



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Jeremy Hanson MLA (Chair), Dr Marisa Paterson (Deputy Chair), Ms Jo Clay MLA

Submission Cover Sheet

Inquiry into Community Corrections

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**Submission by the
ACT Ombudsman**

Inquiry into Community Corrections

Submission by the acting ACT Ombudsman, Penny McKay

30 November 2021

Introduction and summary

Thank you for the opportunity to make a submission to the Standing Committee on Justice and Community Safety's Inquiry into Community Corrections.

This submission outlines:

- the role of the ACT Ombudsman
- details of our 2020 investigation report into the administration of parole by ACT Corrective Services (ACTCS), and
- recent complaints received about ACTCS, which may be of interest to the Committee.

The role of the ACT Ombudsman

The ACT Ombudsman's role is to:

- provide assurance that the organisations we oversee act with integrity and treat people fairly, and
- influence systemic improvement in public administration in the ACT.

This includes influencing improvements in the administration and management of the Alexander Maconochie Centre (AMC) by ACTCS.

The ACT Ombudsman's role is delivered by the Office of the Commonwealth Ombudsman (the Office) under a services agreement between the Office and the ACT Government. The agreement outlines activities undertaken by the ACT Ombudsman in relation to ACT agencies (including ACTCS), which include:

- managing individual complaints (including investigation when warranted)
- conducting own motion investigations in relation to ACT agencies
- outreach activities to inform the public and ACT agency staff about the role of the ACT Ombudsman, and
- making recommendations to improve public administration.

Investigation into the administration of parole by ACTCS

In November 2020, the ACT Ombudsman published an investigation report into the administration of parole by ACTCS. The report is provided at **Attachment A**.

Overview of investigation and recommendations

The former ACT Ombudsman, Michael Manthorpe PSM, decided to commence this own motion investigation after concerns were raised with our Office during outreach with detainees at AMC about issues associated with the preparation for parole:

- the information available to detainees about the parole process
- detainees' level of preparedness and the support provided to them to participate in this process
- the natural justice afforded to detainees during the parole application process and their access to legal representation, and
- the accuracy and completeness of the information provided to the Sentence Administration Board for consideration when making decisions on parole applications.

Detainees indicated they were reluctant to make formal complaints about these issues because of concerns that doing so would impact on their parole outcome.

The investigation was prioritised as even the smallest administrative failure has the potential to result in a detainee unnecessarily remaining in prison beyond their earliest possible release date.

The investigation resulted in 15 recommendations. The first 6 recommendations focus on the development of a healthy and transparent policy framework, as well as the implementation of sound administration for business planning and record management. The remaining 9 recommendations specifically address opportunities for improving sentence management and parole processes.

All 15 recommendations were accepted by ACTCS, which advised it is committed to developing a holistic Integrated Offender Management system focused on preparing detainees for release at the earliest opportunity, with due regard for risk and community safety.

Monitoring the implementation of recommendations

Our Office regularly monitors the implementation of recommendations arising from our investigations.

In September 2020, we published our inaugural *Did They Do What They Said They Would?* report. The report analysed agencies' implementation of recommendations made in reports published between July 2017 and June 2019. We assessed the steps taken by agencies to determine whether our recommendations were 'fully implemented', 'partially implemented' or 'not implemented'.

The Office is currently reviewing the implementation of recommendations made in reports published in the period 1 July 2019 to 30 June 2021 (for both ACT Ombudsman and Commonwealth functions). This review includes the 15 recommendations from our 2020 investigation into the administration of parole by ACTCS.

Agencies, including ACTCS, will have the opportunity to comment on our proposed findings prior to finalisation of our report. Subject to Ombudsman approval, we anticipate a copy of the completed report will be published and provided to the Standing Committee on Justice and Community Safety in 2022.

Complaints summary

Our oversight role in relation to the AMC involves managing individual complaints received by our Office, outreach activities, and regular engagement with other AMC oversight agencies.

Complaints received between 1 July 2020 and 30 June 2021

Between 1 July 2020 and 30 June 2021, the Office received 116 complaints about ACTCS. Each complaint was about the AMC, and the complaints were made by detainees, their friends and families.

The receipt of a complaint does not, on its own, indicate an issue is present. The Office can exercise discretion not to investigate complaints, under section 6 of the *Ombudsman Act 1989* (ACT) (the Act). Every complaint is assessed on its merits to determine whether it can be resolved quickly, or a formal investigation is required. We consider a number of factors in assessing complaints and determining appropriate action to take. This includes whether:

- the complainant has complained to the agency involved
- we can resolve the complaint quickly, for example, by providing a better explanation
- another agency or oversight body can provide a better outcome for the complainant
- it is clear the agency has made a reasonable and lawful decision, based on the information provided by the complainant, without the need for us to request additional information.

A preliminary analysis indicates the 116 complaints received during this period raised the following issues:

Nature of complaint	Number of complaints	Percentage of total complaints ¹
Medical treatment ²	22	19%
Safety / housing	15	13%
Access to visitors / arrangements	11	9%
Work / programs	9	8%
Parole processes	8	7%
Segregation and management	7	6%
Services	7	6%
Property	5	4%
Quality of food	5	4%
Other / multiple issues	27	23%

Outcomes of finalised complaint investigations for ACTCS in 2020–21

The Office decided to conduct investigations into 15 of the 116 ACTCS complaints received between 1 July 2020 and 30 June 2021 and 11 investigations were finalised in this reporting period.

Noting that more than one outcome may be recorded for each complaint investigation, the outcomes of these 11 complaint investigations were:

- a better explanation was provided by the Ombudsman (for 8 complaints)
- a better explanation was provided by ACTCS (for 7 complaints)
- there was no remedy (for 3 complaints)
- a remedy was provided by ACTCS (for 2 complaints)
- the decision was changed or reconsidered (for one complaint), and
- a financial remedy was provided (for one complaint).

¹ Percentages may not add up to 100 per cent due to rounding.

² Section 5(2)(o) of the *Ombudsman Act 1989* (the Act) states the Ombudsman is not authorised to investigate action taken by an agency in relation to a health service. Sections 6A and 6B of the Act provide for the referral of complaints to another statutory office holder or entity. This includes mandatory referral to the Human Rights Commission, if the Ombudsman decides it would be more appropriate for a complaint to be investigated by the HRC.

Complaints received between 1 July and 30 September 2021

Between 1 July and 30 September 2021, the Office received 23 complaints about ACTCS³. ACTCS was the ACT agency with the second highest number of complaints during the quarter. The ACT agency with the highest number of complaints was Housing ACT (25) and Access Canberra was the third highest (19).

Complaints about ACTCS related to parole since publication of our 2020 investigation report

As noted above, detainees may be reluctant to make formal complaints about parole due to concerns about the potential adverse impacts on their parole application. This factor, along with the multifaceted nature of many complaints, makes it difficult to provide reliable information on trends about parole complaints.

For example, complaints relating to parole can be difficult to separate from other complaints, as they may be mixed in amongst other issues, such as access to programs, which may or not be framed in the context of a parole application.

Between 1 January and 30 September 2021 – that is, the 3 quarters since the publication of our investigation report, preliminary analysis indicates approximately 8 of 82 complaints (or 9.8 per cent) received about ACTCS during this period referred to parole. Most of these 8 complaints related to a detainee at the AMC raising concerns about access to programs or case officers to progress or make a parole application. Three complaints referred directly to access and fairness before the Sentencing Administration Board. Two complaints related to issues with compliance and arrangements after parole was granted.

Of these 8 complaints, the Office conducted an investigation into one matter and made preliminary inquiries in relation to another. The investigation did not find any concerns about the support provided to the detainee to apply for parole by the case officer, though it did question whether detainees were provided with sufficient information about the role of case officers. The preliminary inquiry accepted that resourcing limitations meant the Sentence Administration Board was not using face-to-face or video conferences for its hearings at that time.

³ [ACT Ombudsman Quarterly Report](https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0016/112921/ACT-Ombudsman-quarterly-report_Q1-2021-22.pdf) – 1 July to 30 September 2021 - https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0016/112921/ACT-Ombudsman-quarterly-report_Q1-2021-22.pdf

Parole processes at the Alexander Maconochie Centre

INVESTIGATION INTO THE ADMINISTRATION OF PAROLE BY
ACT CORRECTIVE SERVICES

NOVEMBER 2020

Report by the ACT Ombudsman,
Michael Manthorpe, under the *Ombudsman Act 1989*

REPORT NO. **05 | 2020**

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EXECUTIVE SUMMARY

This report has been prepared by the ACT Ombudsman to highlight potential opportunities for improvement in parole processes at the Alexander Maconochie Centre (AMC). It follows an own motion investigation into these matters by our Office.

This investigation commenced following concerns being raised with our Office about:

- the information available to detainees about the parole process
- the level of preparedness of detainees and the support provided to them, to participate in this process
- the natural justice afforded to detainees during the parole application process and their access to legal representation
- the accuracy and completeness of the information provided to the Sentence Administration Board (SAB) for it to consider when making decisions on parole applications.

Our Office considered this investigation a priority as, in the parole context, even the smallest administrative failure has the potential to result in a detainee unnecessarily remaining in prison beyond their earliest release date.

Despite the ACT Government's commitment to the observance of human rights being central to AMC management, such failures have the potential to infringe on a detainee's right to liberty under s 18 of the *Human Rights Act 2004*.¹ Where release of detainees from custody is unnecessarily delayed, it also places added pressure on the already strained resources of the AMC and the SAB, at the tax-payer's expense.

We recognise the complexity of the work involved in ACT Corrective Services' (ACTCS) administration of parole and the various challenges at the AMC, including growth in detainee numbers, population diversity, resourcing and staffing limitations, and available systems functionality. We also acknowledge the policy reform program ACTCS has underway and the efforts of staff to implement new arrangements. This is a complex piece of work that will take time. Nevertheless, our investigation has identified room for improvement in the administration of parole processes in the ACT.

We support the ACTCS vision of a 'holistic integrated offender management model which seeks to enhance rehabilitation and integrative efforts'—as articulated in its Rehabilitation Framework and referred to as the 'sentence management continuum'². We agree this framework should be used to support sentence management decision-making and service provision, ensuring best-practice principles are incorporated in day to day operations. However, it is of concern to our Office that, despite this framework, ACTCS has been operating its parole and sentence management functions in the absence of a comprehensive and transparent policy framework.

¹ See *Human Rights Principles for ACT Correctional Centres* at: <http://www.cs.act.gov.au/page/view/4060/title/the-human-rights-principles-for>.

² The 2019 version (the 2019 Rehabilitation Framework) is available on the ACTCS website at: http://202.47.4.18/resources/uploads/JACS/NON-PRINT_VERSION_-_ACTCS_Rehabilitation_Framework_Summary_Nov_2019.pdf.

In its 2015 report, *The Rehabilitation of Male Detainees at the Alexander Maconochie Centre*, the ACT Auditor-General previously identified:

AMC planning for rehabilitation is ineffective as there is no rehabilitation planning framework, no evaluation framework and no finalised case management policy framework.³

While ACTCS finalised its Rehabilitation Framework document in 2018 and commenced its current program of policy reform, it is concerning that a robust sentence management policy framework has not been finalised. Without additional steps being taken, we anticipate ACTCS will face ongoing challenges in implementing this framework, as staff appear to have become accustomed to operating in the absence of formal policy guidance.

For the proposed new policy framework to be effective the roles and responsibilities of ACTCS staff in their different work units, as well as other agencies with involvement in parole processes, must be clearly articulated and documented across the 'continuum'.

Accompanying service standards, quality assurance processes and training programs must also be put in place. Without these measures there will be gaps in the 'continuum' that may prevent a detainee being adequately prepared for parole.

It is crucial that detainees are consulted and informed throughout these processes and are afforded natural justice where parole recommendations are made by ACTCS to the SAB. In addition, more needs to be done to ensure basic business planning, records management and reporting processes are in place to facilitate a detainee's progress through the 'continuum'.

This report makes 15 recommendations we consider will help ensure parole processes in the ACT are transparent and reflective of best practice administration, and reduce the risks of such administrative failures occurring.

The first six recommendations focus on development of a healthy and transparent policy framework, as well as the implementation of sound basic administration in terms of business planning and record management. The remaining recommendations specifically address opportunities for improving sentence management and parole processes.

All 15 recommendations have been accepted by ACTCS and its formal response is at **Attachment A**.

³ See ACT Auditor General's report no. 2 of 2015 at:
https://www.audit.act.gov.au/data/assets/pdf_file/0009/1179936/Report-No.-2-of-2015-The-Rehabilitation-of-male-detainees-at-the-Alexander-Maconochie-Centre.pdf.

Consolidated Recommendations

Policy framework and transparency

Recommendation 1

ACTCS finalise a policy framework that comprehensively covers the 'sentence management continuum', including the specifics of the parole process and how to manage detainees through this process, comprising:

- policy documents to contain high level principles and explain how the legislative framework is implemented
- complementary procedures to provide practical guidance to staff, which should include staff roles, responsibilities and referral points, as well as service standards and quality assurance measures.

Recommendation 2

To ensure the new policy framework remains up to date and used by staff, ACTCS:

- develop and deliver a training program to ensure staff apply the new arrangements consistently
- establish a process through which the framework is regularly reviewed and updated to reflect operational changes.

Recommendation 3

ACTCS assess any finalised policy documents for publication, as per open access requirements under the *Freedom of Information Act 2016*, with information published unless assessed as contrary to the public interest.

Recommendation 4

ACTCS provide comprehensive information to detainees through the 'sentence management continuum' about sentence management and parole processes, with information effectively communicated, particularly for detainees with high and complex service needs, or alternative service requirements.

Record keeping and planning

Recommendation 5

ACTCS review its records management framework and systems, and adjust them as necessary, to ensure:

- information is stored, managed and able to be retrieved by various work units along the 'sentence management continuum'
- policies and procedures stipulate record management requirements in appropriate detail.

Recommendation 6

ACTCS develop and implement a business planning framework that enables it to pro-actively plan for upcoming phases of the sentence management continuum’.

