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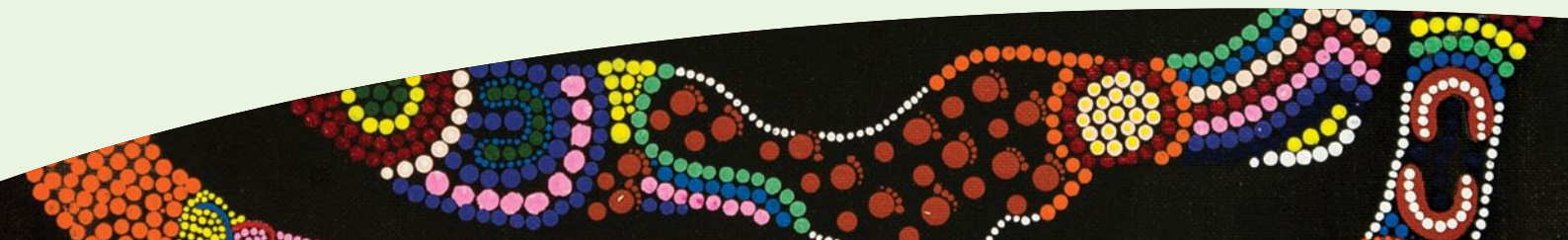
REPORT OF A REVIEW OF A CORRECTIONAL SERVICE

by the

**ACT INSPECTOR OF
CORRECTIONAL SERVICES**

*ACT Corrective Services
Court Transport Unit 2020*

ics.act.gov.au





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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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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Court Transport Unit 2020*

Neil McAllister
ACT Inspector of Correctional Services
November 2020

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GLOSSARY

ACTCS	ACT Corrective Services
AMC	Alexander Maconochie Centre – adult prison
Bimberi	Bimberi Youth Justice Centre – secure detention centre for children & young people
CM Act	<i>Corrections Management Act 2007 (ACT)</i>
CO	Corrections Officer (“prison officer” in other jurisdictions)
CPSU	Community & Public Sector Union
CSD	Community Services Directorate – responsible for Bimberi
CTU	Court Transport Unit – run by ACT Corrective Services
CYP Act	<i>Children and Young People Act 2008 (ACT)</i>
Detainee	An adult in the custody of ACTCS
HR Act	<i>Human Rights Act 2004 (ACT)</i>
HRC	ACT Human Rights Commission
ICS Act	<i>Inspector of Correctional Services Act 2017 (ACT)</i>
Inspector	ACT Inspector of Correctional Services
JACS	Justice & Community Safety Directorate – responsible for CTU through ACTCS
MOU	Memorandum of Understanding between ACTCS and CSD: ‘Operational and administrative arrangements for the safe and secure management of children and young people in custody’ dated 1 September 2020
OICS	Office of the Inspector of Correctional Services
Ombudsman	Office of the ACT Ombudsman
OV	Official Visitor – independent person to whom detainees and young detainees can make complaints, functioning under the <i>Official Visitor Act 2012 (ACT)</i>
PIC	Person/people in custody – a person received by the CTU from a police Watch House for a court appearance
Sally port	Secure vehicle parking bay
Sheriff’s Office	Located at the ACT Courts precinct and responsible for security and support of ACT Courts
Young detainee	A child or young person in the custody of ACTCS or CSD
2018 Remand review	ACT Inspector of Correctional Services (2018), Report of a review of a correctional service: The care and management of remandees at the Alexander Maconochie Centre
2019 Healthy Prison Review of the AMC	ACT Inspector of Correctional Services (2019), Report of a healthy prison review of the Alexander Maconochie Centre

