




**ACT HUMAN RIGHTS
COMMISSION**
Australian Capital Territory



Mr Steve Doszpot MLA
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly

Via email, 29 April 2016

Dear Mr Doszpot

	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
SUBMISSION NUMBER	2
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Inquiry into the Auditor-General's report on rehabilitation of male detainees at the Alexander Maconochie Centre

Thank you for the opportunity to make a submission to the above Inquiry.

As you may be aware, from 1 April, the ACT Human Rights Commission functions were changed to include the Victims of Crime Commissioner and advocacy functions of the Public Advocate.

Please find attached a joint submission on behalf of our two jurisdictions.

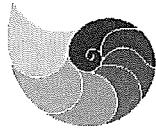
Yours sincerely

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Dr Helen Watchirs
Human Rights Commissioner

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ACT HUMAN RIGHTS
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Australian Capital Territory

**Submission to the Inquiry into the Auditor-General's
Report on Rehabilitation of Male Detainees at the
Alexander Maconochie Centre**

Scope of the AG's Audit

In 2014, the ACT Human Rights Commission undertook a Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre. As the Auditor-General's Report (AG's Report) notes, the scope of that Audit was confined to male prisoners in light of our earlier Inquiry.

Human Rights

As the Auditor General's Audit states, the Government's human rights obligations are relevant to the rehabilitation of detainees. We broadly agree with the discussion of the application of the *Human Rights Act 2004* (HR Act) in the Performance Audit. We note that both the 2015 Auditor General's Report and the Human Rights Commissioner's (HR Commissioner's) earlier 2014 Audit stated that the right to education in s27A of the HR Act did not place a direct obligation on public authorities. At that time, it was only relevant to the interpretation of legislation such as the *Corrections Management Act 2007*, and to the HR Audit function. Following amendments to the HR Act that came into effect on 26 February this year, this right is now directly and legally binding on public authorities. The Legislative Assembly has also passed new Aboriginal and Torres Strait Islander cultural rights, requiring legislation to be interpreted and public authorities to act and make decisions, consistently with such rights. I refer to the Committee's 2015 Report on both these amendments to the Human Rights Act.

It should be noted, that while the AMC being a 'human rights compliant' prison is a worthy goal, such a claim requires ongoing resource-intensive assessment beyond just the design and construction of the facility. We do not currently have the jurisdiction or resources to provide a regular and full assessment of the AMC's human rights compliance.

Victims of Crime

One of the functions of the Victims of Crime Commissioner (VOCC) is to advocate for the interests of victims. In addition, as the Domestic Violence Project Coordinator, the VOCC's role includes to assist government agencies involved in the provision of health, education, crisis or welfare programs to victims or perpetrators of domestic violence or otherwise relating to the incidence or prevention of domestic violence.

Under the *Crimes (Sentencing) Act 2005*, one of the purposes of sentencing is to promote the rehabilitation of the offender (s7(1)(d)). Imprisonment is associated with high rates of recidivism throughout Australia,¹ and so effective rehabilitation must be a primary objective for reducing crime and accompanying victimisation in general. We strongly support the ACT Government's stated objective for rehabilitation within the AMC: 'reducing offending behaviour'.² In addition, many victims of crime have high expectations of the criminal justice system to rehabilitate the people who have offended against them to ensure that others do not suffer harm at the hands of their offender.

¹ J Payne, 2007, *Recidivism in Australia: findings and future research*, Australian Institute of Criminology.

² Auditor-General's report, 2015, p 1.

General Comments

We are concerned by the Auditor-General's finding that 'AMC planning for rehabilitation is ineffective as there is no rehabilitation planning framework, no evaluation framework and no finalised case management policy framework' (p2). We welcome the Government's response to this recommendation, identifying that ACT Corrective Services has commenced implementation of the recommendation that relates to the rehabilitation framework.

The HR Commission's 2014 HR Audit assessed the law, policy and practices of the AMC, which had at that stage been operational for five years, in relation to the treatment of women detainees against the benchmark of international human rights norms enshrined in the *HR Act*, including the International Covenant on Civil and Political Rights, and other relevant international standards. These included the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

In general, the HR Audit found that women detainees at AMC were treated humanely in custody, and that correctional staff and management are respectful of the particular needs and vulnerabilities of women. The cottage accommodation and facilities provided within the women's precinct provided a normalised environment which encouraged women to maintain and develop living skills. The Commissioner was pleased to find that strip searching of women detainees occurred rarely after induction, and that the application of disciplinary processes, segregation and use of force appeared at that time to be fair and considered. The extended Throughcare Program to support detainees during the critical months after release from prison was a welcome development. This program was available to all women released from the AMC, including those held on remand.

