

2021

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE REPORT OF A REVIEW OF A CRITICAL INCIDENT BY THE
ACT INSPECTOR OF CORRECTIONAL SERVICES –
RIOT AND SERIOUS FIRES AT THE ALEXANDER MACONOCHIE CENTRE
ON 10 NOVEMBER 2020**

**Presented by
Mick Gentleman MLA
Minister for Corrections**

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INTRODUCTION

The ACT Government welcomes the report from the Inspector of Correctional Services ('the Inspector') titled *Report of a Review of a critical incident: Riot and serious fires at the Alexander Maconochie Centre on 10 November 2020* ('the Report'), tabled in the ACT Legislative Assembly on 31 March 2021.

Establishing an Inspector of Correctional Services was a commitment of the Government in response to Recommendation 8 of the Moss Review¹, following the death in custody of Steven Freeman at the Alexander Maconochie Centre (AMC) in 2016. It recognised that effective independent oversight is vitally important to maintain public confidence in our correctional system.

The *Inspector of Correctional Services Act 2017* ('the Act') establishes the independent statutory authority and systematic review framework to facilitate a preventative regime to oversee correctional centres in the ACT. Section 18(1)(c) of the Act provides that the Inspector "*may examine a critical incident on the inspector's own initiative or as requested by a relevant Minister or relevant director-general*". A critical incident is defined in s17(2) of the Act as "*any event in a correctional centre or in the provision of correctional services that involved any of the following:*

- (a) the death of a person;*
- (b) a person's life being endangered;*
- (c) an escape from custody;*
- (d) a person being taken hostage;*
- (e) a riot that results in significant disruption to a centre or service;*
- (f) a fire that results in significant property damage;*
- (g) an assault or use of force that results in a person being admitted to a hospital;*
- (h) any other incident identified as a critical incident by a relevant Minister or relevant director-general."*

In May 2018, the ACT Government announced the appointment of Mr Neil McAllister to the role of Inspector. On 27 November 2018, the Inspector tabled his first report of a review of a critical incident, which pertained to an assault of a detainee at the AMC on 23 May 2018. Six more reports by the Inspector reviewing critical incidents at the AMC were tabled between February 2019 and May 2020. All these reports concluded that the incidents reviewed were not reasonably foreseeable by ACT Corrective Services (ACTCS).

The Report makes seven findings and 13 recommendations, which the ACT Government has carefully considered and:

- Agreed to eight recommendations (namely: 1-3, 7-8, 11-13); and
- Agreed in principle to five recommendations (namely: 4-6, 9-10).

¹ *'So much Sadness in our Lives, Independent Inquiry into the Treatment in Custody of Steven Freeman'*
https://cdn.justice.act.gov.au/resources/uploads/JACS/Reviews/submissions/Treatment_in_Custody/Report_of_Independent_Inquiry.pdf

While findings are not formally responded to, the ACT Government welcomes positive findings into the efforts of staff on the night of the incident. A table summarising the ACT Government responses to recommendations made by the Inspector (which provides further clarity on why a recommendation is agreed or agreed in principle), including proposed actions and timeframes for completion to each of the recommendations can be found at [Annexure 1](#).

GOVERNMENT RESPONSE

This review of a critical incident was conducted at the request of the Minister for Corrections, although the Inspector notes the incident met a number of criteria for him to instigate a review as well. Overall, the report found that the disturbance was not reasonably foreseeable by ACTCS.

The Report is critical of various aspects of ACTCS' preparedness for disturbances that include fires. Firstly, it notes that changes in executive position titles since the *Emergency Management Framework* (EMF) and the *Emergency Management Policy* were developed may have caused confusion during the incident. The first recommendation relates to this and suggests these documents are updated as a matter of urgency to ensure they reflect the current ACTCS senior management structure. The ACT Government agrees and has commenced the revision process which will clarify the command structure during emergencies based on roles rather than position titles. Furthermore, the difference between incident and emergency management will be articulated more clearly, as well as the method of determining when to commence emergency management structures. The Emergency Services Agency (ESA) is assisting ACTCS to ensure the EMF is contemporary and considers cross-jurisdictional interfaces during an emergency.

The Report also identifies discrepancies between the EMF and various incident response procedures, specifically the *Code Red (Fire) Procedure* and the *Code Grey – Detainee Disturbance or Riot Procedure*, which may also have caused confusion to responding staff. The associated recommendations (2-3) are to be actioned in tandem with the first recommendation.