CONSOLIDATED RECOMMENDATIONS

Recommendation 1:	That ACT Corrective Services' existing policy review project take into account the need for policies and procedures that reflect the operational requirements of the Court Transport Unit.
Recommendation 2:	That ACT Corrective Services obtain clear guidance from an appropriate regulatory body (e.g. WorkSafe ACT) about reasonable occupancy limits for each of the court cells and affix appropriate signage on each cell door to assist Court Transport Unit officers to safely manage people in their custody.
Recommendation 3:	That the Justice and Community Safety Directorate conduct a review of the process(es) by which ACT Corrective Services makes decisions about the acquisition of Court Transport Unit vehicles, with particular attention to the principles of sound corporate governance.
Recommendation 4:	That ACT Corrective Services replace the Romeo 4 vehicle as soon as possible.
Recommendation 5:	That ACT Corrective Services establish a sustainable process to outsource the cleaning of the Court Transport Unit vehicles to ensure cleaning vehicles is not the responsibility of Court Transport Unit officers on a regular basis.
Recommendation 6:	That ACT Corrective Services implement a procedure that is notified on the ACT Legislation Register for checks on all Court Transport Unit vehicles. This procedure must include a clear process for reporting maintenance issues.
Recommendation 7:	That ACT Corrective Services review the privacy frosting on court cells and find a solution which strikes a reasonable balance between privacy for detainees and the concerns of Court Transport Unit officers about their vision into cells.
Recommendation 8:	That ACT Corrective Services and Bimberi Youth Justice Centre establish an agreed procedure to ensure young detainees leaving Bimberi Youth Justice Centre on court escorts are not subjected to unnecessary searches.
Recommendation 9:	That ACT Corrective Services urgently address the lack of understanding Court Transport Unit officers have about what to do in emergency situations, including evacuation, that may occur at the court premises.

Recommendation 10: That professional signage for the court cells evacuation plan be affixed in the control room and elsewhere around the complex as soon as possible.

Recommendation 11: That ACT Corrective Services conduct regular emergency management exercises for Court Transport Unit officers in the court precinct. These exercises should be conducted at a time that captures the maximum number of Court Transport Unit officers or be made mandatory.

Recommendation 12: That the Community Services Directorate put a system in place that ensures that young detainees are waiting at the internal sally port at Bimberi Youth Justice Centre to board Court Transport Unit vehicles as soon as the escort is ready to do so.

Recommendation 13: That ACT Corrective Services provide Court Transport Unit officers with more Court Transport Unit specific training, including appropriate vehicle familiarisation training, prior to them commencing at the Court Transport Unit.

Recommendation 14: That ACT Corrective Services ensure the Court Transport Unit officers who have not completed mandatory training courses complete these courses as a matter of urgency.

Recommendation 15: That the Community Service Directorate and ACT Corrective Services identify where training requirements differ between adults and children and young people regarding use of force and restraints and then ensure that current and future Court Transport Unit officers are trained to required standards.

Recommendation 16: That ACT Corrective Services ensure that the Alexander Maconochie Centre officers working occasionally at the Court Transport Unit do not escort children and young people unless they have received the required training.

Recommendation 17: That a Bimberi Youth Justice Centre staff member accompany young detainees to court, is present while they are being held in the court cells complex and support Court Transport Unit officers to manage young detainees on escorts.

Recommendation 18: That ACT Corrective Services review the current process for legal professionals to access interpreter services within interview rooms at the Court Transport Unit. This must be done in consultation with Legal Aid ACT, the Aboriginal Legal Service NSW/ACT and other legal professionals that regularly access the interview rooms to meet with clients. The outcome of the review should be reported back to those consulted.

Recommendation 19:

That ACT Corrective Services implement an efficient process for Court Transport Unit officers to notify legal professionals which interview room their client is in that avoids legal professionals entering the wrong rooms while attempting to locate their clients.

Recommendation 20:

That ACT Corrective Services notify a policy and/or procedure that sets out the expected standards of detainee and Court Transport Unit officer courtroom etiquette and behaviour and the role of Court Transport Unit officers in enforcing it.

Recommendation 21:

That Court Transport Unit officers be trained in, and adhere to, courtroom etiquette in accordance with notified policies and procedures.

Recommendation 22:

That ACT Corrective Services and the ACT Sheriff develop and implement a protocol or agreement on how best to meet the Sheriff's needs for information on detainees regarding court security.