However, the overall conclusion of the Auditor-General that rehabilitation at AMC has been compromised due to its relatively small size, multiple classifications, detainee association issues, mixed genders and the unexpected adverse affects of the interaction of these factors with the AMC's design is broadly consistent with the findings in the 2014 Women's HR Audit. In particular, there is significantly overlap between the Auditor General's findings regarding the need for a structured day and 'purposeful activity'.

We also agree with the suggestions of the Auditor-General that comprehensive performance measures on the effectiveness of AMC operations in relation to rehabilitation be developed. We suggest that the outcomes of performance measures should be made publically available to improve accountability, beyond the broad categories of national reporting to the Productivity Commission's Report on Government Services ('ROGS').

Nonetheless, while a number of stakeholders raised concerns during the 2014 HR Audit regarding the co-location of women detainees in a precinct within a predominantly male prison, in the HR Commissioner's view, the issues of scale would not be resolved by the establishment of a separate women's prison in the ACT. There are advantages for women in the current co-location with men in having access to a range of facilities such as the health clinic, dentist, education facilities, library and visiting area. It would be cost-prohibitive to provide these facilities and services to the same extent in a stand-alone women's prison.

The 2014 Human Rights Audit also found many positive aspects of case management for women at AMC, and women expressed positive regard for the Women's Case Manager. However, in a similar vein to the Auditor-General, the HR Commissioner found the case management model could be strengthened to play a greater role in assisting rehabilitation and to encourage women's engagement in programs and activities. Case management plans reviewed by the HR Commissioner were generally fairly brief documents, noting key criminogenic needs and the corresponding programs or services that women had been referred to. Case managers would benefit from specific training on effective case management and motivational techniques, and training on the gender based needs of women offenders.

The engagement of a Women's Services Co-ordinator for a short period created additional capacity in this small area to improve co-ordination of external services, as well as meeting women's individual needs and requests. The HR Commissioner recommended that ACTCS be funded to continue this position on a permanent basis, but this recommendation was not supported by the Government.

Positives

The 2014 HR Audit found that ACTCS demonstrated a commitment to meeting the human rights of Aboriginal and Torres Strait Islander detainees through a specific policy, identified positions, celebration of cultural days, and targeted education courses. ACTCS has also developed a number of partnerships with Aboriginal and Torres Strait Islander organisations to provide support for Aboriginal and Torres Strait Islander women in the AMC. The establishment of an Elders and Community Leaders Visitation Program is a positive practice which is likely to reduce cultural isolation for Aboriginal and Torres Strait Islander women at the AMC and to assist their transition back into the community. This program also provides opportunities for Elders and Community Leaders to provide advice on rehabilitation programs, to ensure that these are culturally safe and accessible. It is important to ensure that the evaluation of the new Visits policy is sensitive to the impact on Aboriginal and Torres Strait Islander detainees.

The HR Commissioner interviewed only a small number of current or former women detainees from culturally and linguistically diverse (CALD) backgrounds, and was pleased to find that reasonable adjustments and support were generally provided to such detainees. Specific English teaching was provided through a tutor, and interpreters were available if required. The HR Commissioner also found that such women were able to participate in some standard programs and education, despite limited English.

Structured Day and Purposeful Activity

The Auditor-General's Report found that as AMC male detainees are not required to participate in many daily activities, the limited employment opportunities is a significant issue. The HR Commission similarly found in 2014 that a structured day where female detainees who wish to be employed are expected to rise, dress and leave their accommodation at a designated time to participate in meaningful work, as well as undertaking programs and education, would provide greater opportunities for rehabilitation. The HR Audit found that while there are quality educational courses and programs offered to women, these are not sufficient to fill their days with purposeful activity.

Activities and programs that are available are also disrupted by operational issues, and the women's cottages appeared to be locked down more often than other areas of the prison as a result of staffing shortages. We suggest more could be done to foster a culture where detainees are expected to follow a routine and participate in daily activities that are conducive to rehabilitation.

We therefore support the Auditor-General's recommendation that ACTCS define 'structured day' and 'purposeful activity' and that this be based on equity of access and opportunity. Visits are an important component of structured activities, and we recommend that the evaluation of the new Visits policy take this explicitly into account.

Treatment of Men and Women

The limited employment opportunities noted by the Auditor-General for male detainees, are likely compounded for women. The HR Commissioner had concerns in her 2014 Audit that rehabilitation services available to women detainees are in some respects more limited than those available to male detainees. In particular, women detainees had significantly less access to structured employment opportunities within the prison than men. Women were also not able to access some programs and facilities available to men such as the Solaris Therapeutic Community, and the Transitional Release Cottage.

