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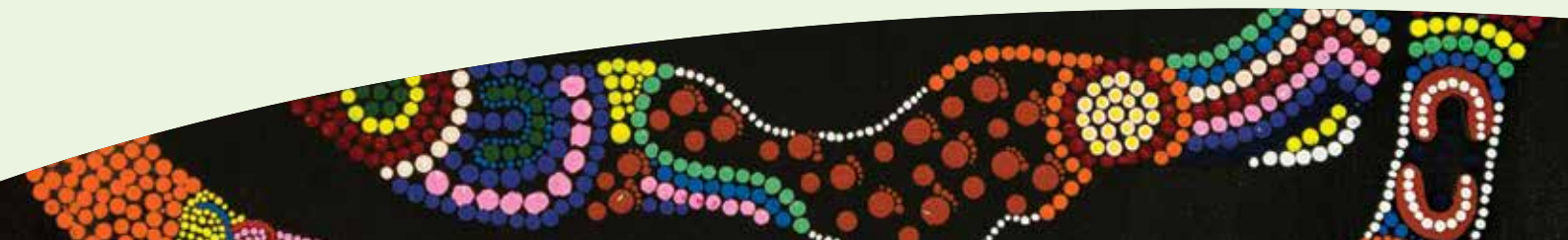
REPORT OF A REVIEW OF A CRITICAL INCIDENT

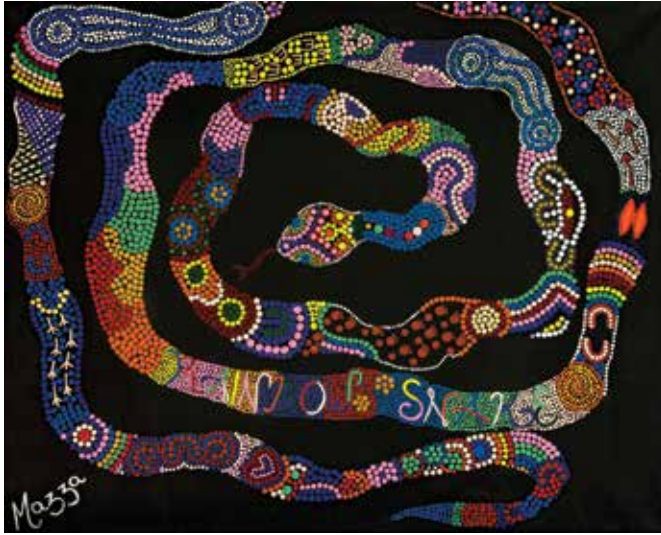
by the

**ACT INSPECTOR OF
CORRECTIONAL SERVICES**

*Riot and serious fires at
the Alexander Maconochie
Centre on 10 November 2020*

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Rainbow Serpent (above and cover detail)
Marilyn Kelly-Parkinson of the Yuin Tribe (2018)

*'There are no bystanders –
the standard you walk past
is the standard you accept'*

– Lieutenant General David Morrison, AO,
Chief of Army (2014)

ABOUT THIS REPORT

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Riot and serious fires at the Alexander Maconochie Centre on 10 November 2020, Canberra*

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ACT Inspector of Correctional Services

We acknowledge the traditional custodians of the ACT, the Ngunnawal people. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

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REPORT OF A REVIEW OF A CRITICAL INCIDENT

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**ACT INSPECTOR OF
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*Riot and serious fires at
the Alexander Maconochie
Centre on 10 November 2020*

Neil McAllister
ACT Inspector of Correctional Services
21 March 2021

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GLOSSARY

Term	Meaning
2CA	ACTCS head office, 2 Constitution Avenue, Canberra City
ACTAS	ACT Ambulance Service
ACTCS	ACT Corrective Services
ACTFR	ACT Fire & Rescue
ACTP	ACT Policing (AFP)
AMC	Alexander Maconochie Centre (ACT adult prison)
AU-N	Accommodation Unit North (high security unit in AMC)
BA	Breathing Apparatus
CMA	<i>Corrections Management Act 2007</i> (ACT)
CO	Corrections Officer ("prison officer")
Commissioner	Commissioner, ACTCS
CPSU	Community and Public Sector Union
DCCO	Deputy Commissioner Custodial Operations, ACTCS
Detainee survey	Survey conducted by OICS of the 27 detainees involved in the incident
EMF	ACTCS Emergency Management Framework 2018 (restricted publication)
GM	General Manager, AMC (officer in charge of the centre)
ICS	Incident Control Suite
Inspector	ACT Inspector of Correctional Services
JACS	Justice and Community Safety Directorate (responsible for ACTCS)
MCR	Master Control Room, AMC (central location for CCTV monitoring and gate control)
OICS	Office of the Inspector of Correctional Services
SDA	Senior Director Accommodation, AMC
SDO	Senior Director Operations, AMC
Staff survey	On-line survey of 42 staff who were on duty at AMC during the incident
TPPE	Tactical Personal Protective Equipment (shields, batons, helmets, vests, etc)

1. EXECUTIVE SUMMARY

On 10 November 2020, detainees in Accommodation Unit-North (AU-N) of the Alexander Maconochie Centre (AMC) refused to move to their cells for the evening lock-in. What started as some sort of passive protest about tobacco purchases earlier that day quickly escalated when a few of the 27 detainees began lighting fires and destroying furniture and equipment. The ultimate damage bill is estimated to be in the order of **\$5.7 million**.

In the hours that followed the initial stand-off, AMC staff were engaged in firefighting and also provided security support to ACT Fire and Rescue (ACTFR) officers who had to deal with multiple fires that detainees lit in various places within the unit and in the external exercise yard. Detainees also armed themselves with homemade weapons and made verbal threats to staff.

Detainees responded to the firefighting efforts by pelting AMC officers and firefighters with various metal and other hard objects obtained from in and around the unit. Thankfully, officers' shields fended off most of the missiles and no AMC staff or firefighters suffered injuries that we are aware of. However, AMC officers were exposed to heavy chemical-laden black smoke for hours and worked in clothes that were drenched with water from fire hoses. The conditions were unpleasant to say the least.

We should also say that the work done by the ACTFR officers was extraordinary in that when they attend fires, they do not expect to be attacked by the people they are trying to protect and save. This was not a "normal day at the office" and they and their commander should be commended for their efforts.

It is also important to recognise the invaluable support provided by ACT Policing and ACT Ambulance Service both of which were onsite during the incident to provide assistance as required.

The violent period of the incident came to an end at about 10:30pm with the surrender of the detainees. However, it took AMC staff several hours to individually search and move all 27 detainees to other accommodation and secure the unit and surrounds (e.g. picking up debris). It was about 3:30am before most were able to go home, with many (the day shift) having been on duty for some 20 hours.

The AMC staff are deserving of public commendation for their efforts on the night of 10–11 November 2020 but, and they acknowledge this, most were ill-prepared by way of training to deal with a riot. It was fortunate that some experienced senior Corrections Officers were available to lead the response teams on the "frontline".

Unfortunately, while much good work was being done by Corrections Officers and firefighters in the compound, there were command problems in the AMC Incident Command Suite. The Commissioner had arrived onsite and was acting in a manner that was perceived by key staff as taking over command of the incident from the AMC General Manager¹. It should be noted that the Commissioner has a different view as described in detail in part 7 of the report. Having carefully considered the Commissioner's actions, OICS is of the view that the confusion caused by the Commissioner's intervention outweighed the benefits.

1 For example, giving radio and in-person directions to Corrections Officers who were directly involved in dealing with incident.

We have made a number of recommendations about specific matters where we believe there is room for improvement. However, the key issue is the urgent need to train and exercise AMC staff to deal with critical incidents at the AMC, including, but not limited to, riots. ACTCS needs to ensure that this happens.

Finally, we note that there was no specific intelligence or other compelling information available to provide advance warning that any detainees were planning a major protest, demonstration, or riot at the AU-N beyond a general concern over recent months that detainees in various units were becoming more disrespectful of staff and argumentative when given directions.

The methodology adopted for the review is set out in **Appendix 1** to this report.

2. RECOMMENDATIONS

Recommendation 1:

That the *Corrections Management (Emergency Management) Policy 2019* and the ACTCS Emergency Management Framework 2018 be updated as a *matter of urgency* to ensure they are consistent and reflect the current senior management structure of ACTCS to avoid any confusion about the responsibilities of ACTCS senior managers in the event of an emergency situation.

Recommendation 2:

That ACT Corrective Services review the Emergency Management Framework 2018, the *Corrections Management (Code Red (Fire)) Operating Procedure 2020* and the *Corrections Management (Code Grey – Detainee Disturbance or Riot) Procedure 2014 (No 1)* to ensure that there is a consistent approach to notifications of ACT Policing, ACT Fire and Rescue and ACT Ambulance Service about serious incidents.

Recommendation 3:

That ACT Corrective Services review the *Corrections Management (Code Grey – Detainee Disturbance or Riot) Procedure 2014 (No 1)* and the Emergency Management Framework 2018 Major Disturbance Plan to ensure that they include responses to fires lit during major disturbances.

Recommendation 4:

That ACT Corrective Services develop a three-year contingency-based exercise program covering both the Alexander Maconochie Centre and the Court Transport Unit that reflects the requirements set out in section 6.1 of the *Corrections Management (Emergency Management) Policy 2019*.

Recommendation 5:

That ACT Corrective Services conduct one major exercise in 2021 which includes significant participation by ACT Policing, ACT Fire and Rescue and ACT Ambulance Service, and which involves after-hours activation and operation of the ACT Corrective Services Head Office Incident Command Suite.

Recommendation 6:

That ACT Corrective Services enter into one or more Memorandums of Understanding (MOUs) with ACT Policing, ACT Fire and Rescue and ACT Ambulance Service concerning the conduct of joint operations arising from major incidents at ACT correctional centres and that the completion of these MOUs be given a high priority by ACT Corrective Services in 2021.

