable if cell searches were conducted in the presence of detainees. Having detainees stand at the cell door is an appropriate policy as they can see, but not intervene in the search, unless they are directed to by staff. However, certain detainees could be excluded during such searches if s/he was attempting to intimidate or disrupt a search, or whose past conduct has shown that s/he was likely to do so.¹³¹ Female detainees' cells should only be searched by female staff members.

Recommendation:

- **There should be a clear policy regarding the searching of detainees' cells. If contraband is found, it should be a matter of a structured discretion whether other detainees are strip-searched. This should be on the basis of the type of contraband found and reasonable suspicion that the other detainee(s) may also have contraband. Only female staff should search female detainees' cells.**

D. Searching of Correspondence

Some measure of control over detainees' correspondence is not of itself incompatible with international standards, as long as it is reasonable and proportionate in the circumstances.¹³² Grounds for censorship of detainees' correspondence must be sufficiently defined, so as to protect individual detainees from arbitrary or abusive interference in their relations with others. There should be individualized justification for each item of correspondence that is censored.¹³³ Routine searching of correspondence could potentially constitute a breach of section 12 of the HR Act (right to privacy).

During the time of our investigation the HRO received conflicting information about how the searching of correspondence was conducted at Quamby. This was largely due to the fact that there was no Standing Order or Manager's Instruction on the searching of correspondence at the time our audit was conducted. Management responded quickly to concerns that were verbally raised during our investigation and a Manager's Instruction was issued on 15 June 2005, which provides guidance on the searching of correspondence at Quamby.¹³⁴ The commentary below is based on the findings from the HRO audit, which have partially been rectified by the Manager's Instruction.

Private correspondence

The detainees interviewed did not receive or write many letters as they preferred visits and phone calls. All detainees were aware that their incoming and outgoing letters to and from family members and friends are read by the case manager, or a chosen youth worker, and that some letters have either been withheld from them or did not reach their correspondent. All incoming mail is opened and searched regardless of whether it is from a family member or a friend. An incoming letter is not given to a detainee if

¹³¹ *Ibid*, at 545.

¹³² *Silver v UK* (1983) 5 EHRR 137 (para. 45).

¹³³ *Demirtepe v France*, App. No.34821/97; (2001) 31 EHRR 28, holding censorship of prisoners' letters to be not in accordance with the law where it fell outside the scope of the regulation.

¹³⁴ Ref: 217/05.

it contains inappropriate enclosures, sexually explicit content or is otherwise inappropriate. It is at the discretion of the case manager whether to forward the letter to the detainee or not (they may delete sections deemed inappropriate), and they can seek a second opinion. If s/he decides the content is inappropriate, the detainee will be informed of the reasons why and advised to let the correspondent know. All letters are opened, searched and read before being given to detainees. It used to be protocol for letters to be opened and searched in front of detainees, but this caused considerable anxiety for the intended recipient if the letter was not given to the detainee.

In the case of an outgoing letter, the case manager will not send it if it contains:

- identifying information concerning other detainees at the centre or staff members;
- information about offences; or
- has inappropriate sexual content.

If s/he decides not to send the letter, the detainee will be informed as to the reasons why.

Legal and welfare correspondence

International jurisprudence provides that the case manager may open a letter from a lawyer to their client when they have reasonable cause to believe that it contains an illicit enclosure. The letter should, however, only be opened and not read in the presence of the detainee. The reading of a detainee's mail to and from a lawyer should only be permitted in exceptional circumstances when the authorities have reasonable cause to believe that the privilege is being abused, in that the contents of the letter endanger the security of the institution, or the safety of others, or are otherwise of a criminal nature. What constitutes 'reasonable cause' will depend on all the circumstances but it presupposes the existence of facts or information, which could satisfy an objective observer that the privileged channel of communication was being abused.¹³⁵

Interviewees stated that legal and welfare correspondence is sealed in front of staff members and sent directly to detainees' legal representatives or relevant agency. There was conflicting information over whether incoming legal correspondence is opened and/or searched. Most interviewees were categorical in stating that such correspondence is not opened, while a few stated that it may be opened to ensure there are no enclosures, such as paper clips and staples that could be used for self-harm by detainees. Staff stated that they may assist the detainee in reading or explaining the contents of letters if requested. Given how common low literacy skills were among detainees, this is an issue of concern in terms of the reliability of the person relaying the information to them. Interviewees stated that some correspondence had not been received by their clients.

¹³⁵ *Campbell v UK* (1992) 15 EHRR 137 endorsed in *R v Secretary of State for the Home Department Ex parte Leech* [1994] QB 198 and *R v Secretary of State for the Home Department, Ex parte Simms* [2000] 2 AC 115.

While Standing Order 9 provides that lawyers have to submit their property, including briefcases, for a search before entering Quamby and that legal professional privilege would not be a defence to a refusal, interviewees stated that lawyers' property is not searched. In the event that lawyers were asked to submit their property for a search, they would be fully entitled to refuse such a request on the basis of legal professional privilege.¹³⁶

While the HRO found no evidence that staff examine legal correspondence during cell searches in the absence of detainees, there should be a clear policy that staff should not.¹³⁷ Legal professional privilege attaches to correspondence with legal advisers, which is stored by a detainee in his/her cell, and accordingly such correspondence is to be protected from any unnecessary interference by staff,¹³⁸ as it could constitute a potential breach of section 12 of the HR Act (right to privacy). This is a real concern given cell searches are often conducted when detainees are in an educational or other program and not in their cells. While it is not expected that detainees are always in their cell when a search is undertaken (see cell searches section above), staff could place all legal documents in a sealed bag while they are searching the cell and wait to examine these documents in detainees' presence. This would guard against the possible perception by detainees that staff are not only checking for material likely to endanger the security of the facility or safety of others, but are improperly reading their documents. Such correspondence should only be read if there is reasonable cause to be suspicious of such material.

Recommendations:

- **A clear policy should be developed on the searching of correspondence. It should be clear what content is inappropriate to justify a letter not being forwarded to a detainee.**
- **There should be a consistent practice of forwarding letters to detainees even if sections with inappropriate content are deleted, unless the letter is offensive in its entirety.**
- **Legal correspondence should not be opened and searched unless there is a reasonable cause for suspicion that legal privilege is being abused. If correspondence is opened to remove paper clips or staples, the contents should not be read by staff.**
- **Detainees should be encouraged to choose the staff member they feel most comfortable with to explain the contents of legal or other correspondence.**
- **Lawyers' property, including their briefcases, should not be requested to be submitted for a search upon entry, except if there is reasonable**

¹³⁶ Rule 93 Standard Minimum Rules for Prisoners, Rule 18(a) Protection of Juveniles, Principle 18 Body of Principles, and article 14(3)(b) & (d) ICCPR. See also *Campbell v UK* (1992) 15 EHRR 137 at para. 46: "It was considered...that if a lawyer were unable to confer with his client without such surveillance and receive confidential instructions from him his assistance would lose much of its usefulness"; and *S v Switzerland* (1991) 14 EHRR 670 (paras 48-50) (right to communicate with lawyer out of hearing of third person).

¹³⁷ See *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532 where the House of Lords held unlawful a blanket policy requiring that prisoners be absent from their cells when privileged legal correspondence held by them in their cells was examined by prison officers.

¹³⁸ *R v Secretary of State for the Home Department, Ex parte Simms* [2000] 2 AC 115, per Kennedy LJ at p. 366.

suspicion that they are concealing contraband or non-legal information that could threaten the safety and security of Quamby.

- **The policy should require that staff are not to read any legal or welfare material in detainees' cells when they are conducting cell searches, if the detainee is absent and if there is no reasonable suspicion of inappropriate content.**

E. Use of Video Camera Surveillance

Detention necessarily entails surveillance and scrutiny. Staff are entrusted to ensure that Quamby is safe and secure and that detainees do not escape. However, there must be adequate and effective guarantees against abuse or unnecessary humiliation of detainees.¹³⁹

There are 56 video cameras throughout Quamby, and eight black and white observation monitors in the control room to monitor all security at the facility. The HRO is primarily concerned about the potential use of video surveillance in cells used by female detainees (either in the 6-bed or in two of the units with cameras in the 8-bed units). Video surveillance is monitored by staff in the control room. While the HRO was assured that the video cameras are not on all of the time - since detainees are on five minute observations in the 6-bed unit, and they avoid having it on when the detainee is going to the toilet or having a shower - a youth worker will request the control room to turn the video surveillance camera on if a detainee cannot be seen from the window slit outside the cell, and does not respond to a query as to whether they are alright, for example by waving a hand or calling out. While the monitors in the control room are not full screen size, it would be preferable to ensure that there is always mixed gender in the control room as a check and balance against potential abuse of male and female detainees.¹⁴⁰ This would go some way to guard against a potential breach of sections 11(2) (protection) and 12 (privacy) of the HR Act.

Recommendation:

- **Ensure, to the extent possible, that there is a mixed gender of staff in the control room when female detainees are being monitored by video cameras.**

F. Right to Adequate Food

International standards provide that the right to adequate food is fundamental and unconditional, it should be suitably prepared and presented at normal meal times and be of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements.¹⁴¹ The reduction of diet

¹³⁹ *Klass v Germany* (1978) 2 EHRR 214 (para. 50). See also Andrew Coyle, *Humanity in Prison: Questions of Definition and Audit*, (International Centre for Prison Studies, 2003, p.19).

¹⁴⁰ See Rule 26.4 Beijing Rules – female offenders should by no means receive less care and protection, and their fair treatment shall be ensured.

¹⁴¹ Rule 37 Protection of Juveniles and Rule 20 Standard Minimum Rules for Prisoners. Section 27 of the HR Act (right of minorities) also applies.

should not be used as a disciplinary measure,¹⁴² as it could constitute inhuman or degrading treatment in breach of section 10(1)(b) of the HR Act. While no interviewees mentioned food being denied to detainees as a disciplinary measure, at the moment the food provided to detainees does not meet appropriate standards despite efforts on the part of management to rectify the situation. There is no doubt that the quality and variety of food provided will have a major bearing on detainees' satisfaction and health.

Even though several detainees have a history of poor nutrition and diet, interviewees criticised the quality and monotony of the institutionalised food supplied to Quamby. The same type of sandwiches is supplied during the week, and dinner is provided in foil containers that most detainees eat out of with plastic cutlery. All interviewees agreed that the food is not of suitable quality. The detainees did not state that any specific dietary needs were not being met for religious or cultural reasons, nor were there complaints that food was restricted for disciplinary reasons. Detainees stated they eat a lot of toast to compensate for the quality of the food, and staff have attempted to supply more variety by providing fruit and yoghurt in the units as snacks. A BBQ lunch is provided for detainees on Fridays and take away pizza is ordered that evening.

In the past, some of the older detainees were permitted to cook for all detainees on the weekends, but this ended when some detainees threatened not to cook if demands were not met for a large amount of soft drinks. There were also occupational health and safety concerns in the potential danger of using heat.¹⁴³ Detainees are keen to reinstate responsibility for providing some weekend meals. They stated that the detainees who demanded the privileges had left and these demands would not be repeated. Management has requested the employment of a chef, which was recently approved. A hospitality course through CIT could also be offered to detainees.

