

Building a human rights youth justice system

While the application of human rights is generally understood and accepted in Australian society, it is often difficult to identify 'human rights' application in practice. The Australian Capital Territory's *Human Rights Act 2004* and the establishment of an ACT Human Rights Commission have begun to create a human rights culture. In this paper this human rights culture is discussed through the very practical example of the development of a new youth detention centre in the ACT. Highlighted is the influence of human rights on the design and build of the centre, the development of policies and procedures, and legislation reform.

by Paul Wyles

In 2004, the Australian Capital Territory (ACT) enacted Australia's first jurisdictionally based human rights legislation. This has been a significant factor in the reformation of youth justice in the ACT. It has influenced decisions in building a new youth justice centre and the development of new human rights compliant legislation, policies and procedures in regard to children and young people. This paper will look in some detail at the influence of the ACT's human rights environment on the design of the detention centre, and also the outcomes of its influence on legislation, policies and procedures. These changes have resulted in improved services, which will in turn contribute to improved outcomes for young people involved in the youth justice system.

Human rights

To understand the concept of human rights in an Australian context it is important to consider the growing awareness of human rights through the last century and more recently over the development of specific legislation. For many of us involved in youth justice in the ACT over the last four years this has been a journey involving dialogue and awareness raising.

A human rights discourse is, by nature, a discourse of hope. It concentrates not only on what is wrong (characteristic of so much social and political analysis), but also articulates a vision (or rather different

visions) of what is right, of where we can be heading, of the human ideal (Ife 2008, p.228).

Human rights in the ACT

On 1 July 2004, the ACT's *Human Rights Act 2004* became law in the Australian Capital Territory. The Act sets out broad principles and specific rights or entitlements for citizens. Of particular relevance to those working with young people in the youth justice system is Section 19.

19 Humane treatment when deprived of liberty

- 1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.
- 2) An accused person must be segregated from convicted people, except in exceptional circumstances.

Note: An accused child must also be segregated from accused adults (see s20(1))

- 3) An accused person must be treated in a way that is appropriate for a person who has not been convicted. (ACT's *Human Rights Act 2004*)

A particular challenge in all Australian jurisdictions, but particularly in a small jurisdiction such as the ACT, is the management in a single detention facility of frequently fluctuating numbers of young people who represent very different cohorts: accused and convicted, male and female, and ages from 10 to 18, with the possibility of adults to 21 years.

A profile of youth justice in the ACT

The ACT's original youth detention centre was called Quamby. It was established in 1986 as a 26-bed facility and was expanded in 2006 to a 39-bed facility. The *Children and Young People Act 1999* allowed for the detention of children and young people aged 10 to 18 on remand or under sentence. In the last couple of years, numbers at Quamby fluctuated between about 10 and 20 at any one time. For the period 2006–2007, there were 287 admissions, consisting of 143 individual children and young people. Thirteen days was the average length of remand, and 88 days was the average length of sentence for young people. During the same period, 33 young women made up 88 admissions. On a daily basis, the number

of females in detention in the ACT has fluctuated from zero to a high of 12.

Aboriginal-identified children and young people make up between one-third and one-half of all young people in detention at any one time. Aboriginal overrepresentation is a key challenge in all Australian jurisdictions. In the ACT, the Aboriginal population in the community is relatively small, but the number of Indigenous young people in detention remains high as a proportion compared to the number of non-Indigenous young people in detention. The reasons for this situation are complex and may relate to a range of factors including policing and court practices; poverty; peer and community influences; disengagement from education; and homelessness.

In 2007, the average number of young people in detention was 16 and the maximum number was 28. As in most other jurisdictions, many young people who enter detention have a history of abuse and/or neglect. About half of all young people in detention are on care and protection orders and more than half have a history with child protection services.

Youth justice services in the ACT have, since 2005, operated within the Department of Disability, Housing and Community Services (DHCS). Youth justice is comprised of two separate but related areas. The first, community youth justice, provides supervision, reports to court and case management of young people on community-based orders, while the second, custody, is concerned with detention.

The location of the ACT's youth justice services within the Department of Disability, Housing and Community Services (DHCS), a human services department with diverse portfolio responsibilities, is advantageous for a number of reasons. For example, housing can be negotiated for young people involved in the youth justice system; second, those involved in the management, redevelopment and rebuilding of detention facilities are able to draw on the significant experience in building and asset management available in the Housing and Community Services portfolio; and, finally, a working relationship can be established with Care and Protection Services, particularly in cases where young people are on both youth justice orders and care and protection orders.

