

2019

**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

**ASSAULT OF A DETAINEE AT THE ALEXANDER MACONOCHIE CENTRE
ON 23 MAY 2018**

**Presented by
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Minister for Corrections and Justice Health**

INTRODUCTION

The ACT Government welcomes the Inspector of Correctional Services first report: *Report of a Review of a Critical Incident, Assault of a detainee at the Alexander Maconochie Centre on 23 May 2018* (the Report), provided to the Speaker of the ACT Legislative Assembly on 22 October 2018.

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). It recognised that effective independent oversight is vitally important to maintain public confidence in our correctional system.

Following the Moss Review, and in recognition of the unique make-up of the ACT's correctional system and increasing population pressures, the ACT Government committed to establishing an external and independent Inspectorate of Correctional Services, intended to strengthen and improve existing oversight arrangements.

On 30 November 2017, the ACT Legislative Assembly passed the *Inspector of Correctional Services Act 2017*. This legislation established the independent Inspector, tasked with conducting biennial reviews of ACT adult corrections facilities. It also provided the Inspector with powers to visit a corrections place at any time, review records, and talk to both detainees and staff.

In May 2018, the ACT Government announced the appointment of Mr Neil McAllister to the role of Inspector of Correctional Services for the ACT. The office of the Inspector of Correctional Services is now fully operational and is committed to ensuring continuous improvement through its systematic and regular reviews of correctional services.

Section 18 (1)(c) of the *Inspector of Correctional Services Act 2017* makes provisions for the Inspector to review critical incidents. Critical incidents are defined in the legislation to include circumstances where a person's life has been endangered, there is an escape, hostage situation, a riot, fire or a serious assault. This function provides insight into broader systemic issues that may be raised by individual incidents and lead to sustainable change towards best practice in correctional services in the ACT. This Report is the first review tabled in the ACT Legislative Assembly since the commencement of the Inspector function.

This review of a critical incident was conducted on the Inspector's own initiative following notification of an assault of a male AMC detainee, and his subsequent hospitalisation, on 23 May 2018. The detainee was treated for minor injuries and has returned to the AMC. ACT Corrective Services (ACTCS) duly reported the incident to ACT Policing for investigation.

There is a strong commitment from ACTCS to maintain correctional facilities and services where the human rights of detainees are respected, with the safety of detainees and staff of

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

paramount importance. However, unfortunately within correctional centres there is inherent potential for conflict amongst detainees. Often there are pre-existing tensions in the relationships between detainees at the AMC resulting from interactions and association, both in custody, and in the community. Dynamics between detainees is something that ACTCS staff manage carefully in consultation with individual detainees, and intelligence gathering.

The Report found that the incident was not reasonably foreseeable by ACTCS, making 10 findings and one recommendation for the ACT Government to consider. The findings of the Report provide assurance that ACTCS responded to this critical incident appropriately, and complied with relevant policies and procedures when responding.

GOVERNMENT RESPONSE

Finding 1

That Section 27 of the *Inspector of Correctional Services Act 2017* (ACT) needs to be reviewed to clarify its relevance to the review of a critical incident.

Finding 2

That Section 17(2)(g) of the *Inspector of Correctional Services Act 2017* (ACT) needs to be reviewed to clarify the meaning of ‘admitted to hospital’.

Finding 3

That AMC custodial and medical staff responded in a timely and effective manner to the assault on Detainee Z.

Finding 4

That both detainees involved in the incident on 23 May 2018 were appropriately classified as Medium Security.

Finding 5

That there was no intelligence information available to suggest that Detainee Z was at risk of assault by Detainee X.

Finding 6

That there were no failings of security procedures or practices that contributed to the assault on Detainee Z.

Finding 7

That desirably, Detainees Z’s mother should have been informed of his injured by a person of Aboriginal or Torres Strait Islander background.

Finding 8

That “Strict Protection” is not adequately defined in ACTCS policies or procedures.

Finding 9

That in terms of the detainees’ correctional histories and prison experience, it was reasonable that they be accommodated in the same unit.

Finding 10

That the Aboriginal and Torres Strait Islander Detainee and Offender Policy was updated in 2018 but does not refer to including the Indigenous Liaison Officer or Indigenous Case Manager in debriefings.

Government Response to the findings: Noted

The ACT Government notes each of the ten findings made by the Inspector.

The ACT Government notes the Inspector’s report has provided assurance that ACTCS could not have foreseen the incident occurring, and there is robust classification protocols and procedures to ensure the appropriate classification and placement of detainees. It is reassuring to hear that ACTCS incident response protocols were effective and appropriate when responding to this incident.

As a new piece of legislation and oversight function, the ACT Government continues to work closely in consultation with the Inspector on the operation the *Inspector of Correctional Services Act 2017*.