Recommendation 7:

That the General Manager of the Alexander Maconochie Centre review the storage of Tactical Personal Protection Equipment kits, batons and shields to ensure that they can be accessed quickly in the event of serious incident.

Recommendation 8:

That ACT Corrective Services conduct a full audit of Tactical Personal Protection Equipment kits to ensure that they are complete, items are undamaged and properly labelled as to size.

Recommendation 9:

That ACT Corrective Services make a firm policy decision as to whether CS gas should be retained as a use of force option at the Alexander Maconochie Centre, and if so decided, ensure that as a minimum all CO2 and CO3 officers are fully trained and qualified to deploy chemical agents if approved to do so. If it is decided that CS gas is not a use of force option, then the current stock of CS gas at the Alexander Maconochie Centre be disposed of as soon as possible.

Recommendation 10:

That a senior training officer(s) be embedded at the Alexander Maconochie Centre, reporting operationally to the General Manager of the Alexander Maconochie Centre.

Recommendation 11:

That the ACT government urgently seek legal advice on whether a written direction to transfer a detainee under section 26(2) of the *Crimes (Sentence Administration) Act 2005* requires a specific NSW correctional centre to be stated.

Recommendation 12:

That the ACT Government make guidelines under section 27 of the *Crimes (Sentence Administration) Act 2005* which include provisions about the transfer of detainees to NSW correctional centres. These guidelines must include human rights considerations and record-keeping requirements.

Recommendation 13:

That ACT Corrective Services review its incident response plans with regard to:

- a. Medical and EAP assistance to staff
- b. Provision of fresh PPE to staff during protracted incidents
- c. Provision of fresh clothes to staff after incidents where clothes may have become wet or contaminated by smoke or chemicals
- d. The suitability of staff uniforms for use with PPE or in hazardous situations
- e. The provision of rest breaks, meals and refreshments to staff engaged in protracted incidents

3. INTRODUCTION

3.1 Authority to conduct a review of a critical incident

Section 18(1)(c) of the *Inspector of Correctional Services Act 2017* (ACT) (the Act) provides that the Inspector 'may review a critical incident on the inspector's own initiative or as requested by a relevant Minister or relevant director-general.' Although it was not technically necessary (given the incident met a number of criterion for the Inspector instigating a review), the Minister for Corrections requested that the Inspector review the incident.

3.2 What is a 'critical incident'?

Section 17(2) of the Act provides a list of events that are critical incidents, including:

- (e) a riot that results in significant disruption to a centre or service
- (f) a fire that results in significant property damage.

This review concerns events relevant to section 17(2)(e) and 17(2)(f) in that a riot occurred at the Alexander Maconochie Centre on 10 November 2020 and that during the riot fires were lit by detainees that caused significant damage to Accommodation Unit-North.

3.3 What must the Inspector report on?

Section 27 of the Act requires that the Inspector include certain things in a report of a review. In a previous report the Inspector noted that this section was directed towards the content of 'examinations and reviews' of correctional centres and correctional services but was ambiguous in relation to the content of reviews of critical incidents.² This report, like the previous critical incident reports tabled in the Legislative Assembly, has been structured to capture the spirit and intent of section 27 but without specific reference to some of the topics.

3.4 Public interest considerations relating to this report

Section 28(1) of the Act provides that 'the inspector must consider whether any part of the report must be kept confidential because—

- (a) there are public interest considerations against disclosure; and
- (b) those considerations outweigh the public interest in favour of disclosure.'

Section 28(2) details grounds of public interest against disclosure. In accordance with section 28(2)(d), certain information that might reveal the identities of detainees and staff involved in the incident has been withheld in this report.

² ACT Inspector of Correctional Services (2018), *Report of a review of an assault of a detainee at the Alexander Maconochie Centre on 23 May 2018*, OICS, Canberra.

Further, the Inspector decided that for security reasons this report does not describe the operational/tactical response to the incident in detail, except where it is reasonably necessary to provide context to findings or recommendations. A “security issues” appendix (**Appendix 4**) has been fully redacted in the tabled version of this report. Appendix 4 has been provided to the ACT Minister for Corrections and the Director-General, ACT Justice and Community Safety Directorate. The Inspector wishes to make clear that security redactions to this and other OICS reports are only made to provide for the safety of staff, detainees and visitors at ACT correctional centres by withholding information that (some) detainees and their associates in the community could exploit for illegal purposes.

3.5 The review team

The review team comprised:

- Neil McAllister, Inspector of Correctional Services
- Rebecca Minty, Deputy Inspector of Correctional Services
- Holly Fredericksen, Assistant Inspector of Correctional Services

3.6 Form of the review

The Act does not specify what form a review must take. In order to take a consistent approach to the review of critical incidents, OICS has devised two types of reviews that may be conducted.

The first is a “desk-top” review of documents and reports, including audio/visual records if applicable, provided by ACT Corrective Services (ACTCS) and other agencies e.g. ACT Health. A desk-top review does not involve the Inspectorate in direct action such as interviewing staff or detainees and is more likely to be conducted where the circumstances of an incident are reasonably self-evident.

The second form of a review is one carried out by OICS utilising, if necessary, the full powers of the Inspector under the Act. This type of review could be conducted following or instead of a desk-top review and is more likely to be conducted in response to very serious or problematic incidents such as an escape from secure custody.

In this case, the Inspector decided to conduct a full review because of the serious nature of the incident and because it was the first riot to have occurred at the AMC since operations commenced in 2009.

4. HOW, WHEN AND WHERE THE INCIDENT OCCURRED

The incident occurred in the Accommodation Unit-North (AU-N) at the AMC on 10 November 2020. AU-N accommodates up to 28 sentenced and remand male detainees in two-person cells over two levels. The AU block has three other similar units with a central officers' station overlooking the ground floor of all four units. Each unit has an unroofed external exercise yard which staff can access via the unit and gates at each end of the yard.

On the morning of 10 November, staff acting on intelligence information, located a mobile phone in an AU-N cell. This cell was occupied by one of the detainees who would later be identified as an alleged "ringleader" in the riot.

At about 5pm a Corrections Officer Grade 1 (CO1) and the Corrections Officer Grade 2 (CO2) unit manager were subject to verbal abuse by a number of detainees about being (rightly) refused supplementary tobacco buy-ups. Also, at about 5pm, two meals were delivered to the unit that were missing the dessert. Despite staff attempts to locate desserts from the kitchen and other units, none could be found. This also resulted in anger directed at staff.

Intelligence reports indicate that a few AU-N detainees came up with a "plan" at around 6pm to refuse to return to their cells for the evening lock-in (7pm). As one AU-N detainee put it:

The occurrences of what happened at the AMC on the night of Nov 10 was merely meant to be a 'sit-out' to then spoke to someone to actually listen to us and not turn a deaf ear onto us, and to accommodate us to our minor needs, which turned out quiet pear shaped from a mixture of things from stupid people getting ideas of this and that and officers pointing and laughing at our attempts to voice our concerns (sic).³

It is important to note that the overall scale and impact of the incident was not evident in media reports (e.g. 'The incident went on for some three-and-a-half hours before a peaceful surrender was negotiated.').⁴ In fact, it was about 3:30am on 11 November before staff were finally stood down with some having been on duty for over 20 hours. Further, the Canberra Times report the day after stated, 'Mr Peach, who has experienced in quelling major riots in other prisons he has managed in the UK, took pains to describe the incident at the Alexander Maconochie Centre as "not of a violent nature toward our staff ... **more of a demonstration**" (emphasis added).⁵ However, OICS is satisfied that the incident that occurred at the AMC on 10 November 2020 was a riot that was characterised by dangerous fire lighting, significant destruction of government property and violent behaviour directed at AMC staff and firefighters. The damage bill is estimated to be in the order of \$5.7 million.⁶ Some of the damage is pictured below.

3 Comment in detainee survey.

4 Brewer, Peter "Difficult' night of riot shields, fires and unrest" *Canberra Times*, 12 November 2020.

5 Brewer, Peter "Difficult' night of riot shields, fires and unrest" *Canberra Times*, 12 November 2020.

6 Email from ACTCS on 05/01/21.



Source: OICS 2020

A redacted chronology of key events of 10–11 November is provided at **Appendix 2** to this report.

5. WAS THE INCIDENT REASONABLY FORESEEABLE?

After any major incident in a prison there is always some speculation or argument as to whether the incident was reasonably foreseeable. This section of the report examines some history of AU-N in the lead-up to the incident, with a view to assessing whether it was reasonably foreseeable.

5.1 Incidents

There were no serious incidents of unrest reported for AU-N in 2020 prior to the 10 November riot (refer to Appendix 3 to this report). However, of the 37 reported incidents, 11 (30%) involved some sort of confrontation with staff e.g. 'disobey direction' and 'threat to staff'. There were also two incidents involving the discovery of home-made weapons.

Finding 1:

That the pattern of incidents in Accommodation Unit-North in 2020 did not reasonably indicate that a major incident was imminent.

5.2 Lock-ins

As lock-ins are a common source of detainee complaints at the AMC, we examined whether lock-ins had "raised the temperature"⁷ in AU-N. The lock-ins data (Table 1 below) shows that about one-third of all lock-in hours were due to staffing related issues.⁸ However, the most common reason for lock-ins was 'Regime/Cohort Management'. This is where a detainee or detainees cannot be out of their cell at the same time as others in the unit due to safety concerns e.g. rival bikie gangs. For example, 47 of the 50 lock-in hours in October were due to a cohort of two detainees who were given separate time out to the other 24⁹ detainees in AU-N.

The total of 136.5 lock-in hours shown in Table 1 represents about 3.7 hours per detainee per week over a 37-week period.¹⁰ Of these, about 1.3 hours per week were attributable to staffing matters. While any lock-ins are undesirable and not welcomed by most detainees or staff, it seems unlikely that 3.7 hours of lock-ins per week would have been a significant contributing factor to the incident. Further, lock-ins were not mentioned by the detainee "spokesperson" during the incident or in the detainee or staff surveys conducted by OICS post-incident.

We also note that the data does not show a correlation between lock-in hours and incidents.