ACTCS consider the viability of prioritising planned development work, and ensure this includes new reporting functionality to facilitate high level management of detainee cohorts through ‘the continuum’, taking into account their earliest release dates.

Sentence management and programs

Recommendation 7

The induction policy be amended to require a discussion about parole at the induction stage, and be supported by up-to-date written documentation.

Recommendation 8

ACTCS put in place quality assurance processes, and provide additional training and guidance for Sentence Management Officers (SMOs), to ensure Sentence Management Plans (SMPs) are created in consultation with the detainee, and are consistent, effective and timely.

Recommendation 9

ACTCS finalise the draft *Sentence Management Policy* and develop complementary procedures, which include minimum service standards and quality assurance measures, to ensure:

- SMP reviews occur in a timely manner, with any delays documented
- related action items are well-documented, with case notes clarifying what actions are required, by whom and by when
- sentence management meetings have clear objectives to further a detainee’s preparedness for release, with further meetings scheduled if objectives are not reached
- handovers of case matters from SMOs to Community Corrections Officers (CCOs) are fully documented, with responsibilities clarified.

Recommendation 10

As a priority, ACTCS identify and implement new arrangements to ensure programs are more accessible to detainees, and particularly for those on remand.

The parole process

Recommendation 11

ACTCS policy and procedures clearly set out requirements for SMOs to:

- provide a detainee with a parole application form, at least seven months in advance of their earliest release date (ERD)
- talk through the form with the detainee to ensure they understand what is required of them and the process going forward, and document this discussion

- support the detainee, where required, with their written application, or identify another support person to assist—for example, an Indigenous Liaison Officer (ILO), if the detainee identifies as Aboriginal or Torres Strait Islander.

Recommendation 12

The new ACTCS parole policy and complementary procedures:

- outline procedural fairness requirements, including in relation to Pre-Release Reports (PRR)
- include a formal quality assurance process to ensure PRRs are accurate and up to date before being provided to the Sentence Administration Board (SAB).

ACTCS engage with the SAB to clarify requirements for a Relapse Prevention Plan (RRP) – with a template made available and detainees assisted to complete them if required.

Recommendation 13

ACTCS:

- include arrangements in the finalised parole and Home Visit Assessment (HVA) policies to ensure accommodation issues are clearly communicated to detainees and addressed prior to Sentence Administration Board hearings
- put in place quality assurance processes to ensure this occurs.

Recommendation 14

ACTCS implement information sharing or relationship protocols with other agencies that are involved when preparing a detainee for parole, to clarify roles and responsibilities. The protocol with Housing ACT should be prepared as an immediate priority.

Recommendation 15

Formal arrangements and quality assurance processes are implemented to ensure:

- outstanding requirements are communicated to the SAB early, enabling hearings to be re-scheduled where required and SAB resources to be more effectively prioritised.
- detainees are prepared for SAB hearings, with any outstanding action items completed
- ACTCS and detainees have a clear understanding of who is responsible for communicating with detainees throughout the parole process.

1. INTRODUCTION AND SCOPE OF INVESTIGATION

Our Role

- 1.1. The role of the ACT Ombudsman is to influence systemic improvements in public administration in the ACT, as well as providing assurance that ACT government agencies act with fairness and integrity. This includes influencing improvements in the administration and management of the Alexander Maconochie Centre (AMC) by ACT Corrective Services (ACTCS).
- 1.2. Our oversight of the AMC comprises the management of individual complaints received by our Office, as well as outreach activities and engagement with detainees and staff. In addition, we engage in broader monitoring activities, in conjunction with other AMC oversight agencies, to influence such improvements.⁴

Background to the investigation

Reasons for the investigation

- 1.3. AMC oversight has been a priority for the ACT Ombudsman, following increases in complaints about ACTCS to our Office and concerns raised through regular liaison with other oversight agencies and community stakeholders.
- 1.4. Since 2019, this has included concerns about the administration of parole processes for AMC detainees, including:
 - the information available to detainees about the parole process
 - the level of preparedness of detainees and the support provided to them, to participate in the parole process
 - the natural justice afforded to detainees during the parole application process and their access to legal representation
 - the accuracy and completeness of the information provided to the Sentence Administration Board (SAB) for it to consider when making decisions on parole applications.
- 1.5. Detainees have indicated they are reluctant to make formal complaints about these issues, because of concerns about possible impacts on their parole outcome. As a result, on 22 July 2019, our Office commenced an own motion investigation into parole processes at the AMC.

Developments since the investigation commenced

- 1.6. The ACT Inspector of Correctional Services (the Inspector) published a review about remandees at the AMC in February 2019 (the Remandee Review), making 39 findings.⁵ More recently, in November 2019, the Inspector's *Healthy Prison Review* (the HPR 2019),

⁴ A relationship protocol which sets out how the AMC oversight agencies work together is available at <https://www.ombudsman.act.gov.au/making-a-complaint/common-complaints/corrective-services>.

⁵ See *The care and management of remandees at the Alexander Maconochie Centre 2018* (the Remandee Review) at <https://www.ics.act.gov.au/reports-and-publications/thematic-reviews/thematic-reviews/2018-remand-review>

found more needed to be done to address issues across all four ‘pillars’ of their identified healthy prison framework—with 73 recommendations made.⁶

- 1.7. We consider this report complements the work already done by the Inspector and have referred to the above mentioned reports where relevant.
- 1.8. We acknowledge ACTCS has had a significant policy reform program underway while this investigation has been ongoing. We accept this is a significant piece of work that cannot be completed within a short timeframe. It involves a full review of all policies to ensure they are up to date and fit for purpose. Each policy also requires accompanying operational procedures, staff training and education. This program is not yet complete, with AMC policies still being reviewed, new versions being notified when finalised, and varied progress in their implementation. In response to the Remandee Review, the ACT Government provided a 30 June 2019 timeframe for completion of its policy reform, but in its response to the HPR 2019 a revised timeframe of 31 December 2020 was provided.⁷
- 1.9. In finalising this report, we have worked closely with ACTCS in an attempt to ensure where possible, any recommendations made reflect up to date policy directions and proposed developments. Our report makes 15 recommendations, all of which were accepted by ACTCS. Its formal response is at **Attachment A**.
- 1.10. In December 2019, we were made aware ACTCS had engaged the Bevington Group to conduct a further review of Community Corrections, encompassing parole and sentence management processes. As our Office has not been provided with a copy of the Bevington Group’s recommendations, we acknowledge there may be some cross over and similarities in our recommendations.

Objective, scope and methodology

- 1.11. This investigation was aimed at identifying opportunities to improve parole processes at the AMC. It was not intended to be a full review of parole activities during a certain period, but rather, to identify opportunities for improvement by analysing the policy framework, as well as the practical application of this framework in a number of sample cases—with an audit of 13 detainee case files undertaken, alongside a review of policy and procedural documents.
- 1.12. The focus was on how sentenced detainees are managed through parole processes and what policies, procedures, data and assurance practices are in place to manage these processes effectively. Of particular interest were those activities undertaken by ACTCS to prepare detainees for the parole application process. We wanted to understand the interactions between the SAB, ACTCS and detainees during this process, and the information ACTCS provided to the SAB, to facilitate parole decisions.
- 1.13. While our Office acknowledges all interactions detainees have in custody can contribute to their parole outcome, this investigation focused predominantly on the ACTCS’ administrative actions in the six month period leading up to the date detainees are eligible for parole. It does not address SAB decision-making or post release support provided to parolees—with the ‘success’ of parole subsequently granted, out of scope for this investigation.

⁶ See *Healthy Prison Review 2019* (2019 HPR) at <https://www.ics.act.gov.au/latest-news/articles/inaugural-healthy-prison-review-of-the-alexander-maconochie-centre-released>.

⁷ See the ACT Government response to recommendation 27 of the 2019 HPR at: https://www.ics.act.gov.au/_data/assets/pdf_file/0004/1551928/Tabled-version_Government-Response-to-Report-of-review-of-correctional-centre-by-Inspector-of-Correctional-Services-Healthy-Prison-Review-of-the-AMC-2019.pdf.

- 1.14. Our Office met with ACTCS in July and August 2019 to discuss:
- the scope of the planned investigation
 - how it could proceed to ensure the outcomes were practical for the agency
 - how information could be made available in the most efficient manner
 - the case selection for the audit section of the investigation.
- 1.15. We subsequently sought relevant information and copies of documentation about parole processes via three requests between August and October 2019, with the information received by February 2020. Further informal requests for information were also made in January and April 2020 to confirm there was no information missing and the status of draft policy documents.
- 1.16. In selecting 13 case files for the audit, our Office attempted to achieve a balanced representation of the detainee population, with a mix of cases from different detainee cohorts. Using the data sets provided by ACTCS, the cases we selected and reviewed included:
- 13 adult detainees, nine of whom appeared before the SAB, at least once, between August 2019 and January 2020
 - five Aboriginal or Torres Strait Islander detainees (including male and female)
 - detainees in their first episode of incarceration to those with extensive custodial history
 - detainees who were sentenced for one offence or a range of offences
 - detainees with high and complex needs (including mental health, drug and alcohol)
 - two cases identified by ACTCS as examples of best practice.
- 1.17. Our Office also met with SAB members in August 2019 in relation to our investigation. At the invitation of the SAB Chair, our staff subsequently attended a day of SAB hearings in August 2019, as observers.
- 1.18. The conclusions of the investigation and our recommendations are based on the assessment of the above material, and analysis of issues raised with our Office about parole processes. Where current practice within ACTCS remains unclear due to the policy reform process discussed above at paragraph 1.8, we have made recommendations that reflect best practice in public administration to ensure these can be considered as ACTCS finalise any new arrangements.

2. PAROLE IN THE ACT

What is parole?

- 2.1 Parole, if granted, allows a sentenced individual to serve the final part of their custodial sentence in the community under supervision.
- 2.2 When a detainee receives a custodial sentence of one year or more, a non-parole period (NPP) will generally be set.⁸ The detainee is then eligible to apply for parole within six months of the end of the NPP—the end of their NPP is known as their earliest release date (ERD).⁹ Parole may be administratively granted prior to the ERD, however a detainee cannot be released on parole before this date. After their ERD, if the detainee has been

⁸ See s 65 of the *Crimes (Sentencing Act) 2005* at <https://www.legislation.act.gov.au/View/a/2005-58/current/PDF/2005-58.PDF>. There are exceptions, including if the court determines it would be inappropriate to set a non-parole period due to the nature of offence, or if a person has been sentenced to life.

⁹ See s 121 of the *Crimes (Sentence Administration) Act 2005* (the CSAA) at <https://www.legislation.act.gov.au/View/a/2005-59/current/PDF/2005-59.PDF>

granted parole they will be released, while remaining subject to certain conditions imposed by the Sentence Administration Board (SAB).¹⁰ There are statutory provisions that allow a detainee to apply to the SAB for release prior to their ERB where there are exceptional circumstances and the recommendations in this report will have relevance to those applications.

- 2.3 Parole facilitates the supported reintegration of detainees back into the community. As the ACT Government has recognised in its *Building Communities, Not Prisons* initiative, parole and other rehabilitation programs can help reduce the cost on the criminal justice system and improve community safety outcomes.¹¹

The legal framework

- 2.4 The legislation relevant to ACTCS's management of rehabilitation within the Alexander Maconochie Centre (AMC) and preparation of detainees for parole is as follows:

- *Corrections Management Act 2007* (the CMA)
 - *Corrections Management Regulation 2010*
- *Crimes (Sentencing) Act 2005* (the CSA)
 - *Crimes (Sentencing) Regulation 2006*
- *Crimes (Sentence Administration) Act 2005* (the CSAA)
 - *Crimes (Sentence Administration) Regulation 2006*
- *ACT Human Rights Act 2004* (the HRA)
- *Information Privacy Act 2014*
- *Public Sector Management Act 1994*
- *Freedom of Information Act 2016* (the FOI Act)

- 2.5 The CMA is referred to throughout this report. It sets out minimum standards for correctional services in the ACT including case management services to be provided within AMC. Of particular relevance to this report:

- s 73 requires a case management plan to be 'prepared for a detainee as soon as practicable after the detainee's admission to a correctional centre'¹²
- s 78(3)(g)(ii) states a sentenced detainee must be 'given necessary assistance in applying for parole'.¹³

The policy framework

- 2.6 A list of policies and procedures, provided to our Office by ACTCS, is at **Attachment B**.
- 2.7 As discussed above at paragraph 1.8, a number of these documents have been under review for some time and are out of date, and do not reflect current practice. These issues are discussed in more detail in Part 3 of this report.

¹⁰ Certain core conditions apply under the CSAA (see s 137), but the SAB can impose additional conditions. These will be designed to protect the community and reduce the likelihood of re-offending.

¹¹ See <https://www.justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons>.

¹² See s 73 of the CMA at <https://www.legislation.act.gov.au/View/a/2007-15/current/PDF/2007-15.PDF>.

¹³ Ibid at s 78(3)(g)(ii).

The parole process in the ACT

- 2.8 A summary of our understanding of the parole application process in the ACT, based on the information we have available, is provided at **Attachment C**. The main stages of the process are also outlined briefly in the table below.