The lack of industry at the time of the HR Audit demonstrated that women are disadvantaged in relation to employment available to them as they are not able to hold positions working with male detainees, and the scope of employment available within the women's area is very limited. There were insufficient women available to fully staff shifts in areas such as the kitchen or laundry, thus they are not able to access this employment. Most positions available to women were self-directed, without set working hours or supervision, and did not provide the discipline of structured work equivalent to employment outside the prison. One exception was the barista program which provided a positive model for detainee employment, combining accredited vocational training with structured work that is equivalent to barista positions in the community. Unfortunately during the HR Audit this program was only available to a few women for a small number of hours per week.

Given the findings of the Auditor-General regarding the limitations on rehabilitation opportunities available to male detainees, the HR Commissioner is anxious to ensure any reforms also take into account the particular needs of women. For example, ensuring that all education courses are available to both men and women, and that access to computers is improved for women. These recommendations were supported or supported in principle by the Government.

The HR Commissioner also recommended that ACTCS review the gender responsiveness of rehabilitation programs provided to women detainees and consider the provision of additional programs to meet their particular needs such as parenting, victimisation and trauma. Similarly, she recommended that ACTCS develop programs to meet the needs of women serving longer sentences, and develop capacity to provide one-on-one rehabilitation programs to meet individual needs. Both of these recommendations were supported by Government.

Industry

The 2014 HR Audit recommended that ACTCS further investigate options for establishing a prison industry at the AMC to provide greater structured employment opportunities for detainees. Any proposal for industry should ensure that women are not disadvantaged in opportunities to access employment. We therefore support the Auditor-General's recommendation that the role of commercial or business enterprises in developing a prison industry should be progressed. It is a welcome development that the Government has subsequently announced to progress the introduction of 'industry' at the AMC to provide greater opportunities for detainees.

We presume that the new industry developed by ACTCS will not disadvantage women in any way.

Incentives

We note that the Auditor-General's Report suggests that 'ACTCS officers stated that the implementation of the structured day as outlined in the 2007 delivery strategy has not proved practicable since compelling detainee participation is inconsistent with the AMC operating philosophy'. Similar issues were raised with the Commission during the 2014 HR Audit. While it would be counterproductive and unnecessary to physically force women to follow a routine, it appears that participation could be improved through appropriate use of incentives and consequences. As one service provider noted at the time "we don't want a militaristic regime, but a compassionate structured day."

The HR Audit recommended that ACTCS review current practice and accountability regarding payment of wages for participation in programs, work and education, to ensure that the payments work effectively as incentives. We understand that there is a new Incentives Policy being developed, but have not yet been provided with a copy to comment on.

Vulnerable Populations

We support the Auditor-General's recommendation that ACTCS collect more data on vulnerable populations, including detainees with disability (including intellectual and physical), mental illness and detainees from culturally and diverse backgrounds, with a view to improving services.

The 2014 HR Audit similarly found that although Aboriginal and Torres Strait Islander women are significantly over-represented in custody in the ACT, they represent a very small percentage of the total detainee population at the AMC, which presents particular challenges in meeting their specific needs. The Commissioner recommended that ACTCS seek the ongoing advice of the Elders and community leaders, including those appointed under the Elders and Community Leaders Visitation Program about rehabilitation and other programs offered to women at AMC, and whether these could be adapted to better meet the needs of Aboriginal and Torres Strait islander women detainees.

Similarly, while the Commissioner found that there are many positive aspects of practice, the AMC did not have specialist programs or services for detainees with cognitive disabilities, and AMC Case Managers did not have specialist knowledge in disability. She was concerned that this may lead to programs not being suitably tailored to detainees with particular disabilities. Detainees who may be unable to undertake education programs due to their disability should not be disadvantaged when participating in rehabilitation programs, particularly if the completing of programs is considered in

assessing the suitability of a detainee for parole. The HR Commissioner considered that these issues could be addressed through a specific policy for detainees with disabilities at the AMC, and recommended that ACTCS develop policies on making reasonable accommodations for people with disabilities with regard to education programs in particular, and ensuring that visitors with disabilities are able to access the AMC. Such adjustments needed to include ACTCS ensuring that all women with disabilities can access rehabilitation programs and that adjustments are made to allow women detainees with disabilities to complete courses particularly if completion of a course could impact on the likelihood of being granted parole. We believe this continues to be a priority to implement at the AMC.

The Commissioner also recommended that ACTCS screen all female detainees using the Hayes Ability Screening Index (HASI) which assesses detainees for intellectual abilities. We understand this has been implemented by ACTCS.