The ACT Government notes the comments made by the Inspector about clarifying Sections 17(2) and 27 of the Act respectively, and will further consult on how the interpretation of the Act can be strengthened. If considered necessary, legislative reform will be progressed to address these matters. In the meantime, ACTCS will prepare guidance protocols in consultation with the Inspector to clarify areas of ambiguity within the Act. If also required, the existing ‘*Memorandum of Understanding between ACT Inspector of Correctional Services and ACT Corrective Services concerning Critical Incidents*’ (August 2018) will be updated.

ACTCS are currently reviewing all policies and procedures as part of a comprehensive reform program. This review process will address the need for a definition of ‘strict protection’.

The ACT Government also notes the comments made by the Inspector about reference to the Indigenous Liaison Officer or Indigenous Case Manager in relevant policy documents.

The *Corrections Management (Aboriginal and Torres Strait Islander Detainee and Offender) Policy 2018* is a broad document outlining the commitment and principles of ACTCS towards Aboriginal and Torres Strait Islander detainees and offenders. Specific requirements are addressed in separate policies.

The *Corrections Management (Incident Reporting, Notifications and Debriefs) Policy 2018 (No 2)* outlines the requirements and purpose of post incident debriefs. These debriefs are used to identify learnings from an incident, and to check on the welfare of staff involved.

Most critical incidents will require some form of debrief, these may be informal, 'hot' and/or formal. Informal and 'hot' debriefs include all staff involved in an incident, including ACT Health and contracted staff where applicable. These debriefs take place in the immediate aftermath of an incident. Due to the time sensitive requirement for these debriefings, only staff involved in an incident can participate. The Executive Director or relevant Divisional Executive will determine whether a formal debrief is required, and set the attendance. This may include the Indigenous Liaison Officer or Indigenous Case Manager where appropriate.

The *Corrections Management (Critical Incident Stress Debrief) Policy 2011* describes a Critical Incident Stress Debrief as 'a confidential discussion about the critical incident with the staff members involved.' Therefore, it would be inappropriate to include any staff members not involved in the actual incident.

Recommendation 1

ACTCS policies and procedures should be reviewed so that in the event of injury or illness affecting an Indigenous detainee, where possible and appropriate, a person of Aboriginal or Torres Strait Islander background notify the next of kin of the detainee.

Government Response: Agreed in Principle

The ACT Government notes the importance and sensitivities around the notification of next of kin for detainees involved in critical incidents, and the requirement for culturally competent people to be involved in this process. It is pleasing to note that the Report found that ACTCS contacted the victim's mother promptly on the night of the incident.

The ACT Government also notes previous comments highlighting the importance of next of kin notifications in both the National report of the Royal Commission into Aboriginal Deaths in Custody (1999) and the Moss Review (2016).

The *Corrections Management (Incident Reporting, Notifications and Debriefs) Policy 2018 (No 2)* provides the specific arrangements for the notifications of next of kin. This policy prioritises the timeliness of notifications to next of kin in all instances where a detainee is admitted to hospital.

ACTCS strives at all times for next of kin notification to be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the incident as are known.

ACTCS acknowledges that conveying information to next of kin about a serious injury to a detainee is an emotionally sensitive matter. In such circumstances, due consideration will be given to the cultural sensitivities of the notification process. While all efforts will be made by ACTCS to use an Indigenous Liaison Officer to be involved in such notifications, the unpredictability of critical incidents and need for timely availability of Indigenous Liaison Officers may mean this isn't always possible.

Under the 2017 Memorandum of Understanding between ACT Policing and ACT Corrective Services, ACT Policing have primary responsibility for coordinating notification of the next of

kin of an Aboriginal or Torres Strait Islander death in custody. ACTCS provide, where appropriate, a designated Aboriginal or Torres Strait Islander representative from ACTCS to accompany ACT Policing or the ACT Coroner's Court representative when notifying next of kin to provide cultural support. Additionally, as previously noted, the *Corrections Management (Next of Kin) Policy 2012* outlines the policy and procedure to notify a detainee's next of kin of any unexpected injury/illness, death or other urgent circumstances.

This notification process acknowledges that at all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known. The ACT Government recognises that ongoing consultation and collaboration with the local Aboriginal and Torres Strait Islander community is required to continue to operate within the spirit of Recommendation 19 of the *National Report of the Royal Commission into Aboriginal Deaths in Custody*.

The ACT Government is satisfied that the current ACTCS practice for notifying next of kin when a serious incident or illness occurs is appropriate for all detainees at this time. Where possible, ACTCS will use Indigenous Liaison Officers to deliver the notification if there are available staff to deliver the information.

CONCLUSION

The ACT Government recognises that effective independent oversight provided by the Inspector of Correctional Services is important to build and maintain public confidence in the ACT's correctional system. The findings and recommendation of this Report will contribute to the continuous improvement of the care, treatment and safety of all detainees in the ACT's correctional facilities.