Stage	Actions
Parole application preparation and submission	<p>Detainees can submit a parole application to the SAB within six months of their ERD and are encouraged to do so as early as possible.</p> <p>Application forms can be obtained from, and discussed with, the detainee's Sentence Management Officer (SMO).</p>
Initial consideration of application	SAB will acknowledge receipt and decide whether or not to accept the application.
Preparation of Pre-Release Report (PRR)	<p>If SAB accepts the application, it will ask ACTCS to prepare a PRR for them to consider. We understand, it is at this point there is a hand-over from the SMO to a Community Corrections Officer (CCO).</p> <p>The CCO will prepare the PRR.¹⁴ A Home Visit Assessment (HVA) will usually also be conducted to assess the suitability of accommodation prior to release.</p>
Parole inquiry	<p>Once the PRR is received, the SAB will proceed to conduct an inquiry where it will consider the parole application on the papers.</p> <p>If parole is granted following an inquiry, a parole order will be signed. If this does not occur, SAB must schedule a parole hearing where the detainee is required to attend so the application can be considered further.</p>
Parole hearing	<p>The CCO will attend SAB hearings with the detainee.</p> <p>If parole is granted at the first hearing, a parole order will be signed. Alternatively, parole will be refused or a further hearing scheduled.</p>

3. ISSUES ARISING OUT OF INVESTIGATION

Policies and Procedures

Currency of policy framework

- 3.1 It is of concern to this Office that ACTCS has been operating its parole and sentence management functions outside of a robust and transparent policy framework.
- 3.2 Many of the policy documents provided to our Office (see **Attachment B**) were either in draft form or out of date and do not appear to reflect current practice. For example, the *Parole Unit - Policy and Procedures (dated 16 September 2015)* (the 2015 Parole Unit Policy), refers to an organisational structure and case management practices which we understand no longer exist. Despite this and while not a notifiable instrument, we understand the policy remains in place and has yet to be superseded or replaced. ACTCS has advised a new parole policy will be finalised by 31 December 2020.¹⁵

¹⁴ The SAB advised our Office in April 2020, in the context of a complaint investigation, that PRRs are taking eight to nine weeks to be prepared by ACTCS, and hence, when the report and other key information is received by the Board, they then promptly list the case for the first step, an 'inquiry'.

¹⁵ See ACT government response to recommendation 72 of the 2019 HPR - footnote 7.

- 3.3 We acknowledge ACTCS are in the process of transitioning from a ‘case management’ to a ‘sentence management’ approach, as is discussed further below at paragraphs 3.45 to 3.48. Given these changes, it is of particular concern that there is an absence of documentation to guide ACTCS staff in relation to their roles, scope and responsibilities under a sentence management model, or during an interim transition period. A revised *Sentence Management Policy*¹⁶ has been developed by ACTCS, which has remained in draft since October 2019 and does not clarify these procedural changes.
- 3.4 The documents that do exist are procedural documents focusing on limited parts of the sentence management process and do not explain how staff activities contribute to the broader organisational goals of prisoner rehabilitation. We do not consider existing documents provide sufficient guidance to ACTCS staff on:
- how detainee cohorts should be managed to ensure they are able to be released at the earliest possible time, consistent with the CMA (see discussion at paragraphs 3.41 to 3.44)
 - the roles of different ACTCS officers in sentence management and in particular through the parole process (see further discussion at paragraphs 3.45 to 3.48)
 - how detainees should be invited to apply for parole and guided through the application process (see further discussion at paragraphs 3.98 to 3.100)
 - how ACTCS should interact with the Sentence Administration Board (SAB) to ensure that parole application processes are streamlined, particularly where resources are limited (see further discussion at paragraph 3.149).
- 3.5 We acknowledge the documents provided to our Office includes (the now updated) *ACT Corrective Services Rehabilitation Framework (2018)*, outlining principles underpinning the ongoing delivery of offender rehabilitation programs and services in the ACT.¹⁷ ACTCS states this document aims to support ACTCS’ mission, as outlined in its *Strategic Plan*, to contribute to a safer community through ‘the safe, secure and humane management of offenders both in custody and in the community’ and ‘the provision of sustainable opportunities for offenders to lead law abiding and productive lives in the community through rehabilitation and reintegration’.¹⁸
- 3.6 The current *2019 Rehabilitation framework* presents sentence management as ‘a continuum of related processes which manage an offender’s risks and needs from induction to discharge’¹⁹—listing assessments, sentence planning, sentence management, transition and post-release as forming part of this continuum.
- 3.7 We consider it positive ACTCS has a publically available, overarching framework document in place, which recognises the importance of a rehabilitative approach to corrective services, references the legislative framework and makes a commitment to best practice. Nevertheless, for best practice to be achieved, it is critical ACTCS have a full suite of up to date policy and procedural documents available to staff to support each of the above listed processes.

¹⁶ See *Sentence Management Policy No. D3*.

¹⁷ See *Rehabilitation Framework* (version 13 March 2018). A more recent version of this document (the 2019 Rehabilitation Framework) has since been developed and published by ACTCS - see footnote 2.

¹⁸ This is referenced as taken from the *ACT Corrective Services Strategic Plan 2017–2019* in the forward to the 2019 Rehabilitation Framework. This document cannot, however, be accessed from the ACTCS website, nor can the *ACTCS Strategic Plan 2019–2024 One Team, One Purpose: Supporting a Safer Community* referred to later in the framework.

¹⁹ See page 6 of 2019 framework - footnote 2.

- 3.8 As discussed, at paragraph 1.8, we appreciate ACTCS has taken significant steps to review and update its policy documents since 2018. On 3 April 2020, ACTCS finalised its policy framework which establishes the requirements for the creation, review and updating of policy documents. We acknowledge the policy review is a significant and complex project which will take time to complete. Nevertheless, ongoing delays finalising revised parole policies and procedures are concerning, given the potential impacts on existing detainees—with detainees potentially remaining in prison unnecessarily, beyond their earliest release date. Not only could this put added pressure on already strained resources at the AMC and the SAB, but such failures have the potential to infringe on a detainee’s right to liberty under s 18 of the HRA.
- 3.9 Such delays raise concerns about which policy or procedure ACTCS has been operating under. Staff may have become accustomed to operating outside a policy framework, which has potential to undermine good administrative practice.
- 3.10 During our investigation we had the opportunity to provide comment and feedback on a broad range of ACTCS parole related policies and procedures²⁰. Based on our analysis, even where ACTCS policies have been re-written and notified, individual policy documents:
- do not fit together to form a comprehensive policy framework that guides what staff do in practice across the ‘continuum’, with complementary procedures providing a ‘how to’ manual for staff
 - lack high level advice to staff about the legislative framework and the principles they should apply to their work, and contain significant operational details that inevitably become out of date—making it difficult to ensure policies remain current and reflect actual current practices.
- 3.11 Procedural documents are often much shorter than desirable, repeat information in the policy and do not sufficiently refer to the relevant parts of the policy/legal framework.
- 3.12 We identified policy and procedural documents using differing terminology, which leads to confusion and focuses on siloed work packages.
- 3.13 We note the Inspector of Correctional Services (the Inspector) recommended in the HPR 2019, that ACTCS consult with oversight agencies before finalising new or revised policies²¹. We encourage ACTCS to consult with both the Inspector and the ACT Ombudsman in this regard, not just the ACT Human Rights Commission as suggested in the ACT Government’s response, so any such issues can be addressed ‘up front’ where possible.²² We also encourage ACTCS to engage in broader consultation with other agencies and stakeholder groups who are involved in the sentence management continuum, as is discussed further at paragraphs 3.138 to 3.141.
- 3.14 We acknowledge ACTCS is seeking to develop the approach to market for the next iteration of their education contract for the AMC, with a review of education offerings to be finalised by 30 June 2021. We encourage ACTCS to consider a training program for AMC that effectively complements any new policies and procedures developed as part of this process.²³

²⁰ These policies are listed at Attachment B.

²¹ See Recommendation 28 on page 70 of the 2019 HPR - footnote 6.

²² See page 19 of the ACT Government Response to the 2019 HPR - footnote 7.

²³ Ibid. at response to recommendation 63 of the 2019 HPR.

Recommendation 1

ACTCS finalise a policy framework that comprehensively covers the ‘sentence management continuum’, including the specifics of the parole process and how to manage detainees through this process, comprising:

- policy documents to contain high level principles and explain how the legislative framework is implemented
- complementary procedures to provide practical guidance to staff, which should include staff roles, responsibilities and referral points, as well as service standards and quality assurance measures.

Recommendation 2

To ensure the new policy framework remains up to date and used by staff, ACTCS:

- develop and deliver a training program to ensure staff apply the new arrangements consistently
- establish a process through which the framework is regularly reviewed and updated to reflect operational changes.

Accessibility

- 3.15 ACTCS must comply with its obligations under the CMA and the FOI Act, to publish their policies and procedures. The FOI Act establishes a pro-disclosure approach to publication. This is important in the context of ACTCS policies, with transparency regarding prison operations, helping to ensure that detainees are aware of policies and procedures that impact them.
- 3.16 Under the CMA each corrections policy or operating procedure must be published as a notifiable instrument, unless to do so would disclose information that may endanger public safety or undermine justice, security or good order at a correctional centre.²⁴ Where certain sections of policies or procedures are withheld for this reason, a statement explaining this must be published.
- 3.17 Similarly, documents identified as containing ‘open access information’, consistent with s 23 of the FOI Act, must be published, except where the information is assessed as contrary to the public interest information.²⁵ Again, where a decision not to disclose is made, reasons must be provided and published.
- 3.18 At present, there is no published parole policy or directly related procedures. This must be rectified to ensure compliance with the CMA, as well as ACTCS’ open access obligations. To comply with the FOI Act, it is also important policy documents that are published are accurate, up-to-date, and complete.²⁶

²⁴ See ss 14 and 15 of the CMA Act.

²⁵ See s 24 of the FOI Act.

²⁶ See s 25 of the FOI Act

- 3.19 We do not consider any sections of a parole policy are likely to be contrary to the public interest to disclose, or that disclosure may endanger public safety or undermine justice, security or good order at a correctional centre. On this, ACTCS has indicated its intention to publish the policy document.²⁷ If this is not the case, the relevant sections should be redacted and reasons provided. It is not consistent with the FOI Act, or the CMA, for the document not to be published at all.
- 3.20 The Inspector, in the HPR 2019, re-iterated the need to publish current and future policies and procedures without redactions wherever possible.²⁸ We note in its response, the ACT Government advised all its current policies and procedures, including those that are restricted, are notified and included on the ACT Legislation Register.²⁹ This does not address the issue of transparency in situations where policies and procedures are not documented, or remain out of date, as discussed above at paragraphs 3.1 to 3.9 above.
- 3.21 ACTCS is encouraged to publish, and regularly review, links to these documents on its own website under subject area headings to ensure they are up to date and easily accessible.
- 3.22 We acknowledge ACTCS has recently recognised its additional publication obligations under the FOI Act, and has recently published a new open access policy, following consultation with our Office.³⁰

Recommendation 3

ACTCS assess any finalised policy documents for publication, as per open access requirements under the *Freedom of Information Act 2016*, with information published unless assessed as contrary to the public interest.

Information available to detainees

- 3.23 Related to accessibility, it is essential ACTCS ensure all detainees can access policy documents that impact them. The ACTCS website should be made available to detainees (that is, 'white-listed') and arrangements made for those detainees with literacy issues, or without access to a computer.
- 3.24 Ideally, detainees should also have access to specifically designed documents or other information sources that clearly set out, in plain English, sentence management and parole processes from their perspective—for example, a finalised and up-to-date detainee handbook and any relevant induction information packs.
- 3.25 While the length of the NPP is set at the time of sentencing, detainees may not always be aware of when they are able to apply for parole, nor what they need to do to prepare in terms of programs and other activities. Indeed, in conversations with detainees many expressed confusion and concern at their upcoming parole process, in particular they did not know what they themselves had to do. Many had never spoken with their allocated Sentence Management Officers (SMO)³¹ about parole.

²⁷ See ACT Government response to recommendation 72 of the 2019 HPR - footnote 7.

²⁸ See Recommendations 29 and 30 of the 2019 HPR - footnote 6.

²⁹ See ACT Government response to recommendation 29 of the 2019 HPR - footnote 7.

³⁰ See http://202.47.4.18/resources/uploads/ACTCS/publications/Signed_-_Open_Access_Policy_2020.PDF.

³¹ In this report, SMO is used to refer to both Sentence Management Officers and former Case Managers, who are understood to have had a similar, yet more expansive role as is discussed later in this report at paragraphs 3.45 to 3.48.

- 3.26 As discussed at paragraphs 3.52 to 3.55 in the context of AMC induction processes, this information should be provided up front, both verbally and in writing, potentially in a visual format such as a personal rehabilitation flow chart or timeline.
- 3.27 We acknowledge ACTCS' advice that SMOs deliver SAB notices to detainees and that SMOs are available to discuss, or answer any questions about the process, in person or via email at the detainee's request.³² However, given limited SMO resources, we consider more needs to be done to ensure detainees have an understanding of the end-to-end parole process.
- 3.28 In the absence of official advice for detainees, a parole manual has been created by a detainee to assist fellow detainees in understanding the process.³³ This is a comprehensive document, with good tips for detainees to help them present their case effectively to the SAB. ACTCS could adapt this document, in consultation with detainees that have been involved, and make it readily available to all detainees.
- 3.29 ACTCS should also consider how best to provide such information, particularly during the induction process, given detainees may find it difficult to take in all relevant information at this time, particularly where they have difficulties with English or other special needs—as is already recognised by s 9 of the *Corrections Management (Induction) Policy 2019* (the Induction Policy). For example, ACTCS could consider producing a video in which the SAB Chair and/or a former detainee discusses the importance of parole and rehabilitation and the parole application process, including what the SAB consider when making decisions, and how a detainee might demonstrate they have addressed previous behaviour of concern.
- 3.30 Alongside the open access activities discussed at paragraph 3.22, our Office encourages ACTCS to prioritise taking a proactive approach to publishing such documents and/or materials on their website. This would provide greater transparency of the parole process and AMC operations, and assist organisations supporting detainees going through the parole process.

Recommendation 4

ACTCS provide comprehensive information to detainees through the 'sentence management continuum' about sentence management and parole processes, with information effectively communicated, particularly for detainees with high and complex service needs, or alternative service requirements.

Information management

File management and record keeping

- 3.31 A detainee's file, whether paper based or electronic, needs to adequately capture the work of ACTCS in managing the detainee's sentence, consistent with relevant legislation and policy. This includes preparing and storing case notes, forms, reports, emails and notices.
- 3.32 Ensuring records are maintained appropriately may assist ACTCS in meeting its legislative obligations in regard to case management. It may also assist when audits occur. Our Office

³² We received advice from ACTCS that this was the case in the context of a complaint investigation in April 2019.

