



MEMORANDUM OF UNDERSTANDING

between

ACT INSPECTOR OF CORRECTIONAL SERVICES

and

ACT CORRECTIVE SERVICES

concerning

CRITICAL INCIDENTS

August 2018

Application

1. This is a Memorandum of Understanding (MOU) between the ACT Inspector of Correctional Services and the Executive Director of ACT Corrective Services ('the parties').
2. The objective of this MOU is to establish and maintain a constructive and cooperative working relationship between the parties regarding their respective responsibilities in the event of a critical incident.

Authority

3. The parties derive authority to consult and exchange information from the *Corrections Management Act 2007* (ACT) and *Inspector of Correctional Services Act 2017* (ACT) and the arrangements set out in this MOU.

Examples: Section 7 of *Corrections Management Act 2007* (ACT) and Section 17 of the *Inspector of Correctional Services Act 2017* (ACT)

Terms used in this MOU

4. The following terms and abbreviations are used in this MOU:

Act:	<i>Inspector of Correctional Services Act 2017</i> (ACT)
ACTCS:	ACT Corrective Services
Contractor:	A person engaged by the OICS under s14 of the Act
DI:	Deputy Inspector of Correctional Services (when appointed)
ED:	Executive Director, ACTCS
GMCO	General Manager Custodial Operations, ACTCS
Inspector:	Inspector of Correctional Services
OICS:	Office of the Inspector of Correctional Services

What is a critical incident?

5. Section 17(2) of the Act states:

critical incident means any event in a correctional centre or in the provision of correctional services that involves 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.*

Interpretation of section 17(2) of the Act

6. The Act does not define the meaning of:

- 'significant' in (e) and (f)
- 'disruption' in (e)

For the purposes of this MOU, Oxford English Dictionary meanings are taken as a guide:

Disruption: Disturbance or problems which interrupt an event, activity, or process.
Significant: Sufficiently great or important to be worthy of attention; noteworthy.

Uncertainty as to whether an incident is a 'critical incident'

7. Given that there is some ambiguity about s17(2) of the Act, if a situation were to arise where the parties disagreed, or were unsure, as to whether an incident was a critical incident they will seek a decision from the Minister for Corrections or the Director-General, Justice and Community Safety Directorate, pursuant to s17(2)(h) of the Act.

Initial Notification of a critical incident

8. In the event of an incident that could reasonably be considered to be a critical incident, the ED, or in their absence the GMCO, will notify the Inspector by telephone within 4 hours of confirmation that the incident was critical in nature or where an incident is ongoing, within 4 hours of an incident commencing.

9. If for some reason the Inspector is not contactable by phone the leaving of a voice mail message(s) will constitute initial notification.

10. Current (as at 25/06/18) contact numbers for ACTCS and OICS relevant officers are provided at Appendix 1 to this MOU.

12. Within 24 hours of the telephone notification, the ED will provide the Inspector by email (cc. Deputy Inspector) with brief details of the incident, including but not limited to:

- nature of incident
- where it happened
- when it happened
- injuries to staff or detainees
- status of security and good order of the location
- media interest

13. Where the Inspector or DI learns of what may be a potential critical incident by another means than from the ED, they will call the ED, or in their absence the GMCO in as soon as is practicable to clarify the situation.

Provision of relevant information

14. Where the Inspector determines to undertake a full review of a critical incident, ACTCS will provide a copy of the following paperwork within 7 working days, or if required earlier, as reports are available.

- Officer reports
- Incident Synopsis
- Detainee Injury Form if appropriate
- Hot and Cold debrief minutes if available
- Any other identified documentation

15. Where the Inspector determines to undertake a 'desk top review' of a critical incident, ACTCS will provide a full pack consisting of the above and any further associated documentation within 4 weeks of the incident.

Inspector may refer a matter to another investigative entity

16. Section 32 of the Act provides that:

(2) The inspector may decide not to review or examine the matter and to refer the matter together with any relevant documents or information in the inspector's possession or control, to an investigative entity.

...

***investigative entity** means an entity with power to require the production of documents or the answering of questions including, for example, the chief police officer, the human rights commission and the ombudsman.'*

Note, by definition, ACT Corrective Services is not an *investigative entity*.

Timing of Inspector's referral to another investigative entity

17. Timing of a referral could occur at the outset of an incident (e.g. to ACT Policing in the event of suspected arson) or it could occur later as information/evidence came to light.

18. In either case, Inspector will notify the ED by telephone and email as soon as practicable if a referral is to be made. However, it is noted that s32(4) of the Act provides that '*Nothing in this section requires the investigative entity to deal with the referred matter.*' This means that the Inspector may decide to proceed/continue with a review until such time that a referral has been accepted.

ACTCS may commence an internal review of a critical incident

19. The Inspector recognises that, in the event of a critical incident, ACTCS will inevitably need to conduct an initial review of the incident to, among other things:

- Provide timely and accurate information to the Minister and/or Director-General
- Ensure that both safety and security are addressed immediately to prevent any further incident
- Ensure that witnesses are identified
- Identify and secure evidence
- Take written reports from staff involved in the incident

20. Nothing in this section precludes ACTCS from launching a staff misconduct investigation¹ arising from an incident.

OICS may bring equipment into a corrective services location

21. As provided for under s19(5) of the Act, the OICS (including its contractors) may take equipment into a corrective services location for the purposes of a review.. Such equipment may include:

- Computers
- Cameras
- Voice recording devices

22. Any such equipment remains subject to gate entry procedures and must be signed in and out of any correctional centre.

23. By oral agreement between the parties, equipment does not include mobile phones.

OICS will comply with reasonable safety or security instructions

24. The OICS (including its contractors) will comply with reasonable safety or security instructions while on-site. For example:

- Presentation of identification
- Searching of bags and equipment
- Searching of the person, other than strip-searching
- Adherence to any emergency measures such as a “no movement” order
- Carry a personal duress device or radio
- In the event of an emergency situation arising, follow the directions of custodial officers to ensure safety and security

¹ The ICS has no power under the Act to conduct staff misconduct investigations

25. A 'reasonable safety or security instruction' does not include a requirement for OICS staff to be escorted unless there are sound safety and/or security reasons for doing so (e.g. incident in progress).

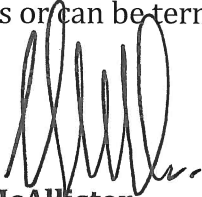
26. In general, such instructions must not unnecessarily impede the carrying out of the functions of the Inspector under the Act.

Date of effect

27. This MOU comes into effect on the date on which it is signed by both of the parties.

Amendment and termination

28. This MOU can be amended or varied following the written agreement of both parties or can be terminated at any time by written notification by either party.



Neil McAllister
ACT Inspector of Correctional Services



Jon Peach
Executive Director
ACT Corrective Services

Date: 23 August 2018

Date: 4 September 2018