EXECUTIVE SUMMARY

The ACT Corrective Services (ACTCS) Court Transport Unit (CTU) provides an important service to the Alexander Maconochie Centre (AMC), Bimberi Youth Justice Centre (Bimberi), ACT Courts, Sentence Administration Board and ACT Policing. They transport, manage and care for hundreds of people in their custody every year comprising adult and juvenile males and females, both convicted and unconvicted. For some of these people the CTU is their first exposure to corrective services, albeit a brief experience for those who are granted bail.

This review found that the CTU is highly regarded by the key stakeholders it services. This is evidenced by complimentary remarks about their professionalism and conduct, sometimes in difficult situations. In the [detainee survey](#) conducted as part of the 2019 Healthy Prison Review of the AMC, 72% of detainees (n=169) said that the custodial officers at court were respectful and 76% (n=174) said that the custodial officers transporting them were respectful.

The review identified the following key issues:

- There is a lack of up to date policies and procedures that detail the functions of the CTU and reflect the CTU's operational requirements.
- Better processes need to be put in place for the cleaning and maintenance of the vehicle fleet.
- The Romeo 4 van is in urgent need of replacement due to its poor standard of maintenance and a design flaw.
- There are anomalies in the recent acquisition of two vehicles and questions around whether they are fit for purpose. The procurement of the Mitsubishi Fuso transport vehicle (Romeo 5) was being considered by the ACT Auditor-General at the time of writing and so there is only brief mention of it in this report.
- CTU officers are not familiar with the emergency management procedures for the new court cell complex. These procedures need to be finalised immediately and staff trained in their implementation.
- CTU officers would appreciate more CTU-specific training. In particular, they need some sort of vehicle familiarisation and training in courtroom etiquette and procedures prior to starting work at the CTU.
- There are gaps in the training completed by the current pool of CTU officers, with some officers having not completed mandatory training courses.
- CTU officers are very uneasy about working with children and young people, especially in relation to use of force and restraints. This is unsurprising given their lack of specific training in this area. Many CTU officers felt that youth detention officers (called "youth workers" by Bimberi) should accompany young detainees on court escorts.

Postscript:

The evidence gathering for this review was conducted from February to June 2020. Some matters were revisited following comments on the draft report provided by ACTCS and CSD.

ACTCS and CSD signed an MOU on 1 September 2020 titled 'Operational and administrative arrangements for the safe and secure management of children and young people in custody'. While the finalisation of the MOU is a significant milestone, it is incumbent on ACTCS and CSD to ensure that the various arrangements and undertakings set out in the MOU are adhered to in practice. Further, ACTCS and CSD must ensure that all relevant policies and procedures are updated as soon as possible to reflect the provisions of the MOU, otherwise staff will be unaware of any new practices.

OICS acknowledges, that if implemented, there are provisions in the MOU that would address some of the recommendations made in this report (e.g. Recommendation 12). However, the MOU is silent on other matters (e.g. Recommendation 8).

The methodology used for this review is set out in the Appendix. There are references in the report to opinions of CTU officers conveyed to us in interviews. While in some areas we have verified what they told us using other evidence, we would also like to emphasise that staff feelings and perceptions about their job are a valid evidence source and should not be simply dismissed as "anecdotal".

CHAPTER 1: INTRODUCTION

1.1 Authority for this review

This is a review of a correctional service conducted under s18(1)(b) of the *Inspector of Correctional Services Act 2017* (ACT) (ICS Act). This section requires that the Inspector 'examine and review correctional services at least once every two years'.

1.2 Human rights applicable to detainees in the ACT

The *Human Rights Act 2004* (ACT) (HR Act) sets out the rights of all persons in the ACT. Some rights are of particular relevance to detention. Section 19 of the HR Act provides that 'anyone deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person'. Staff have the right to 'just and favourable conditions of work' (s27B(2)). Further, detainees are afforded:

- protection from torture and cruel, inhuman or degrading treatment (s10);
- the right to a fair trial (s21);
- rights in criminal proceedings, including to be presumed innocent until proved guilty (s22); and
- the right to privacy and reputation (s12).