³³ *A guide for AMC inmates applying for parole*

acknowledges the *Building an Evaluation Ready Organisation: ACT Corrective Services Program Evaluation Framework*³⁴ was published in September 2019 and demonstrates ACTCS' aspiration to address the inadequacies in their information storage.

- 3.33 Our investigation has found ACTCS has further work to do in ensuring information is readily available when requested by an audit.³⁵
- 3.34 We acknowledge the efforts ACTCS made to provide us with the information we requested for our investigation. However, it is of concern that not only our Office, but ACTCS staff themselves, appear unable to centrally access all information regarding a single detainee and review their progress for sentence planning purposes. Poor information management has the potential to negatively impact a detainee preparing for parole.
- 3.35 Our investigation highlighted the quality of record keeping in case management files varied greatly:
- Some SMOs had completed necessary forms (such as SSMPs) correctly, but others were less diligent in covering all aspects of the plan comprehensively.
 - Some made extensive case notes of their discussions with the detainees, as well as relevant stakeholders, whereas other files include case notes with little to no detail. Of particular concern, was the lack of documentation in a number of case files regarding:
 - the content of sentence management discussions during induction
 - ACTCS staff describing the parole application process to detainees
 - the communications between Community Corrections Officers (CCOs)³⁶ and SMOs following a SAB hearing, to discuss required next case management steps.
 - Some case files held further documentation, such as the results of drug tests or participation in programs, but this was not consistent.
 - Of the 13 case files we audited, there was regular mentions of forms 'uploaded to the briefcase', but they were not supplied to our Office. It is unclear whether the documents are missing from the records themselves or were not provided to us. Some notable missing documents include: Parole Applications, Relapse Prevention Plans (RPPs), Home Visit Assessments (HVAs) and Parole Orders.
 - There appears to be no consistent practice in noting when a referral to a program occurs or recording communications about referral progress between SMOs, CCOs, Indigenous Liaison Officers (ILOs) and program staff.
- 3.36 Our case audit also highlighted concerns raised by detainees that record keeping was insufficient. For example, one detainee discussed with their SMO whether the results of urine drug tests were being adequately recorded, as the broader population were concerned only positive tests were noted. Our Office was unable to determine the basis of this concern as we were not provided with results, positive or negative, in the case files.
- 3.37 The case study below also demonstrates the inefficiencies that can arise in the parole application process due to a failure to maintain accurate records.

³⁴ See http://cdn.justice.act.gov.au/resources/uploads/ACTCS/ACTCS_Program_Evaluation_Framework.pdf.

³⁵ This is consistent with the Inspector's finding in review Remandee review that a considerable body of work needed to be done to bring detainee hard files to an acceptable state. See finding 39 of the Remandee Review - footnote 5.

³⁶ The term CCO is used in this report. ACTCS policies indicate that this title is interchangeable with the title Probation and Parole Officer (PPO).

Case study:

During a SAB hearing for the detainee, the CCO, who authored the PRR, advised a HVA had deemed the property unsuitable as a parole address. The detainee had no knowledge of this assessment outcome or that they could have pursued other accommodation options prior to the SAB Hearing. The SAB cannot approve parole in the absence of approved accommodation.

The CCO advised the detainee's SMO had been notified and was aware of this outcome. However, it became clear this was not communicated to the detainee. The detainee expressed significant frustration as they indicated that they had other accommodation options they could have provided if they had known their first choice had been rejected. There is no recording in the documents provided to our Office of the assessment outcome being communicated to the SMO; nor of the SMO attempting to communicate the outcome to the detainee.

- 3.38 We understand some file records may be missing, as some SMOs did not transpose all emails relevant to a detainee's case management into a case note and these are no longer accessible if that staff member has left. This highlights the necessity for a centralised case filing system that is not disturbed by staff turnover and is less labour intensive than transposing emails. As discussed above, at paragraph 3.8, in the parole context, it must also be recognised that such failures are not merely a matter of simple administrative errors and inconvenience, they have the potential to delay a detainee's release date.
- 3.39 We know there are dedicated and highly competent SMOs working with detainees at the AMC. However, it would appear their efforts are not adequately captured by current records management processes, nor are their records always accessible to those further along the sentence management 'continuum'.
- 3.40 It is critical ACTCS staff members are able to access a 'single source of truth' detailing: preparations already made, remaining actions to be taken, timing of parole processes and/or relevant dates such as upcoming SAB hearings. This should include copies of: Sentence Management Plans (SMPs) and relevant reviews, case notes of conversations with detainees, program requirements and assessments, notices from the SAB, applications for parole and parole notices.

Recommendation 5

ACTCS review its records management framework and systems, and adjust them as necessary, to ensure:

- information is stored, managed and able to be retrieved by various work units along the 'sentence management continuum'
- policies and procedures stipulate record management requirements in appropriate detail.

Reporting and high level case management

- 3.41 As part of this investigation, ACTCS provided data in excel spreadsheets, from the final quarter of 2018–19, which it uses to identify parole-eligible detainees.³⁷
- 3.42 Based on the information provided, there does not appear to be a business management system or adequate reporting mechanisms available to ACTCS staff to enable them to plan ahead in the parole context. For example, to ensure detainees can attend and complete relevant programs before they apply for parole and any other required steps are taken before detainees appear before the SAB. Instead individual staff are left to manually manage individual cases they have been allocated and take the initiative to adopt an ad-hoc, pro-active approach to sentence management.
- 3.43 We consider higher level business planning to be a necessary component of ‘case management’, as referred to in the CMA. Particularly where case management resources remain limited, we consider the current approach fails to adequately address the risk of detainee sentences being extended due to administrative error.
- 3.44 Despite our investigation and reports by other oversight agencies highlighting ACTCS’ inadequate recording processes³⁸, we are not satisfied ACTCS has made sufficient changes to rectify these inadequacies and upgrades to information management systems continue to be delayed.³⁹

Recommendation 6

ACTCS develop and implement a business planning framework that enables it to pro-actively plan for upcoming phases of the ‘sentence management continuum’.

ACTCS consider the viability of prioritising planned development work, and ensure this includes new reporting functionality to facilitate high level management of detainee cohorts through ‘the continuum’, taking into account their earliest release dates.

Sentence management processes

- 3.45 By its own definition, ACTCS views *sentence management* as the integrated provision of appropriate services and programs to detainees that address assessed needs, and support the rehabilitation and reintegration of offenders into the community. This process can alternatively be known as ‘case management’, as it is in legislation, in other jurisdictions, and indeed, as it was known by ACTCS until it moved from a case management to a sentence management approach in July 2019.⁴⁰
- 3.46 We understand ACTCS has implemented a number of procedural changes to reflect this transition, including re-naming ‘Case Managers’ to ‘Sentence Management Officers’ (SMOs) and adapting their role to focus strictly on activities considered to relate to sentence planning—as opposed to activities involved with detainee welfare issues (to be managed by a ‘welfare officer’) or facilitating contact with other agencies, such as Housing ACT. We

³⁷ These spreadsheets were: Earliest Release Date List; Throughcare Release List; Current Parolees List; Current Sentenced Prisoners Database; Consideration List.

³⁸ See footnote 6 (HPR 2019) and *Rehabilitation of Male Detainees at the AMC*—2015 Auditor General’s report into the Rehabilitation of Male Detainees at the AMC. See also footnote, p. 143.

³⁹ The ACT Auditor General’s report at footnote 3 states that that \$400,000 was provided in the 2014-15 budget for ACTCS to begin work on developing its information management system; with an original target date of 2017 for this work.

⁴⁰ See discussion on p. 132 of the 2019 HPR at footnote 6 above.

understand SMOs do remain responsible for providing case management services to detainees on remand.

- 3.47 Some policies, such as the revised Induction Policy, have been updated to define the role of SMOs in a particular context.⁴¹ However, in the absence of any comprehensive role description we could not determine the overall scope of their responsibility to detainees. Nor could we separate any overlap in duties between SMOs and ILOs, with their roles appearing the same in some case files.
- 3.48 As discussed above at paragraph 3.3, ACTCS does not appear to have documented for its staff the change in duties from those of the case manager (under the previous framework) to the newly defined SMO role under the current aspirational framework. Such documentation would provide transparency around this transition and ensure there are no ‘gaps’ remaining—gaps which could have a negative impact on sentence management processes generally and particularly in terms of parole preparations for detainees. As a result, there appears to be some confusion amongst detainees and staff, about who they should be communicating with and who is responsible for particular processes and activities.
- 3.49 We acknowledge in its response to the HPR 2019, the ACT Government agreed to introduce an Integrated Offender Management model by 1 July 2021, with a focus on enhancing reintegration and rehabilitation efforts. The response also references development of a Women Offenders Framework by mid-2020.⁴²
- 3.50 Our Office welcomes such developments and the opportunity to comment on its implementation, but remains concerned by a lack of guidance and procedural support may be available to support staff in the interim.
- 3.51 We consider it a risk to individual detainees if the roles and responsibilities of ACTCS staff are not documented as soon as practicable. This would also assist with the review of the efficacy of the new arrangements recommended by in the HPR 2019.⁴³

Induction processes

- 3.52 As discussed, at paragraphs 3.23 to 3.27, it is important detainees are provided with comprehensive information regarding sentence management processes, particularly during the induction process. In addition, s 66 of the CMA specifically requires ACTCS to take reasonable steps to explain case management plan arrangements—now referred to as SMPs by ACTCS and in this report—to a detainee ‘as soon as practicable’ once admitted to the AMC.
- 3.53 In practice, our investigation found this has not been occurring consistently until the Induction Policy was implemented from 21 June 2019. Even where there was evidence in case files of inductions occurring in a timely manner, no specific references to sentence management or parole processes being discussed were recorded.

⁴¹ See <https://www.legislation.act.gov.au/View/ni/2019-387/current/PDF/2019-387.PDF>.

⁴² See ACT Government response to recommendation 66 and pp. 6 and 13 - see footnote 7.

⁴³ See Recommendation 66 of the 2019 HPR - see footnote 6.

- 3.54 It is positive the Induction Policy implements this in a practical sense, requiring SMOs to meet with detainees during the induction process to discuss SMPs. Section 4.9 of the policy also stipulates ‘All records relating to the induction process will be recorded on a detainee’s electronic detainee record system’.
- 3.55 It is important any such induction interview includes an up-front discussion about parole processes, particularly given limited SMO resources, to help ensure detainees will be able to meet SAB requirements by the time they are eligible to apply for parole.
- 3.56 This is because, even where an SMP is created as part of initial discussions with a SMO, it is not clear from our investigation that detainees understand what they must progress on their SMP, as opposed to what their SMO is responsible for.⁴⁴
- 3.57 ACTCS are encouraged to consider this as part of their current review of induction processes for female detainees.⁴⁵

Recommendation 7

The induction policy be amended to require a discussion about parole at the induction stage, and be supported by up-to-date written documentation.

The development of Sentence Management Plans (SMPs)

- 3.58 Consistent with the CMA, SMPs must be maintained, which ‘outline how the detainee is to be prepared for lawful release and reintegration into society at the earliest possible time’.⁴⁶ They may include requirements for the detainee to be given ‘necessary assistance in applying for parole’⁴⁷ and must be prepared ‘as soon as possible’ after admission.⁴⁸
- 3.59 The draft *Sentence Management Policy* provided to our Office does not refer to these provisions, which is concerning. It merely states SMPs should be completed within the first six weeks of admission, which may be inconsistent with s 73 of the CMA.
- 3.60 We suggest SMOs be reminded of their legislative responsibilities, with one case audit identifying a detainee who did not have a SMP created for them until months after they attended their sentence hearing. ACTCS advised the SAB this occurred later than appropriate due to ‘operational restrictions’.
- 3.61 We encourage ACTCS to ensure detainee engagement in the SMP development process is ‘prioritised’, consistent with s 4.5 of its draft *Sentence Management Policy*. This is because the development of SMPs should provide detainees with an opportunity to express those factors which may lead to re-offending in the community, with corresponding detail added by SMOs around the various supports available and what options ACTCS considers may best prepare them for release.
- 3.62 There is evidence of SMPs being created without an in-person conversation with the detainee themselves, indicating the SMP has been used primarily as a risk management tool, rather than one that may be beneficial to the detainee. This is reflected in the case study below.

⁴⁴ See case studies relating to housing, RPPs and programs attendance. All demonstrate detainee frustration over referral process.

⁴⁵ See ACT government response to Recommendation 4 of the 2019 HPR - see footnote 6.

⁴⁶ See ss 78(1)(a) and 78(2)(d) of the CMA at <https://www.legislation.act.gov.au/View/a/2007-15/current/PDF/2007-15.PDF>.

⁴⁷ See s 78(3)(g)(ii) of the CMA at *ibid*.

⁴⁸ See s 73 of the CMA at *ibid*.

Case study:

The detainee requested assistance from ACTCS to acquire post release accommodation. An SMO responded and explained they were the assigned SMO. The SMO told the detainee a SMP had already been created for them and was being vetted by the Sentence Management Unit Team Leader. The SMO indicated they would speak more, once the SMP had been approved. The detainee asked to see the SMP so they could see what programs had been recommended they attend, as previously they had self-referred without success.

- 3.63 It is also important the SMP, when developed, is comprehensive and covers all aspects of rehabilitation and risk management. The SMP template designed by ACTCS is comprehensive, but, as discussed at paragraph 3.35, our investigation demonstrated at least in the past, this has not been consistently utilised.

Recommendation 8

ACTCS put in place quality assurance processes, and provide additional training and guidance for Sentence Management Officers (SMOs), to ensure Sentence Management Plans (SMPs) are created in consultation with the detainee, and are consistent, effective and timely.

Reviews of SMPs and sentence management communication

- 3.64 Even a well prepared SMP must be supported by actions in order to succeed. The case management minimum standards, provided to us by ACTCS, specify SMP reviews are required every six or 12 months, depending on the length of the sentence—with more regular fortnightly meetings to occur in the first three months of a detainee's sentence and the last three months prior to release.
- 3.65 Reflecting the above, the SMP template provided to us includes a review date when created. Our investigation reveals only some plans appear to have been reviewed in time, as evidenced in the case study below. We could not identify any quality assurance mechanisms in place to ensure that required reviews occurred or to measure their effectiveness.