Furthermore, the Report notes that minimum requirements under the *Emergency Management Policy* to conduct emergency management exercises have not been met, resulting in three recommendations to address this. The ACT Government agrees in principle to all these recommendations and will review the manner in which exercises are scheduled to ensure that the requirement to test all incident responses over a three-year period is met. Following finalisation of the EMF and *Emergency Management Policy* review as per recommendations 1-3, ACTCS will coordinate a major emergency exercise with relevant agencies (ACT Policing, ACT Fire & Rescue and ACT Ambulance Service), if possible, outside of business hours to include after-hour activation of the Head Office Incident Command Suite. Should this exercise be scheduled within business hours, the after-hour activation and operation of the Head Office Incident Command Suite will form part of a separate desktop exercise. Furthermore, ACTCS is in the preliminary stages of discussions with the Australian Federal Police regarding Memorandums of Understanding to gauge

interest in establishing a formal MOU or other appropriate cooperation mechanisms to support joint operations. Stronger interoperability will also be achieved through joint exercising and training as per recommendations 4-5.

Other concerns identified by the Inspector related to access to Tactical Personal Protective Equipment (TPPE). All three associated recommendations are agreed or agreed in principle, with ACTCS reviewing the storage of TPPE and auditing individual TPPE kits to ensure they are complete. A decision regarding the use of CS gas will be made as part of the EMF review, following which a determination will be made on the number and classification of staff that may require training or the stock will be disposed of.

Results from a staff survey conducted by the Inspector showed gaps in participation in training exercises and clarity of emergency instructions, leading to the finding that the custodial training program is not working properly in key areas. Issues around staff training have previously been identified and are addressed as a priority by the ACT Government. This is evidenced by the formation of the Blueprint for Change oversight committee, which was announced in December 2020 and will support ACTCS in bringing training capabilities for all custodial officers to an acceptable standard. The Organisational Capability Unit (OCU) that ACTCS established focuses on further professionalising the workforce and ensuring training related issues are addressed appropriately. While the Inspector recommends embedding a senior training officer at the AMC who reports to the General Manager, dividing training capacity across different divisions is not optimal due to poor economy of scale as well as difficulty ensuring consistency and standards maintenance in line with the Registered Training Organisation (RTO) status. As such, the current governance for training will continue, however this recommendation will be addressed by establishing dedicated custodial training staff and building strong connections with custodial operations to support greater onsite training and assessment in a flexible and timely manner.

In the period after the disturbance, eight detainees involved in the incident were transferred to a correctional centre in New South Wales due to accommodation pressures associated with the temporary loss of the AU North accommodation unit. The Report expresses concern that the written directions used to transfer these detainees may have been inconsistent with section 26 of the *Crimes (Sentence Administration Act) 2005* and recommends seeking urgent legal advice on this matter, which was obtained in February 2021. The Report also notes that ACTCS does not have any policy documents to guide the decision making around detainee transfers to NSW. The ACT Government agrees that transparency around decision making is imperative at all times, including in relation to transfers. ACTCS is currently developing guidelines under section 27 of the *Crimes (Sentence Administration) Act 2005*, which will ensure detainees are afforded due process and that their individual circumstances are considered, as well as outline recordkeeping requirements. In the interim, the Acting Commissioner has instituted processes to provide greater transparency.

Finally, the Inspector raised various concerns around staff health and welfare, which led to a recommendation that ACTCS reviews its incident response plans regarding medical and Employee Assistance Program assistance to staff post incident, provision of fresh TPPE

during protracted incidents, provision of fresh clothes post incident, the suitability of staff uniforms for use with TPPE or in hazardous situations, and provision of breaks, meals and refreshments for staff. The ACT Government agrees and will consider these as part of the review of the EMF.

Conclusion

The ACT Government is strongly committed to maintaining correctional facilities where safety of detainees and staff are of paramount importance, while respecting the human rights of detainees. As such, critical incident reviews by the Inspector play a vital role in identifying both immediate concerns and systemic issues. The findings and recommendations of this Report will contribute to the continuous improvement of the care, treatment and safety of all detainees and staff at the AMC.