Recommendations:

- **Employment of a chef should be fast-tracked. In the meantime, variety in the food provided should be improved, especially lunch.**
- **A program for the older detainees to cook on the weekend should be re-instated with adequate supervision.**

¹⁴² Rule 67 Protection of Juveniles. See also *R v Governor of HMP Frankland, ex p. Russell* [2000] 1 WLR 2027, where the court held that the governor of the prison could not withdraw or limit the provision of adequate food, no matter how uncooperative and disruptive a prisoner had become. Note, however, that if prisoners are on a hunger strike, the governor has no right or duty to force feed them; their autonomy in this regard must be respected: *Secretary of State for the Home Department v Robb* [1995] Fam. 127.

¹⁴³ Detainees alleged the cooks or servers spat in their food and some were given smaller portions than others.

G. Right to Recreation

International standards provide that detainees have the right to a suitable amount of time (at least one hour) for daily free exercise outdoors, weather permitting,¹⁴⁴ during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. The facility should ensure that each detainee is physically able to participate in the available programs of physical education. Female detainees should not receive less attention than their male counterparts. Remedial physical education and therapy should be offered to those detainees in need.¹⁴⁵ Long confinement and lack of stimulus, as well as the general lack of facilities, can contribute to depression and behavioural problems. Interviewees stated that the periods of exercise and recreation outside detainees' cells were inadequate.

Facilities at Quamby

Detainees have a small oval, a volley-ball court, a basketball court, a tennis court and there is access to a small gymnasium that accommodates up to four detainees. The volley-ball court is not used as the sand is too hard. The basketball court is not used as half of it is blocked by a demountable, although staff commented that it has never been well-utilised. The detainees mainly play tag football as they are not allowed to tackle each other. Usually the older male detainees go to the gymnasium under staff supervision. The female and younger detainees from the 8-bed unit are sometimes allowed to join in a game on the oval. Female detainees sometimes use the gymnasium, but it consists of weight equipment rather than cardio machines that are working. One detainee's bad behaviour from the 8-bed unit results in all detainees from that unit returning to that area. The 8-bed area only has a quarter hoop for basketball. Quamby management explained that the context of this practice is based on the supervision needs of all detainees of the 8-bed unit, and the available staff to carry this out. Detainees in the 6-bed unit are not allowed to associate with other detainees, and have to play outside within a small caged area.

Activities are available in the communal areas of the units until bedtime at 8:00pm for younger detainees and 9:00pm for older detainees. Detainees have the option of playing video games or watching television or videos in the communal areas of the 8 and 12 bed units. The 12-bed unit also has a pool table. There are no activities in the 6-bed unit, but a television may be provided depending on the detainees there at the time. Sporting groups visit Quamby, usually on Fridays, and run different programs for the detainees.¹⁴⁶ Popular sporting figures from rugby teams and the Australian Institute of Sport are encouraged to visit Quamby and do so on an irregular basis.

¹⁴⁴ See *Napier v The Scottish Ministers*, 2004 SLT 555 (at 75), where Lord Bonomy held that the extent a remand prisoner was confined in his cell was excessive, and the periods of exercise and recreation outside the cell were inadequate, constituting a breach of article 3 of the ECHR (degrading treatment). Only 36 prisoners out of the average of about 250 to 270 were able to enjoy physical training each day. Recreation was available for each prisoner twice a week for about an hour and a half but it was regularly cancelled because of staffing difficulties. If recreation was not available, then prisoners were locked in their cells from 7:30pm to 7:00am the following morning.

¹⁴⁵ Rule 26.1 Beijing Rules, Rule 47 Protection of Juveniles and Rule 21 SMR.

¹⁴⁶ The PCYC and Tuggeranong's Vikings Rugby Club visit Quamby regularly. However the unsatisfactory state of the oval deters rugby players and other athletes from coming.

Long lockdowns

Detainees have an hour after lunch for recreation before being locked down between 2:30 -3:30pm (for shift changeover, and there is an extra hour on Thursdays to allow staff time to catch up on paperwork, training, and external visits by detainees to professionals), and again at lock down in their units at 5:30pm. Detainees consistently complained that although they should be let out at 3:30pm, they often were not let out of their cell until 4:00 - 4:30pm, which considerably lessened the time for outdoor activities. Many detainees complained that on the weekends they were often not let out of their cell until 10:00-11:00am when they were very hungry to have breakfast,¹⁴⁷ as opposed to the official time of 8:00am on Saturdays or later on Sundays (detainees are allowed to voluntarily sleep-in). This directly impacts on the time available for recreational activities for the rest of the day.

Conflicting information was received from management, who stated that the details provided by the detainees are not consistent with the routine practice of the facility. On occasions, young people may not be let out at 3:30pm. When this occurs, the reason for the delay is explained, and they are provided with drinks. On weekends, any detainee wishing to leave their cell after 7:30am is able to do so. This is usually the time detainees choose to sleep in. Detainees are required to be out of their cells on Saturdays by 8-8:30am to do a linen change and room clean. On Sundays, they must be out of their cells by 12 noon, having cleaned and tidied their room. The HRO considers there should be random monitoring of treatment of detainees on the weekend, for example, by the Official Visitor.

Indoor multi-purpose facility

Interviewees stated that there was too much time between being placed in their units and being locked down for the evening. This contributes to tensions between detainees, and between detainees and staff. However the facility does not allow for further outdoor or indoor activities after dark. There are no lights on the oval and no multi-purpose indoor gymnasium. Concerns about the lack of a large indoor recreational facility have been raised for many years and was urgently recommended in the report by the Standing Committee on Education, Community Services and Recreation in August 2001, *The Government's Response to Recommendations 1 and 3 of Coroner Somes' Inquest into a Death at Quamby*.¹⁴⁸ Given that the new facility will not be operational until 2008, this recommendation should be urgently implemented.

Quamby is currently within the international standards on providing detainees access to recreational activities, except potentially for those detainees' in the 6-bed unit as their activities are in a small caged area. A lot of effort is made to provide activities for the detainees – several youth workers are creative in devising different programs, which is commendable. However, all interviewees expressed the desire to upgrade the facilities to enable a greater variety of recreational activities and trainings than are currently offered. There is also a firm view, which the HRO endorses, that detainees should be offered the same activities and facilities as children and young people are in schools. The HRO's main concern is to ensure that the female and younger detainees

¹⁴⁷ This was supported by other interviewees.

¹⁴⁸ See recommendation 1 of the report, and sections 2.23-2.28 of the report.

do not miss out on the recreational activities, trainings and other activities offered. The new facility should ensure there is a variety of activities offered both indoor and outdoor. In the meantime, staff should continue to create different programs for the detainees, with their input, to ensure there is some variety, lights could be considered for the oval, and access to an external secure facility should be considered.

Recommendations:

- **There should be independent monitoring of the periods of lockdown, especially on the weekends.**
- **An indoor multi-purpose recreation facility should be established as soon as possible, or alternately access should be allowed to an outside facility after 5:30pm.**
- **All youth workers should be encouraged to create different activities for detainees, and detainees should be facilitated to develop new activities they are interested in.**
- **Detainees held in the 6-bed unit must receive adequate access to recreational activities. The cage should be dismantled and any alternative security measure that is established should ensure there is more room for activities.**
- **Female detainees must receive the equivalent access to activities and trainings as males, for example cardio equipment should be installed in the gymnasium.**

H. Right to Appropriate Clothing

International standards provide that, to the extent possible, detainees should have:

- The right to wear their own clothing;
- Clothing provided by detention facilities that is not degrading or humiliating;¹⁴⁹
- Clothing is kept in clean and in proper condition; and
- When detainees are removed from or leaving the facility for any purpose, they should be allowed to wear their own clothing or other inconspicuous clothing.¹⁵⁰

It appears that Quamby is in general adhering to such standards with some exceptions. Quamby issues two sets of clothing and a pair of shoes are issued on induction (only one set if detainee is on remand for less than two days). Detainees' personal clothes and shoes are laundered and kept in an allocated locker, which can only be accessed by the detainee's key worker or the unit manager. Detainees wash clothes every day using a roster system. Detainees consistently complained about not being able to receive the same set of clothes back at the end of the day, about not being able to wear at least one personal item of clothing, and that all their clothes and surroundings were the same colour, blue.

¹⁴⁹ Note in *McFeely v UK* (1980) 3 EHRR 161, the European Commission on Human Rights held that there was nothing inherently degrading or objectionable about a requirement that prisoners wear prison uniform.

¹⁵⁰ Rule 36 Protection of Juveniles and Rule 17 SMR.

Most detainees stated that when they left Quamby to go to court, for medical appointments, or other forms of leave that they were able to wear their own clothes. However, there were some exceptions. Some detainees stated that most of them grow out of their clothes while they are at Quamby. This would be due to normal growth patterns as well as putting on weight because they receive regular meals, boredom, and the side effect of being off alcohol and drugs. The detainees wanted the opportunity to buy some new clothes before they are released. Management suggested that this could not be accommodated where there is a specific security risk.

Management explained that previously detainees were allowed to have personal items of clothing, but this was discontinued when items were bartered and went missing, leading to allegations of theft against other detainees and staff. We also understand that on occasion, detainees have been taken shopping before their release to buy new clothes with their own money. However, all detainees should be given the option of shopping for clothes before their release or during their time at Quamby if their original clothes no longer fit. They could then wear them when temporarily leaving Quamby. Detainees should not be wearing the issued clothing, as this has a stigmatising effect. In addition, Quamby could consider allowing detainees to wear their own clothes during visits.

Recommendations:

- **There should be consideration given to changing the colour of the issued clothing (having the top or pants a different colour).**
- **Whenever a detainee is leaving Quamby s/he must be wearing their own clothing.**
- **Detainees should be given the option before leaving Quamby, for whatever reason, to go shopping for new clothes (especially if their clothes no longer fit). If there are security concerns such as high risk of escape, then the family of the detainee should be contacted to organise appropriate clothing.**
- **Quamby should allow, at regular intervals, some personal items of clothing to be worn, especially for detainees on remand.**

I. Right to Receive Visits and Telephone Access

It is an essential part of both private life and the rehabilitation of detainees that their contact with the outside world be maintained as far as practicable, for example, by allowing friends to visit and correspondence between them and others.¹⁵¹ International standards provide that detainees have the right to receive regular and frequent visits, not less than once a month and to communicate in writing or by telephone at least twice a week, unless legally restricted.¹⁵² Non-compliance could potentially breach sections 11(2) (protection) and 12 (privacy) of the HR Act.

¹⁵¹ *X v UK*, App.No.054/80; 30 DR 113 and Rule 59 Protection of Juveniles.

¹⁵² See Rules 59-61 Protection of Juveniles, Rule 26.5 Beijing Rules, Rule 37 SMR, Rule 20 Vienna Guidelines, articles 9(3) and 16 CRC.

The interviewees indicated that Quamby provides adequate communication in the form of visits and telephone calls with family members and friends. Detainees can receive visitors three days a week (including the weekend),¹⁵³ are allowed to make two outgoing calls three nights a week and receive one incoming call on a non-outgoing telephone night (except for Mondays). Quamby also appears to be flexible in allowing visits outside normal visiting hours when requested. This level of contact is in accordance with international standards.