Case study:

A detainee signed a SMP created with them four months after they were sentenced. This SMP notes a review should occur in six months' time. However, there is no evidence of this occurring, with a further SMP created eleven months later. Although the detainee did make progress in between these two SMPs, and a substantial amount of case management appears to have occurred, there is no evidence of the SMP itself being reviewed.

- 3.66 Following a SMP review, it is not always evident from the records whether it is the responsibility of the SMO or the detainee themselves to action identified objectives; nor is it evident, whether these objectives are physically recorded and provided to the detainee for their reference.
- 3.67 Our investigation found it common for no sentence management planning meetings to occur in between SMP reviews.
- 3.68 It is evident from our investigation that SMOs previously interacted with detainees predominantly through chance encounters in the yard, unless a mandatory process, such as development of a SMP needed to occur. Contacts that did occur could, as a result, potentially be as brief as picking up a signed form with no further discussion or follow up required.

- 3.69 There is positive evidence of SMOs, more recently, scheduling appointments to discuss sentence management with detainees. However, limited access to SMOs does appear to remain an issue, reflected both in our investigation and more recent feedback to our Office—with concerns raised about the reduced capacity of SMOs, particularly given growing numbers of detainees at AMC.
- 3.70 Our file audit included matters where detainees expressed frustration at the delay in being assigned an SMO to further their pre-release plans, or not being assigned an SMO at all.⁴⁹ Based on the records available, it was difficult to ascertain when a SMO has actually been allocated, even where significant amounts of ad hoc case management had occurred.
- 3.71 While arrangements have changed at the AMC, with the introduction of SMOs, a detainee's knowledge of, and access to their SMO still appears to be insufficient—with detainees on some occasions unaware of who their SMO is, potentially due to staff turnover or infrequency of contacts. While staff turnover is not uncommon among correctional services nationally, it can have a notable impact on a detainee's experience of sentence management, as outlined in the case study below.

Case study:

At a SAB hearing, a detainee expressed their frustration at having five different case managers over a period of two or three months. The detainee's files indicate there were three SMOs engaged with the file in addition to two ILOs and a CCO.

- 3.72 As reflected in the Induction Policy and the draft *Sentence Management Policy*, it is critical detainees are aware of their allocated SMO, and regular contacts are made to discuss sentence planning activities—not just at limited mandatory case reviews.⁵⁰
- 3.73 Such communication is particularly important in the context of preparing for the parole process, as detainees in custody have limited capacity to communicate with ACTCS staff and staff from other services. There are several crucial communication points during the management of a sentence and subsequent application for parole. A failure for this communication to occur can result in a significant loss of agency for the detainee.
- 3.74 Where staffing levels cannot be adjusted to meet increased demand, we suggest ACTCS consider other ways to at least improve the quality of limited engagements.
- 3.75 Even if communication points are more limited than ideal, detainees are also likely to be successfully granted parole if their sentence management has been structured and is conscious of desired outcomes. As has been highlighted in the case files, SMPs that see the most progress in terms of addressing the objectives required for parole, involve some proactivity from detainee and ACTCS staff.
- 3.76 As part of our investigation, it was pleasing to see some SMOs do operate with a clear objective when meeting with detainees. There is also ad hoc evidence of SMOs taking a more pro-active communication approach, as per the case study below. In addition, the integration of email appears to have increased the amount of communication between detainees and SMOs, where access to computers is not an issue.

⁴⁹ These findings also appear consistent with the results of surveys undertaken as part of the 2019 HPR, with only 67 per cent of sentenced detainees reporting they had a case manager and 65 per cent indicating that they could access their case manager when needed. See n 6 above.

⁵⁰ The Inspector made similar observations. See p 133 of the HPR 2019 above at n 6.

Case study:

A detainee was anxious to hear about the outcome of their parole application. They sent their SMO an email checking whether the SMO had received more information than they had. The SMO responded within the hour indicating they were yet to hear, provided the usual time frame for such a response and confirmed the detainee would be notified as soon as an update was received. The detainee responded with gratitude.

- 3.77 To address some of these issues, we consider any revised policy framework should sufficiently cover not only sentence management discussions with detainees, but also those between ACTCS staff—in particular SMOs and CCOs. Our investigation noted insufficient evidence of handovers occurring between ACTCS staff in similar roles.
- 3.78 Our Office understands from the documents available to us, ACTCS’ desired practice is to hand responsibility for a detainee’s case from the SMO to the CCO upon their release. However, as discussed at paragraph 3.48, there remains some confusion with this process and the split of responsibilities is unclear. Our Office was also unable to source any detail of handover discussions, with no such records included on the files we reviewed.

Recommendation 9

ACTCS finalise the draft *Sentence Management Policy* and develop complementary procedures, which include minimum service standards and quality assurance measures, to ensure:

- SMP reviews occur in a timely manner, with any delays documented
- related action items are well-documented, with case notes clarifying what actions are required, by whom and by when
- sentence management meetings have clear objectives to further a detainee’s preparedness for release, with further meetings scheduled if objectives are not reached
- handovers of case matters from SMOs to Community Corrections Officers (CCOs) are fully documented, with responsibilities clarified.

Programs

- 3.79 ACTCS offers a number of programs to detainees designed to ‘develop essential skills and thereby increase both community safety and their likelihood of reintegration into community life’.⁵¹ The programs include ‘Offence Related’, ‘Offence Specific’ and ‘Wellbeing and Lifestyle Programs’. A list of the programs run by ACTCS is included at **Attachment C**.
- 3.80 Attendance at these programs is important for demonstrating detainees have addressed the issues that led them to being incarcerated, and as a result are looked upon favourably by the SAB.
- 3.81 It appears the programs are also enjoyed by those who attend them, and valuable skills are learnt which are referred to during time on parole. However, accessibility to these programs appears to be an issue.
- 3.82 Programs run at AMC all have eligibility requirements, maximum group numbers and are available at different frequencies. As reflected in the case studies below, it is evident a number of detainees have not completed programs due to administrative circumstances beyond their control, with a consequential impact on their application and/or eligibility for parole.

⁵¹ See *3F Programs Compendium*, page 4.

Case study

A detainee's earliest release date was only a few months away. Despite this, their SMO identified they had not yet attended any programs and so made the necessary referrals.

When the detainee attended their first SAB Hearing, their eligibility to attend programs had not yet been assessed by ACTCS. Consequently, the SAB rejected their parole application due to a lack of behavioural progress. It took a further seven months, from the parole decision, before the detainee was assessed to attend programs.

Case study

During a SAB hearing, the detainee acknowledged they needed to attend the Adult Sex Offender Program (ASOP) or the Domestic Abuse Program (DAP) but was waiting to be assessed. The SAB asked ACTCS about the delay in assessing the detainee's eligibility for ASOP or DAP. ACTCS told the SAB the detainee was due to be assessed on the same day as the SAB hearing, but due to the conflict, this would now need to be rescheduled, causing further delay.

- 3.83 While the management of programs for detainees was not a direct focus for this investigation, it highlighted the lack of planning in place to ensure detainees are able to undertake the required programs in a timely fashion prior to becoming eligible to lodge their parole application.
- 3.84 This is problematic as a failure to plan appropriately could delay release of individual detainees from the AMC, as discussed at paragraph 3.8, with the CMA requiring detainees to be prepared for lawful release and reintegration into society at the earliest possible time.
- 3.85 We acknowledge detainees may not have sufficient awareness of these programs⁵², but regardless, they should not be required to self-select themselves for programs and develop their own release plan, as per the case study below. Program attendance should form part of the SMP and sentencing planning discussions, particularly where programs need to be attended and are not regularly available, or where the particular detainee has additional restrictions on their movement due to security considerations.

Case study:

A detainee created a Relapse Prevention Plan (RPP) without any assistance. At their SAB hearing, the board noted the RPP was not comprehensive enough given the detainee's history of substance abuse.

The SAB asked if the detainee had access to relevant programs. The detainee told the SAB they had been deemed ineligible. No further explanation or reason for this decision was provided. The SAB asked the detainee if they had a case manager who could assist. The detainee confirmed it was their case manager who supplied them with the template for the RPP.

- 3.86 We consider this situation arises due to a lack of appropriate business planning discussed at paragraphs 3.42 to 3.44. As per recommendation 6, a business planning and reporting framework needs to be implemented that enables ACTCS to consider at a high level the current cohort of detainees, their ERDs, program requirements and program scheduling.

⁵² This was highlighted in the HPR 2019, with a survey for this review indicating that 57 per cent of respondents were not aware of the range of programs available, and 71 per cent did not believe that the programs help prepare them from release. See footnote 6.

The risks of insufficient preparation for parole are considered high where this is managed on a case-by-case basis only—particularly where access to certain programs are restricted, and ACTCS resources are finite.

- 3.87 Consistent with the discussion above at paragraphs 3.1 to 3.9, it is concerning there does not appear to be a policy document detailing how programs are run or allocated at the AMC. Our Office was only provided with a copy of a 'Programs Compendium' describing particular courses and a PowerPoint training presentation designed to increase knowledge of available programs. ACTCS does not appear to have documented their policy approach in terms of how attendance at programs informs their recommendation to the SAB.
- 3.88 In addition, we identified specific issues regarding access to programs where detainees cannot participate in criminogenic (offence-specific) programs while on remand, because they have not yet been convicted of an offence. In the ACT, as at June 2019, 40 per cent of detainees were on remand.⁵³
- 3.89 This can be problematic for detainees who are subject to lengthy periods on remand before being sentenced and where their sentences are backdated, making them eligible to apply for parole at, or shortly after being sentenced. This can lead to poor parole applications and outcomes because detainees are not able to be referred, assessed for suitability or attend required programs prior to their ERD or SAB hearing, as seen in the case study below.

Case study:

A detainee spent 10 months on remand, before they were sentenced. Although the detainee expressed an interest in commencing meaningful sentence management planning, there was limited case management prior to the detainee being sentenced.

When the detainee was sentenced, their sentence date was backdated to the date they were remanded in custody with only two months left before their ERD. This left the detainee with only two months to prepare a parole application and complete any required programs before their ERD. Due to the short time frame and lack of case management prior to being sentenced, the detainee was unable to be assessed for or complete the required programs before their SAB hearing. As a result, their parole application was denied.

- 3.90 The success of parole applications should not be determined by the length of remand as opposed to sentenced periods spent in the AMC. A detainee should not be penalised for not completing a program which was not available to them prior to their ERD.
- 3.91 ACTCS should also regularly audit and review their program offerings to ensure the relevance and effectiveness of the current programs being delivered. We understand such a review was commenced by the Corrections Programs Unit in 2019, but are unclear on the outcomes of this review.⁵⁴
- 3.92 Any such review should also take into account programs that are specifically available for Aboriginal and Torres Strait Islander detainees, with the Australian Law Reform Commission recommending such programs be made available, including to Aboriginal and Torres Strait Islanders on remand or serving a short sentence.⁵⁵

⁵³ See ABS, [Prisoners in Australia](#), 2019.

⁵⁴ See Justice and Community Safety Directorate Annual Report 2018–2019, [Rehabilitation of Offenders, Custodial and Community Correctional Programs](#) at p. 92.

⁵⁵ See Australian Law Reform Commission – [Final Report into the Incarceration rates of Aboriginal and Torres Strait Islander people](#), Recommendation 9.

Recommendation 10

As a priority, ACTCS identify and implement new arrangements to ensure programs are more accessible to detainees, and particularly for those on remand.

The parole process

- 3.93 Separate from the broader sentence management and sentence planning processes discussed above, a focus for our investigation was how detainees were actually prepared in terms of applying for parole and navigating the SAB process—with feedback from detainees and stakeholders increasingly suggesting preparation was inadequate, with potentially serious implications for detainees in terms of longer periods of incarceration. On an administrative level, a failure to prepare for such processes can lead to inefficiencies and and/or additional work for the SAB, whose resources are limited.
- 3.94 Section 78(3)(g)(ii) of the CMA also specifically requires detainees to be given the *necessary assistance* to apply for parole. However, as discussed in detail below, our investigation supports the informal feedback to our Office that assistance being provided to detainees is insufficient—and where it is, this is because of ad hoc actions by particular ACTCS staff, rather than a robust policy framework.

Access to legal representation

- 3.95 As discussed above at paragraph 1.4, feedback to our Office raised concerns about the access of detainees to legal representation to support them through the parole application process.
- 3.96 It certainly appears very few detainees do have legal representation, despite the fact this may assist them to achieve improved parole outcomes. From the sample of cases we reviewed, no detainees had legal representation. Support (emotional) was provided by an ILO in some circumstances and some detainees had family support at the parole hearing itself.
- 3.97 We acknowledge SAB parole hearing notices explain detainees can be legally represented at their SAB hearing and provides contact details for ACT Legal Aid and the Aboriginal Legal Service. However, we consider options for legal representation, or other forms of support, could be outlined earlier and more comprehensively to detainees by ACTCS. This could be included in the formal parole information package discussed above at paragraph 3.28.

Parole application

- 3.98 None of the documents given to us by ACTCS sufficiently explain the process in terms of a parole application being provided to a detainee or what assistance will be provided to the detainee in terms of completing the form. At present, it appears the onus remains on the detainee to request the parole application form from a staff member and complete it themselves:
- The parole information sheet provided to us by ACTCS remains in draft and does not explain the process. It puts the onus on the detainee to ensure an application is made as soon as possible and is well thought out with pre-release plans to be discussed with their case manager before submitting the form.
 - The draft detainee handbook indicates parole applications can be obtained from case managers, who can assist detainees but do not provide legal advice.

