

2020

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

**GOVERNMENT RESPONSE TO THE REPORTS OF REVIEWS OF CRITICAL
INCIDENTS BY THE ACT INSPECTOR OF CORRECTIONAL SERVICES –
ASSAULTS OF DETAINEES AT THE ALEXANDER MACONOCHIE CENTRE
ON 5 DECEMBER 2019 AND 13 JANUARY 2020**

**Presented by
Shane Rattenbury MLA
Minister for Corrections and Justice Health**

INTRODUCTION

The ACT Government welcomes two reports from the Inspector of Correctional Services ('the Inspector') titled *Report of a Review of an assault of a detainee at the Alexander Maconochie Centre on 5 December 2019 (CIR 03/19)* and *Report of a Review of an assault of a detainee at the Alexander Maconochie Centre on 13 January 2020 (CIR 01/20)*, tabled in the ACT Legislative Assembly on 21 May 2020.

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

Following the Moss Review, and due to the unique make-up of the ACT's correctional system as well as taking into account existing oversight measures in the ACT, the ACT Government committed to establishing an external and independent Inspectorate of Correctional Services, intended to strengthen and improve existing oversight arrangements.

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

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

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

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

The two reports that are the subject of the current Government Response are described and responded to below. A table summarising the ACT Government responses to recommendation made by the Inspector (which provides further clarity on why a recommendation is agreed, agreed in principle, noted or not agreed), including proposed actions and timeframes for completion to each of the recommendations can be found at [Annexure A](#).

GOVERNMENT RESPONSE

Assault of a detainee at the Alexander Maconochie Centre on 5 December 2019

This review of a critical incident was conducted at the Inspector's own initiative following notification of an assault of a male detainee and his subsequent hospitalisation on 5 December 2019. ACTCS also reported the incident to ACT Policing for investigation.

Overall, the report found that the assault was not reasonably foreseeable by ACTCS and that the actions of ACTCS were appropriate in the circumstances. The Government welcomes positive findings made in the report, including the timely response to the incident by AMC staff, the appropriate security classification of detainees involved, and notifications being made in accordance with policies and procedures.

Findings that included areas for improvement were related to evidence handling after the assault, conducting post-incident debriefs, record keeping around next of kin notification, and communication of segregation review timing to a detainee. The ACT Government notes these findings. Finally, the report contained the recommendation *"that ACTCS implement the use of an Incident Checklist to ensure that all notifications are made and recorded, including the time of successful notification"*. The ACT Government agrees with this and ACTCS is incorporating a checklist into their Incident Summary Form.

Assault of a detainee at the Alexander Maconochie Centre on 13 January 2020

This review of a critical incident was also conducted at the Inspector's own initiative following notification of an assault of a male detainee and his subsequent hospitalisation on 13 January 2020. ACTCS also reported the incident to ACT Policing for investigation.

Again, the report found that the assault was not reasonably foreseeable by ACTCS and that the actions of ACTCS were appropriate in the circumstances, which provides assurance that ACTCS is well equipped to respond to such incidents and that robust policies and procedures are in place. Findings made also largely centred around the next of kin notification processes and post-incident debriefs and are noted by the ACT Government. The first recommendation of the report related to an amendment of the *Corrections Management Act 2007* (CMA) to provide a definition for the term 'officer-in-charge of a correctional centre, as the Inspector's report noted that this term might be confusing to ACTCS staff. The ACT Government does not agree with this recommendation as 'Officer-in-Charge' is a standard and recognised term that refers to the highest-ranking custodial officer in a correctional centre at any one time and ACTCS currently has no indication that the use of this term causes staff confusion. Moreover, amending the CMA to include this role would create a statutory office holder, which is not currently required in the legislation. The

second recommendation suggests the inclusion of a provision in the ACTCS *Incident Reporting, Notifications and Debriefs Policy 2019* for the Officer-in-Charge to consider next of kin notification prior to formal hospital admission where prudent based on their assessment of the severity of the injury/ies or illness. The ACT Government agrees in principle with this recommendation and ACTCS will revise the policy, however the decision to notify will rest with the Duty Manager rather than the Officer-in-Charge, as they have operational responsibility for the safe and secure operations of the AMC while on duty.

Systemic issues identified

Both reports found the record keeping around next of kin notifications to be inadequate and debriefs to be lacking. The ACT Government acknowledges that the Inspector has raised these issues on several occasions now and therefore considers them as systemic and in need of an active approach in order to achieve the desired outcomes.

Next of Kin notification

As indicated above, ACTCS is reviewing the Incident Checklist as recommended by the Inspector to ensure all relevant notifications are made, checked against and recorded appropriately. ACTCS also uses notices to staff to reinforce the requirements for record keeping and is closely monitoring progress in this respect. Should these measures not result in the expected and desired improvements, ACTCS will develop additional processes to assist in achieving this. More broadly, the release of the ACTCS *Quality Assurance Framework* earlier this year, as well as further work being conducted under this framework around developing and implementing quality assurance processes across the agency, will assist in achieving continuous improvement in policy compliance.

Debriefs

During the aforementioned revision of the *Incident Reporting, Notifications and Debriefs Policy 2019*, ACTCS will also review the requirements for each type of debrief. Once the new policy is notified, implementation processes will emphasise the circumstances and requirements for each debrief. Work being done under the ACTCS *Quality Assurance Framework* is also aimed at further ensuring compliance with policies and procedures and will include auditing standards to monitor compliance.

Conclusion

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

Annexure 1

ACT Government Response to Recommendations

Recommendation	Government Response	Implementation
<i>Report of a Review of an assault of a detainee at the Alexander Maconochie Centre on 5 December 2019</i>		
<p>Recommendation 1 That ACTCS implement the use of an Incident Checklist to ensure that all notifications are made and recorded, including the time of successful notification.</p>	<p>Agreed An Incident Checklist will be incorporated in the Incident Summary Form as part of the current review of the <i>Incident Reporting, Notifications and Debriefs Policy</i>.</p>	<p>Ongoing Incident Checklist to be incorporated in the Incident Summary Form by 31 July 2020</p>
<i>Report of a Review of an assault of a detainee at the Alexander Maconochie Centre on 13 January 2020</i>		
<p>Recommendation 1 That the <i>Corrections Management Act 2007</i> be amended to provide a definition for the term 'officer-in-charge of a correctional centre'.</p>	<p>Not agreed 'Officer-in-Charge' is a standard and recognised term that refers to the highest-ranking custodial officer in a correctional centre at any one time. Moreover, amending the <i>Corrections Management Act 2007</i> (CMA) to include this role would create a statutory office holder, which is not currently required in the legislation. As such, the ACT Government does not agree with the recommendation to amend the CMA.</p>	<p>N/A</p>
<p>Recommendation 2 That s8.1(b) of the <i>Corrections Management (Incident Reporting, Notifications and Debriefs) Policy 2019</i> (NI2019-266) be revised to read 'where the Officer-in-Charge of a correctional centre considers it prudent to do so, based on their assessment of the severity of the injury/ies or illness'.</p>	<p>Agreed in principle The <i>Incident Reporting, Notifications and Debriefs Policy</i> is currently under review and will be updated to reflect that the Duty Manager may decide to notify next of kin prior to formal hospital admission based on their assessment of the severity of the injury/ies or illness.</p>	<p>Ongoing Revision to be included in <i>Incident Reporting, Notifications and Debriefs Policy</i> by 31 July 2020</p>