Background to Bimberi

The ACT Human Rights and Discrimination Commissioner, Dr Helen Watchirs, undertook an audit into Quamby in May 2005 and made 52 recommendations (ACT Human Rights and Discrimination Commissioner 2005). The key issues raised in the audit were: the lack of a separate admission unit; the inappropriate mixing of detainees on the basis of age, gender and status (remand or under sentence); segregation of detainees for disciplinary purposes; and the lack of appropriate recreational facilities. In many respects the Human Rights and Discrimination Commissioner's report highlighted the limitations of Quamby and supported the ACT Government's decision to build a new youth detention centre. The audit was important in informing key aspects of the design, build and operations of this new facility.

At the end of 2008, young offenders sentenced to detention in the ACT were placed in the new youth justice centre, which was called Bimberi. The name Bimberi was chosen because it is the name of the highest peak in the ACT region. Symbolically it represents the challenges young people will need to confront to achieve great heights.

In order to ensure that the design and development of the new centre was human rights compliant, work was commissioned by DHCS in partnership with the ACT Human Rights Commission. This work assessed Bimberi's proposed design, including physical structures, procedures and programs, against international human rights standards for juveniles in detention.

Assessment of the physical design involved consideration of the design brief, the architect's final sketch plans and discussion with the architects. Assessment of the operating procedures required close consideration of the exposure draft of the *Children and Young People Bill 2007* and the current and proposed Standing Orders/Policies and Procedures. Programs and staff training were assessed through discussions with detention centre staff and management. Bimberi's design was assessed for compliance against each of the international human rights standards for juveniles in detention, which enabled any gaps, omissions or inconsistencies to be readily identified.

The standards documents consulted included:

- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social and Cultural Rights (1966)
- UN Convention on the Rights of the Child (1989)
- UN Standard Minimum Rules for the Administration of Juvenile Justice – The Beijing Rules (1985)
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1992)
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)
- UN Standard Minimum Rules for the Treatment of Prisoners (1955)
- *Human Rights Act 2004* (ACT)

The Royal Commission into Aboriginal Deaths in Custody (1991), which outlines the standards for the health, welfare, safety and treatment of Aboriginal and Torres Strait Islander people in custody, with specific recommendations for Aboriginal and Torres Strait Islander children and young people, was also given detailed consideration.

The key outcome of the assessment of international human rights standards for young people in detention was the development of a comprehensive working document that enabled the identification of areas that required work to achieve compliance with human rights standards. As part of the design of the facility, detailed policies and procedures were created with close reference to human rights standards and legislation.

Design

In designing the Bimberi Youth Justice Centre, the ACT Government was keen to bring to bear current best practice and innovation in design. The project team looked at prisons and detention centres in every mainland state and territory and talked to architects, project managers, operational staff and policymakers. It was clear that no one jurisdiction had it exactly right, but there were some good recent examples of design in WA and Victoria.

The functional brief was the initial document developed to guide the design of the new youth

detention centre. It followed extensive consultation with key stakeholders, including children and young people in detention, youth justice staff, managers, policymakers and administrators both locally and nationally.

One of the key aims of the new youth detention centre is to assist children and young people to return to the community stronger and better able to live a non-offending lifestyle. The design and operation of the new youth detention centre focuses on ensuring that children and young people are minimally institutionalised and, wherever possible, the routines and practices in secure care appropriately reflect those of the community.

The design of the new youth detention centre had to provide a safe and secure environment that promoted the rehabilitation and re-integration of children and young people into the community. It also had to be consistent with operational requirements and support case management, program delivery and the operational plans (DHCS 2005).

Four key themes were identified that had to be reflected in the design philosophy of the new youth detention centre. These were seen as critical to the successful operation of the centre, and the achievement of desired outcomes for the new facility. These were: flexibility, normalisation, privacy and security. Each of the themes had implications in regard to decisions about the look and feel of the new centre.

The functional brief (DHCS 2005) stated:

The design of the new Youth Detention Centre is to be flexible in terms of:

- allowing the separation of population groups, as required under the *Human Rights Act 2004*, while not causing isolation;
- adapting to changes in centre population, operations, legislation and departmental policy;
- allowing for future expansion of the centre; and
- being easily manageable on a daily basis and responding to daily changes in population groups.