- 3.99 We consider this problematic, particularly if a detainee does not see their SMO regularly or engage in meaningful sentence planning discussions, because they may be unaware this is how the parole process commences or fail to apply in a timely manner. The application form is also broad and detainees may not know what information they should provide—leading to applications going before the SAB that are inadequate.
- 3.100 The case study below indicates the benefits that can flow from additional assistance, in this case the assistance of an ILO, being provided to detainees completing their parole application forms.

Case study:

Over a 12 month period, a detainee engaged in a number of cultural programs, developing their leadership skills and supporting other detainees. This was facilitated by the ILO. The ILO was also able to assist the detainee to prepare their parole application. The detainee was able to develop a comprehensive application, including a detailed RPP. The ILO was also able to assist the detainee to connect with external community groups and opportunities, allowing them to continue engaging in cultural programs and mentoring upon release.

- 3.101 It is important that detainees submit their parole application form as soon as possible to avoid unnecessary release delays. The earliest possible date this can occur is six months before their ERD. We consider detainees should be provided with a copy of the parole application form at least a month before the earliest date that they can submit the form (that is, seven months before their ERD).

Recommendation 11

ACTCS policy and procedures clearly set out requirements for SMOs to:

- provide a detainee with a parole application form, at least seven months in advance of their earliest release date (ERD)
- talk through the form with the detainee to ensure they understand what is required of them and the process going forward, and document this discussion
- support the detainee, where required, with their written application, or identify another support person to assist—for example, an Indigenous Liaison Officer (ILO), if the detainee identifies as Aboriginal or Torres Strait Islander.

Pre-Release Reports (PRR) and Sentence Administration Board (SAB) preparations

- 3.102 Our investigation indicates a PRR is not requested until the SAB has received a parole application from a detainee and accepted it.
- 3.103 We consider this approach acceptable to ensure limited resources are not exercised where a parole application does not proceed. However, it means, in practice, there is a six month window in which a PRR needs to be prepared, together with any other information required by the SAB, hearings held where required and a decision made on the parole application—noting the window will be shorter if the parole application is not submitted six months prior to their ERD.
- 3.104 ACTCS' policy and procedural documents do not adequately highlight these strict timeframes, or provide for a pro-active approach to be undertaken to meet them:

- The 2015 Parole Unit Policy indicates matters are only allocated to the CCO four months prior to NPP expiry and the majority of activities only commence three months prior to expiry.
 - The early draft revised *Transition to Community Supervision (Sentenced Offenders) Policy* does not provide any detail regarding preparing PRRs, with no draft procedures yet available to review.
 - Service standards for providing PRRs to the SAB are also not documented and as discussed above at paragraph 2.8, PRR timeframes appear to have extended to nine weeks.
- 3.105 Where PRRs cannot be prepared in a timely manner, it will directly impact the time that may pass between a detainee's earliest release date and the potential granting of parole. For this reason, it is crucial that effective and efficient process are put in place with the responsibilities of CCOs formally documented to avoid detainees remaining in the AMC for longer than strictly necessary.⁵⁶
- 3.106 PRRs should comprehensively document reasons why any required programs have not been able to be undertaken by the detainees so the SAB can consider this upfront at the inquiry stage rather than this only being identified at the hearing stage.⁵⁷

Natural justice and the SAB process

- 3.107 Detainees should be given an opportunity to review the final PRR and advise of any concerns/errors prior to its submission to the SAB. A failure to do so is inconsistent with administrative law principles and can also lead to further delays in the SAB process, with SAB members required to address such issues in person at SAB hearings when they arise.
- 3.108 The 2015 Parole Unit Policy requires a completed PRR be 'discussed with detainee prior to transmission to SAB' and 'during second week prior to the SAB meeting date'.⁵⁸ However, as indicated in the case study below, there have been instances where there was no record of detainees sighting PRRs prior to their SAB hearing or being able to respond in the way they would like to. Similar concerns raised with our Office include detainees attended SAB hearings without ever seeing their PRRs.⁵⁹

⁵⁶ The importance of timeliness in terms of parole decisions has been recognised by the ACT courts. In *Jackson v The Chief Executive of the Dept. of Justice and Community Safety and the Sentence Administration Board of the Australian Capital Territory* [2009] ACTSC 102 (25 August 2009), Chief Justice Higgins stated: 'the parole eligibility date is of central important to applicants. If they are to be found eligible for parole then that decision ought to be made at the earliest date practicable, and, in any event, before the parole eligibility date'.

⁵⁷ During a SAB hearing we witnessed as part of this investigation, the Chair asked why the detainee had not attended a drug and alcohol program. The detainee explained that as the programs run with mainstream prisoners, it would not be safe for them to participate in it.

⁵⁸ See p. 9 of the 2015 Parole Unit Policy.

⁵⁹ Similar concerns were also raised with the Inspector in the HPR 2019—see p. 141 of the HPR 2019 - footnote 6.

- 3.109 This is consistent with broader concerns raised by detainees to our Office about how their cases are presented unfairly to the SAB. Detainees have said they have been disheartened to review their own case notes in preparation for parole. They told us that despite their best efforts to make positive impacts on fellow detainees and going to some effort to ‘do the right thing’, they felt like case notes and written records only ever comprise comments from ACTCS staff about poor behaviour. For example, one detainee stated:

I asked for a copy of my case file to assist me in writing my parole application, and there were no positive comments about me—they were all negative. I know I’ve tried really hard and it’s really disheartening that no-one noticed.⁶⁰

- 3.110 Our file audits indicate detainees had at least sighted their PRR prior to their SAB hearing on almost all occasions. This is documented by a case note, as well as a signed acknowledgement form. This practice should be formalised in policy.
- 3.111 It is crucial, where the detainee has literacy issues, the PRR is discussed with the detainee and this step is not merely a checkbox process to indicate they have seen the report, as per the case study below.

Case study:

The SAB Chair asked the detainee if they had read a specific section of the PRR, which they had signed. The detainee advised they had not, as they experienced issues reading and writing. It appears the SMO had not read through the report with the detainee.

- 3.112 The policies and procedures should outline a framework for managing situations where the detainee does not agree with this report and indicates something needs to be changed or updated. That is, arrangements for providing procedural fairness to the detainee must be documented and relevant interactions recorded on file.
- 3.113 We have no evidence that there is effective quality assurance in place to ensure any inadequacies or inaccuracies in the PRR are addressed prior to SAB consideration.
- 3.114 We acknowledge a team leader reviews the report, but this task is often completed without sufficient time to address any inadequacies. There does not appear to be an escalation process available where a detainee has identified problems with the PRR, which ensures these issues are considered and amendments are made where appropriate before any further SAB hearing.
- 3.115 If such arrangements are in place, we consider this could eliminate, or at least reduce, the need for the SAB to schedule further hearings for the detainee—potentially delaying the release date of the detainee. Such unnecessary delays are of particular concern, when feedback and complaints to our Office have raised concerns about increasing delays in the SAB process being finalised, as is discussed further below at paragraph 3.151.
- 3.116 Regardless, we support recommendation 73 of the 2019 HPR which suggests ACTCS put in place quality control mechanisms to ensure PRRs are provided and explained to parole applicants, no later than one week prior to their scheduled hearing before the SAB, in addition to our further recommendation below.

⁶⁰ ACT Ombudsman outreach visit in 2019.

- 3.117 We acknowledge ACTCS has agreed to implement this recommendation, already amended its processes and advised it will be included in the new parole policy and procedure when finalised. We consider this change would help ensure limited SAB resources are more effectively utilised.⁶¹
- 3.118 Given feedback to our Office that detainees have no path to escalate their concerns about PRR inaccuracies not being addressed, ACTCS should consider whether the new complaints policy provides for sufficient avenues for detainees to address concerns about the PRR process or whether further avenues and/or prioritisation arrangements for managing such issues need to be introduced.

Relapse Prevention Plans (RPPs)

- 3.119 Our Office was not provided with information about RPPs, including the basis for which they are requested, how they will be utilised or whether they are necessary or influential in parole hearing outcomes.
- 3.120 Our investigation indicated the RPP is a form related to a detainee's drug and alcohol use which is requested by the SAB for some detainees. It asks detainees to outline how they will respond to scenarios where they are more vulnerable to relapse.
- 3.121 There does not appear to be any formal guidance given to a detainee when compiling a RPP, nor is information provided outlining the consequences should their plan fail to meet the SAB's expectations.
- 3.122 It is not clear in what context an RPP is required, but given the complexities associated with mental health and/or addiction, prevention and the long term nature of recovery, it would seem appropriate for such plans to be prepared with the assistance of a suitably skilled officer or service provider, trained in the management of relapse prevention.
- 3.123 The lack of support in creating a RPP is evident in case files, with some detainees completing a plan with the assistance of a suitable service provider, such as Directions ACT, but others completing the plans on their own. The case study below demonstrates the lack of formality in relation to RPPs, as well as how the absence of guidance and appropriate supports can impact the outcome of a SAB hearing.

Case study:

A detainee completed a RPP template supplied to them by their SMO. They included this in their parole application. During the SAB hearing the board requested a more comprehensive plan. They asked the detainee if there was anyone that might assist them and suggested their SMO. The CCO and SAB agreed upon a more comprehensive template that may be more appropriate.

- 3.124 If the SAB require a RPP be created for the purpose of determining parole, it should be made clear to detainees and ACTCS staff. The requirement of a RPP should be included in any parole policy and subsequent procedure established by ACTCS.

⁶¹ See ACT Government response to recommendation 73 of the 2019 HPR - footnote 7.

Recommendation 12

The new ACTCS parole policy and complementary procedures:

- outline procedural fairness requirements, including in relation to Pre-Release Reports (PRR)
- include a formal quality assurance process to ensure PRRs are accurate and up to date before being provided to the Sentence Administration Board.

ACTCS engage with the SAB to clarify requirements for a Relapse Prevention Plan (RPP)—with a template made available and detainees assisted to complete them if required.

Accommodation and Home Visit Assessments (HVA)

- 3.125 Prior to commencement of this investigation, particular frustrations were raised with our Office regarding accommodation arrangements not being made for detainees, particularly where public housing was required, resulting in parole applications being refused.
- 3.126 This situation arises because the CSA Act provides criteria the SAB must consider when making a parole order.⁶² As outlined in the relevant regulations, this includes that the offender must live only at premises approved by the director-general⁶³—in practice, we understand this approval is delegated to the Commissioner.⁶³
- 3.127 The main issues raised were that detainees were stuck in a ‘circular situation’ where the SAB required detainees to have an approved address when making an application for parole, but Housing ACT would not discuss housing options with detainees until they were released. Similar situations were identified as part of our investigation, as was clearly articulated by the SAB in the case study below.

Case study:

A detainee had applied to a housing provider for accommodation post-release. The housing provider and the detainee had a preliminary discussion and it was indicated the detainee may be accepted for the housing service, but they would require a further conversation after their parole was granted. The SAB were unable to accept the application without confirmation of accommodation—with the Chair stating: *‘We can’t release the detainee because they haven’t got accommodation and they can’t enter that accommodation because they haven’t got a release date. This is like a ridiculous situation.’*

⁶² See s 120(2) of the CSAA - footnote 9.

⁶³ See s 4(a) of the *Crimes (Sentence Administration) Regulation 2006*.

- 3.128 These issues were raised with Housing ACT by our Office in 2019. There have been a number of positive developments since this time with:
- Housing ACT introducing new arrangements to ensure public housing properties that are not needed due to the tenant being incarcerated are handed back quickly to increase supply with detainees then placed on the priority list when eligible for parole.⁶⁴
 - Pre-COVID-19 pandemic, Housing ACT staff and OneLink staff, commenced visiting the AMC at least monthly to facilitate detainees completing any necessary paperwork. The paperwork which is required for detainees who are seeking access to public housing for the first time or will be seeking new housing in line with the priority list arrangements outlined above. Videoconferencing facilities are also being used.
 - We understand additional temporary housing options are being considered by the ACT Government, where a property is not immediately available on exit from the AMC.
 - The Justice Housing Program (JHP) has also commenced with the ACT Government, as part of the *Building Communities, Not Prisons* initiative.⁶⁵ However, this appears to focus on accommodation options for alleged offenders who are denied bail because they don't have an address to go to. As this initiative is designed to reduce demand on the AMC, it would be beneficial if this was extended to ensure detainees have housing options available, to enable parole to be granted.
- 3.129 We acknowledge Housing ACT's efforts to engage with detainees over the last 12 months to gain a better understanding of their housing needs and preferences, prior to their release—and their preparedness to trial new arrangements to see what might be more effective and what further programs might be warranted. We understand some of these case by case initiatives have resulted in housing applications being progressed prior to release of the detainee.
- 3.130 We are not aware of these arrangements for housing detainees on exiting the AMC being documented anywhere in ACTCS, or Housing ACT, policies. There also does not appear to be any protocols or a Memorandum of Understanding (MOU) in place to clarify the roles and responsibilities of each agency, and how they will collaborate to ensure housing options are available for detainees being released from prison where possible.
- 3.131 Our investigation identified frustration often occurs at SAB hearings where accommodation developments have not been effectively communicated between the detainee, the SMO, the CCO and/or the SAB. This is particularly evident where multiple service providers are involved—potentially reducing even currently available housing options for detainees in practice as outlined in the case studies below. As a result, any such MOU should include schedules covering engagement with service providers in this space.

Case study

A detainee expressed frustration in trying to organise accommodation for release. The SMO was unable to provide them with an update. When the detainee called the provider directly, they were informed they could not speak with them directly.

Case study

⁶⁴We consider that such arrangements do, however, need to be balanced to ensure they don't have unintended consequence for individuals on short sentences.

⁶⁵ See footnote 11.

The detainee's SAB hearing was adjourned due to a lack of accommodation. A HVA was completed by a CCO, but their accommodation option was deemed unsuitable. There is no record of the SMO or the detainee being notified of this before the SAB hearing.

Case study

The SAB Chair asked if other applications for alternate accommodation could be made for a detainee. The detainee told the SAB they had been submitted for the CCO to consider. The CCO advised the detainee was not aware of this occurring.