Annexure 1

ACT Government Response to Recommendations

Recommendation	Government Response	Implementation
<p>Recommendation 1</p> <p>That the Corrections Management (Emergency Management) Policy 2019 and the ACTCS Emergency Management Framework 2018 be updated as a matter of urgency to ensure they are consistent and reflect the current senior management structure of ACTCS to avoid any confusion about the responsibilities of ACTCS senior managers in the event of an emergency situation.</p>	<p>Agreed</p> <p>The EMF has been identified as requiring a review and update. The EMF will be updated to clarify the command structure based on roles rather than position title. The update will also ensure that the EMF is operationally appropriate within ACTCS and considers cross-jurisdictional interfaces during an emergency. The Policy and EMF will more clearly articulate the difference between incident and emergency management and the method of determining when to commence emergency management structures. The Emergency Services Agency is assisting ACTCS to undertake a more wholesale review to ensure the EMF is contemporary.</p>	<p>The EMF will be updated by 31 December 2021.</p> <p>The Emergency Management Policy will be updated and notified by 31 December 2021.</p>
<p>Recommendation 2</p> <p>That ACT Corrective Services review the Emergency Management Framework 2018, the Corrections Management (Code Red (Fire)) Operating Procedure 2020 and the Corrections Management (Code Grey – Detainee Disturbance or Riot) Procedure 2014 (No 1) to ensure that there is a consistent approach to notifications of ACT Policing, ACT Fire and Rescue and ACT Ambulance Service about serious incidents.</p>	<p>Agreed</p> <p>The EMF has been identified as requiring a review and update as per recommendation 1. The Codes are currently under review.</p>	<p>The EMF will be updated by 31 December 2021.</p> <p>Code Red and Code Grey Operating Procedures will be updated and notified by 30 September 2021.</p>
<p>Recommendation 3</p> <p>That ACT Corrective Services review the Corrections Management (Code Grey – Detainee Disturbance or Riot) Procedure 2014 (No 1) and the Emergency Management Framework 2018 Major Disturbance Plan to ensure that they include responses to fires lit during major disturbances.</p>	<p>Agreed</p> <p>The EMF has been identified as requiring a review and update as per recommendation 1. The Codes are currently under review.</p>	<p>The EMF will be updated by 31 December 2021.</p> <p>The <i>Code Grey Operating Procedure</i> will be updated and notified by 30 September 2021.</p>

Recommendation	Government Response	Implementation
<p>Recommendation 4</p> <p>That ACT Corrective Services develop a three-year contingency-based exercise program covering both the Alexander Maconochie Centre and the Court Transport Unit that reflects the requirements set out in section 6.1 of the Corrections Management (Emergency Management) Policy 2019.</p>	<p>Agreed in Principle</p> <p>ACTCS will review the manner in which exercises are scheduled to ensure that the requirement to test all responses over the three years is met. ACTCS will work with ACT Policing and the Emergency Services Agency to build participation into exercise programs cross agency.</p>	<p>The schedule of emergency exercises will be reviewed by 30 September 2021.</p>
<p>Recommendation 5</p> <p>That ACT Corrective Services conduct one major exercise in 2021 which includes significant participation by ACT Policing, ACT Fire and Rescue and ACT Ambulance Service, and which involves after-hours activation and operation of the ACT Corrective Services Head Office Incident Command Suite.</p>	<p>Agreed in Principle</p> <p>After the finalisation of recommendations 1 to 3 (scheduled to be completed by 31 December 2021), an emergency exercise including ACTCS, ACT Police, ACT Fire & Rescue and ACT Ambulance Service will be scheduled (after hours if possible) based on the availability of these agencies, noting that bushfire season may limit their availability prior to April 2022. Should this exercise be scheduled within business hours, the after-hour activation of the Head Office Incident Command Suite will form part of a separate desktop exercise. Between finalisation of the EMF review and the major cross-agency exercise, ACTCS will conduct various smaller (single-agency) exercises to optimise benefits from the major exercise.</p>	<p>An emergency exercise will take place by 31 March 2022 pending finalisation of recommendations 1 to 3 and based on availability of emergency services agencies.</p>
<p>Recommendation 6</p> <p>That ACT Corrective Services enter into one or more Memorandums of Understanding (MOUs) with ACT Policing, ACT Fire and Rescue and ACT Ambulance Service concerning the conduct of joint operations arising from major incidents at ACT correctional centres and that the completion of these MOUs be given a high priority by ACT Corrective Services in 2021.</p>	<p>Agreed in Principle</p> <p>ACTCS is in the preliminary stages of complex MOU discussions with the Australian Federal Police (AFP), that includes ACT Policing. ACTCS (through JACS) will consult internally with the relevant agencies and with ACT Policing to gauge interest in establishing a formal MOU to support joint operations. Stronger interoperability will also be achieved through joint exercising and training.</p>	<p>MOUs or other appropriate cooperation mechanisms will be finalised by 30 June 2022, noting that development of extensive schedules may continue for 12-18 months to address the many intersections between ACTCS and the AFP.</p>
<p>Recommendation 7</p> <p>That the General Manager of the Alexander Maconochie Centre review the storage of Tactical Personal</p>	<p>Agreed</p> <p>The location of Tactical Personal Protective Equipment (TPPE) storage</p>	<p>Review to be completed by 30 July 2021.</p>