It does appear, however, that there is some confusion over who will be given approval to visit and how that is recorded to ensure that approved visitors are not turned away. The approved list of visitors and telephone contacts for each detainee is kept in the control room. While there is no maximum number of contacts, most detainees did not have many approved visitors or telephone contacts. Detainees claimed that friends and family members who are ex-detainees are not given approval to visit or to telephone. The decision for ex-detainee family members to visit detainees is made on a case-by-case basis. Given that these family members may be a source of bad influence, such visits could be supervised. If they are ATSI, the visits could be supervised by Gudan Gulwan or the South East Aboriginal Legal Service. Detainees also did not feel that many of their other friends would get approval, despite their parents giving permission. Both the decision-making and appeal process for the approval of visitors should be clarified to minimize confusion and the perception of arbitrariness.¹⁵⁴ This is especially important if an approved person is no longer allowed to visit. The detainee should be informed as to why this person will not be visiting anymore. Friends and other members of their community assume an even greater importance if family members do not regularly visit. It should be noted that Quamby staff do go out of their way to assist family members to visit a detainee.¹⁵⁵

Detainees have reasonable, although not ideal, access to a telephone to make outgoing calls and to receive incoming calls. They are allowed to make two outgoing calls from their unit on three designated days. They have to request the control room to put them through to the requested number. The control room has a list of approved contacts, informs the receiver of the call as to the identity of the detainee and asks whether they wish to accept the call from Quamby. Each of the two calls should not exceed five minutes, or they can be combined into one ten-minute call. There is no limitation on STD calls or calls to mobile phones. Staff may be flexible in allowing longer phone calls when the units are not full. This flexibility is noteworthy, as while calls are capped at five minutes to ensure equitable access, this is a very short timeframe, especially for those detainees whose family members and/or friends cannot easily visit them. In addition, only allowing detainees to receive one incoming call on their non-outgoing telephone days (except Mondays) may also be restrictive depending on the individual circumstances of the detainee, for example if they do not receive many visits from family and friends. Discretion is required on the part of Quamby to ensure that the detainee is not unduly isolated from their family and community. Given the

¹⁵³ Twice during the week and once on the weekend.

¹⁵⁴ Standing Order 9 is inconsistent with the Policy and Procedures Manual.

¹⁵⁵ See Standing Committee on Community Services and Social Equity's report, *The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence*, Report 06, June 2004, p. 95, and through interviews conducted at Quamby between 31 May – 10 June.

recognition of how crucial it is for detainees to stay in contact with the outside world, this is not an ideal arrangement. Phone calls should be for at least 10 minutes.¹⁵⁶

There appeared to be no problem in detainees requesting calls to their legal representative, the Official Visitor, the Office of the Community Advocate or the ACT Ombudsman's Office at any time, or in receiving return calls, although there may be some delay due to the schedules of these contacts (for example, due to regular court appearances).

An important issue is the lack of privacy surrounding the use of the telephone. Each unit has one or two telephones. While telephone calls are not monitored, they are in an open area and telephone conversations are easily heard. This is of particular concern in relation to welfare and legal calls, and calls to complaint handling agencies in which confidentiality should be ensured. This will be discussed in more detail in the section on the complaints process.

Recommendations:

- **There needs to be flexibility and transparency in considering requests for approving visits and telephone contacts with friends, and other members of the community.**
- **Ex-detainees, especially if they are family members, should not be automatically excluded from having supervised visits.**
- **Lists of approved visitors and telephone numbers in the control room should be up to date for each detainee.**
- **A telephone system should be installed that would allow detainees longer and more outgoing calls on their designated days.**¹⁵⁷
- **Improvements should be made for protecting privacy when detainees are making or receiving telephone calls.**
- **Protections need to be provided when detainees are making or receiving welfare or legal telephone calls.**

J. Maintenance of Family Relationships

Quamby should allow visits by children of detainees where a court decision has given the detainee a right to access his or her child(ren). The separation of detainees and their families, and the distress resulting from it, are inherent in detention. However, the issue is whether the interference with the right to family life protected in sections 11 and 12 of the HR Act, to which the detainee is entitled, 'goes beyond what would normally be accepted in the case of an ordinary detainee'.¹⁵⁸ This will need to be assessed on a case-by-case basis. While none of the detainees interviewed at the time of the audit had any children, Quamby should be flexible in terms of visiting hours given the evenings may be unsuitable to visit for babies or for young children, and either allow more access within Quamby beyond the visiting cells which are small and

¹⁵⁶ *Ibid*, p. 98.

¹⁵⁷ *Ibid*, endorsing recommendation 34, p. 99.

¹⁵⁸ *X v UK*, Coll.46 (1974), (para. 116)

cramped, or provide an adequate and safe play area and facilities for infants and young children.¹⁵⁹

Quamby should be prepared for the possibility of a female detainee giving birth while there, an event that nearly occurred in the past.¹⁶⁰ Separation of mother and child may give rise to an unjustifiable interference in family life.¹⁶¹ International standards provide that the mother should be provided with appropriate pre and post-natal care and treatment, and where the infant is breastfeeding, should be allowed to remain in the facility. To enable this to occur, there should be a nursery staffed by qualified persons when the infant is not in the care of its mother.¹⁶²

The HRO endorses the recommendations made in the June 2004 Standing Committee on Community Services and Social Equity's report, *The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence*, to allow primary caregivers, whether on remand or sentenced, to maintain children up to pre-school age with them, where that is assessed as being in the child's best interests, and to make available parent education programs for both expectant mothers and other parents in Quamby.¹⁶³

Recommendation:

- **Primary caregivers should be allowed, whether on remand or sentenced, to maintain care and contact with their children up to pre-school age, where that is assessed as being in the child's best interests, and to make available parent education programs for both expectant mothers and other parents in Quamby.**

K. Record Keeping

International standards provide that all reports should be placed on a confidential individual file, which should be updated regularly and accessible only to authorized persons. Details of the commitment order should be immediately entered. Upon release, records will be sealed and, at an appropriate time, expunged. Detainees should have the right to contest any fact or opinion on his or her file; and there should be procedures in place to enable this to occur.¹⁶⁴

Each detainee at Quamby has an individual file. The file includes their action sheet on induction, court records, psychological assessments (general and forensic), health

¹⁵⁹ See Standing Committee on Community Services and Social Equity's report, *The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence*, Report 06, June 2004, p. 76.

¹⁶⁰ See *ibid*, Transcript of Evidence, 25 March 2004, p. 162.

¹⁶¹ The European Commission on Human Rights found admissible a complaint that the separation of an imprisoned mother who was breastfeeding her child was an unjustified interference in family life: *Togher v UK* 25 EHRR.CD99. However in *Kluever v Norway* App. No.45837/99, Dec. 3-4.02, the European Court of Human Rights held that a complaint regarding the separation of a newly born infant from the detained mother was unfounded, taking account of the conditions of the prison, her escape attempts and the arrangements for frequent visits. There should be an assessment of the adverse effect on the baby of separation from the mother, and/or of the proposed care arrangements: *R v Secretary of State for the Home Department ex parte (1) CD and (2) AD* (2003).

¹⁶² See Rule 23 SMR, and article 24(d) & (e) CRC.

¹⁶³ Report 06, June 2004, recommendations 12, 14 and 35.

¹⁶⁴ See Rules 19-20 Protection of Juveniles and Rule 21 Beijing Rules.

information, case plans, case notes and conferences, visitors approved and received, external appointments and visits (education, recreation, family), information from external agencies, incident reports, individual education learning plans,¹⁶⁵ and their remission record (if under sentence). Quamby recently contracted a record keeper to ensure that files are up to date, but that contract may not be renewed due to budget constraints. These records have proved essential, as discovered by Coroner Somes' inquest into the death in custody at Quamby in 1996.¹⁶⁶ All staff can access detainees' files. File caretakers and key workers are responsible for filing and ensuring that all files are up to date. There is no other administrative support at Quamby to ensure the files are maintained. The need to systematically update detainees' files and to enable constant and consistent access for all staff is imperative in such a complex and busy operating environment.

Many important records are generated at Quamby: the different log books regarding the control room, visits, consequences, incidents, observations, time out, and seclusion along with the restraints and complaints registers, and case notes, are among those that are very significant in its day-to-day running. Currently, information about each detainee is mainly relayed orally through the debriefing and briefing sessions held in the staff demountable at the end and beginning of each shift. Technical information is also displayed on a white board. Both sorts of information should be in writing with clear instructions as to the responsibilities of each staff member about the supervision and care of each individual detainee. An appropriate database should be acquired so that all relevant information for each detainee can be kept in one place and updated at the end of every shift. All staff members would need to be able to access computers and have training on how to use the database.¹⁶⁷ There would need to be clear instructions about who is responsible for generating what information for each detainee's file. This would need a degree of oversight by senior management to ensure consistency across all files.

Recommendation:

- **The file management process and procedures should be reviewed to ensure that information is comprehensive and up-to-date for all detainees and can be accessed easily and quickly when required. An electronic database should be established for this purpose.**

L. Right to Information on the Rules, Rights and Obligations

International standards provide that all juveniles should be given a copy of the rules governing the facility and a description of their rights and obligations in a language they understand, addresses of authorities that can receive complaints and addresses of organisations or agencies that can provide legal advice. If they have low literacy skills, information should be conveyed in another manner to enable full comprehension.¹⁶⁸ Not to adhere to these procedures could potentially breach section 8 of the HR Act (recognition and equality).

¹⁶⁵ At this stage individual learning plans are established for those under sentence. The educators are hoping to complete individual learning plans for all categories of detainees' by the end of the year.

¹⁶⁶ See Coroner Somes' Inquest into the Manner and Cause of Death [at Quamby], 28 June 1999, p. 82.

¹⁶⁷ This was recommended in *ibid*, 28 June 1999, pps. 64 and 82.

¹⁶⁸ Rule 24 Protection of Juveniles and Rule 35 SMR.

A review of admission processes at Quamby indicates that the detainees were generally informed about the operational rules of Quamby at the time they were inducted. Detainees were informed verbally when they first arrived, unless they were returning to Quamby and were known by staff. It appears an interpreter has not been required, as staff members with particular language skills have been able to assist when the need has arisen. Most detainees were aware of the detainees' code of conduct handbook, although many did not have it to refer to in their cell. Some detainees said they read it and gave it back to a staff member, as they felt they did not need it, others said they kept it so they could check whether staff were adhering to the stated consequences for misbehaviour. Staff members stated that copies of the handbook are kept in each unit and can be produced on request. However, detainees, staff and management all stated that the content in the handbook is out of date and cannot be relied on (for example, the visiting times are not correct).¹⁶⁹ Quamby must ensure that all detainees are aware of the current operational rules of the institution to minimize unnecessary misunderstandings. While such information is communicated verbally, it must also be in written form to avoid confusion. This should be rectified as soon as possible.

From the detainees surveyed, it was clear that they were not adequately provided with sufficient information concerning not only the rules, but what their rights and obligations are at Quamby. Crucial information is out of date on disciplinary requirements and making complaints.¹⁷⁰ In both cases, the information provided is too brief, given the importance of these issues. A revised handbook should set out in full both the behaviour management system, and the internal and external complaints processes. Addresses and other contact information should be provided for the external agencies.¹⁷¹ Staff showed little or no awareness about the international rules and standards governing the treatment of children and young people in detention.