- 3.132 We acknowledge this is a complex area with:
- ACTCS staff expressing the frustration they feel when left in a difficult position because accommodation arrangements cannot be approved. For example, the detainee's family will not agree to the detainee returning to the family home, but have asked that this not be revealed to the detainee.
 - The SAB highlighting to us the complexities of finding housing options for individuals who have been charged with sexual offences involving children has limited availability in Canberra.
- 3.133 We acknowledge Housing ACT supports a number of housing options and programs, outside of public housing that Throughcare staff support their clients to access upon, or prior to their release. This includes funding two programs in the specialist homelessness sector—with EveryMan funded to provide the Men's Accommodation and Support Service, and Toora Women funded to provide the Coming Home Program. The Housing ACT Rental Bond Loan program can also be of assistance to detainees and community housing service providers are also available.
- 3.134 Regardless, given the multiple options potentially available but the limited nature of these resources, we consider more needs to be done to explain housing requirements and the complexities that can arise to detainees, so they are fully prepared and where possible, such frustrations do not arise.
- 3.135 There is also a lack of clarity regarding the process where a HVA is required (or how it should be recorded) in order for the proposed accommodation be deemed suitable by ACTCS. We only identified one formal 'HVA checklist' on file despite other files indicating a HVA occurred. In these files the details of the HVA were documented within a case note rather than an 'HVA checklist'.
- 3.136 It was also apparent HVA requirements are not always adequately communicated to detainees. We understand these assessments can be complex depending on the number of individuals residing at the proposed accommodation. However, it appears common for assessments to occur and accommodation options to be deemed appropriate without this being communicated to the detainee in a timely manner. Issues can also arise when a HVA is completed too late.
- 3.137 As a result, it is timely ACTCS is developing a revised *Home Visit Assessment Policy*. Our Office has provided feedback on this document separately to ACTCS, but re-iterates it is supportive of the inclusion of a 'preliminary assessment' being conducted by the SMO early in the detainee's sentence to address any obvious concerns. Although a similar measure was captured in the original policy, it is not evident this is currently occurring.

Recommendation 13

ACTCS:

- include arrangements in the finalised parole and Home Visit Assessment (HVA) policies to ensure accommodation issues are clearly communicated to detainees and addressed prior to Sentence Administration Board (SAB) hearings
- put in place quality assurance processes to ensure this occurs.

Engagement with other agencies

- 3.138 There can be a number of agencies involved in a parole applicant's preparation, with agencies required to collaborate, to provide support for the detainee and ensure required information is collected.
- 3.139 With this in mind, ACTCS has developed a *Consent to Release Information Form*, which is signed by the detainee. It allows ACTCS to request and receive information about the detainee from relevant agencies such as Mental Health, Justice Health and Alcohol and Drug Services.
- 3.140 Although ACTCS appear willing to engage with other agencies there appears to be ongoing issues with agencies not being forthcoming with information, or information releases being delayed. This could impact a detainee's parole outcome if the information relied upon is delayed, as demonstrated by the case study below.

Case Study

A SMO met with a detainee in order to discuss post-release plans. The SMO indicated moving into a residential mental health centre might be a good option to assist their rehabilitation. The SMO also indicated this option may be looked favourably upon in a parole application. The detainee agreed it would be a good way forward and requested the SMO liaise with Forensic Mental Health (FMH) in order to facilitate the referral.

The detainee applied for parole a number of months before their ERD. The SAB held an initial inquiry and hearing, requesting further information about the detainee's accommodation. The detainee's SMO and their CCO both attempted to obtain information from FMH and the residential mental health unit about the progress of the detainee's referral. The residential unit was unable to provide information due to privacy reasons. The detainee called the residential unit directly, but was also unsuccessful in obtaining information.

Multiple hearings were required due to ACTCS being unable to obtain the information required for the SAB.

- 3.141 Relationship protocols between ACTCS and other agencies, including Housing ACT and ACT Health would ensure shared understanding of roles, responsibilities and timing of each agencies' role in the parole process.

Recommendation 14

ACTCS implement information sharing or relationship protocols with other agencies that are involved when preparing a detainee for parole, to clarify roles and responsibilities. The protocol with Housing ACT should be prepared as an immediate priority.

Parole hearings and communication between ACTCS, the SAB and the detainee

- 3.142 The lack of documented information for ACTCS staff and detainees about the parole process, discussed above at paragraphs 3.4 to 3.28, is also evident at the parole hearing stage. The parole information sheet provided to our Office remains in draft and is out of date—referring, for example, to case managers. The responsibilities of particular ACTCS officers (including SMOs, CCOs and ILOs) in preparing detainees for parole hearings remains undocumented and unclear.
- 3.143 Parole hearing notices appear to be completed consistently and are provided to detainees, however, there is no evidence of further discussions occurring with detainees as to what to expect at the hearing.
- 3.144 Our investigation indicates communications following a SAB hearing may also be insufficient. Although the SAB try to make detainees as comfortable as possible during a hearing, it is still an anxiety provoking exercise. This can mean a detainee is unable to process all of the information being provided to them or requested from them during the hearing.
- 3.145 As a result, it is important the CCO takes notes from the hearing, so both SMO and detainee are informed in writing, of the outcome, including any outstanding tasks. This action does not appear to be required under the policy framework, nor is practice consistent in this area.
- 3.146 When a detainee is unsuccessful at an initial SAB hearing and a further hearing is scheduled, they may only have a number of weeks to address the concerns raised by the SAB. As a result, it is critical the SMO and detainee are provided with timely and accurate advice by the attending CCO, so any outstanding issues are addressed between hearings.
- 3.147 Our investigation indicates the ineffective communication between SMOs, CCOs and detainees may result in a detainee failing to address such issues leading to additional hearings being scheduled or a negative parole outcome, as reflected in the case study below. In some cases the CCO recorded what was required on the case file, but the SMO was not notified to ensure follow up was undertaken.

Case Study

A detainee entered AMC and completed induction in a timely manner. They were assigned a case manager (and subsequently a SMO), who completed the required assessments including a SMP.

When they entered AMC it was evident their post-release accommodation preference may have been precarious as it was the home of the victim of the most recent offence. Another accommodation option for the detainee was their mother's home. However, when their mother called ACTCS to enquire about the HVA process, prior to the detainee even being sentenced, it was made clear this home already housed a parolee (which is identified as a potential barrier to ACTCS providing a suitability recommendation). This was confirmed when the allocated CCO completed a HVA.

The detainee applied for parole and was unsuccessful during the SAB's inquiry, therefore a hearing was scheduled. Multiple hearings were held and adjourned, in part due to the detainee's failure to acquire suitable housing. Between the first and second SAB hearing dates there is no evidence of the SMO or the CCO actively pursuing different accommodation options or communicating with one another.

The detainee's application for parole was rejected, in part due to the absence of suitable accommodation.

- 3.148 In more recent cases there is evidence of a better practice approach as demonstrated by the case study below.

Case Study

The detainee applied for parole however, the SAB decided there was insufficient information to grant parole and a hearing was scheduled. At this point, the detainee was also notified of what information had been missing from their application. The detainee's SMO emailed them the elements that needed addressing and also spoke with them in person on the same day. This allowed the detainee the opportunity to be proactive in addressing the incomplete aspects of their application.

- 3.149 As discussed above, at paragraphs 3.42 to 3.44, additional planning processes should be put in place to ensure any outstanding tasks likely to affect a detainees' release on parole (such as suitable accommodation, attendance at programs or reports) are communicated to the SAB. This should occur via an agreed process ahead of time, to ensure unnecessary hearings are not held until all required tasks are completed.
- 3.150 We consider a proactive approach to postponing a hearing, rather than going ahead in the knowledge that a decision cannot be made, would:
- help ensure detainees are not subject to unnecessary anxiety or stress
 - increase the cost effectiveness and efficiency of the SAB
 - enable SAB resources to be further prioritised taking into account the ERD of detainees awaiting a decision on their parole application and other high risk characteristics of particular matters.
- 3.151 This is particularly important in an environment where SAB resources are limited and concerns have been raised with AMC oversight agencies about hearing delays which impacts on sentence lengths.

- 3.152 There were concerns such delays were a result of COVID-19 pandemic restrictions, but recent discussions with the SAB indicate this not to be the case. The SAB Chair explained that timeframes have been increasing over recent years due to resourcing issues, availability of court premises for hearings and video conferencing facilities at the AMC restricted for court use. Telephone conferencing has been utilised during the pandemic.⁶⁶
- 3.153 The Justice and Community Safety Annual Report for 2018–19 does not provide any data in terms of timeliness of SAB decisions or trends in this area. As referenced by the SAB Chair, it does explain the more than 40 per cent increase in the number of offenders subject to the Board’s supervisory functions over the last two financial year years. This is clearly starting to have an impact despite the Board increasing its sitting days by almost 30 per cent from 2017–18 to 2018–19.⁶⁷

Recommendation 15

Formal arrangements and quality assurance processes are implemented to ensure:

- outstanding requirements are communicated to the SAB early, enabling hearings to be re-scheduled where required and SAB resources to be more effectively prioritised.
- detainees are prepared for SAB hearings, with any outstanding action items completed
- ACTCS and detainees have a clear understanding of who is responsible for communicating with detainees throughout the parole process.

⁶⁶ SAB advice provided to our Office in April 2020 in context of complaint investigation.

⁶⁷ See relevant section of the report at: <https://justice.act.gov.au/resources/uploads/JACS/annual-report-2018-2019/page181.html>

Attachment A—ACT Corrective Services' formal response



ACT
Government

Justice and Community Safety

Mr Michael Manthorpe PSM

ACT Ombudsman

GPO Box 442

CANBERRA ACT 2601

Dear Mr Manthorpe, *Michael*

Response to report on the administration of parole by ACT Corrective Services

Thank you for inviting a formal response to the recent ACT Ombudsman report '*Parole processes at the Alexander Maconochie Centre: Investigation into the administration of parole by ACT Corrective Services (Report 4/2020)*' and the associated recommendations. I appreciate the detail provided in the Report and the value of the recommendations within. The recommendations made are consistent with improvements that ACT Corrective Services (ACTCS) are currently implementing or planning.

I acknowledge that feedback provided on the draft Report was incorporated in the final Report where deemed appropriate. I also appreciate further discussions between your office and Jon Peach, Commissioner, ACTCS, to clarify the requirements for a formal response to the Report.

I note that a number of recommendations relate to policy development and improvement and would like to confirm that ACTCS are committed to developing a holistic Integrated Offender Management (IOM) system that focuses on preparing detainees for release at the earliest opportunity, with due regard for risk and community safety.

The IOM model is intended to provide holistic end to end sentence management processes across both custody and community, ensuring that interventions are delivered in a considered and timely manner at the appropriate point of an offender's sentence.

The IOM also seeks to provide opportunities for offenders to engage in constructive activity throughout their custodial sentence and that those in the community post release or by virtue of a community service, are supported.

The IOM model will further embed the ACTCS Reintegration Framework across all offender management processes. An IOM Manual will be developed and is anticipated to address all elements of the recommendations, including staff training. Development and implementation of an IOM model is a substantial program of work within the broader ACTCS reform and is intended to be in place and operational by the end of 2021. Please find responses to individual recommendations included below.

Recommendation 1

ACTCS finalise a policy framework that comprehensively covers the ‘sentence management continuum’, including the specifics of the parole process, and how to manage detainees through this process, comprising:

- *policy documents to contain high level principles and explain how the legislative framework is implemented, and*
- *complementary procedures to provide practical guidance to staff, which should include staff roles, responsibilities and referral points, as well as service standards and quality assurance measures.*

Response

Agreed. The forthcoming IOM Manual will set out high level guiding principles for managing offenders, as well as outline processes involved from allocations to supervision and case closure. It is anticipated that this document will function as suggested to provide overarching structure to offender sentence management policy documents. More broadly, ACTCS policy and procedure drafting is intended to include the legislative framework within policies, and operational ‘day-to-day’ level instruction within secondary procedure documents that provide a ‘how to’ for staff. The ACTCS *Corrections Management (Policy Framework) Policy 2020* sets out the various policy documents used across ACTCS.

Recommendation 2

To ensure this new policy framework remains up to date and used by staff, ACTCS:

- *develop and deliver a training program to ensure staff apply the new arrangements consistently, and*
- *establish a process through which the framework is regularly reviewed and updated to reflect operational changes.*

Response

Agreed. The new IOM model and the *Corrections Management (Policy Framework) Policy 2020* address this recommendation. Training is updated or developed as needed as part of policy implementation processes.

Recommendation 3

ACTCS assess any finalised policy documents for publication, as per open access requirements under the Freedom of Information Act 2016, with information published unless assessed as contrary to the public interest.

Response

Agreed. ACTCS acknowledge the need to publish policies and procedures without redactions where appropriate, and this is currently being addressed in policy review projects across custodial and community operations. Furthermore, ACTCS are in the process of implementing an *Open Access Policy 2020*, which also addresses this recommendation.

Recommendation 4

ACTCS provide comprehensive information to detainees through the 'sentence management continuum' about sentence management and parole processes, with information effectively communicated, particularly for detainees with high and complex service needs, or alternative service requirements.

Response

Agreed. This forms part of the new IOM model, which includes the development of a parole handbook and parole information sheet for detainees. A parole information sheet will also be provided to detainees in advance of the IOM.

Recommendation 5

ACTCS review its records management framework and systems, and adjust them as necessary, to ensure:

- *information is stored, managed and able to be retrieved by various work units along the 'sentence management continuum', and*
- *policies and procedures stipulate record management requirements in appropriate detail.*

Response

Agreed. This forms part of the new IOM model. Furthermore, the forthcoming electronic record system for detainees ('CORIS') will include a tracking mechanism that will allow Sentence Management and Community Corrections Officers to view the sentence management progression of offenders, including programs completion and release timeframes. I am pleased to advise that the CORIS system is now progressing well and a staged implementation is scheduled to take place prior to the end of the financial year.