7 Shorthand for describing the state of tension in a prison.

8 This is lock-in hours beyond the usual 13-hour overnight lock-in and 1-hour lunch lock-in.

9 Note that detainee numbers are constantly fluctuating within each unit across the jail.

10 Based on an average of about 26 detainees per day.

Table 1: Lock-in hours (per detainee and not including usual overnight and lunch lock-in) and incidents, AU-N 2020

Month	Total lock-in hours	Staffing related lock-in hours**	% Staffing related	Incidents
JAN	Not available (lock-ins not recorded by individual unit)			3
FEB	12.9	8	62	1
MAR	19.9	11	55	3
APR	0	0	0	4
MAY	6	1	17	3
JUN	14.9	10.9	73	4
JUL	7.5	7.5	100	2
AUG	17	4	24	3
SEP	4.8	2	42	5
OCT	50	2.5	5	5
NOV*	3.5	0	0	4
Total	136.5	45.9	34	37

* 1–9 November 2020

** 'Limited staffing' or 'Staff meeting' or 'Staff training'

Source: ACTCS Incidents & Lock-ins registers

Finding 2:

That the extent of the lock-ins in Accommodation Unit – North in 2020 does not appear to be a significant causal factor of the riot.

5.3 Intelligence reports

The OICS reviewed numerous intelligence reports that were submitted by staff at the AMC in 2020 to the ACTCS Intelligence and Integrity Unit. We found no reports from prior to the incident that were directly relevant to the AU-N riot incident on 10 November 2020 i.e. referring to an impending violent protest or demonstration. We also reviewed highly detailed intelligence profiles on each of the seven AU-N detainees who were the suspected ringleaders of the riot. Some of these detainees were “prison gang” members and others had Outlaw Motor Cycle Gang affiliations. However, those gang connections do not appear to be a key factor in the lead-up to the incident.

5.4 AMC Security Committee

The OICS examined Security Committee monthly reports (July to November 2020) and minutes of meetings (July to October 2020). There were a number of references to increasing disrespect being shown to staff by detainees and non-compliance of detainees with staff directions across the AMC. One unit (not AU-N) was of particular concern. AU-N was mentioned in an August report as having potential for an ‘incident’ relating to an event in the community, but no such ‘incident’ transpired.

The July 2020 Security Committee report notes:

‘Two recent incidences of a refusal to lock in by detainees appeared to have no specific cause and may be an exhibition of frustration caused by the restrictions the current pandemic is creating’ (the unit or units were not named).

5.5 COVID-19

A further factor causing unrest may have been the restrictions on social visits implemented due to the COVID-19 pandemic. At the time of the riot, detainees could have limited face-to-face visits, but there were restrictions on the number of visitors and no physical contact was allowed, including with children. This restricted visit regime came after a period of several months where there were no in-person visits permitted, however, video visits were occurring during most of this period. While visits were not raised as an issue in the detainee survey OICS conducted, it was mentioned as a “demand” during the riot.

5.6 Conclusion

While there were indicators of some unrest at the AMC, *possibly* related to lock-ins and COVID-19 visit restrictions, in the period of some months leading up to the riot, there was no clear pattern of events or information to suggest that a major incident was planned or imminent. The evidence suggests that the riot on 10 November was largely spontaneous and may well have got out of hand when a few detainees escalated a roughly planned sit-in protest to fire lighting and other destructive and threatening behaviour.

Further, the events of 10–11 November do not indicate that the 27 AU-N detainees planned or attempted to escape from AU-N. Nor did they make any serious demands during the surrender negotiations. This may indicate that their actions were impulsive, rather than well thought through or planned.

Finding 3:

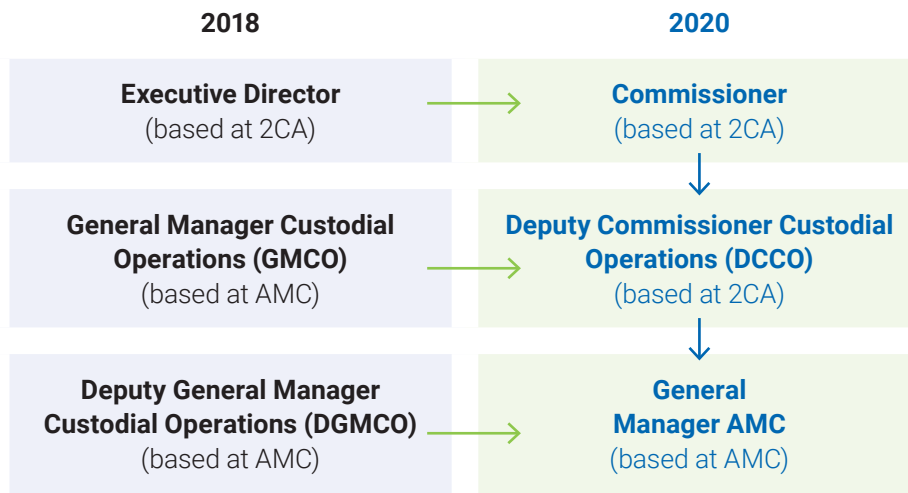
That there was no intelligence or other compelling information available to suggest that any detainees were planning a major protest, demonstration, or riot at the Accommodation Unit – North.

6. WAS ACTCS PREPARED TO RESPOND TO THIS TYPE OF INCIDENT?

6.1 Command responses

The ACTCS Emergency Management Framework (EMF) was prepared in 2018 and sets out how to respond to emergencies at the AMC. As with a number of ACTCS policies, procedures and instructions, there are references in the EMF to position titles that do not reflect the current (2020) ACTCS organisational structure, in particular the position of Deputy Commissioner Custodial Operations (DCCO), which was established in 2020.

ACT Corrective Services changes to position titles



With these changes in mind, it is noted that the EMF refers to the ‘General Manager’, as the ‘Incident Commander’ at the AMC. We take this to mean the then (2018) General Manager Custodial Operations (GMCO), now the DCCO. However, while the GMCO was based at AMC, the DCCO is based at 2CA.¹¹ In any case, we are of view that the General Manager AMC should have been the Incident Commander at the AMC because that officer has an intimate knowledge of the capabilities of the AMC staff and the “geography” of the AMC.

The *Corrections Management (Emergency Management) Policy 2019* has also not been updated since the position titles of ACTCS executives were changed. While we note that there is a general understanding in ACTCS that all “documents” referring to the GMCO now means the DCCO and Deputy GM AMC now means GM AMC, this is not particularly helpful regarding the *Emergency Management Policy* or the EMF, which are based on the GMCO being located at the AMC.

¹¹ As the DCCO was absent interstate on leave when the incident occurred it is unclear as to what role she may have taken in this incident under the EMF.

In addition, there is an inconsistency between the *Emergency Management Policy* and the EMF about who is responsible for activating the AMC Incident Command Suite. Under the policy, the DCCO, Commissioner¹² or delegate can activate the AMC Incident Command Suite. Under the EMF, it is the DCCO, GM or Duty Manager who is responsible for this. Therefore, both the *Emergency Management Policy* and the EMF need to be reviewed to not only ensure they reflect the current ACTCS management structure, including who is onsite at the AMC and who is at 2CA, but also to ensure these documents are consistent.

Recommendation 1:

That the *Corrections Management (Emergency Management) Policy 2019* and the ACTCS Emergency Management Framework 2018 be updated as a *matter of urgency* to ensure they are consistent and reflect the current senior management structure of ACTCS to avoid any confusion about the responsibilities of ACTCS senior managers in the event of an emergency situation.

6.2 Notification of external agencies

The EMF provides detailed instructions for the response to and management of a wide range of incident scenarios. Of relevance to this incident are 'Major Fire' and 'Major Disturbance (Riot)' plans. This incident began as a 'Major Disturbance (Passive)' where detainees were refusing to lock-in but not acting in an aggressive manner. It quickly escalated when fires were lit (Major Fire) and detainees armed themselves and threatened staff (Major disturbance (Aggressive)).

The initial response to the incident on the evening of 10 November was to call a Code Red (fire) over the radio, which was appropriate in the circumstances. Oddly, the Major Fire plan in the EMF makes no mention of calling the ACTFR, although this is clearly stated in the *Corrections Management (Code Red (Fire)) Operating Procedure 2020*. As it happened, the ACTFR responded to an automated alarm at 6:44pm and were advised by the AMC at or about 6:50pm that detainees were rioting and that it may not be safe for the ACTFR crews to enter. The EMF Major Fire plan requires that the ACTP be advised, but this is not mentioned in the *Code Red (Fire) Operating Procedure*. The AMC did not call the ACTP. The ACTP was advised by the ACTFR that a fire and riot was in progress at the AMC and ACTP then attended quickly.

The *Corrections Management (Code Grey – Detainee Disturbance or Riot) Procedure 2014 (No 1)* (RESTRICTED) and the EMF Major Disturbance Plan both require notification of the ACTP. However, neither mentions dealing with fires or notifying the ACTFR or the ACT Ambulance Service (ACTAS). It seems that ACTCS did not contemplate a scenario where major fires were lit during a riot, despite this being a common occurrence in prison riots in Australia and overseas. A Code Grey was not called at any time during the incident, although staff responded as if one had been called and ACTP attended of their own volition.

Because of this planning oversight, AMC staff had to refer to two separate plans and their associated procedures to deal with the one incident.

¹² Titles have been changed to reflect the current titles. The policy refers to the GMCO and the Executive Director.

Recommendation 2:

That ACT Corrective Services review the Emergency Management Framework 2018, the *Corrections Management (Code Red (Fire)) Operating Procedure 2020* and the *Corrections Management (Code Grey – Detainee Disturbance or Riot) Procedure 2014 (No 1)* to ensure that there is a consistent approach to notifications of ACT Policing, ACT Fire and Rescue and ACT Ambulance Service about serious incidents.

Recommendation 3:

That ACT Corrective Services review the *Corrections Management (Code Grey – Detainee Disturbance or Riot) Procedure 2014 (No 1)* and the Emergency Management Framework 2018 Major Disturbance Plan to ensure that they include responses to fires lit during major disturbances.