Recommendations:

- **The detainees' handbook must be updated as a priority;**
- **Detainees must be informed of their rights and obligations, as well as the operating rules.**
- **Staff must be given a copy of relevant international rules and standards regarding the protection of juveniles in detention.**

¹⁶⁹ See ACT Legislative Assembly Standing Committee on Community Services and Social Equity Report No 6, *The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence*, June 2004, para. 9.23, where the visiting times are incorrectly stated as the Committee based their information on the handbook.

¹⁷⁰ See Rule 35 Standard Minimum Rules, Principles 13 and 14 of the Body of Principles and Rule 11(b) of the Vienna Guidelines (the CRC and the UN standards and norms in juvenile justice should be made widely known to children).

¹⁷¹ See Rule 24 Protection of Juveniles.

M. Access to Lawyers

International standards provide that detainees are entitled to:

- Legal assistance (free, if necessary and available);
- Adequate time and facilities to prepare their defence;
- Visited by, and to consult and communicate without delay or censorship, and in full confidentiality;
- Interviews may be within sight but not within hearing.

Non-compliance with these standards could potentially breach section 22(2)(b) of the HR Act. A review of detainees' access to lawyers revealed that they have access to a legal adviser, usually from ACT Legal Aid or the South-East Aboriginal Legal Service (SEALS), and appropriate access is provided by Quamby. However, SEALS is not automatically notified when a young person who identifies as ATSI enters Quamby. Detainees are allowed to call their lawyers when they wish to, and receive visits from lawyers outside normal visiting hours by prior appointment. However, there was a perception among some detainees that the control room delays making these calls. Quamby logs all calls including those made to lawyers. It appears that some lawyers do not always respond to the calls with the urgency the detainees consider reasonable. Visits by lawyers are not supervised unless the lawyer requests or if Quamby has safety concerns.¹⁷² A staff member would, however, not be inside the visiting room but placed outside the room to ensure that they would be in sight but not hearing.¹⁷³ Therefore, Quamby's operating practices appears to conform with international standards. The HRO's concern relating to searching of legal correspondence has already been discussed.

Recommendation:

- **The South East Aboriginal Legal Service should be advised on entry to Quamby when detainees identify as ATSI and consent to notification.**

N. Access to Media

A blanket policy prohibiting contact with the media breaches detainees' right to freedom of expression contained in section 16 of the HR Act. While media representatives are not explicitly precluded from visiting Quamby, Standing Order 9.11 and 9.12 states the Operations Manager has discretion to refuse such visitors.

Interviewees stated that detainees are not allowed contact with the media, and detainees were either not aware or unsure of whether they are allowed contact. However, a Canberra Times journalist attended the open day held at Quamby during

¹⁷² Rule 18(a) Protection of Juveniles provides that juveniles have the right of legal counsel and be enabled to apply for free legal aid...and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications'. See also, art. 22(2)(b) HR Act, Rule 93 SMR, Principles 17 and 18 of the Body of Principles, art. 14(3)(b) and (d) of the ICCPR and art. 40(ii) CRC.

¹⁷³ However, according to Standing Order 9 the operations manager has the discretion to allocate a youth worker to supervise any visits.

Youth Week, which led to front-page articles about Quamby on 12 and 13 April.¹⁷⁴ Some detainees expressed interest in writing letters to the editor, or journalists from the Canberra Times and contacting radio stations (mainly to request songs; detainees are not allowed walkmans or CDs).

Appropriate letters concerning the conditions or treatment of detainees at Quamby should be forwarded to the media.¹⁷⁵ Telephone calls by detainees to the media should also be allowed in controlled circumstances. There is a concern that there would be insufficient opportunity to monitor and control what was ultimately published, which may cause offence to victims and their relatives or undermine the good order and discipline at Quamby. To address this concern, substantial safeguards could be put in place.¹⁷⁶ For example, the journalist could be asked to indicate the scope of the interview, the call could be monitored and both the detainee and the journalist could be asked to give assurances as to the content,¹⁷⁷ and that it would not be broadcast live to air. Detainees should be made aware of what content should not be in letters to the editor or journalists. While letters would not be searched, Quamby could notify the newspaper forewarning them that a letter will be received from a detainee and seek an assurance that nothing will be published, which either identifies the detainee or other detainees or staff members, or effect the security and good order of Quamby. The HRO is aware that there have been incidents in the past where the media has released identifying information about detainees, and this needs to be addressed in the policy developed.

Recommendation:

- **Detainees should have controlled access to the media with appropriate safeguards in place.**

O. Books, Magazines, Newspapers, Television and Videos

Quamby appears to largely conform with international standards, which provide the right of detainees to obtain, within reasonable limits of available resources, educational, cultural and informational material.¹⁷⁸ Detainees indicated that they were satisfied with the books, newspapers and videos available at Quamby. Detainees receive books either from the mini-borrowing scheme (emulating a library system) at Quamby or from family members. Detainees are able to request books, which will be

¹⁷⁴ 'Quamby's Walls of Shame' 12 April 2005, and D McLennan, '\$40m to Replace Quamby Sooner', 13 April 2005.

¹⁷⁵ See *R v Home Secretary ex parte Hirst* [2002] EWCA Civ 602. Hirst was an advocate for prisoners' rights. He was refused permission to speak to the media on issues relating to prisons and prisoners. The Court held that the curtailment of prisoners' free speech rights was not part and parcel of his sentence and therefore had to be subject to the full proportionality test in order to be justified. It found the policy that denied the claimant the right to contact the media by telephone whenever his purpose was to comment on matters of legitimate public interest was unlawful.

¹⁷⁶ UK case law supports this position. See *R v Home Secretary ex parte Leech* [1994] QB 198; *R v Home Secretary ex parte Simms* (2000) 2 AC 115; *R v Home Secretary ex parte Daly* [2000] 2 AC 532; and *R v Secretary of State for the Home Department West London Mental Health Trust* EWHC [2003] 2846 (Admin).

¹⁷⁷ *Hirst* *opcit.*

¹⁷⁸ See Principle 28 of the Body of Principles, Rules 41 & 62 Protection of Juveniles, Rule 40 SMR, and art. 17 CRC.

considered and bought if they can be used as a shared resource. Newspapers are delivered three times a week, but not on weekends when they have more time to read. Magazines are difficult to make available, due to inappropriate content in them, even those marketed towards teenagers.¹⁷⁹

At the time of the audit, televisions appeared not to be working properly in some detainees' cells, but this should be rectified in the near future.¹⁸⁰ A survey of the videos in the 8-bed unit showed there were a number of videos rated M+15. While recognizing that not all M+15 have inappropriate content, given that the 8-bed unit is a mixed population (younger boys with female detainees), detainees who are under 15 should not be allowed to watch these videos. A M+15 video should only be viewed after lockdown of the younger detainees. A number of videos surveyed in the 12-bed unit had violent content. Staff are allowed to bring in videos and DVDs on the weekends as a treat for detainees, which must be approved by the Unit Manager on duty. While this is commendable, there needs to be an explicit policy to ensure the content and classification of the videos/DVDs are appropriate to all viewers. There should be oversight by senior management to ensure this is being adhered to.

Recommendations:

- **Management should oversight videos and DVDs brought into Quamby to ensure appropriate content and classification.**
- **Weekend newspapers should be delivered and made available to detainees.**

P. Access to Computers and the Internet

All detainees complained about the lack of access to and quality of computers and the internet. However, the Hindmarsh Education Centre is in the process of upgrading the computers to ensure there is computer access in a number of education programs by third semester in 2005, depending on the service provider's timeliness. Internet will be available to detainees, as it would be if they were in a mainstream school and sites will be blocked that are blocked for all schools by the Department of Education and Training. Email accounts will be set up, but only for internal use for skills learning. However, given that emails and text messages from mobile phones are the way most teenagers communicate today, rather than writing letters, detainees should be encouraged to write emails to family members and friends on their approved contact list. Emails could be sent in bulk at the end of the day or every two days after monitoring to ensure emails are only being sent to approved contacts. Software could also be installed which catches keywords or phrases, to guard against inappropriate content being sent.

¹⁷⁹ Teenage and car magazines have explicit sexual content.

¹⁸⁰ Quamby is waiting for aerials to be mounted for each cell. This will allow identification of which televisions are in need of repair – some of them have been damaged by detainees, but not necessarily the current detainee in the cell. Televisions are in all unit shared areas and in the cells of the 8 and 12-bed units. Only detainees facing consequences and in the 6-bed unit do not have a television in their cells.

Recommendation:

- **Email accounts for detainees should be set up for external use with appropriate monitoring to ensure emails are only sent to approved contacts before being sent in bulk.**

Q. Right to Access Complaints Processes

International standards provide for the right of detainees to make complaints both internally and to external agencies.¹⁸¹ They provide, in part, that:

- Detainees should have the opportunity to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay;¹⁸²
- Qualified inspectors should be empowered to conduct inspections on a regular basis;¹⁸³
- Inspectors should enjoy full guarantees of independence in exercising their functions, have access to all detainees and to all records of such facilities;¹⁸⁴
- Detainees should be permitted to communicate freely and confidentially with the monitoring bodies;¹⁸⁵
- Inspectors should maintain confidentiality if requested by the complainant;¹⁸⁶
- Complaints should be promptly dealt with and replied to without undue delay¹⁸⁷ unless it is evidently frivolous or groundless.¹⁸⁸

Internal process

There is an emphasis on attempting to resolve issues internally before contacting external agencies, in order to resolve an issue quickly. Detainees are required to fill in an internal detainee complaint form and give it to their key worker or youth worker, who is required to give it to the Unit Manager. The complaints range from requests for variety of food and recreational activities, to requests for a review of 'consequences' received as a disciplinary measure and unfair treatment by staff members.¹⁸⁹ The Unit Manager is responsible for addressing the complaint, informing the detainee and ensuring the detainee is satisfied with the outcome, or whether further action is required. The form is given to the Operations Manager who signs and dates it and places it on the complaints register. Complaints of a very serious nature,

¹⁸¹ See Rules 72-78 Protection of Juveniles; Rules 21 & 22 Vienna Guidelines; Rules 35-36 & 55 SMR; and Principles 29 & 33 of the Body of Principles.

¹⁸² Rule 76 Protection of Juveniles; articles 12 and 13 CRC; Principle 36 SMR; Principle 30(2) Body of Principles.

¹⁸³ Rule 72 Protection of Juveniles.

¹⁸⁴ *Ibid.*

¹⁸⁵ Rule 21 Vienna Guidelines.

¹⁸⁶ Principle 33(3) of the Body of Principles.

¹⁸⁷ Principle 33(4) of the Body of Principles.

¹⁸⁸ Rule 36(4) SMR.

¹⁸⁹ See OCA's *Annual Report 2003-2004*, pp. 82-3 found at:

http://www.oca.act.gov.au/publications/pdfs/oca_ar/OCA0304AnnualReport.pdf, and the Official Visitors Annual Reports, August 2004 and 2002-2003 in Department of Education, Youth and Family Services *Annual Report 2002-2003*, pps. 228-235.

such as alleged assault by a staff member against a detainee, are dealt with under a separate process.