Recommendation 6

ACTCS develop and implement a business planning framework that enables it to proactively plan for upcoming phases of the sentence management continuum'. ACTCS consider the viability of prioritising planned development work, and ensure this includes new reporting functionality to facilitate high level management of detainee cohorts through 'the continuum', taking into account their earliest release dates.

Response

Agreed. As noted above, this forms part of the new IOM model and CORIS will also assist in this respect.

Recommendation 7

The induction policy be amended to require a discussion about parole at the induction stage, and be supported by up-to-date written documentation.

Response

Agreed. Whilst the new IOM Manual will detail the requirement to discuss parole at the induction stage, this will be implemented in the short term to ensure that detainees are better informed with regards to the parole process and an information sheet provided.

Recommendation 8

ACTCS put in place quality assurance processes, and provide additional training and guidance for Sentence Management Officers (SMOs), to ensure Sentence Management Plans (SMPs) are created in consultation with the detainee, and are consistent, effective and timely.

Response

Agreed. Since June 2019, various quality assurance processes have been implemented, including tracking of SMP completion and review, monitoring of discussion content, recording of case notes, and the ongoing development of Key Performance Indicators. The new IOM model will further address this recommendation.

Recommendation 9

ACTCS finalise the draft Sentence Management Policy and develop complementary procedures, which include minimum service standards and quality assurance measures, to ensure:

- *SMP reviews occur in a timely manner, with any delays documented*
- *related action items are well-documented, with case notes clarifying what actions are required, by whom and by when*
- *sentence management meetings have clear objectives to further a detainee's preparedness for release, with further meetings scheduled if objectives are not reached*
- *handovers of case matters from SMOs to Community Corrections Officers (CCOs) are fully documented, with responsibilities clarified.*

Response

Agreed. This forms part of the new IOM model.

Recommendation 10

As a priority, ACTCS identify and implement new arrangements to ensure programs are more accessible to detainees, and particularly for those on remand.

Response

Agreed. As part of the broader ACTCS reform project, ACTCS are currently establishing an Offender Reintegration division. A key mandate for the new division is enhancing the coordination of sentence management processes and program delivery to ensure that they are more accessible and more responsive to the detainee risk profile. Due to the unconvicted legal status of remandees, ACTCS are unable to provide access to

criminogenic programs for this cohort. However, whilst the *Corrections Management Act 2007* does not place a mandatory obligation on ACTCS to develop SMPs for remandees, the *Corrections Management (Remand Detainees) Policy 2019* requires an SMP to be developed to set goals to prepare for release and reintegration. ACTCS continue to seek out service improvements and programs that will enhance the support and release preparation for remand detainees.

Recommendation 11

ACTCS policy and procedures clearly set out requirements for SMOs to:

- *provide a detainee with a parole application form, at least seven months in advance of their earliest release date (ERD)*
- *talk through the form with the detainee to ensure they understand what is required of them and the process going forward, and document this discussion*
- *support the detainee, where required, with their written application, or identify another support person to assist - for example, an Indigenous Liaison Officer (ILO), if the detainee identifies as Aboriginal or Torres Strait Islander.*

Response

Agreed. The new IOM model will address this recommendation.

Recommendation 12

The new ACTCS parole policy and complementary procedures:

- *outline procedural fairness requirements, including in relation to Pre-Release Reports (PRR)*
- *include a formal quality assurance process to ensure PRRs are accurate and up to date before being provided to the SAB*
- *ACTCS engage with the SAB to clarify requirements for a Relapse Prevention Plan (RPP) – with a template made available and detainees assisted to complete them if required.*

Response

Agreed. The new IOM model will address this recommendation.

Recommendation 13

ACTCS:

- *include arrangements in the finalised parole and Home Visit Assessment (HVA) policies to ensure accommodation issues are clearly communicated to detainees and addressed prior to Sentence Administration Board (SAB) hearings, and*
- *put in place quality assurance processes to ensure this occurs.*

Response

Agreed. The new IOM model will address this recommendation.

Recommendation 14

ACTCS implement information sharing or relationship protocols with other agencies that are involved when preparing a detainee for parole, to clarify roles and responsibilities. The protocol with Housing ACT should be prepared as an immediate priority.

Response

Agreed. A Memorandum of Understanding (MOU) is in place with Housing ACT that governs the Justice Housing Program (JHP). It is noted that MOUs are not in place with service providers as services are provided under contract with the social housing and homelessness section of Housing ACT. ACTCS are also undertaking to review and progress new MOU arrangements with service providers and stakeholders, including those involved in parole preparation.

Recommendation 15

Formal arrangements and quality assurance processes are implemented to ensure:

- *outstanding requirements are communicated to the SAB early, enabling hearings to be re-scheduled where required and SAB resources to be more effectively prioritised.*
- *detainees are prepared for SAB hearings, with any outstanding action items completed, and*
- *ACTCS and detainees have a clear understanding of who is responsible for communicating with detainees throughout the parole process.*

Response

Agreed. This will form part of the IOM model.

On a final note, I would like to add that the JHP is intended to include post release support for offenders in the community. The post release JHP accommodation is expected to become operational in late 2020.

Thank you again for providing a copy of the final Report. I am confident that the implementation of these recommendations will lead to improved parole processes for detainees in the ACT.

Yours sincerely



Richard Glenn

Director-General

Justice and Community Safety Directorate

29 September 2020

Attachment B—list of ACTCS policies and procedures

The following policies and procedures were provided to our Office by ACTCS:

- Parole Policy Procedure
- Release Policy—Working Draft
- Home Visit Assessment Policy
- Home Visit Assessment Policy—Working Draft
- Rehabilitation Framework
- Programs Compendium
- Interview Support Person Policy
- Case Management Plan—Custody
- Case Management Minimum Standards—Custody
- Sentence Planning Policy—Working Draft
- Supervision Policy—Working Draft
- National Parole operating Procedures and Annexures for Interstate Transfer of Parole Orders and Parolee Interstate Travel Permits

Attachment C—Summary of the parole process and the roles of ACTCS staff

A summary of the parole process and the roles of ACTCS staff based on the information available to us is provided below—noting as reflected in the main body of the report, the ACTCS policy framework does not clearly cover the parole process and/or the end-to-end sentence management processes, therefore some steps in the process may be missing.

Pre-parole application

When an individual is sentenced to a custodial sentence, the Sentence Administration Board (SAB) is made aware and where a parole period is provided for, the offender's name is added to their parole consideration list. A letter is also sent to the offender advising that they will be able to apply for parole within six month of their earliest release date (ERD)—that is, at the end of their non-parole period (NPP).⁶⁸

Within a week of their admission to the Alexander Maconochie Centre (AMC) on a custodial sentence, a detainee is allocated a Sentence Management Officer (SMO).⁶⁹ SMOs are required to meet with detainees during the induction process to discuss options for work, education and programs, as well as development of their Sentence Management Plan (SMP) and goal-setting.

The SMP is to be completed within the first six weeks of admission to custody. It is a written document designed to 'guide the rehabilitation and reintegration of offenders in custody and those serving supervised orders in the community'.⁷⁰

The SMP is to be reviewed regularly with the review schedule determined by the length of the detainee's sentence.⁷¹

Parole application

The detainee must complete a parole application which explains their reasons for wanting parole as well as their accommodation, program and counselling intentions upon release. It also asks the detainee to detail any education, rehabilitation and employment undertaken while in custody.

This application can be submitted six months prior to the ERD. It then goes before the SAB who determines whether parole should be granted.

Once a parole application is submitted, we understand there is a hand-over from the SMO to a Community Corrections Officer (CCO)⁷²—but how this handover occurs and when or what is required is not clear.⁷³

Post parole application

Once the SAB receives a parole application it will acknowledge its receipt, determine whether the detainee is eligible to apply and whether or not to accept the application.

The SAB can reject the application immediately if it considers the application to be frivolous, vexatious or misconceived. The Board may also reject an application if an application from the detainee was previously rejected in the last 12 months⁷⁴.

⁶⁸ See 2G parole process flow chart provided by ACTCS.

⁶⁹ See section 8.14 of *Corrections Management (Induction) Policy 2019 Notifiable instrument NI2019-387* at <https://www.legislation.act.gov.au/View/ni/2019-387/current/PDF/2019-387.PDF>.

⁷⁰ See sections 3 and 7.1 of the draft Sentence Management Policy No. D3.

⁷¹ See *Sentence Management Minimum Standards—Custody*.

⁷² ACTCS policies indicate that this title is interchangeable with the title Probation and Parole Officer (PPO).

⁷³ The *1.7 Parole Unit Policy and Procedures*, which appears out of date and refer to a previous system of case management and organisational structure, indicates that this will occur three months prior to the ERD.

⁷⁴ See s 122 of the CSSA above at n 8.

If the application is accepted the SAB must proceed to conduct an inquiry into the parole application without holding a hearing.⁷⁵

As a result, ACTCS will be requested to prepare a Pre-Release report (PRR) for the SAB to consider and set an Inquiry date (that is a date for the SAB to consider the application on the papers).

Documentation provided by ACTCS indicates the Inquiry date will be approximately seven weeks from the date of receipt of the parole application⁷⁶, but we understand that PRR time frames have extended. As a result, as of April 2020, the SAB no longer sets an Inquiry date until after they receive the required documentation from ACTCS.⁷⁷

The detainee is given a 'Notice of the inquiry', but does not appear. We understand this is delivered to the detainee by their SMO as well as by email.⁷⁸

The PRR will be prepared by the CCO and will detail:

- the background of the detainee's offence/s
- the detainees conduct since their arrival in custody (positive and disciplinary)
- any programs the detainee did or did not complete (vocational, educational and/or rehabilitative)
- the detainee's proposed plan for release, including accommodation and ongoing supports in relation to their reintegration and rehabilitation if they were to be granted parole
- a recommendation from ACTCS to the SAB in relation to the granting of parole.

The current policy requires the completed report to be discussed with the detainee prior to the report being transmitted to the SAB.⁷⁹

A core condition of parole is that a detainee must reside in accommodation approved by ACTCS. A Home Visit Assessment (HVA) will also usually be conducted, to assess the suitability of accommodation prior to release⁸⁰. The HVA aims to identify any 'pro-social supports' or risks that may be present at the detainee's preferred accommodation.

Parole inquiry

If parole is granted following the inquiry and on the papers assessment an order is signed.

If the SAB decide the application and supporting documents alone do not justify the granting of parole, they must schedule a parole hearing where the detainee is required to attend.⁸¹

⁷⁵ Ibid. s 125.

⁷⁶ See *2C Sentence Administration Board Process Summary* provided by ACTCS.

⁷⁷ The SAB advised our Office in April 2020, in the context of complaint investigation (2020-302874), that PRRs are taking eight to nine weeks to be prepared by ACTCS, and hence, when the report and other key information is received by the Board, then then promptly list the case for the first step, an 'inquiry'.

⁷⁸ Advice of ACTCS in the context of complaint investigation (2020-302874), see letter from Commissioner of 18 April 2019.

⁷⁹ See section 5 of the *1.7 Parole Unit Policy and Procedure*.

⁸⁰ See *Home Visit Assessment Policy (2014)*—If it is a known accommodation, such as a residential rehabilitation unit, an in-person assessment may not need to occur. If the option is with a family member, friend or roommate, an assessment must occur.

⁸¹ See n 52 at s 126.

If the Board decides at that time that a hearing is required, the case is set down for a hearing for a 'date to be advised'. Documents provided by ACTCS indicates the first parole hearing will generally be four to five weeks after the Inquiry⁸², but we understand these time frames have since extended.⁸³

Parole hearing

The CCO will attend any SAB hearing together with the detainee.

If parole is granted at the first hearing a parole order will be signed. Alternatively, parole will be refused or a further hearing scheduled.

Documents provided by ACTCS indicates that a parole decision will be made within 60 days of the first hearing, but we understand these time frames have since extended.⁸⁴

Parole outcomes

The SAB must consider several factors when deciding to grant parole, including, but not limited to:

- the offender's participation in activities while serving the sentence of imprisonment
- the likelihood that, if released on parole, the offender will commit further offences'
- whether parole is likely to assist the offender to adjust to lawful community life'.⁸⁵

All SAB parole decisions must also be made 'having regard to the principle that the public interest is of primary importance'.⁸⁶

⁸² See *2C Sentence Administration Board Process Summary* provided by ACTCS.

⁸³ The SAB advised our Office in April 2020 that PRRs are taking eight to nine weeks to be prepared by ACTCS, and hence, when the report and other key information is received by the Board, then then promptly list the case for the first step, an 'inquiry'.

⁸⁴ The SAB advised our Office in April 2020 that PRRs are taking eight to nine weeks to be prepared by ACTCS, and hence, when the report and other key information is received by the Board, then then promptly list the case for the first step, an 'inquiry'.

⁸⁵ See s 293(2)(k) of the CSAA.

⁸⁶ Ibid.

Attachment D—list of ACTCS programs

ACTCS provided us with a Programs Compendium as part of this investigation which listed the following programs as available to AMC detainees. It is dated December 2018.

We noted that it does not appear to include specific programs for detainees that identify as Aboriginal and Torres Strait Islander that we understand that the AMC does offer.

- Exploring Change/Treatment Readiness Program
- Adult Sex Offender Program (ASOP)
- Sex Offenders with a Learning or Intellectual Disability (SOLID)
- Sex Offender Individual Counselling
- Cognitive Self-Change Program (CSC)
- Domestic Abuse Program (DAP)
- Violence in Intervention Program (VIP)
- Harm Minimisation
- Alcohol and Drug Awareness and Harm Prevention Training
- First Steps Alcohol and Drug Program
- Sober Driver Program
- Self-Management & Recovery Training (SMART)
- Solaris Therapeutic Community
- Solaris Therapeutic Community (Continued)
- Directions ACT: Individual Counselling
- ACT Health Alcohol and Drug Service (ADS): Individual Counselling
- Anger Management Program
- Stress Less Program
- Circles of Security
- Being a Man and a Dad
- Self-Care for Women
- Seasons for Growth
- Out of the Dark
- Schema Group Therapy
- Real Understanding of Self-Help (RUSH) Program
- Community Service Work Induction Program