Normalisation, in this context, refers to allowing children and young people to lead lives as close as possible to normal. In practical terms, the goal of normalisation is to maintain

a balance between legitimate security needs and the child or young person's need for a reasonable quality of life. This can be achieved by minimising labelling and stigmatisation; by providing a social environment that will enhance individuality and self-respect; by providing the children and young people in detention with community resources that are culturally relevant; by permitting socialisation with peers in a variety of settings; and by allowing children and young people in detention to express cultural identity, practise religious beliefs and enjoy a degree of privacy and personal space. The structure of each day also needs to reflect as closely as possible that of a child or young person not in detention and involve schooling or vocational training, and recreation activities.

Privacy is a particularly important issue for children and young people. It includes privacy of information, the limiting of social interactions if desired, the right to a degree of personal space, and the protection of identity from people on the outside of the centre.

Security systems in detention facilities have changed rapidly, which reflects changes in the basic philosophy surrounding security as well as changes in available technology. A balance has to be maintained between the intrusiveness of security systems for residents versus the degree of containment that is required, the safety of the staff working in these facilities, and the safety of the community (DHCS 2005).

It is significant that these themes are well reflected in the end product. Bimberi looks like a high school campus. The investment in getting the secure perimeter right means that the design has achieved a very open look and feel to the facility. Colour and landscaping have assisted in making the site feel relaxed and look like a regular public facility.

Human rights considerations at Bimberi

There are many examples of how the project team responded to human rights requirements. There were 22 groups of principles/standards identified from human rights documents. These standards are in areas as diverse as: records, searches, food, behaviour management,

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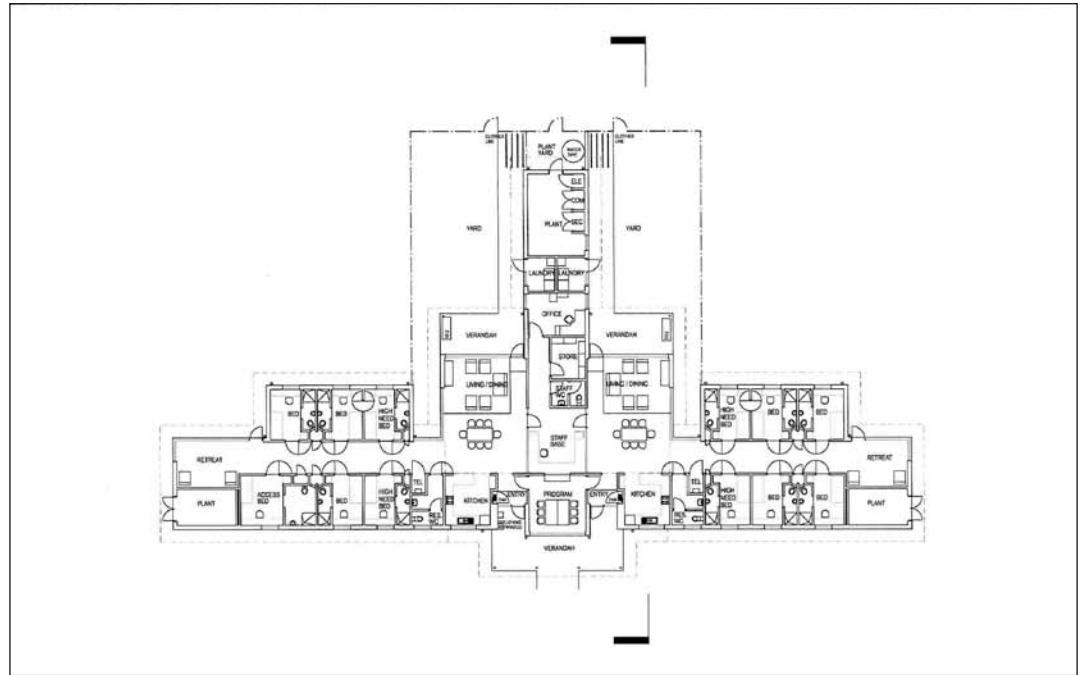


FIGURE 1 Residential unit: The design of the residential unit, with its central staff base, allows for staff observations in both directions but also separation of different cohorts of young people. Both wings can be opened to accommodate up to 12 or closed to accommodate up to 6 young people. Other features include: the access bed providing a bedroom and ensuite for a disabled young person; *Retreat* and *program* spaces; *High need beds* closer to the staff base.