A majority of the detainees expressed dissatisfaction with the current complaints process. Detainees consistently stated that they are often not informed or consulted while the complaint is being dealt with, or after about whether they are satisfied with the outcome.

External agencies

Detainees at Quamby have access to external complaint handling agencies:

- The Official Visitor,
- The Office of the Community Advocate (OCA); and
- The ACT Ombudsman's Office.

The Official Visitor and the Office of the Community Advocate (OCA) visit Quamby on a regular basis (fortnightly and monthly respectively) meeting with detainees and listening to any questions or concerns they have, and raising those concerns and following up on issues with management.

A number of detainees appeared confused between the Official Visitors and OCA and how they operate. The Official Visitor was believed to have been required under section 42 of the CYP Act to visit and inspect Quamby, hear and investigate complaints made by detainees or a referral of a complaint by another person about the detainee's care, detention and/or treatment. It was discovered in May 2005 that the Official Visitors were appointed using an incorrect instrument in 2003. This was corrected through amending legislation introduced to the Legislative Assembly on 21 June 2005, which provides for their retrospective appointment through a Disallowable Instrument.

The OCA undertakes a range of functions on behalf of children and young people,¹⁹⁰ including meeting with detainees to explain their rights, listening to any questions or concerns they may have, and advocating to have these questions or concerns addressed. There is potential for overlap between the two bodies. However, the Official Visitor deals primarily with matters raised by detainees that are internal to Quamby, such as concerns regarding the provision of services, and general administration and maintenance issues, for example, cleanliness, heating, food, and programs. The OCA follows up on issues raised that may be either internal or external to Quamby, and may represent detainees before courts, tribunals or at their case conferences if requested. The OCA also identifies and raises systemic issues of concern. The Official Visitor and the OCA may discuss with each other issues arising from their visits and agree that a particular issue is to be handled by either, or both, agencies. If the matter is serious, they inform each other. They have, in the past, both been requested by Quamby to attend meetings addressing complaints made by detainees. Both the Official Visitor and the OCA are aware of the need to clarify their roles and taking steps in that regard.

¹⁹⁰ Sections 13 and 14 of the *Community Advocate Act 1991*.

Where a detainee has filled in an internal complaint form and complains to the Official Visitor that s/he has either not heard or is unhappy about the outcome, the Official Visitor will inquire with management about the complaint, its status and outcome, and inform the detainee on a subsequent visit.¹⁹¹ Such inquiries will be made verbally, by email, or if it is of a serious nature in a formal letter. If the investigation requires access to the detainee's records, the Official Visitor needs the detainee's written consent. If the detainee is not satisfied with the outcome from this process, the Official Visitor will discuss other options, such as contacting the OCA or the ACT Ombudsman's Office.

Confidentiality concerns and areas for improvement

While it is understandable that Quamby encourages detainees to seek resolution of a complaint initially through the internal complaints procedure there will be times when the complaint is of such a nature that the detainee might legitimately prefer to take it directly to an external agency.¹⁹² Detainees are allowed to call the Official Visitor, OCA and ACT Ombudsman's Office outside of designated telephone hours. However, the detainee has to request a staff member to ask the control room to put the call through to the external agency. While it appears that the control room places these calls through immediately (although some detainees felt that sometimes the calls were deliberately delayed), and the calls are not monitored, calls are made in the open area of the units, therefore undermining confidentiality. These factors potentially inhibit the use of these external complaint mechanisms. Detainees should be able to contact the external agencies by direct dialing. The telephones in the units should have direct dialing capability for this purpose. Staff monitoring the area where the detainee is calling from should ensure that they are not within hearing range and should not require the detainee to explain who they were calling or why.

The Official Visitor and OCA should be guaranteed access, as authorized persons, to detainees' records when investigating a complaint.¹⁹³ Detainees should be able to communicate confidentially with external monitoring agencies, and their complaints should be promptly dealt with. They should be consulted at regular intervals, and confirmation must be received that detainees are satisfied with the outcome.

Other areas for improvement in the complaints process include separating out the issues of complaint and ensuring the number of hands forms go through is lessened. There should be two parts to the complaints form, one for general issues, (for example on issues such as food, heating, mirrors, toasters, and recreation), and a serrated form for serious matters (for example, treatment by staff and requests for review of consequences or loss of remissions) which should go directly to the Operations Manager. The forms should be numbered to ensure they are not lost and easily tracked. Complaints concerning the loss of remissions should be dealt with by an independent body (see BMS section on right to appeal). The OCA should be notified so that they can provide representation to the child or young person if requested.

¹⁹¹ Unless the complainant has already left Quamby, is in court that day, or does not want to discuss it.

¹⁹² Including where literacy is a problem and the detainee does not want to seek assistance from a staff member.

¹⁹³ See Rule 21 Beijing Rules (records should be kept strictly confidential and closed to third parties; access shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons).

Recommendations:

- **The complaint forms should be numbered to ensure appropriate tracking.**
- **The complaint form should separate general and serious issues regarding detainees' treatment, consequences and loss of remissions. In the latter case, the form should go directly to the Operations Manager.**
- **Detainees should be consulted and informed throughout the process of dealing with their complaint. If there are several complaints on the same issue, all detainees should be informed at regular intervals about the progress of their complaint.**
- **Complaints regarding the loss of remissions should be addressed by an independent body.**

Annex I – ACT Human Rights Act and International Human Rights Standards on Treatment of Children and Young People in Detention Facilities

ACT Human Rights Act 2004	International Standards
<p>No unlawful or arbitrary arrest or detention</p> <p>S. 18(1) HR Act</p>	<p>No child should be detained or imprisoned unlawfully or arbitrarily. Detention or imprisonment or institutionalisation should only be used as a measure of last resort & for the shortest appropriate period of time & should be limited to exceptional cases.</p> <p>Art. 37(b) CRC¹⁹⁴ Rule 1 & 2 Protection of Juveniles¹⁹⁵ Rule 19.1 Beijing Rules¹⁹⁶ Art. 9(1) ICCPR¹⁹⁷ Principle 2 Body of Principles.¹⁹⁸</p>
<p>Detention pending trial</p> <p>S.18(4), (5), s.20(1), (2), (3) & s. 22(1), (2), (3) HR Act</p>	<p>Presumption of innocence; shall only be used as a measure of last resort & for shortest time possible.</p> <p>Shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in educational setting or home.</p> <p>Are entitled to all rights & guarantees of the Standard Minimum Rules for the Treatment of Prisoners¹⁹⁹ & ICCPR (especially articles 9 & 10).</p> <p>Shall be kept separate from adults & be detained in a separate institution or in a separate part of an institution also holding adults.</p> <p>Untried juveniles should be separated from convicted juveniles.</p> <p>Right to legal counsel & free interpreter if language is not understood.</p> <p>Shall receive care, protection and necessary individual assistance</p>

¹⁹⁴ Convention on the Rights of the Child 1989.

¹⁹⁵ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (adopted by General Assembly resolution 45/113 of 14 December 1990).

¹⁹⁶ The Standard Minimum Rules for the Administration of Juvenile Justice (adopted by General Assembly resolution 40/33 of 29 November 1985) ('Beijing Rules').

¹⁹⁷ The International Covenant on Civil and Political Rights 1966.

¹⁹⁸ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (adopted by General Assembly resolution 43/173 of 9 December 1988).

¹⁹⁹ The Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977).

	<p>in view of their age, sex & personality.</p> <p>Rule 13 Beijing Rules Rules 17-18 Protection of Juveniles Art 40(2) CRC</p>
<p>Place of detention</p> <p>S.11 HR Act</p>	<p>If detained, children must not be held under prison-like conditions.</p> <p>Open facilities with no or minimal security measures. Number of detainees in closed facilities should be small enough to enable individualised treatment.</p> <p>Size should facilitate access & contact with & between juveniles and their families.</p> <p>Rule 30 Protection of Juveniles</p>
<p>Records</p> <p>S.12 HR Act</p>	<p>All reports should be placed on confidential individual file, which should be updated regularly & accessible only to authorised persons.</p> <p>Juvenile should have the right to contest any fact or opinion in his/her file – there should be procedures to follow.</p> <p>Upon release, records will be sealed &, at an appropriate time, expunged.</p> <p>Details of the commitment order should be immediately entered in the register.</p> <p>Rules 19-20 Protection of Juveniles Rule 21 Beijing Rules</p>
<p>Admission, registration, movement & transfer</p> <p>S.8 HR Act</p>	<p>Information should be kept on: identity; reasons for commitment; day & hour of admission, transfer & release; notifications to parents & guardians at time of commitment; physical & mental health problems, including drug & alcohol abuse.</p> <p>After reception, full reports & relevant information should be drawn up & given to the administration.</p> <p>On admission, juveniles should be given a copy of the rules governing the facility, a description of their rights & obligations in a language they understand; addresses of authorities that can receive complaints; addresses of organisations/agencies that can provide legal advice. If illiterate or cannot understand the language in written form, information should be conveyed in another manner to enable full comprehension.</p>

	<p>Right to an interpreter, in particular during medical examinations & disciplinary hearings.</p> <p>Right to be allowed to immediately inform family of detention.</p> <p>Transport – no subjection to hardship or indignity, as little public exposure as possible, proper ventilation.</p> <p>Rules 21-26 Protection of Juveniles Rule 11(b) Vienna Guidelines²⁰⁰ Rules 35, 45 & 92 SMR Prisoners Principles 13-16 Body of Principles</p>
<p>Classification & placement</p> <p>S. 19(2), 20(1) & (3) HR Act</p>	<p>Shortly after admission, should be interviewed - psychological & social report identifying factors relevant to specific type & level of care & program required should be prepared. This report & medical report should be forwarded to director to determine appropriate placement in facility & specific type & level of care & program required.</p> <p>Detention to take place under conditions that take full account of their particular needs, status and special requirements according to age, personality, sex & type of offence, mental & physical health.</p> <p>Principle criterion for separation of different categories should be provision of type of care best suited to particular needs of the individuals & protection of their physical, mental & moral integrity & well-being.</p> <p>Untried prisoners should be kept separate from convicted prisoners & be detained in separate institutions.</p> <p>Convicted juvenile offenders should be segregated from adults (unless they are members of the same family) [NB Australia has a reservation to art. 37 CRC – accepted only to the extent it is feasible & consistent with child able to maintain contact with family].</p> <p>Men & women shall as far as possible be detained in separate institutions – if not, the premises allocated to women should be entirely separate.</p> <p>Rules 27-29 Protection of Juveniles Rule 26.3 Beijing Rules Rules 8, 67-69, 85 SMR Prisoners Principle 8 Body of Principles</p>

²⁰⁰ The Guidelines for Action on Children in the Criminal Justice System (annexed to Economic and Social Council resolution 1997/30 of 21 July 1997).