6.2 Emergency management exercises

6.2.1 AMC emergency management exercise program

The *Corrections Management (Emergency Management) Policy 2019*¹³ states:

6.1 The GMCO will ensure that:

- a. testing of all responses included in the *ACTCS Emergency Management Framework* is conducted at least once every three (3) years; and
- b. a minimum of six (6) emergency management exercises are conducted each year, including:
 - i. at least one (1) live exercise;
 - ii. one (1) major incident exercise incorporating the Head Office Incident Command Suite; and
 - iii. one (1) exercise incorporating an external agency response; and
- c. two (2) fire drill exercises are conducted at a correctional centre each year.

This policy has not been updated since the position titles of executives changed and so the reference to the GMCO should now read DCCO. The responsibility of the DCCO to ensure these emergency management exercises are conducted is repeated in section 2 of the EMF. Further, the EMF states that all exercises involving 'other Agencies' must be approved by the Commissioner.

ACTCS provided OICS reports on five exercises conducted between 29 April 2019 and 10 November 2020 (a period of approximately 18 months). The exercises were coordinated by the AMC Senior Director Operations (SDO) and involved:

- 29/04/19 Small fire in Hume Health Centre requiring evacuation (live exercise)
- 17/12/19 Small cell fire in the court cells complex requiring the evacuation of four detainees (live exercise with staff playing detainees)
- 02/06/20 Minor incident in a unit escalates and detainees arm themselves (desktop)
- 29/09/20 Detainee taking nurse hostage (desktop)
- 10/11/20 Death in custody (live exercise)

13 Dated 07/01/2019.

The 2 June 2020 exercise had some elements of the actual 10 November riot, with the notable exception of fire lighting. Staff involved in the exercise included the GM, SDO, Senior Director Accommodation (SDA), three senior COs and a few other COs. The exercise debrief report was thoughtful and identified some actions that needed to be taken from “lessons learned”. It is of interest that the debrief report noted ‘*The use of the AFP Tactical Response Group was briefly discussed but was outside the scope of the tabletop (exercise)*’.

Some long-serving COs at the AMC recalled a small-scale desktop exercise conducted in about 2016 that had a scenario approximating the actual 10 November riot. They had found that exercise useful and one of the Incident Response Team leaders on the night said that his recollection of that exercise proved helpful.

No staff involved in the incident that we received input from, some of whom have worked at the AMC since it opened, have any recollection of live or desktop exercises involving ACTP, ACTFR or ACTAS.

Finding 4:

That ACT Corrective Services has not provided appropriate leadership or direction of the Alexander Maconochie Centre emergency management exercise program as required under section 6.1 of the *Corrections Management (Emergency Management) Policy 2019*.

Recommendation 4:

That ACT Corrective Services develop a three-year contingency-based exercise program covering both the Alexander Maconochie Centre and the Court Transport Unit that reflects the requirements set out in section 6.1 of the *Corrections Management (Emergency Management) Policy 2019*.

Recommendation 5:

That ACT Corrective Services conduct one major exercise in 2021 which includes significant participation by ACT Policing, ACT Fire and Rescue and ACT Ambulance Service, and which involves after-hours activation and operation of the ACT Corrective Services Head Office Incident Command Suite.

6.3 Memorandums of Understanding with external agencies

Section 4.8 of the *Corrections Management (Emergency Management) Policy 2019* states that ‘ACTCS will ensure appropriate Memorandums of Understanding with police and emergency services authorities are in place.’ Whilst we understand that there had been some initial discussions between ACTCS and ACTP about an MOU relating to emergency management prior to the incident, at the time of the incident there was no relevant MOU in place or a draft MOU developed.¹⁴

Recommendation 6:

That ACT Corrective Services enter into one or more Memorandums of Understanding (MOUs) with ACT Policing, ACT Fire and Rescue and ACT Ambulance Service concerning the conduct of joint operations arising from major incidents at ACT correctional centres and that the completion of these MOUs be given a high priority by ACT Corrective Services in 2021.

¹⁴ There is a MOU with ACTP dealing with some matters, but it does not include joint operations such as a riot incident.

6.4 Tactical Personal Protection Equipment and other equipment

Tactical Personal Protection Equipment (TPPE) refers to the equipment available to COs to provide additional protection where there is an assessed increased threat to the safety of staff or others. TPPE is stored and issued in individual kitbags. Each bag contains several items, including:

- Helmet
- Slash proof vest
- Forearm protectors
- Upper arm protectors
- Shin guards

In addition to TPPE kit bags, the AMC holds riot shields and batons which may be issued to staff if required. The AMC also holds a supply of CS gas (2-chlorobenzylidene malononitrile), also known as tear gas or chemical agent.

There were some problems with access to TPPE and other equipment on 10 November 2020, which for security reasons, cannot be included in the public version of this report. These matters are covered in the confidential security appendix (Appendix 4).

Recommendation 7:

That the General Manager of the Alexander Maconochie Centre review the storage of Tactical Personal Protection Equipment kits, batons and shields to ensure that they can be accessed quickly in the event of serious incident.

Recommendation 8:

That ACT Corrective Services conduct a full audit of Tactical Personal Protection Equipment kits to ensure that they are complete, items are undamaged and properly labelled as to size.

Recommendation 9:

That ACT Corrective Services make a firm policy decision as to whether CS gas should be retained as a use of force option at the Alexander Maconochie Centre, and if so decided, ensure that as a minimum all CO2 and CO3 officers are fully trained and qualified to deploy chemical agents if approved to do so. If it is decided that CS gas is not a use of force option, then the current stock of CS gas at the Alexander Maconochie Centre be disposed of as soon as possible.

6.5 Staff training and preparedness to deal with a riot

The 10 November 2020 riot at the AMC was a first for the centre and therefore a rapid learning experience for the 54 staff who responded to the incident either in the front line, management of, or in support roles.¹⁵ We thought it important to gauge how well prepared staff thought they were to respond to a riot or major detainee disturbance by asking them some questions in the survey.

¹⁵ We did not ask, but there may have been officers who have been involved in similar incidents in other jurisdictions e.g. the Senior Director Operations told us that he was involved in a major riot incident in the UK.

6.5.1 Familiarity with AMC emergency instructions

To the question 'Are you familiar with the AMC's emergency instructions?', the responses by length of time at the AMC were:

Time at AMC	Yes (n & %)	Somewhat (n & %)	No (n & %)	Total (n & %)
1 to 3 years	3 7.1%	4 9.5%	3 7.1%	10 23.8%
More than 3 years	11 26.2%	14 33.3%	7 16.7%	32 76.2%
Total	14 33.3%	18 42.9%	10 23.8%	42 100%

6.5.2 Clarity of AMC emergency instructions

To the question 'How clear do you feel the emergency instructions are in how to deal with emergency situations?', the responses by length of time at the AMC were:

Time at AMC	Clear (n & %)	Unclear (n & %)	Don't know (n & %)	Total (n & %)
1 to 3 years	4 9.5%	5 11.9%	1 2.4%	10 23.8%
More than 3 years	6 14.3%	20 47.6%	6 14.3%	32 76.2%
Total	10 23.8%	25 59.5%	7 16.7%	42 100%

6.5.3 Participation in a training exercise (live or desktop) for a similar incident

To the question 'Have you participated in a training exercise (live or desktop) for a similar incident (e.g. where detainees refuse to enter cells, riot, fire situations etc)?', the responses by length of time at the AMC were:

Time at AMC	Yes (n & %)	No (n & %)	Not sure (n & %)	Total (n & %)
1 to 3 years	1 2.4%	9 21.4%	0	10 23.8%
More than 3 years	5 11.9%	23 54.8%	4 9.5%	32 76.2%
Total	6 14.3%	32 76.2%	4 9.5%	42 100%

6.5.4 Effectiveness of training to respond to the 10 November incident

OICS notes that there is significant discussion of training in the redacted Security appendix this report, which unfortunately cannot be included here for the safety of AMC staff, detainees and visitors.

There are a lot of improvements to be made in our emergency response for future incidents in the AMC. Updated training and relevance to position and environment. Training is very outdated, and the time periods are lapsed over years.

(Staff member comment in the survey)

To the question 'How effective was your training in preparing you to respond to this incident?', the responses by length of time at the AMC were:

Time at AMC	Effective (n & %)	Ineffective (n & %)	Not sure (n & %)	Total (n & %)
1 to 3 years	0	8 19.5%	2 4.9%	10 24.4%
More than 3 years	4 9.8%	21 51.2%	6 14.6%	31 75.6%
Total	4 9.8%	29 70.7%	8 19.5%	41 100%

6.5.5 OICS observations on the survey response data

The staff survey revealed that the training and preparation of staff to respond to the 10 November riot was deficient in a number of areas:

- 23.8% (n=42) reported that they were not familiar with the AMC emergency instructions, including 7 who had been at the AMC for more than 3 years
- 59.5% (n=42) reported that the AMC emergency instructions were unclear to them, including 20 who had been at the AMC for more than 3 years
- 76.2% (n=42) reported that they had not participated in a training exercise related to a riot-type incident, including 23 who had been at the AMC for more than 3 years
- 70.7% (n=41) reported that their training to respond to the 10 November incident was ineffective, including 21 who had been at the AMC for more than 3 years

It is concerning that longer serving staff (more than 3 years at the AMC) reported high levels of inadequacies in their training and preparation when it might have been expected that they would have been better equipped than newer staff (less than 3 years at the AMC). This suggests that the post-recruit course (ongoing) training program at the AMC is not meeting the needs of custodial staff in some key areas such as responding to serious incidents.

6.5.6 The relationship between training and staffing

It was not within the scope of this review to undertake a staffing analysis of the AMC, and we note that the Minister for Corrections has highlighted staffing as a priority for the new corrections advisory committee that he announced on [17 December 2020](#).