Recommendation	Government Response	Implementation
Protection Equipment kits, batons and shields to ensure that they can be accessed quickly in the event of serious incident.	will be reviewed, and changes made if required.	Any changes required as identified in the review to be completed by 30 July 2021.
<p>Recommendation 8</p> <p>That ACT Corrective Services conduct a full audit of Tactical Personal Protection Equipment kits to ensure that they are complete, items are undamaged and properly labelled as to size.</p>	<p>Agreed</p> <p>The TPPE kits will be re-audited to confirm completeness, condition and labelling. Any deficiencies will be rectified.</p>	<p>Audit to be completed by 30 July 2021.</p> <p>Any deficiencies identified in the audit to be rectified by 30 September 2021.</p>
<p>Recommendation 9</p> <p>That ACT Corrective Services make a firm policy decision as to whether CS gas should be retained as a use of force option at the Alexander Maconochie Centre, and if so decided, ensure that as a minimum all CO2 and CO3 officers are fully trained and qualified to deploy chemical agents if approved to do so. If it is decided that CS gas is not a use of force option, then the current stock of CS gas at the Alexander Maconochie Centre be disposed of as soon as possible.</p>	<p>Agreed in Principle</p> <p>As part of the EMF review and consideration of additional emergency response tools, a decision regarding the use of CS gas will be made. Depending on the decision, ACTCS will either make a determination on the number and classification of staff that may require training or dispose of the current CS gas stock.</p>	<p>A policy decision to be made by 31 December 2021 (as per recommendations 1-3).</p> <p>Determination on training needs to be made by 31 January 2022.</p> <p>OR</p> <p>Current stock to be disposed of by 31 March 2022.</p>
<p>Recommendation 10</p> <p>That a senior training officer(s) be embedded at the Alexander Maconochie Centre, reporting operationally to the General Manager of the Alexander Maconochie Centre.</p>	<p>Agreed in Principle</p> <p>Dividing training capacity across different divisions is not optimal due to poor economy of scale as well as difficulty ensuring consistency and standards maintenance in line with the Registered Training Organisation (RTO) status. Whilst the current governance for training will continue, dedicated custodial training staff will be established and will build strong connections with custodial operations to support greater onsite training and assessment in a flexible and timely manner.</p>	<p>A refreshed custodial training model will be finalised by 31 December 2021.</p>
<p>Recommendation 11</p> <p>That the ACT government urgently seek legal advice on whether a written direction to transfer a detainee under section 26(2) of the Crimes (Sentence Administration) Act</p>	<p>Agreed</p> <p>Legal advice regarding transfer directions, including whether there is a requirement to specify a NSW correctional centre was obtained in February 2021.</p>	<p>Completed.</p>

Recommendation	Government Response	Implementation
2005 requires a specific NSW correctional centre to be stated.		
<p>Recommendation 12</p> <p>That the ACT Government make guidelines under section 27 of the Crimes (Sentence Administration) Act 2005 which include provisions about the transfer of detainees to NSW correctional centres. These guidelines must include human rights considerations and recordkeeping requirements.</p>	<p>Agreed</p> <p>Guidelines are under development in line with the legal advice obtained. These will ensure detainees are afforded due process and that their individual circumstances are considered, as well as outline recordkeeping requirements.</p>	<p>Guidelines to be completed by 30 November 2021.</p>
<p>Recommendation 13</p> <p>That ACT Corrective Services review its incident response plans with regard to:</p> <ul style="list-style-type: none"> a. Medical and EAP assistance to staff b. Provision of fresh PPE to staff during protracted incidents c. Provision of fresh clothes to staff after incidents where clothes may have become wet or contaminated by smoke or chemicals d. The suitability of staff uniforms for use with PPE or in hazardous situations e. The provision of rest breaks, meals and refreshments to staff engaged in protracted incidents. 	<p>Agreed</p> <p>The review of Emergency Management Framework (EMF) will take into account the recommendations made and updated where required.</p>	<p>Review of EMF to be completed by 31 December 2021.</p> <p>Updates identified in the review to be implemented by 31 March 2022.</p>