Individualised Rehabilitation

The VOCC recommends that case management plans seek to address the factors that contribute to a detainees offending behaviour. Where the offending behaviour includes sexual, domestic or other interpersonal violence, the AMC should have a particular obligation to seek to address violent behaviour specifically. Although important, rehabilitation of such offenders should not focus solely on issues that occur alongside and/or exacerbate violent behaviours, such as substance abuse, mental illness and unemployment. Such an approach balances the human rights of offenders with the right to safety of existing victims or potential future victims.

The VOCC notes the Audit's finding that the Cognitive Self-Change program has had low uptake and that between 2012 and 2014 there was no delivery of programs specifically designed for violent offenders (with the exception of the domestic abuse program), and that the Government's response does not directly address this issue. The VOCC would like to see this addressed, particularly because the domestic abuse program currently being delivered at the AMC works only with perpetrators of intimate partner violence, not those who are serving sentences for violence against other family members.

Information Sharing

The Auditor-General's Audit recommends that the draft Case Management Policy Framework should provide guidance on communication and coordination between those involved in supporting male detainees. The 2014 HR Audit similar recommended that the ACTCS establish regular meetings and information sharing mechanisms between the Education provider Auswide and AMC Case Managers.

Throughcare

We support the Auditor-General's that throughcare and extended throughcare should be defined and incorporated into ACTCS Policy. The HR Audit similarly recommended in 2014 that the ACT Government provide ongoing funding for the Throughcare program, and enhance the funding if necessary to ensure a sustainable model of case management, which was supported. We welcome

the recently announced details of an independent review of the Throughcare initiative, which implements the HR Audit's recommendation about evaluation.

Emerging Issues

Employment survey

We understand that ACTCS recently surveyed detainees about their views about reforms to employment options at AMC. While we have not seen the results of that survey, it would prove useful data source for future reform, and a public discussion of its findings would ensure detainees feel that they are active participants in designing their rehabilitation.

Visits Policy

We were informed through media of the new visits policy at the AMC, which already has been subject to public discussion, but we would have valued the opportunity to comment on a draft document. We note ACTCS' public commitment to a consultation process with oversight agencies after six months of operation, and look forward to participating in that review.

The HR Commissioner recommended in her 2014 Audit that ACTCS amend the Visits Policy to provide transparent criteria for decision making regarding intra-prison visits, reflecting detainee's minimum entitlements to visits with family members, which was supported. We understand the revised policy was partially in response to this recommendation.

Role of Oversight Bodies

We agree with the suggestion in the Auditor-General's Report that the Human Rights Commission works closely with Corrective Services, as an independent oversight body. For example, the HR Commissioner's staff continue to train new recruits on human rights, and attend regular meetings at AMC convened by ACTCS and involving all oversight agencies.

To further this work, the HR Commissioner recently has begun convening meetings of all oversight agencies, including the Health Services Commissioner, Public Advocate (now both part of the Human Rights Commission), Official Visitors, and Ombudsman. The goal of these meetings is to reach agreement on shared concerns, strategic priorities and determine how best to utilise limited oversight resources.

However, discussion at these meetings has demonstrated the limited capacity for all current oversight bodies to provide significant and regular reviews of the provision of rehabilitative services. For example, the HR Commissioner has a limited statutory role in relation to the AMC, which is not necessarily commensurate with community expectations. Apart from the resource-intensive systemic reviews undertaken when resources are available (eg the 2014 Women's Audit), undertaken utilising the Commissioner's statutory inspection and audit powers.³ We have no ability to deal with other issues, most particularly individual complaints from detainees. The Commission remains a free call for detainees, and our services are utilised for discrimination and health services complaints, and we use this feedback to inform our systemic work. However, her inability to provide individual complaint

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handling remedies for detainees claiming breaches of human rights is a source of ongoing frustration for detainees.

Even in relation to systemic issues, the Commission has limited power. For example, the HR Commissioner cannot compel ACTCS to supply documents to her, including draft policies such as the new Incentives and Visits policies. In practice this means the Commissioner has limited ability to influence the development of new AMC policies and practice prior to their implementation.

The HR Commissioner recommended in her 2007 Audit of Corrective Services that the Government consider appointing an Inspectorate of Prisons, something we understand the Government is still considering. In light of the limited powers of the Human Rights Commissioner in this area, most particularly her lack of jurisdiction to handle complaints (including Commission-initiated complaints), the HR Commissioner continues to advocate that such an Inspector would provide a dedicated, ongoing and clear oversight mechanism for the custody of detainees in the Territory, including the rehabilitative services provided to them.

This would be on the basis that the introduction of such a new agency would provide clarity about the roles of the existing oversight bodies, including the Ombudsman, Human Rights Commission and Official Visitors.