Another feature built into the design is a separate accommodation building for young people coming into the centre on remand.

recreation and accommodation. The following are some examples of the efforts made to ensure human rights compliance throughout the project from design to build to the operation of Bimberi.

Separation

The ACT's *Human Rights Act 2004* and a number of key human rights documents (UN Standard Minimum Rules for the Treatment of Prisoners 1955) highlight the need for "... an accused person to be segregated from convicted people". The design of Bimberi achieved this in several ways including: separate rooms; separated wings in residential buildings with a central staff point that allows both observation and management; separation of different cohorts and; the capacity to open up and close down areas to accommodate changes in population and cohorts.

Mixing detainees

Following discussion with the Human Rights Commission, there was agreement that while

the mixing of different cohorts of young detainees, for example remand and sentenced, in residential units, programs and activities, is a prima facie breach of human rights standards, it was conceded that if this process is conducted to best meet the needs of individuals (and is the stated aim of legislative framework, policies and procedures), then this aspect of Bimberi will comply with human rights standards.

Assessment

Another feature built into the design is a separate accommodation building for young people coming into the centre on remand. Admissions separates young people being assessed and monitored from the rest of the population of the centre. In the ACT, like some other jurisdictions, there is a relatively high number of young people on very short-term remands – from a few hours to a few days. The admissions unit allows separation of this new admissions group from the more settled group of young people admitted for a longer period.

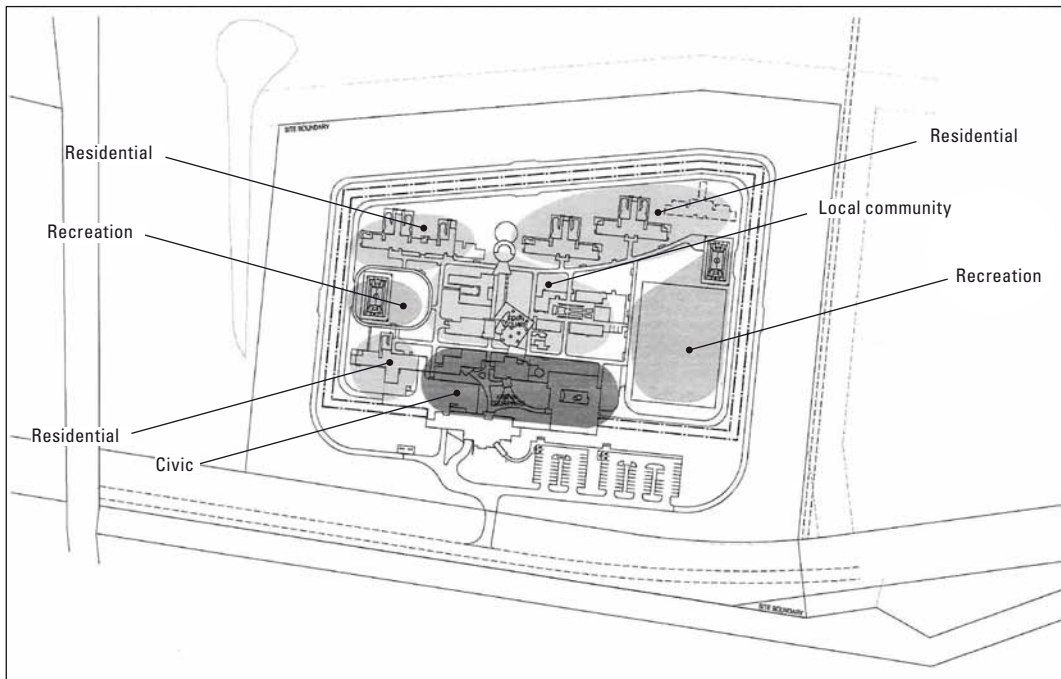


FIGURE 2 Zonal drawing: This diagram illustrates the various zones: civic; local community; residential; recreation. This assists with movements of young people, staff and visitors around the site and creates a more normalised environment with the separation of residential units (home) from daily activities like school, sport, recreation, training and meeting family.