	<p>Art. 20, 34 CRC Art. 10(2) ICCPR</p>
<p>Physical environment and accommodation</p> <p>S.11(2), s.20(2), (4) HR Act (protection of child & appropriate treatment)</p>	<p>Design in keeping with rehabilitative aim of residential treatment – minimise risk of fire & ensure safe evacuation from premises.</p> <p>Sleeping accommodation: small group dormitories or individual bedrooms (for untried residents); unobtrusive supervision; regular sleeping hours; sufficient bedding, which should be clean when issued & changed often enough to ensure cleanliness.</p> <p>Dormitories should be regularly supervised at night & detainees carefully selected as being suitable.</p> <p>Sanitary installations; personal hygiene.</p> <p>Possession of personal effects – inventory if not kept – returned in good condition, except as authorised to dispense.</p> <p>Right to choose their own clothing – removed from or leaving should be allowed to wear their own clothing.</p> <p>Rules 31-36 Protection of Juveniles Rules 9(2), 10, 15-20, 43, 86 & 88 SMR Prisoners Art. 10(2) ICCPR</p>
<p>Education, vocational training & work</p> <p>S. 26 HR Act.</p>	<p>Compulsory age: right to education provided outside facility – special education if illiterate or has cognitive or learning difficulties.</p> <p>If above compulsory age but wish to continue education, effort must be made to provide access.</p> <p>Diplomas or educational certificates awarded should not indicate that juvenile has been institutionalised.</p> <p>Right to obtain within limits of available resources reasonable quantities of educational, cultural & informational material.</p> <p>Access to a library.</p> <p>Right to receive vocational training in occupations likely to prepare them for future employment.</p> <p>Should be able to choose type of work they wish to perform & be remunerated – right to equitable remuneration.</p> <p>Rules 13 & 38-46 Protection of Juveniles Rules 26.1 & 26.2 Beijing Rules Rules 40, 71-77, 89 SMR Prisoners</p>

	Principles 6 & 8 Basic Principles for the Treatment of Prisoners ²⁰¹ Principle 28 Body of Principles Arts 17(c), 28, 29, 32 CRC Art. 8(1), (2), (3)(a) & (c) ICCPR. Arts. 6-7, 10(3), 13 ICESCR ²⁰²
Food Sections 8(2), 11(2) & 27 HR Act.	Food must be suitably prepared & presented at normal meal times & of a quality & quantity to satisfy the standards of dietetics, hygiene & health, be of wholesome quality &, as far as possible, religious & cultural requirements. Reduction of diet should not be imposed as a disciplinary measure. Rules 37 & 67 Protection of Juveniles. Rule 20 SMR Prisoners.
Recreation Sections 8(2) & 11(2) HR Act	Right to a suitable amount of time for daily exercise outdoors weather permitting; adequate space, installations & equipment should be provided; arts & crafts; remedial physical education for those in need. Rule 47 Protection of Juveniles Rule 21(2) SMR Prisoners Art 31 CRC
Religion Sections 14 & 27 HR Act.	Allowed to satisfy needs of religious & spiritual life. Regular services to be provided if a sufficient number of juveniles of a given religion; right to receive visits from a qualified representative of any religion, right not to participate in religious services. Rules 4 & 48 Protection of Juveniles Rules 41-42 SMR Prisoners Principle 3, Basic Principles for the Treatment of Prisoners Arts. 14 & 30 CRC Arts. 18 & 27 ICCPR Art. 2(2) ICESCR.
Medical care & information S. 10(2) HR Act.	Right to receive adequate medical care, preventive & remedial – dental, ophthalmological & mental health care, pharmaceutical products & special diets as medically indicated Right to be examined by a physician immediately upon admission & to request a second medical examination or opinion.

²⁰¹ Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

²⁰² The International Covenant on Economic, Social and Cultural Rights 1966.

	<p>Juvenile suffering from a mental illness should be treated in a specialised institution.</p> <p>Should adopt specialised drug abuse prevention & rehabilitation programs administered by qualified personnel.</p> <p>Medicines should be administered only for necessary treatment on medical grounds.</p> <p>Should not be subjected to any medical or scientific experimentation regardless of consent.</p> <p>Right to access information aimed at the promotion of physical & mental health.</p> <p>Health-care providers are obliged to keep confidential medical information (advice & counselling on health matters) - can only be disclosed with the consent of the adolescent or in same situations applying to violation of an adult's confidentiality.</p> <p>Should adopt special measures to ensure the physical, sexual & mental integrity of adolescents with disabilities.</p> <p>Provide access to sexual & reproductive information, including on family planning & contraceptives, dangers of early pregnancy, prevention of HIV/AIDS & STDs.</p> <p>Rules 49-55 Protection of Juveniles Rule 26.2 Beijing Rules Rules 24-25, 82 SMR Prisoners Principle 9 Basic Principles for the Treatment of Prisoners Principles 22-27 Body of Principles Art. 12 ICESCR Arts. 3(3), 23-25, 39 CRC.</p>
<p>Notification of illness, injury & death</p> <p>Sections 9, 11-12 HR Act.</p>	<p>Family, guardian or other designated person has the right to be informed of the state of health on request & in the event of any important changes.</p> <p>Director should notify immediately in cases of death, illness requiring transfer to an outside medical facility, or condition requiring clinical care within facility for more than 48 hrs.</p> <p>Upon death, nearest relative should have the right to inspect the death certificate, see the body & determine method of disposal of body. Should be an independent inquiry into causes of death, accessible to the nearest relative.</p> <p>Juvenile should be informed at the earliest possible time of the death, serious illness or injury of any immediate family member,</p>

	<p>& should be provided the opportunity to attend the funeral or go to the bedside.</p> <p>Rules 56-58 Protection of Juveniles Rule 44 SMR Prisoners Principle 34 Body of Principles Arts. 6 CRC Arts. 6(1), 17, 23(1), (2) ICCPR.</p>
<p>Contacts with wider community</p> <p>Sections 11 & 12 HR Act.</p>	<p>Adequate communication with the outside world: with families, friends & others; to leave the facility for a visit to their home & family, and for educational, vocational or other important reasons.</p> <p>Right to receive regular & frequent visits – at least once a week & not less than once a month.</p> <p>Right to communicate in writing or by phone at least twice a week, unless legally restricted, & has right to receive correspondence.</p> <p>Right to communicate with diplomatic & consular representative of their State if a foreign national.</p> <p>Should have opportunity to read newspapers, periodicals etc, access to radio, TV & movies.</p> <p>Rules 59-62 Protection of Juveniles Rule 26.5 Beijing Rules Rule 20 Vienna Guidelines Rules 37-39 SMR Prisoners Principle 28 Body of Principles Arts. 9(3), 16-17 CRC Arts. 17 & 23 ICCPR.</p>
<p>Access to lawyers</p> <p>Section 22(2)(b) HR Act</p>	<p>Entitled to legal assistance (free if available); to have adequate time and facilities to prepare defence; to be visited by & to consult & communicate without delay or censorship & in full confidentiality; interviews may be within sight but not within hearing.</p> <p>Rule 93 SMR Principles 17-18 Body of Principles Principle 18(a) Protection of Juveniles Art. 14(3)(b) & (d) ICCPR Art. 40(ii) CRC.</p>
<p>Limitations of physical restraint & use of force</p>	<p>Instruments of restraint & force can only be used in exceptional cases, where all other control methods have been exhausted & failed, & only as explicitly authorised and specified by law &</p>

<p>Sections 19(1), 20(2) & (4) HR Act.</p>	<p>regulation.</p> <p>Should not cause humiliation & degradation, used restrictively & for shortest possible period of time.</p> <p>Instruments may be resorted to prevent self-injury, injuries to others or serious destruction of property. Director should report to the higher administrative authority.</p> <p>Carrying & use of weapons by personnel should be prohibited.</p> <p>Self-defence - in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations – use of force no more than is strictly necessary & must report incident immediately to director.</p> <p>Rules 63-65 Protection of Juveniles. Rules 33-34 & 54 SMR Prisoners. Arts. 19 CRC. Arts. 10(1) ICCPR</p>
<p>Disciplinary procedures</p> <p>S. 10(1), 19(1), 20(2) & (4), 26 HR Act</p>	<p>Measures constituting torture or cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile.</p> <p>Types of conduct constituting disciplinary offences, the description & duration of disciplinary punishment that may be inflicted & authorities competent to impose shall be specified by law of lawful regulations.</p> <p>Reduction of diet & restriction or denial of contact with family members should be prohibited.</p> <p>Labour shouldn't be used as a disciplinary sanction.</p> <p>Collective sanctions should be prohibited.</p> <p>Legislation or regulations should establish appropriate norms.</p> <p>A report on misconduct should be presented promptly to competent authority which should conduct a thorough examination of the case.</p> <p>Complete records should be kept of all disciplinary proceedings.</p> <p>Rules 66-71 Protection of Juveniles Rule 18 Vienna Guidelines Rules 27, 29-32 SMR Prisoners</p>

	<p>Principle 7, Basic Principles for the Treatment of Prisoners Principles 1, 6 & 30 Body of Principles. Arts. 1 & 16 CAT Art. 19, 37, 39 CRC Arts. 7, 8, 10(1) ICCPR</p>
<p>Inspection and complaints</p> <p>S.16 HR Act.</p>	<p>Qualified inspectors or constituted authority should be empowered to conduct inspections on a regular basis & to undertake unannounced inspections on their own initiative, enjoy full guarantees of independence in exercise of this function.</p> <p>Should have unrestricted access to all persons employed, juveniles and to all records.</p> <p>Qualified medical officers should participate in the inspections, evaluating compliance with the rules concerning physical environment, hygiene, accommodation, food, exercise & medical services.</p> <p>Every juvenile should have the right to talk in confidence to any inspecting officer.</p> <p>Inspector should be required to submit a report on the findings.</p> <p>Detained/imprisoned person has the right to be heard before disciplinary action is taken and can bring such action to higher authorities for review.</p> <p>Every juvenile should be able to make requests or complaints to the director or to his/her authorised representative (right to express views & have them taken into account).</p> <p>Right to make a request or complaint to the central administration, judicial authority or other proper authorities, & be informed of the response without delay.</p> <p>Confidentiality concerning complaint shall be maintained if requested by complainant.</p> <p>An independent office (ombudsman) should receive & investigate complaints.</p> <p>Right to request assistance from family members, legal counsellors, humanitarian groups or others, in order to make a complaint. Illiterate juveniles should be provided with assistance.</p> <p>Rules 72-78 Protection of Juveniles Rules 21 & 25 Vienna Guidelines Rules 26, 35-36 & 55 SMR Prisoners Principles 29, 30(2) & 33 Body of Principles</p>

	<p>Art. 12, 13 CRC Art. 19 ICCPR.</p>
<p>Return to the community</p>	<p>Procedures should be designed to assist in returning to society, family life, education or employment after release.</p> <p>Competent authorities should provide or ensure services to assist juveniles re-establishing themselves in society & to lessen prejudice. Should have access to local community while detained.</p> <p>Juveniles released conditionally (at earliest possible time) shall be assisted & supervised by an appropriate authority.</p> <p>Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres etc to assist in reintegration.</p> <p>Rules 8 & 79-80 Protection of Juveniles Rules 28.1, 28.2 & 29.1 Beijing Rules Principle 10, Basic Principles for the Treatment of Prisoners Rules 79-81 SMR Prisoners</p>
<p>Personnel</p> <p>Sections 10, 11(2) & 12 HR Act.</p>	<p>Should be qualified & include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists & psychologists.</p> <p>Should be employed on a permanent basis and the director should be full-time.</p> <p>Should make the use of all remedial, educational, moral, spiritual, & other resources & forms of assistance which are appropriate & available in the community.</p> <p>Administration should provide for careful selection & recruitment of every grade & type of personnel.</p> <p>Personnel should be appointed as professional officers with adequate remuneration to attract & retain suitable men & women.</p> <p>There should be communication between difficult categories of staff to enhance cooperation.</p> <p>Should receive training – in particular child psychology, child welfare & international standards & norms of human rights - at suitable intervals throughout their career. Shall be given special training to enable them to restrain aggressive prisoners.</p> <p>Should respect & protect the human dignity & fundamental human rights of all juveniles: may not inflict, instigate or tolerate</p>