In addition, young detainees have 'the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind' (s11(2)). Young people also have rights specific to the criminal process (s20), including that they must be treated in a way appropriate for a person of their age and legal status.

These rights are reflected in the *Corrections Management Act 2007* (ACT) (CM Act) and the *Children and Young People Act 2008* (ACT) (CYP Act). Section 12 of the CM Act sets out the minimum living conditions required to protect the human rights of detainees. Human rights relevant to adult corrections were further articulated in the 2019 [Human Rights Principles for ACT Correctional Centres](#).

Section 138 of the CYP Act states that measures carried out under the Act must respect and protect young detainees' human rights and s141 provides the minimum living conditions for young detainees. The [Charter of Rights for Young People in Bimberi Youth Justice Centre](#) further articulates these rights.

Section 31 of the HR Act states that international law relevant to a human right may be considered in interpreting that right. In relation to prisons and youth detention, there are rich sources of guidance in international law, notably the:

- United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);
- United Nations Standards Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); and
- United Nations Standard Minimum Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules).

No major issues were raised with the review team that indicated that detainees' rights were being breached.

1.3 Context

At the time the 2019 Healthy Prison Review of the AMC was conducted, the new court cells complex was being constructed. The Inspector decided that it would be more productive to conduct a detailed review after the new court cell complex had been operational for a reasonable period. This would allow ACTCS to identify, and hopefully rectify, any initial problems with the building, equipment, policies and procedures. However, we note that the complex was not handed over to ACTCS until November/December 2019 and in March to June 2020 was still not fully operational. For example, the designated cells for children and young people were not yet able to be used.

During the 2019 Healthy Prison Review, CTU officers raised concerns about the transport of children and young people. In that review, OICS recommended that the ACT government acknowledge and address these concerns and the government agreed to this recommendation. Nonetheless, OICS has revisited this issue in more depth in this review.

While this review was being conducted, the operations of the CTU underwent significant changes in response to the COVID-19 pandemic. The ACT declared a public health emergency on 16 March 2020. The ACT Courts increased the use of audio-visual technology and significantly reduced attendance at court. This review only examines the normal operations of the CTU, that is, its operations before changes were made in response to the COVID-19 pandemic.

1.4 Roles and functions of the CTU

The CTU is based at the court cells situated beneath the court precinct on London Circuit, Canberra City. It operates five transport vehicles in various configurations (discussed later in this report).

ACTCS does not publish any significant information about the CTU. Some of its roles and functions may be gleaned from ACTCS policies and procedures (see text boxes below).

A detainee may be required to be escorted by ACT Corrective Services (ACTCS) to, from or within an ACT correctional centre for the purpose of attending a Court, Tribunal or Sentence Administration Board (SAB) hearing; in response to a medical issue, attending the funeral of a family member; or any other purpose as deemed appropriate by the Deputy General Manager, Custodial Operations (Deputy General Manager) or above, in accordance with the Corrections Management Act 2007 (CMA) and Crimes (Sentence Administration) Act 2005.

A child, young person or young detainee in the custody of the Community Services Directorate (CSD) (young person) may be escorted by ACTCS as arranged between the Director General responsible for the Children and Young People Act 2008 (or delegate) and the Director General responsible for the CMA (or delegate).

Corrections Management (Escort) Policy and Operating Procedure 2017 (No 2)

The range of escort duties undertaken by the CTU include:

- escorts of offenders from the court cells to an ACT Court or Tribunal hearing;
- escorts of remand and sentenced prisoners between ACT correctional facilities and the courts;
- escorting prisoners to and from NSW facilities;
- escort of prisoners for assessments or treatment as directed by the courts;
- escort of prisoners before the Sentence Administration Board or other Tribunal;
- special leave escorts (e.g. funeral escorts);
- escorting of young people to and from the ACT Youth Detention Centre;
- escorts for medical emergency and hospitalisation of prisoners; and,
- other escorts as directed by the Superintendent or the courts.