Site layout

The overall design consists of zones. Public zones are found at the front. These include meeting rooms, front reception and screening, visits centre and delivery stores. The central zone is designed to cater for the young people's daily routine, and is built around a town square, and includes a health and case management centre, an education and training centre, recreation space, kitchen and spiritual space. The back of the centre contains the residential units. The placement of buildings and paths also assists in providing the capacity to separate particular cohorts through the managed movement of young people.

Family contact

A number of human rights documents highlight the importance of contact with families (UN Rules for the Protection of Juveniles Deprived of their Liberty; *Human Rights Act 2004*; Australasian Juvenile Justice Administrators Building Standards). They state that detention facilities should be decentralised and small scale to facilitate access and contact between the juveniles

and their families and to encourage and enable visitation and communication between young people and their families or significant others. Bimberi achieves this in a number of ways, but most importantly through a purpose-built visits centre. The centre caters for contact and non-contact visits, has an open area with tables arranged in café style, a children's play area, an outdoor area with seating and play equipment, private meeting rooms for consultations with legal representatives or for other private meetings. Importantly, the visits centre has been designed to be a friendly and welcoming place and provides a barbeque that can be used by families to celebrate special occasions with residents.

Detainees of Aboriginal and Islander descent

The Royal Commission into Aboriginal Deaths in Custody (1991) recommends:

That in all cases, unless there are substantial grounds for believing that the well being of detainees or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone ... Wherever possible, an Aboriginal

detainee should be accommodated with another Aboriginal detainee (Royal Commission into Aboriginal Deaths in Custody 1991).

This recommendation, in discussions with the project team and the architects, allowed for an innovative solution to be found. Several rooms have been designed with conjoint capacity enabled via a door that can be locked open to accommodate the above recommendation, or used for a sibling group, or locked closed and used as two separate rooms. Importantly, the door has been designed recessed which eliminates hanging points.

Education and training

A number of human rights documents, including the International Covenant on Civil and Political Rights (1966), the UN Rules for the Protection of Juveniles Deprived of their Liberty (1990), and the UN Convention on the Rights of the Child (1989), highlight the need for young people in detention to receive education and vocational training, the aim of which is to rehabilitate them, provide work opportunities, and prepare them for their return to the community. Bimberi has an education and training facility that provides the possibility of training in hospitality, woodwork, metalwork and horticulture. The school has the facilities to teach domestic science, art and craft and music and its resources include classrooms, a library and resource centres.

Spirituality

Another significant feature of Bimberi is the purpose-built spiritual space. This building was designed with a range of purposes in mind: spiritual, cultural, religious, meditative, relaxation or even as a quiet space for time out or counselling. The Australasian Juvenile Justice Administrators Building Standards (1999) recommend: "There is a communal area available in the centre for religious observance." The UN Convention on the Rights of the Child (1990) also advocates freedom of expression and religious freedom.

Recreation

Recreational activity is an area in which many young people in detention often have strengths and where others learn new skills and build confidence for the first time. The UN Rules for the

Protection of Juveniles Deprived of their Liberty (1990) state, "Juveniles should receive and retain materials for their leisure and recreation". A consideration for the development of recreational facilities at Bimberi was to ensure some gender equity. An outdoor playing court was established for the female residential unit thus overcoming the often common experience of older boys dominating sport and recreation facilities. A fully equipped gymnasium, indoor swimming pool, artificial turf and an all-weather playing field are also key features of the sport and recreation facilities at Bimberi. These recreation facilities, if managed well, will provide significant health benefits, including mental health benefits.

Proportionality

The proportionality test is a measure that has been useful in the ACT's youth justice policy development and the training of staff. Proportionality is a human rights concept for gauging whether an exercise of power to achieve a legitimate aim is reasonable and proportionate. The exercise of power must be: necessary and rationally connected to the objective, the least intrusive in order to accomplish the object, and not have a disproportionately severe effect on the person or persons to whom it applies.

Human resource reform

The Human Rights Commissioner's review of Quamby highlighted the need to focus on staff. Specifically one of her recommendations stated:

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 (ACT Human Rights and Discrimination Commissioner 2005, p.25).

A number of reforms have assisted in raising the standard and ensuring a focus on improved practice. For example, a human resource strategy that involved the introduction of psychometric testing to inform structured selection interviews resulted in a substantially improved quality of staff in detention facilities.