The majority of staff training at the AMC needs to be delivered during normal business hours to capture as many staff as possible.¹⁶ This can happen by:

- Locking in detainees to release staff from posts; or
- Bringing in staff on overtime to relieve staff on posts, avoiding lock-ins but at a financial cost.

However, for health and safety reasons, there are legal restrictions as to how much overtime staff can perform in a given period of time e.g. must have specified time-off between shifts. This means that even if the AMC was fully staffed (100% Full Time Equivalent (FTE)) to cover all custodial posts on each shift, additional FTE would be needed to enable training. Locking-in detainees to facilitate staff training is, in OICS view, undesirable and should be the option of last resort.

The AMC does not have its own training staff and is reliant on the training team based in 2CA to meet its training needs, including mandatory refresher training e.g. CPR.¹⁷ Given that the AMC accounts for about 53% of all ACTCS staff (FTE), it would be sensible for a training officer(s) to be embedded at the AMC and to report operationally to the General Manager.

Note: JACS provided the following comment on a draft of this report "A senior training officer for the AMC was appointed in 2018 and trialled, however the model was not successful in addressing training needs at the AMC. As such, the position has been embedded into the newly formed Operational Capability unit [at 2CA]."

Nevertheless, we stand by our opinion on this matter because, in our view, General Manager should have direct access to training resources rather than being reliant on priorities determined in head office.

Finding 5:

That the ACT Corrective Services custodial post-recruit (ongoing) training program is not working properly in some key areas such as emergency management and related skills such as use of batons and shields and needs urgent attention.

Recommendation 10:

That a senior training officer(s) be embedded at the Alexander Maconochie Centre, reporting operationally to the General Manager of the Alexander Maconochie Centre.

¹⁶ Some training can be, and is, delivered by e-learning after hours for night shift staff but this tends to be limited to reading things like new policies and procedures.

¹⁷ We note that the Bimberi Youth Justice Centre, a fraction the size of AMC, has an onsite training officer who reports to the centre manager.

7. ACTCS RESPONSE TO THE INCIDENT

7.1 Control of the incident

7.1.1 Confusion over who was in charge

As noted in section 6.1, due to the out of date Emergency Management Framework 2018, it is unclear who should have been the Incident Commander at the AMC, although it is clear that the EMF does not provide for the Commissioner to take on that role.

However, when notified of the incident the Commissioner decided to attend the AMC rather than establishing a Head Office Incident Command Suite at 2CA (the reasons for this are articulated further below).

Under section 5.5 of the *Corrections Management (Emergency Management) Policy 2019*, the Commissioner (or GMCO or delegate) 'will activate the Head Office Incident Command Suite when:

- a. the emergency escalates and places a correctional centre at risk;
- b. the incident cannot be contained effectively;
- c. command is given to ACT Policing or ACT Fire and Rescue;
- d. a media or public interest response is required; and/or
- e. at any time according to a direction by the [Commissioner].'

Had the Commissioner established an Incident Command Suite at 2CA, he would have assumed overall (strategic) command of the incident while the operational response would have rested with the AMC General Manager at the AMC Incident Command Suite.

At interview, when asked if he had considered activating an Incident Command Suite at 2CA, the Commissioner stated *"I did actually, my immediate thought process was to put in an Incident Command Suite at 2CA noting this was a Tuesday evening at 7 o'clock with no staff available at both the jail or 2CA, the decision I made was attend the prison."*¹⁸ This suggests that the Head Office Incident Command Suite can only manage incidents between 9am – 5pm on normal working days. If that is the case, it is a farcical situation that renders section 5.5 of the *Corrections Management (Emergency Management) Policy 2019* irrelevant.

Note: notwithstanding the Commissioner's recorded comments (above), JACS' response to the draft report stated, 'While it is acknowledged that it is more complex than within business hours, the ICS can be scaled and set up at 2CA outside of business hours. Staff were available to set up a 2CA ICS should the Commissioner have elected to establish it there.'

The evident contradiction between the Commissioner's comments at interview and the JACS' position gives no reason for confidence in ACTCS' preparedness to establish an Incident Command Suite at 2CA (Recommendation 5 of this report is relevant to this issue).

18 OICS Interview with Commissioner on 27/11/20.

Finding 6:

There are serious doubts as to whether ACT Corrective Services could establish and run a head office Incident Command Suite outside of normal business hours.

The Commissioner arrived at the AMC at about 7:45pm and proceeded to a conference room, which is designated as the Incident Command Suite (ICS)¹⁹ when required. Finding no one there, he then went to the Operations office in the central area of the AMC but also found no one present. On his way back to the ICS, the Commissioner met up with the GM and they moved to the ICS.

The Commissioner formed the view that the ICS had not been established properly in that staff had not been assigned specific roles. This view was based on the Commissioner's training and experience in dealing with such incidents in other prisons. He was also mindful that this was the first such incident of its type (riot) that the AMC had experienced since it commenced operations in 2009, and as such, it would be a new challenge for the AMC management team. He was also aware that the AMC management team had received only limited training and exercise preparation for dealing with such incidents. OICS notes that the training of AMC staff in managing incidents, including exercises, was and is, ultimately the responsibility of ACTCS head office.

Prior to the Commissioner's arrival, the Duty Manager (SDA) had secured access to the centre, accounted for all staff and visitors and had arranged for all units to be locked down. When notified of the incident by phone the GM had ordered all detainee telephone and email access to be cut. On his arrival at the AMC at about 7:25pm, the GM went to the MCR to view CCTV coverage of the AU-N. He then proceeded into the centre where he found officers "kitting-up" (putting on riot gear) in a walkway. He directed them to move back from the incident area and to not attempt to enter AU-N unless directed to do so. The GM also organised the officers into teams, each with an experienced CO as Team Leader.²⁰

At his interview with OICS, the Commissioner said that when he arrived at the AMC, he told the GM that he (the GM) was Incident Commander and that the Commissioner's role was to lend support to the GM. This conversation was confirmed by the GM. However, according to multiple witnesses the Commissioner soon began issuing instructions to the GM and other AMC staff and engaging with ACTP in the ICC, sometimes answering questions that had been put to the GM. There is an example of this cited in the AMC running log:

20:50 GM advises AFP team members of staff capabilities regarding Shield/, Baton and Charge

20:52 Commissioner also advises AFP staff of staff capabilities – level of training etc

Note: JACS provided the following comment on a draft this report 'While the attached is acknowledged as an accurate reflection of the log (which is also helpfully attached in an Appendix to this report), there is no reference either in the commentary above or in the log itself to a question being "put" to the GM, and the Commissioner responding on behalf of the GM. The question exemplified was part of an open discussion...'

19 Often referred to locally as the Incident Control Centre (ICC) to avoid confusion with the 2CA Incident Command Suite if established.

20 OICS interview with GM on 24/11/20.

When interviewed by OICS the Commissioner was asked about his role in the management of the incident vis-à-vis the GM. The Commissioner said that he asked the GM to take the role as local Incident Commander at about 8pm and that he (the Commissioner) “*sort of sat out of the way*” so he could focus on his 2CA functions (communication with the Minister, media, etc). However, that got ‘convoluted somewhere along the way’ as things were not being resolved and he had to ask the GM and other staff if things had been done. While it was his intention for the GM to be the local Incident Commander, he told OICS, “*I think the roles got confused actually on the incident*”.²¹

The Commissioner also said that AMC staff had not been trained enough to assume formal roles (logistics officer, etc). He said that he had to work with what he had as there was no time to train people on the day and allocating unfamiliar roles would have been too confusing for people trying to manage a live incident.

A Formal Debrief on the incident was conducted by the DCCO at the AMC on 26 November 2020. The Formal Debrief Report included references to the management of the incident:

...the managers in the emergency command post struggled to separate the authority of the Commissioner and roles within the post.

Having the GM and Commissioner on site at the same time doesn't work. External agencies and ACTCS senior managers need to have a clear understanding on who is in charge.

No obvious command and control structure.

Inconsistent messages from the Commissioner, who at different times said that the GM was in command, the Commissioner was in command, that the Commissioner was in charge of negotiations etc.

The question of who was in charge of the incident was never resolved for the police, despite their presence in the emergency command post and observing the communications of the ACTCS senior management team.

In the survey we asked staff, ‘Did you know who was in charge of managing the incident while it was occurring?’ (n=42):

- 45% replied ‘Yes’
- 26% replied ‘No’ and
- 29% replied ‘Not sure’

Nineteen respondents nominated who they thought was in charge:

- Commissioner x 2
- Individual CO team leaders x 14
- General Manager x 2
- ‘Too many chiefs’ x 1

21 OICS Interview with Commissioner on 27/11/20.

In a free text section of the staff survey one officer wrote:

Who was in charge of the incident is too vague a question. In my mind GM [name] was overall in charge of the incident (though that line became extremely blurry when [Commissioner] was on scene). On the ground CO3 [name] and CO3 [name] were operational on the ground. [name] handled the negotiations and [name] organised the staff...the knowledge and leadership of [GM] is what got us through this incident safely.

The survey indicates that a significant proportion of staff (55%) were unclear as to who was in charge of the incident response, which indicates a need for better training on command structures during emergencies and unambiguous leadership arrangements.

7.1.2 OICS' opinion on the Commissioner's involvement

We note that the Commissioner arrived at the AMC at about 7:45pm, just some 20 minutes after the General Manager. In the Commissioner's contribution to the Formal Debrief²² he stated that there were a number of things he attended to during the course of the evening such as:

- Ensuring that someone was talking to the detainees
- Pulling staff away from the incident scene to the staff canteen
- Establishing the ICC
- Commencement of an incident log
- Confirming the muster was correct and all detainees accounted for
- Requesting tactical options from ACTP
- Requesting rapid intervention plans/surrender plans because 'these were clearly not understood and not provided'

Whether the things the Commissioner said he did would have happened anyway is unknown. In any case, he could have checked on progress of actions with the GM by telephone or email from his home or office. At some point in the evening the Commissioner began engaging directly with the emergency services in the ICC and Corrections Officers in the frontline. In our opinion, this intervention may have undermined the authority of the GM in the eyes of AMC staff and external agencies in the ICC (e.g. ACTP, ACTFR).