	<p>any act of torture or any form of cruel, inhuman or degrading treatment, punishment, correction or discipline; oppose & combat any act of corruption, report it to competent authorities; should respect UN Rules on Protection of Juveniles (be provided with a copy) – if violated should be reported; protection from physical, sexual, & emotional abuse & exploitation, & should take immediate action to secure medical attention whenever required.</p> <p>Whenever necessary use services of an interpreter.</p> <p>Respect right of juvenile to privacy – safeguard all confidential matters concerning juveniles or their families.</p> <p>Should seek to minimise any differences between life inside & outside the detention facility which tend to lessen due respect for the dignity of juveniles as human beings.</p> <p>Rules 6, 81-87 Protection of Juveniles Rule 22 Beijing Rules Rules 24-25 Vienna Guidelines Rules 46-52 & 54 SMR Prisoners Principle 7(2) Body of Principles Art. 19 & 34 CRC</p>
<p>Gender</p> <p>Sections 8(2),(3), 11 & 12 HR Act</p>	<p>Female offenders deserve special attention as to their personal needs & problems – shall not receive less care, protection, assistance, treatment & training than their male counterparts.</p> <p>Special accommodation for all necessary pre & post-natal care & treatment. If child is born in facility, should not be mentioned on birth certificate.</p> <p>Where infants are breastfeeding, they should be allowed to remain in facility; there should be a nursery staffed by qualified persons when infant is not in care of their mother.</p> <p>Provide guidance for parents & family planning education & services.</p> <p>A female officer should have custody of the keys of the part where female detainees are held.</p> <p>No male staff member shall enter that part unless accompanied by a woman officer.</p> <p>Females should be attended & supervised by women officers, except in carrying out their professional duties – such as teachers & doctors.</p> <p>Rule 26.4 Beijing Rules</p>

	Rules 23 & 53 SMR Prisoners. Art. 19, 24 & 27 CRC
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ANNEX II: AUDIT QUESTIONNAIRES

I. QUAMBY INTERVIEWS – DETAINEES

Cover Sheet

TIME DAY DATE

Length of interview

Detainee (1, 2, 3 etc)

Consent given: Y/N

Basic profile

Male/Female

Age:

Remand:

Period on remand:

Days

Months

Years

Committed:

Length of Sentence:

Years

Months

Days

ATSI/NESB

First time in Quamby: Y/N

General Warm Up Question: What interests you in talking with us today?

Specific Areas of Examination

1. Humane treatment, segregation and privacy

Indicators - Induction procedures; treatment on arrival, assessment; classification, placement, staff behaviour, food and clothing; personal hygiene and privacy; recreation/exercise.

A. Induction procedures

1. How did you feel when you first arrived?
2. How did the staff treat you?
3. What was the induction process like?
4. Were you held with any other detainees during the induction process? Y/N
5. Were they the same age/M/F/remand-under sentence (depending on gender and status of interviewee)?
6. Were you strip-searched? Y/N. If so, who performed the search (e.g., youth worker)? Was it a M/F staff member who searched you? Y/N. Was there anyone else present? Was that person M/F? Y/N. [If opposite sex] Could that person see you? Y/N
7. Did you have access to a telephone on your first night? Y/N, If yes, who did you call?

B. Classification, vulnerability assessment and placement:

Segregation of remand and those under sentence; females and males; age groups; special needs); children and young people from adults (Quamby has 18-21 yrs if under sentence)

Vulnerability assessment

1. When you arrived were you assessed for any special needs [eg drug/alcohol use, HIV test, medical condition, emotional or mental health difficulties?] Were any of these tests done without your consent? Y/N
2. How long after you arrived did you see a doctor? Was it a M/F doctor? [If opposite sex] was a M/F youth worker with you?
3. Have you seen a social worker/psychologist/psychiatrist? Y/N

Segregation

1. What unit do you live in? Brindabella Murrumbidgee Ngunnawal
2. During the day do you mix with other detainees? Are they boys and girls on remand [or] under sentence?
3. When you go to class or out for sport, who do you mix with?

C. Relationships between detainees/safety/time alone

1. Do you feel safe mixing with other detainees? Y/N
2. Do you go to the recreation area, watch TV or play sport with the other detainees? Y/N
3. How long do you spend in your own cell on an average day?
4. Is there any bullying or harassment between detainees? All the time
Often Sometimes Rarely Never
5. What would you do if another detainee was hassling you or threatening you? would you report it? Y/N. If reported, what happened. If not, why not? How do you think the staff would handle the situation?

Females

1. Do you ever mix with male detainees? Y/N. If so, how often?
2. Are you in the same accommodation unit as young males? Y/N
3. How do you get on with the male detainees and staff members

[NB All allegations of sexual abuse must be reported].

D. General treatment of detainees by staff

1. Do you think the staff care about you? Y/N. Do they take an interest in your well being and your future? Do they treat you fairly?
2. How do staff members speak to you?
3. Is there anything else you would like to say about the staff?

E. Behaviour management regimes

Disciplinary offences and procedures; Use of sanctions as punishment; use of 'time out' and isolation for punishment; use of force, instruments of restraint; searches; reports.

1. Have you ever been disciplined? Y/N. If so, why?
2. What punishment did you receive? Did you lose any privileges?
3. Did you feel the punishment was justified? If not, why?
4. Have you ever been made to do 'time out' in your cell? Y/N
5. If so, how long for?
6. Have you ever been put in seclusion? Y/N. How long for?
7. Did you get a chance to say why you should not do 'time out' or 'seclusion'? Y/N
8. Has any member of the staff restrained you physically? Y/N. How/why?
9. Have you ever been required to take any medication/sedation to calm you down? Y/N [NB this is not a general health question]
10. Have you ever needed to see a doctor/nurse about a physical injury as a result of any fights with staff or other detainees? Y/N
11. If you want to see a social worker/ counselor/psychologist/psychiatrist, what would you do?

F. Cells – conditions and privacy

1. Do you have personal items in your cell?
2. Is your cell clean, is there enough or too much light, is there enough air?

G. Personal hygiene

1. Are you able to shower daily? Y/N
2. Do you have enough supply of soap, shampoo, a toothbrush and toothpaste?
3. How often are you meant to wash your clothes?

H. Clothing

1. Own v. issued clothing – at centre, outings, work experience, visits, court appearances etc
2. When are you allowed to wear your own clothes?
3. How do you feel about wearing the blue 'uniform'?

I. Personal privacy

1. Have you ever been searched? What kind of search?
2. Is either your body or your cell searched regularly? Y/N. How often?
3. Who conducted the low level body search? M/F Time of day/night?
4. Why were you strip-searched?
5. Who conducted the strip search, were they M/F and was anyone else present?
6. Where was the strip search performed?
7. How was the search conducted? [Full/partial strip? Examination of cavities?]
8. Were you given any notice of the search of your cell? How were your personal effects treated?
9. Is there any video surveillance of your cell or in the toilets or shower?
10. Do you write letters home? Y/N. Do you receive letters? Y/N
11. Do you know whether your mail is read by the staff or changed?
12. Have you ever been tested for HIV, alcohol or drugs during your time in Quamby? Y/N

13. If so, did you agree to the test? Y/N How often was it done?

J. Food

Food sufficient standard, suitably prepared, pregnant young females & religious and cultural requirements catered for.

1. What do you think about the food?
2. Is there sufficient quality/quantity? Y/N
3. Do you have any special dietary needs – e.g. are you allergic to any particular foods, are you vegetarian, religious reasons?

K. Recreation

Suitable amount of time for daily exercise outdoors; adequate space, installations and equipment; arts and craft, etc

1. What activities or exercise opportunities are offered? Outdoors/indoors. How often do you participate?
2. Should other activities be offered? If so, what?

2. Information and Communication

Indicators: access to information about rights, access to complaints mechanisms; communication with the outside world, family relationships, access to lawyers and the media.

A. Information about rights

1. Did you receive any information about the rules and regulations and your rights and obligations when you arrived at Quamby? Y/N. How? [verbal or written, in a language you understand]. Did you need an interpreter? Y/N Was one provided? Y/N
2. Have you been given names and contact details of organizations/agencies that can provide legal advice or other help? Legal Aid; Aboriginal Legal Service; Community Advocate
3. Do you know what rights you have to make a complaint about your treatment in Quamby? Who would you complain to? Youth worker; Manager; Official visitors Community Advocate; Ombudsman; Discrimination Commissioner.
4. How do you know about these people [external]? Do you have their contact details?
5. Have you ever used one of these mechanisms? Y/N
6. If so, why? Were you given assistance?
7. What was the result? And were you happy with the outcome?

B. Individual records

1. Do you know what records are kept about you while you are living in Quamby? Have you ever seen or asked to see them?

2. If you disagreed with a member of staff about an incident, and you knew it was written on your record, what would you do?

C. Communication with the outside world

Visitors, maintenance of family relationships –separation of mothers from children; access to lawyers; see or hear newspapers, periodicals, radio, TV etc; notification of illness, injury or death; leave applications

Family and friends

1. Are you allowed visitors?
2. How often do you actually have visitors?
3. Would you like Quamby to help you get more visits? How?
4. Has a visitor been turned away? Y/N. If so, how do you know and why?
5. Do you have children? Y/N. If so, how often do you see them and how long are they allowed to stay?
6. Are you allowed to have physical contact with your visitors – hug, hold hands? Y/N
7. Can you use the telephone? How often? How do you pay for the calls?

Females – if have children or are pregnant

8. Did you have access to pre or post-natal care? Y/N
9. Were you able to breastfeed your baby? Y/N

D. Leave

1. Have you asked for leave? If so, why? was it granted? If not, did you appeal?
2. Have you received bad news about a family member or friend since you've been here? Y/N. If so, how were you informed?

E. Lawyers and media

1. Can you contact your lawyer easily? Are there any restrictions?
2. Can you contact the Canberra Times or the local television or radio station if you want to?

F. Access to information about the outside world

1. How often do you get to watch TV or listen to the radio? Often Sometimes
Rarely Never
2. Are there newspapers, comics, magazines, or books available? Y/N Can you request books?
3. How often do you have access to a computer? Email?

GENERAL COMMENTS

What is the worst thing about living at Quamby – what would you change?

Ask detainee to agree or disagree:

‘I am treated as a human being and a person of value at Quamby’.

Agree/disagree

Is there anything else you would like to tell us about your experience at Quamby or have any suggestions about how Quamby can be improved?

REAFFIRM CONSENT

The information you have given us will help us write our report. Nothing in the report will identify you. Do you agree to allow us to use the information? Y/N

NB: If they identify other detainees or staff, we should not record unless it relates to abuse.