The current mix of staff at Bimberi is more diverse and has improved gender parity. One recruitment strategy in 2008 was to consider

people from a range of backgrounds, some of whom may not have had direct experience of working in a detention setting but rather had experience and a commitment to working with children and young people. The rationale was that if people had this experience and commitment, the department could provide the relevant training and support.

The recruitment strategy involved advertising in local and regional papers over a period of three months, fine-tuning the advertisement to improve its appeal, and running information sessions at local clubs where interested individuals could speak with youth workers about the job. Additionally a glossy booklet was produced and radio interviews were conducted to increase interest.

The development of a seven-week training package, in collaboration with Canberra Institute of Technology, and with accreditation towards a Certifying IV in Youth Work, has also proven positive in terms of attracting and retaining staff.

Education, training and practice support changes over the last three years have resulted in a significant reduction in employee Comcare claims, a significant reduction in absenteeism, and improved management of young people by the staff. Evidence of the latter includes a reduction in the use of the safe room (a room used to keep a young person safe, often when they are at risk of self-harm) and a reduction in critical incident reports involving young people.

The Children and Young People Act 2008

The development of new legislation, the *Children and Young People Act 2008*, provided an opportunity to ensure that it complied with the ACT's *Human Rights Act 2004*. Under the 2004 Act, all ACT legislation must be issued with a certificate of compliance prior to cabinet approval. The new legislation clearly sets out basic human rights for young people held in custody and ensures that entitlements for young people in custody are equivalent to or exceed the standard for adult prisoners. Some innovations include the capacity to provide services for children of young parents in detention and the capacity to hold young people in the detention centre up until the age of 21, where appropriate, thus protecting

them from potentially negative outcomes of involvement in the adult prison system.

The new *Children and Young People Act 2008* includes 'Objects, principles and considerations (Part 1.2)', which sets out particular principles in relation to Aboriginal and Torres Strait Islander children and young people, and also stresses that the best interests of children and young people in general should be the paramount consideration in decision-making in relation to young offenders:

Part 1.2, 7(f) is designed to ensure that young offenders

- (i) receive positive support and opportunities for rehabilitation and reintegration as community members; and
- (ii) share responsibility for rehabilitation and reintegration with their parents and families, the community and the government in partnership.

There were and continue to be a number of challenges and tensions in relation to the implementation of human rights in a youth justice setting. One relates to different perspectives on the best interests of young people in detention. For example, while as a general principle the separation of particular cohorts is important, clearly there are circumstances where keeping young people together is also important. These include where siblings can support each other and, in line with the Royal Commission into Aboriginal Deaths in Custody, where Aboriginal young people are provided with shared sleeping arrangements in order to support each other. It is also not uncommon experience in the ACT to have a single female in detention. Clearly in some cases it is not in the young person's best interests to be completely isolated from other young people in detention.

Conclusion

A total of 197 human rights standards have been addressed in the last four years by the ACT Government with regard to children and young people in detention. These standards have been achieved through:

- the design and build of Bimberi;
- the enactment of new legislation;
- new notified policies and procedures, declarations and delegations; and

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- the implementation of a human resource strategy and staff training.

Although it is early days, initial signs of success are encouraging. The focus has now moved to the engagement of services and programs in the community and their role in assisting young people in the justice system. There is a growing realisation through discussions with key stakeholders that to be effective in our interventions with young people in the justice system we need to intervene early, divert from the justice system where possible, ensure engagement with community agencies and follow up and follow through.

In the end, detention services for juveniles can only provide brief periods of assessment and stabilisation. The important tasks of getting young people engaged in education, training and employment and disengaged from the influences of criminal activity are largely dependent on agencies providing services in the community.

Engagement with human rights is critical to improving the service system. The experience in the ACT has shown that engagement, discussion and education are key to allowing service systems to respond to new legislation and reflect how design and practice can adhere to basic human rights and the development of a human rights culture.

As Eleanor Roosevelt reflected on human rights last century she was aware of the need to make them relevant:

Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: The neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world (Roosevelt 1958, quoted in Franklin and Eleanor Roosevelt Institute 2001).

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UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)

UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") (1985)

UN Standard Minimum Rules for the Treatment of Prisoners (1955)