The Commissioner had legal authority to take local command of the incident, though he contends he did not exercise it in this instance. OICS notes that the incident was resolved without serious harm to staff or detainees. However, his involvement was at odds with to the *Corrections Management (Emergency Management) Policy 2019* and the ACTCS Emergency Management Framework.

On balance, OICS is not persuaded that the value added by the Commissioner's presence at the AMC outweighed the confusion it caused amongst AMC staff and the police and emergency services as to who was in charge.

In our opinion, the Commissioner should not have attended the AMC unless requested to by the GM.

²² The Commissioner did not attend the debrief so as not to inhibit frank discussion. He provided written comments to be attached to the report of the Formal Debrief.

8. OTHER MATTERS

8.1 Transfer of detainees to Corrective Services NSW

In late November and early December 2020, eight detainees involved in the incident on 10 November were moved to a correctional centre in NSW. OICS identified the following issues relating to these transfers.

8.1.1 Written transfer directions

Section 26(2) of the *Crimes (Sentence Administration) Act 2005* states: 'the director-general may, in writing, direct that a full-time detainee...

b) be removed to a NSW correctional centre **stated in the direction.**' (emphasis added)

OICS interprets this section as requiring the written direction to specify which NSW correctional centre the detainee is to be transferred to. The written directions ACTCS used to transfer the eight detainees state:

...that the detainee [name] be taken into the custody of Corrective Services NSW, and direct, pursuant to section 26 of the Act, for [detainee name] to be transferred to **a NSW correctional centre** on [date]. (emphasis added)

OICS is concerned that these written directions may not comply with section 26 of the *Crimes (Sentence Administration) Act 2005*. Not specifying the correctional centre to which the detainee is to be transferred means that Corrective Services NSW could select any of its 38 correctional centres around the state. They could also potentially move detainees between these centres.

This has significant human rights implications because the treatment a detainee would receive may differ depending on the centre (for example, the security level). This is discussed further in section 8.1.3.

Finding 7:

That the directions given by the Commissioner ACTCS to transfer detainees to NSW custody may be inconsistent section 26 of the *Crimes (Sentence Administration) Act 2005* and be unlawful directions.

Recommendation 11:

That the ACT government urgently seek legal advice on whether a written direction to transfer a detainee under section 26(2) of the *Crimes (Sentence Administration) Act 2005* requires a specific NSW correctional centre to be stated.

8.1.2 Lack of transparent criteria

The lack of published policy or procedure to guide ACTCS on their decision-making to transfer detainees to NSW raises significant concerns. Under section 27 of the *Crimes (Sentence Administration) Act 2005*, guidelines may be made in relation to the allocation of detainees to correctional centres, including the transfer of detainees between centres. These guidelines are to be a notifiable instrument, but no guidelines currently exist.

ACTCS advised OICS that they transfer detainees to NSW 'in exceptional circumstances where necessary to ensure:

- a. The safety of the detainee and other detainees; or
- b. The security of staff members or other people at a correctional centre; or
- c. Security or good order in a correctional centre.²³

They stated that 'there is no specific policy that governs decision making processes to send detainees to NSW.²⁴ The three criteria provided by ACTCS appear to be something it has created internally and are not published.

Public access to information about government decisions and processes is an important accountability mechanism, especially in the case of such a broad power. Detainees, their legal team, and their families and friends should know what criteria is applied when deciding whether to transfer them to NSW. A detainee should be informed in writing of the decision to transfer them, the reasons for the decision, and any right to have the decision reviewed.

8.1.3 Individualised decision making and proper consideration of human rights

The transfer of a detainee to NSW is a significant human rights issue. The following rights under the *Human Rights Act 2004* (HR Act) may be engaged:

- Protection of the family and children (section 11);
- Humane treatment when deprived of liberty, including equivalent health care to that available in the community (section 19); and
- Cultural and other rights of Aboriginal and Torres Strait Islander peoples (section 27).

In the OICS survey of detainees involved in the AU-N incident, some detainees raised that they perceive being transferred to NSW as a punishment without having been charged with a discipline or criminal offence at that point. This could engage the right to be presumed innocent (section 22(1)) and the right to a fair trial (section 21). A fair trial must include an opportunity for the accused to be heard, and appeal rights.

When making the decision to transfer a detainee, the Commissioner is required under the HR Act to both give proper consideration to the human rights that are engaged *and* reach an outcome that is compatible with those rights.²⁵ To demonstrate that this has occurred, there should be individualised documentation on the decision for each detainee. The documentation provided by ACTCS was a series of emails that discussed the detainees as a group.²⁶ Factors considered were the need 'to release some tension' caused by accommodation restraints and the involvement of these detainees in the AU-N riot. The proximity of court dates for some detainees was also taken into consideration, with some transfer dates delayed to accommodate this.

23 Email from ACTCS dated 08.12.20.

24 Ibid.

25 *Human Rights Act 2005* (ACT), s 40B.

26 Except for the eighth detainee as the decision to transfer him was made at a later date.

OICS is concerned that the documentation ACTCS provided does not at all demonstrate that the transfer of each detainee had been done on its own merits, including proper consideration of the impact on the human rights of the detainee and any other relevant individuals (such as the detainee's children or family). There was no reference to any consideration of individual factors such as whether the detainees have children or other family who visit the AMC, ways these detainees maintain cultural ties while in the AMC, and particular disability or health needs. In addition, five of the detainees that were transferred were on remand and the transfer could have impeded preparation for their legal matter. Whether and how these rights would be impacted by transfer to NSW should have been part of the decision-making process and documented. Also, NSW does not have human rights legislation, so the loss of any protections the HR Act provides by being transferred interstate should also have been explored.

Recommendation 12:

That the ACT Government make guidelines under section 27 of the *Crimes (Sentence Administration) Act 2005* which include provisions about the transfer of detainees to NSW correctional centres. These guidelines must include human rights considerations and record-keeping requirements.

8.2 Media coverage of the incident

Following the riot, the Commissioner made comments to staff at the "hot debrief" at about 3am on 11 November and subsequently to the media. At his interview with OICS, the Commissioner was asked if he had been misquoted in any of the comments shown below. The Commissioner did not indicate that he had been misquoted

As reported in the media (emphasis added)

ABC News 12/11/20

"At no point did they make any threats towards staff," he said. *"They did arm themselves with weapons from inside the unit – items like broom handles – but the incident was resolved peacefully at 10:30pm."*

Canberra Times 12/11/20

*Mr Peach, who has experienced in quelling major riots in other prisons he has managed in the UK, **took pains to describe the incident at the Alexander Maconochie Centre as "not of a violent nature toward our staff ... more of a demonstration"**.*

*Mr Peach said there was **no aggression was shown** [sic] to the staff on Tuesday night but admitted that this was "probably the most elevated incident I've seen in the ACT".*

City News 11/11/20

*"At no point did they make any threats towards staff. **They had armed themselves with weapons from inside the unit but at no point did they show any violence towards our staff,**" he said.*

Canberra Times (Editorial) 13/11/20

*He dealt with during his time in the UK; the nasty, stomach-churning kind involving teargas and full-scale battles between inmates and baton-wielding tactical teams. So from his perspective, 27 inmates at Canberra's jail refusing to enter their cells for the nightly lockdown, **then arming***

themselves with mops and broom handles, throwing veggies at fires and setting fire to mattresses must seem a very tame disturbance indeed.

Unfortunately, the media's reporting of the Commissioner's comments, were not well-received by many staff involved in the incident who felt that the comments downplayed the seriousness of the incident, and in particular, the dangers faced by AMC staff and ACTFR firefighters in dealing with the detainees in AU-N:

I was also deeply disappointed on how the Commissioner played the incident down to the media that the situation was under control by 10pm and that there was only vegetable matter being thrown over the fence. the commissioner didn't mention that there were iron bars, frozen water bottles, metal tennis rackets and other items being thrown over the fence directed at Corrections Officers and Fire Brigade officers. (Staff member comment in the survey)

I got home around 4:30am. My wife asked where I had been all this time because she heard on the news that the incident was over by 10:30. (Staff member interview)

Note: JACS provided the following comment on a draft of this report 'The excerpts from media above reflect selective reporting of the full statement issued to the ABC referenced in previous comments.'

JACS was requested²⁷ to provide OICS with a copy of 'the full statement issued to the ABC' but did not do so for reasons that are unclear to us.

As far as we are aware, the only in-depth interview the Commissioner gave after the incident was to ABC radio Canberra on the **evening** of 11 November 2021. A transcript of the ABC interview is provided at **Appendix 4** to this report. We note that the only comment about staff in that interview was a quote attributed to the Minister for Corrections:

"...this incident was concerning and challenging to everyone involved and that he is grateful to the corrections officers and first responders that led a professional response to deescalate the situation without any injury to staff or detainees."

The Commissioner was asked about his comments when interviewed by OICS on 27 November 2020. He advised that he had been told when he arrived at the AMC that fruit and vegetables had been thrown at staff and firefighters and he was not aware until the following day that metal and other hard objects had also been thrown at the responders.²⁸ He said he was not aware of detainees' verbal threats to staff but acknowledged that detainees were armed and prepared to fight, and that staff were understandably in a difficult situation given their experience and may well have felt scared.

Concerning the media, he wanted to emphasise that ACTCS staff resolved the incident, not police or the fire service. He added that media reporting of a three-hour incident was referring to the 'containment' phase of the operation which saw the detainees surrender at about 10:30pm. The Commissioner acknowledged the relocation of the detainees from AU-N did not conclude until about 3am on 11 November and that the relocation process was not without risk to staff.

²⁷ Request by OICS to JACS media on 09/03/21.

²⁸ 'Some detainees in the yard threw pieces of metal, at least one CCTV camera, metal cooking equipment and other items at the firefighters and officers protecting them. Most of these items bounced off the shield over the officers.' C03 Officer report dated 11/11/20

He told us that he thought staff did a very remarkable and professional job in difficult circumstances and that it was never his intent to 'minimise the incident'. He said that he had apologised to staff the 'day after' for any offence they may have taken to his comments.