Space: any additional notes

II. QUAMBY INTERVIEWS – MANAGEMENT & STAFF

Cover Sheet

TIME DAY DATE

Length of Interview

Staff (1, 2, and 3 etc)

Consent given: Y/N

Basic profile

Male/Female

Background

Manager/Youth Worker/Other

Months/years at Quamby

Permanent/casual

Introductory question

Do you think there should be more emphasis on discipline and control or on welfare and rehabilitation? Or should it be equal?

Specific Areas of Examination

1. Humane treatment, segregation and privacy

Indicators - Induction procedures; assessment; classification & placement; staff behaviour; privacy; food and clothing; recreation/exercise.

A. Induction procedures

1. How do the young people generally react when they arrive at the center for the first time? How do you engage with them?
2. Are different categories of young people held in the same unit during the induction process?
3. Is there enough staff to ensure the strip search/showering process is carried out by a person of the same gender? The observer as well?
4. Is the young person able to contact their family, friends, lawyer or any other organization on their first day/night – if not, how long do they have to wait?
5. Do you think there should be changes to how induction is carried out?

B. Classification, vulnerability assessment and placement

Segregation of remand and those under sentence; females and males; age groups; special needs; children and young people from adults (Quamby has 18-21 yrs if under sentence)

Vulnerability assessment

1. How long does it take the young person to be assessed for any special needs (e.g. drug/alcohol use, HIV, medical condition, emotional or mental health difficulties)?
2. Is there informed consent to the taking of blood or any other medical procedure? Y/N
3. How long do detainees generally spend in the six-bed unit before being transferred to another unit? What is the criteria for transfer?
4. Do you think that the individual assessment process is working well for detainees? Y/N. If not, why not?
5. Are all staff aware of the special needs/problems detainees have?
6. Is the record keeping process for each detainee adequate & easy to access for staff?

Segregation

1. How is the decision made to mix detainees of different age groups, backgrounds and status/behaviour?
2. Are there problems or benefits to mixing young people of different age group/backgrounds/behaviour and status together?
3. What about gender?
4. How will the current accommodation arrangements change with the expected demountable buildings?

C. Relationships between detainees

1. Is there any bullying or harassment between detainees? Y/N
2. How do you respond when you see a detainee being bullied or provoked. What about when a detainee complains to you about another detainee's behaviour, but you haven't seen anything?
3. How are incidents resolved e.g., use of surveillance tapes?
4. Are there any detainees who spend a lot of time in their cell alone? Why do you think they stay there when they don't need to?
5. Are detainees able to request to be placed voluntarily in the 'time out' (seclusion cell) in the 6-bed facility when other detainees are/are not there?

Female detainees

1. Does the presence of female detainees create particular problems?
2. Do female detainees mix with male detainees? Y/N. If yes, how often & where?
3. Are you aware of any situation where a female detainee has been afraid of, or abused by, any of the male detainees or staff? Y/N If so, why? And what action was taken?
4. How do the female detainees relate to you and to other staff?

[NB All allegations of sexual abuse must be reported].

D. General relationships between detainees and staff

1. How would you describe the everyday relationship between detainees and staff? Is it different depending on the units?
2. Does management encourage staff to take an active interest in the well being and future of the detainees?
3. Are you involved in the case management of the detainees? If so, in what capacity?
4. When would you recognize that a detainee needs to see a social worker/counsellor/psychologist/psychiatrist, even if they're not asking to see one? What do you do to assist this detainee?

E. Behaviour management regimes

Disciplinary offences and procedures; use of sanctions as punishment; loss of privileges; use of 'time out' and isolation for punishment; use of force, instruments of restraint; searches; reports; recreation/exercise.

1. Is Standing Order 6 – behaviour management strategies - current?
2. Do you generally follow the policy and procedures/standing order if a detainee starts to act up? Y/N
3. Explain the markdowns and loss of privileges system
4. How do you decide what punishment is appropriate? Does it differ between detainees of different units?
5. Are detainees required to sign any documentation?
6. What behaviour would result in a loss of remission? Given the gravity of this penalty (lengthens their sentence), can the detainee appeal?
7. How often do you impose time out (in own cell) on a detainee?
8. When the detainee is doing time out in their cell, how often do you observe them, how long do they generally stay there? Is it recorded on their file and do they lose privileges?
9. In what circumstances will you send a detainee to the seclusion cell?
10. What procedure do you follow when a detainee is in the seclusion room? [white suit (dress or shorts)/other detainees able to see detainee in the cell?]
How is this documented?

What is the average, usual, longest stay in the seclusion room?

Are you aware of any cases where a young person has been in that room for:
2-3 hours 4-5 hours 6-8 hours More than 8 hours

Was anyone notified [management/OV/OCA]?

11. Can a detainee appeal the decision to deprive them of privileges or which places them in the seclusion room?
12. Have you ever had to use force or physically restrain a detainee? How? Why?
13. Have you ever used instruments of restraint? Y/N If so, what were they?
14. Are you aware of, or did you witness, any cases where either a detainee or a member of staff has been assaulted and suffered an injury because of the use of force?

15. Do you consider that in general the use of force by staff is proportionate? Y/N
Comments:
16. Do you provide written reports after incidents requiring use of force/assaults?
Y/N. Who reviews them?
17. Do you think that you have been given adequate training to allow you to handle such situations?
18. Are you aware of any cases where a young person has been given medication to calm them down? Voluntarily or involuntarily?

F. Privacy

1. Is Standing Order 15 – searches – current?
2. How often do you have to perform?
Personal search: Daily Weekly Monthly Rarely
Cell search: Daily Weekly Monthly Rarely
3. How are decisions made on when, who and how often to search?
4. When and how do you conduct a low level body (frisk) search? Always of the same gender? If not, is the procedure modified?
5. How often are detainees subjected to a full strip search?
6. Is a strip search ever carried out by or in view of a person of the opposite gender? Where is it carried out?
7. Is the person half clothed or fully stripped?
8. Are detainees given any notice of and/or reasons for a search of their body or cell?
9. What time of day/night is a cell search usually carried out?
10. What time of day/night is a strip search usually carried out?
11. What areas are not under video surveillance? How is risk managed in these areas?
12. Is there video surveillance or other forms of surveillance used in the detainees cell, including showers and toilets?
13. Are detainees regularly tested for infectious diseases or drugs/alcohol? How often? On a voluntary basis or not?
14. Are staff tested for drugs, tobacco or alcohol or searched on the way in or out of the facility for contraband? Y/N. If so, how often on average?
15. [For management] Are you aware that some staff may be giving cigarettes to some detainees? How would they be disciplined?
16. How do you search detainees' incoming and outgoing mail?
Do you read them?
Are they ever not forwarded?
Why and do you notify the detainee or correspondent?

G. Recreation/exercise

1. Are the recreational activities available to detainees, in your view, adequate. Y/N. What about the participation of female detainees?
2. Can you suggest any short-term improvements in the current facility/long-term in new facility?
3. How often does a hairdresser come to the centre?

H. Food

1. How could the quality & variety of the food given to detainees be improved?
2. What security issues would need to be considered in detainees preparing food?

I. Clothes

1. When are detainees able to wear their own clothes?
2. Why aren't detainees able to wear some personal items?
3. Is it possible to vary the colour of the uniform?
4. Is it possible for detainees to be taken shopping for clothes before they're released – usually they've grown out of the clothes they came in with.

2. Information and Communication

Indicators: access to information about rights, access to complaints mechanisms; communication with the outside world, family relationships, leave, access to lawyers and the media.

A. Information about rights

1. Do you give detainees information about their rights and obligations when they arrive, and at any other later time, at Quamby? Y/N If yes, verbal/written? How often do you call an interpreter?
2. Is there information in the yellow handbook for detainees that is out of date? If so, what? And when will it be amended?
3. How well, in your opinion, are detainees consulted about changes that affect them?
4. How would a detainee make a complaint about their treatment in Quamby?
5. Explain the internal process & how well do you think it deals with complaints?
6. Are detainees aware of the external processes (OV, OCA, Ombudsman). How?
Are they given their contact details?
Can they contact them directly and in confidence?
7. Are you aware of any complaints lodged against yourself or other staff how were they handled?
8. How are complaints by staff members against other staff members or management handled?
9. Do you think the 'Official Visitor' is an effective mechanism? What about the OCA? What do you see as the benefits and limits of such mechanisms?

B. Individual records

1. What records are kept about detainees while they are living in Quamby?
2. Can detainees access them upon request? Are there security or other issues that would need to be considered (e.g., psychiatric note that might be misinterpreted) or privacy of third parties, confidentiality.

3. If a detainee disagreed with a staff member about an incident, especially if it results in a loss of remission, could they get the file record changed or have their own comments added? Y/N. How?

C. Communication with the outside world

Visitors & maintenance of family relationships; access to lawyers; newspapers, periodicals, books, radio, TV etc; notification of illness, injury or death; leave applications

Family and friends

1. Is Standing Order 9 - visits and visitors - current?
2. Do all the detainees get visitors?
3. What happens if a detainee does not get visits from his/her family? Does Quamby try to encourage detainees' family relationships? How?
4. Are detainees' friends allowed to visit? How are they approved? Why aren't ex-detainees allowed to visit especially if they're a family member or relative?
5. Are visitors allowed to bring their children along? Are the detainees' children allowed to visit?
6. How are children catered for during such visits?
7. Why would a visitor be turned away from Quamby? What if they've visited before and no contraband was found – why would they be refused entry? Is the detainee told that his/her visitor has been refused entry and why? Can this decision be appealed?
8. How many phone calls can detainees make on their outgoing telephone nights? How long for each one? Are there any restrictions on STD calls or to mobiles?
9. Is there an approved telephone list of contacts? How would a detainee seek approval for a non-family member?
10. How are incoming calls monitored?
11. Are there enough telephones in all the units?

Leave applications

1. Is the information in Standing Order 25 – leave guidelines – current?
2. When can detainees ask for leave? Is it different for those on remand/committal?
3. Do detainees have to do some educational leave before being allowed home leave? What about compassionate leave?
4. Do detainees have their requests for leave generally accepted? Y/N If not, why not? What is the criteria?
5. What about medical appointments?
6. Can detainees appeal if their leave requests are denied?

Lawyers and media

1. Can detainees contact their lawyer easily? Are there any restrictions? Delays?
2. Can detainees speak to their lawyer in private and away from the hearing of a youth worker? Y/N

3. Are you aware of any occasions when an NGO, the Office of Community Advocate or a lawyer has not been permitted access to a detainee? Or vice versa?
4. If a detainee wants to contact the Canberra Times or the local television or radio station, how would they do that or is it prohibited?

Access to information about the outside world

1. How long has the TV not been working properly? Do detainees have to pay a weekly rental fee?
2. Are newspapers, comics, magazines, or books readily available? Can they make requests? Is the newspaper available every day?
3. Do detainees have access to a computer? Internet/email?

GENERAL QUESTION

In your opinion, is there sufficient training and ongoing training and support of staff?

GENERAL COMMENTS

Is there anything else you would like to tell us about how Quamby is run or make suggestions about how the operating procedures can be improved?

REAFFIRM CONSENT

The information you have given us will help us write our report. Nothing in the report will identify you. Do you agree to allow us to use the information? Y/N

NB: If they identify other staff or detainees, should not record unless it relates to incidences of abuse.

Any additional notes