Note: JACS provided the following comment on a draft of this report 'The Commissioner advises that a clear apology was made in the morning brief to all staff who were involved, and relates to not being aware that metal items and other objects were thrown at staff until after speaking to the media.'

The 'morning brief' referred to by JACS was an impromptu meeting called by the Commissioner on Friday 13 November in the AMC staff canteen at which about 40 day shift staff attended²⁹. Some of these staff had been involved in the incident while others had not. Similarly, because the meeting was called without notice, some staff who had been involved in the incident did not attend as they were not rostered on that day. Those who could not attend included one of the senior Corrections Officers who had led a response team on the night of 10/11 November.

OICS spoke separately to three senior staff who attended the meeting³⁰. Although one person recalled the Commissioner saying something like his comments to the media were taken "out of context", all were adamant that no 'apology' was made by the Commissioner at that meeting.

We note that the Commissioner sent a 'Commissioner's Message' about the incident to staff on 11 November 2020 in which (among other things) he said, 'Obviously, this was a significant incident which was resolved peacefully without injury to staff or detainees. I am extremely grateful to all staff involved all of whom displayed exceptionally high levels of professionalism throughout.'

8.3 Staff health and welfare

The following comments were made by staff in the survey:

The incident has caused a lot of stress for me and again am deeply disappointed as I haven't been formally debriefed. I am seeking counselling at my own cost.

ALL other emergency services had PPE. The fire department change all their clothes after being in contact with smoke, we had [to] wear wet and smoke contaminated clothes all night then travel home in them, our cars are now contaminated, and all the harmful particles were introduced into our homes. Our issued equipment are unsuitable for the purpose, we should be clothed the same as the AFP.

Officers were on shift for almost 24 hours and their care could of been improved by better management of the situation, e.g. providing adequate meals, breaks and rotations. Some officers were cold and wet outside and at risk of hyperthermia in combination with being hit with objects that included legs of tables. We were lucky to have peer support on site to manage meals, drinks, medication, towels, physical and mental health support and to be on standby to assist with injured staff. There is so far no policy for peer support to attend in emergency situations. However, members of peer support attended as civilians to provide much needed support to everyone affected by the riot.

I was in a position where I had no option but to breathe smoke from burning plastic/foam for up to 6 hours without BA equipment or PPE.

29 The attendance of officers meant that detainees had to be locked-in cells during the meeting.

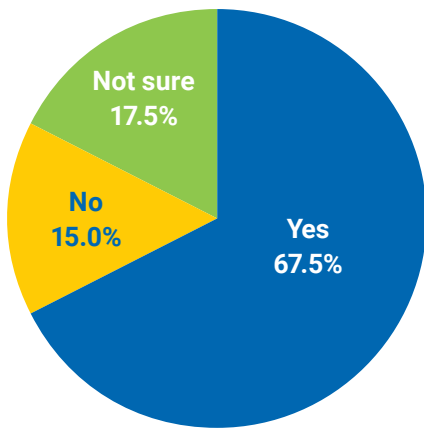
30 Individual telephone conversations on 10/03/21.

it was a very messy unsafe operation. Multiple officers including myself inhaled copious amounts of toxic smoke due to the limitations on PPE.

quite disappointed with the lack of professional and OHS issues for post incident follow up on the night and after.

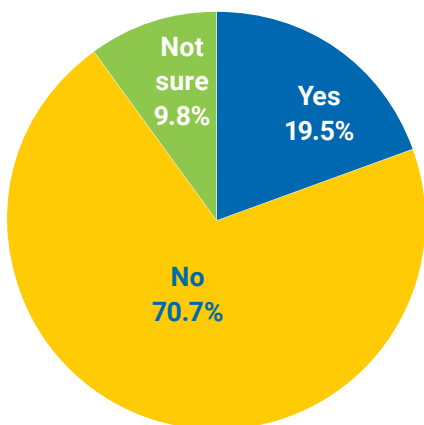
I would like to add a few concerns regarding our clothing and the PPE we were wearing on the night. We entered a contaminated area with fires burning and toxic fumes. We were not offered fresh clothing to wear home and were not advised to dispose of any clothing. Also, the PPE (riot gear) we were wearing to this day still has not been cleaned and cleared of any hazardous chemicals or fluids. As the situation ended all detainees involved were seen by health staff and cleared of any smoke inhalation. No officers involved were offered any treatment or advised to seek medical attention.

10. Were you offered Employee Assistance Program (EAP) assistance after the incident?



Value	Percent	Responses
Yes	67.5	77
No	15.0	6
Not sure	17.5	7
Total		40

12. Were you offered medical assistance after the incident?



Value	Percent	Responses
Yes	19.5	8
No	70.7	29
Not sure	9.8	4
Total		41

It is of concern that 71% of survey respondents (n=41) reported that they were not offered medical assistance after the incident (with another 10% 'unsure'), noting that such assistance was provided to the 27 AU-N detainees involved in the riot. It is also of concern that 15% (n=40) of respondents said that

they were not offered EAP assistance after the incident while another 18% were unsure as to whether assistance had been offered to them.

JACS advised in response to a draft of this report 'that EAP support was offered to all staff by the Commissioner during both the hot debrief and in the formal debrief. This is borne out by just under 70% of survey respondents indicating they had in fact been offered EAP support.

ACTCS needs to consider this staff feedback and incorporate any learnings into its post-incident response plans.

Recommendation 12:

That ACT Corrective Services review its incident response plans with regard to:

- a. Medical and EAP assistance to staff
- b. Provision of fresh PPE to staff during protracted incidents
- c. Provision of fresh clothes to staff after incidents where clothes may have become wet or contaminated by smoke or chemicals
- d. The suitability of staff uniforms for use with PPE or in hazardous situations
- e. The provision of rest breaks, meals and refreshments to staff engaged in protracted incidents

APPENDICES

Appendix 1: Review methodology

The methodology adopted for this review comprised:

Interviews

OICS conducted in-person interviews at our office with:

- Commissioner ACTCS
- General Manager AMC
- Senior Director Operations AMC
- Senior Director Accommodation AMC

We also had informal meetings with the Deputy Commissioner Custodial Operations ACTCS³¹ and the head of ACTCS Intelligence and Integrity Unit to clarify some organisational reporting matters. In addition, we conducted brief telephone interviews with two AMC senior Corrections Officers to clarify some elements of their written officer reports.

Meetings

We met with ACT Policing (in-person) and with the Community and Public Sector Union and a Corrections Official Visitor (by teleconferences).

Reports from external agencies

ACT Policing, ACT Fire and Rescue and ACT Ambulance Service kindly provided us with written information about their involvement in the incident.

Submission

The ACT Human Rights Commission provided a helpful submission to the review.

Staff survey

We developed an anonymous questionnaire which was sent to 54 AMC staff members who were involved in the incident. 42 staff responded, providing a very healthy response rate of 78%. The survey questions were:

1. How long have you worked at AMC?
2. Are you familiar with the AMC's emergency instructions?
3. How clear do you feel the emergency instructions are in how to deal with emergency situations?

³¹ The Deputy Commissioner was on interstate leave when the incident occurred. However, we thought it appropriate to talk to her about some background matters relevant to the incident.

4. Do you feel adequately trained in the following areas:
 - (a) Use of force
 - (b) Use of restraints
 - (c) Use of batons
 - (d) Use of shields
 - (e) Use of gas
 - (f) Operational procedures (e.g. chain of command) in emergency situations
5. Were you able to access appropriate PPE (“riot gear”) quickly during the incident? (free text also provided)
6. Did you know who was in charge of managing the incident while it was occurring? (free text also provided)
7. Have you participated in a training exercise (live or desktop) for a similar incident (e.g. where detainees refuse to enter cells, riot, fire situations etc)?
8. When was the most recent training exercise?
9. How effective was your training in preparing you to respond to this incident?
10. Were you offered Employee Assistance Program (EAP) assistance after the incident?
11. Did you seek EAP assistance after the incident?
12. Were you offered medical assistance after the incident?
13. Is there anything else that you wish to add? (free text section)
14. Full results of the staff survey will be published on the OICS website at a later time.

Detainee survey

We developed an anonymous questionnaire which was sent to the 27 detainees³² who were involved in the incident, including 6 who had been transferred to Corrective Services NSW custody after the incident.³³ Five detainees responded, providing a response rate of 19%. The survey questions were:

1. In your own view, what was the cause(s) of the incident?
2. Do you have any comments on how ACT Corrective Services responded to the incident while it was “live”?
3. Do you have any comments on how ACT Corrective Services responded after the incident was over when detainees were exited from the exercise yard? For example, searching, accommodation etc?
4. Do you have anything else you would like to tell us about the incident?

Documentation from ACTCS

We requested a large volume of documents from ACTCS including intelligence reports, security committee reports and minutes of meetings, policies and procedures, officer reports, CCTV footage, logbook entries and so on. All requests were met in a timely manner.

³² ACT Policing were consulted prior to sending out the survey in case it may compromise their investigation. They did not raise any objections.

³³ We are grateful to Corrective Services NSW for their assistance in facilitating contact with these detainees.

Site inspection

The review team visited AU-N on 11 November 2020 before it had been cleaned-up and were thus able to examine and take photographs of the scene much as it was left.

Draft report

We provided a copy of the draft of this report to the Minister for Corrections and the Director General of JACS pursuant to section 29 of the *Inspector of Correctional Services Act 2017*:

- (1) The inspector must give a draft copy of a report prepared under section 27 to the relevant Minister and relevant director-general at least 6 weeks before giving the report to the Legislative Assembly.
- (2) The relevant Minister and relevant director-general may provide comments in relation to the draft report to the inspector within the 6-week period.
- (3) The inspector—
 - (a) must consider any comments made under subsection (2); and
 - (b) may include the comments provided by the relevant Minister and relevant director-general as an attachment to the report; and
 - (c) may, if the inspector is satisfied that amendment is an appropriate response to the comments, amend the draft report.

In some cases we have made amendments to the draft report, in other cases we note comments from JACS in the text of the report.

Appendix 2: Incident chronology (partially redacted)

Date	Time	Event
10/11/20	18:40	Code RED (fire) AU-N exercise yard
	18:44	AMC smoke alarm alert to ACTFR
	18:50	ACTFR reports 'riot in progress'
	18:51	ACTFR unit P16-1 arrives AMC
	18:52	ACTFR reports AMC 'roller door still down – no entry at this time'
	18:53	ACTFR unit P7 arrives AMC
	19:03	000 call received by ACTAS
	19:10	AMC running log commenced
	19:13	ACTAS unit A123 arrives AMC
	19:14	Call (from GM) 'have internet cut off (Email) for whole centre. All phones (to be) disabled.'
	19:15	ACTFR unit P5 arrives at AMC
	19:23	AMC reports 'AFP on site (not called by us)'
	19:25	GM arrives at AMC (time approximate)
	19:25	ACTFR reports 'Plume of black smoke issuing. Not safe for fire service to enter'
	19:35	ACTFR moves to AU block
	19:37	ACTFR reports 'projectiles coming in'
	19:40	General Manager arrived at AMC and directed that someone needed to be trying to talk to detainees in AU North
	19:45	ACTFR reports 'P7 in area out of range of missiles. P7 has protective guard to protect them if break thru fence. Heavy smoke from building'
	19:45	Commissioner arrives at AMC (time approximate)

Date	Time	Event
	19:48	Teams kitted up and separated to assess numbers
	19:51	GM addresses teams
	19:54	ACTFR reports Fire attack crew heading down to scene with AMC guards with shield wall
	19:59	MCR advised that it appears detainees are spreading soap suds on the floor of AU North
	20:03	ACTFR reports 'trying to fight fire'
	20:04	ACTAS unit A146 arrives AMC
	20:12	ACTFR reports fire possibly out
	20:23	AMC running log 2 commenced
	20:29	ACTFR reports 'P7 & P16-1 crews secure but still inside jail'
	20:34	ACTFR reports 'smoke possible from eastern side of structure. Suggest AFP drone to check.'
	20:34	CO3 [name] talking to detainee's in external yard of AU North
	20:40	Commissioner addresses AFP officers with update
	20:46	Commissioner directs CO2 [name] regarding a surrender plan or Rapid Intervention Plan
	20:47	ACTP advise Commissioner that if negotiators/tactical response required ACTP need (time redacted) notice
	20:50	GM advises AFP team members of staff capabilities regarding Shield/, Baton and Charge
	20:52	Commissioner also advises AFP staff of staff capabilities – level of training etc
	20:53	ACTAS unit A146 departs AMC
	20:56	ACTFR reports 'received info large fire developing pumps now fighting fire and possible plant room affected'
	20:57	Commissioner requests ACTP negotiators
	21:07	ACTFR reports 'pump 16 advancing to get closer to fire, no fire control, concern spread to plant room also another fire inside 2nd floor in cell p5 crew will be entering the structure'
	21:34	ACTFR reports 'facilities maintenance in plant room no damage and extraction fans working'
	21:39	Commissioner advises GM about AU North extraction – muster of detainees
	21:53	ACTFR reports 'correction staff entering au block with view to secure area invest direct attack on fire no fire and rescue resources inside
	22:06	Staff and firemen enter AU North to secure/ check yard door
	22:13	ACTFR reports 'crews have fire control on alpha side working towards bravo side'
	23:11	ACTAS unit A126 arrives AMC
	23:13	ACTAS unit A123 departs AMC
	23:18	ACTFR reports 'crews all staged outside structure. Debriefing and release crews shortly'
	23:24	ACTAS unit A126 departs AMC
	23:28	ACTAS incident closed
	23:57	ACTFR clear from AMC
11/11/20	00:37	Detainee extraction begins one by one
	02:55	AU North external yard declared clear. Last detainee extracted
	02:56	Staff start moving away from AU North external yard to attend hot debrief
Total elapsed time from 18:40 on 10/11/20 to 03:00 on 11/11/20 = 8hrs 20mins		

Sources: ACTFR incident report, AMC running log, MCR log, ACTP brief, OICS' interview notes

Appendix 3: AU-North incidents 01/01/20 – 10/11/20

Date	Incident
02/01/20	Disobey direction
05/01/20	Assaulted in yard
30/01/20	Attempted to grab methadone from nurse
23/02/2020	Had shoes not belonging to him
03/03/2020	Passing contraband on work detail
05/03/2020	Threats to medical staff
22/03/2020	Self-harm
06/04/2020	Broken window cell 9
20/04/2020	"Joke" about stealing meds from HHC
25/04/2020	Refuse urine
28/04/2020	Nuisance behaviour re practical joke
07/05/2020	Medical to TCH
09/05/2020	Health segregation
18/05/2020	Disobey direction
06/06/2020	At-risk referral
16/06/2020	Abusive to staff
17/07/2020	Home brew
19/07/2020	Abusive to staff
22/07/2020	Medication diversion
30/07/2020	Threw something over AU fence
07/08/2020	Home brew
07/08/2020	Rope in laundry
21/08/2020	Medication diversion
05/09/2020	Home brew
07/09/2020	Disobey direction
11/09/2020	Threw liquid at staff
16/09/2020	Smoke alarm cooking
19/09/2020	Shiv in laundry
19/10/2020	Home-made weapons
21/10/2020	Home brew
23/10/2020	Abusive to staff
24/10/2020	Smoke alarm from steam
25/10/2020	Phone & SD card confiscated
02/11/2020	Threat to staff member
04/11/2020	Threats to staff members if demands not met
08/11/2020	Fruit thrown into women's unit (SCC)
08/11/2020	Clean urine in container
10/11/2020	Phone confiscated

Source: AMC Incident reports

Appendix 5: Transcript of Commissioner's Interview on ABC Radio Canberra on the evening of 11 November 2020.

This transcript covers the matter of the incident only, noting that there were also questions and answers on other topics.

Anna Vidot: The newly appointed Minister for Corrections, Mick Gentleman was not available to be interviewed this evening. In a statement he said that this incident was concerning and challenging to everyone involved and that he is grateful to the corrections officers and first responders that led a professional response to deescalate the situation without any injury to staff or detainees. And he says he's asked the Inspector of Correctional Services to review the incident and report back. With us on the line this evening is Jon Peach, who is the Commissioner of ACT Corrective Services. Jon Peach, what is the current status of things at AMC this evening?

Commissioner – ACT Corrective Services, Jon Peach (JP): Yeah, good evening Anna, this evening what we have got is a secure prison. A well-controlled prison with everybody locked in their cells and a minimal regime going on while we assess the impact of yesterday's incident.

AV: What do you know at this stage about what actually did happen?

JP: What we, the information we have at the moment is that at approximately 18:50 hours yesterday evening, 27 detainees on our accommodation unit north, refused to lock in their cells. As we would normally do in such an incident, we then go away, secure the whole prison to make sure we can account for all our staff and all the detainees. In that meantime, the detainees themselves set a fire on the external yard of the prison, the accommodation unit rather. We started negotiations with them to little effect at that point. The Emergency Services, both ACT Policing and Fire and Rescue attended. Fire and Rescue were able with our support to extinguish the fire on the exercise yard. Over the next two hours a further three fires were lit by detainees. One on the yard and two actually in cells within the accommodation unit. Around about 21.30 hours we were able to secure detainees all on the exercise yard and negotiate a surrender with the detainees and once we'd been able to extinguish the fires in the accommodation unit, we proceeded to take that surrender and were able to stand down both Fire and Rescue and ACT Policing who had been immense supports for us. But through ACT Correctional Staff's actions and negotiations and then taking the surrender plan we were able to successfully resolve the incident last night.

AV: In terms of the damage sustained, what's that meant about your housing capacity for detainees at the moment?

JP: At this moment in time we've got the whole of the accommodation unit north closed off while we have scenes of crime look at it and that's twenty-seven available beds in the gaol for our prisoners. Obviously, that does (inaudible) our pressures our capacity, we're still within our operational capacity at this moment but of course, removing 27 cells does place pressures on the system for us.

AV: What does that mean in terms of ongoing tension then because we know that for anyone, being crowded in any kind of situation is not a terribly relaxing way to be, what does that, what concern do you have about the ongoing impact then of some of the events of last night?

JP: Look, in terms of our operational capacity, my concern is more around you know, increase in growth in detainee population if we get an influx in prisoners. At this moment in time the numbers that we have, we can manage. The biggest problem that we have is that we manage as the only prison within the ACT, we manage a significant number of different cohorts of prisoner. So we manage, you know, OMCGs, we manage all three levels of security, we manage mainstream prisoners, we manage strict-protection prisoners, detainees rather, and we also manage male female remand and sentenced. And of course, when you remove the availability of the accommodation unit that stretches your capacity to keep all of those people separate and safe beyond what we would normally have.

AV: So, is that a concern for you then at this moment?

JP: It's always a concern for me. It's a constant concern for me. We have a very, very proactive staff group and intelligence capability that works tirelessly to make sure that the risks of people that shouldn't be interacting and that non-associations are maintained. But of course, as I said earlier if you move 27 beds from that mix, that places increased pressure on them. It means that we are constantly looking at every move we do in the goal and moving people around to accommodate you know, every new reception

AV: You're listening to Jon Peach, the Commissioner of ACT Corrective Services. Speaking of some of those pressures Jon Peach, what is your understanding of what may have sparked this incident?

JP: This one is too early to say. We heard a number of different versions from detainees yesterday. I think I would rather wait and let the Inspector or the police investigation actually reveal what they find out. There are a number of, as I said earlier on television, there have been a number of tensions associated with COVID-19, that has had an impact on our detainees population and our staffing and of course that general anxiety level and general stress level has elevated across the site. And that can't be dismissed from being a contributory factor.