Corrections Management (Functions, Court Transport Unit) Policy 2008

CTU officers are also required to escort people while they are appearing before the courts and tribunals. This usually involves two officers but sometimes more according to the assessed risk (escape, violence, etc.).

CHAPTER 2: POLICIES AND PROCEDURES

The ACTCS policies and procedures are published on the ACT Legislation Register. There are some policies and procedures that relate directly to the specific functions of the CTU. The CTU is also subject to all other ACTCS policies and procedures where they are relevant.

The *Corrections Management (Functions, Court Transport Unit) Policy 2008* is woefully out of date. It is unacceptable to still have in force a policy that has not been revised for almost 12 years. This policy even refers to the Belconnen Remand Centre which has not been operational since the AMC opened in 2009 and is not a declared correctional centre under the CM Act. It also references 'the carriage of firearms' despite firearms not being available to ACTCS staff. In addition to being out of date, the *Functions, Court Transport Unit Policy* provides extremely limited information. A two-page document is inadequate to cover the duties of the CTU and how they should be carried out.

The *Corrections Management (Escort) Policy and Operating Procedure 2017 (No 2)* is a more comprehensive document. It has a section dedicated to court escorts which outlines how CTU officers are to exercise their functions. However, it lacks some details about the operations of the court cells and the role and conduct of CTU officers in court rooms. In particular, while it does have a clear section on pregnant detainees, it does not address any other detainee vulnerabilities, such as disability or limited understanding of English.

The *Corrections Management (Receiving Prisoners from Watch-House, Court Transport Unit) Operating Procedure 2008* has also not been revised for almost 12 years. It contains very outdated language such as 'Quamby', which was a youth detention centre that closed in 2008.

In addition, the *Superintendent's Instruction (Supervising Offenders at the CTU) 2010* remains in force. Instruments such as this (now called Commissioner's Instructions and Deputy Commissioner Custodial Operations' Instructions) are only to be used as short-term directions until they are no longer needed or are incorporated into a notified policy or procedure. To have one of these Instructions operating for 10 years is unacceptable.

CTU officers expressed concern about the ambiguity of some of the policies and procedures that apply to their roles, especially where policies and procedures are written with the AMC in mind and are not tailored to the CTU. They told us that changes in practice are sometimes addressed through informal directions issued by CTU Managers and ACTCS management. It would be of great benefit to CTU officers to have an up-to-date policy about the functions of the CTU with accompanying operating procedures on specific aspects of their roles.

This is the third major report where OICS has had to make comments about outdated policies and procedures.

Since 2009 AMC policies and procedures have fallen into a state of disrepair to the extent that many are blatantly out-of-date with current nomenclature (e.g. some refer to prisoners rather than detainees, some refer to the 'Superintendent' rather than the General Manager etc.) while more than half (80 of the 154 policies and procedures notified at the time of writing) have not been updated in the last five years. Over the same period, detainee muster has almost doubled with consequential impacts on many areas of AMC operations and infrastructure use. Furthermore, some policies contain procedures and vice versa which may create confusion and lack of clarity for staff and others.

Finding 38

That significant work must be done in a timely manner to bring policies and procedures to a standard the community should expect for a custodial environment.

2018 Remand Review

Significant work has been underway over recent months to review ACTCS policies and procedures to bring them up to date. Our Remand Review released in February 2019, made the finding that 'significant work must be done in a timely manner to bring policies and procedures to a standard the community should expect for a custodial environment'. This finding was accepted by the ACT government and the timeframe for completion was listed as 30 June 2019. As at September 2019 a significant number of policies still need to be updated. We recognise that significant work has been done and note that in general the updated policies and procedures are an improvement on outdated preceding policies.

Recommendation 27

That ACTCS publicly commit to an updated timeframe for bringing policies and procedures to a standard the community should expect for a custodial environment.

2019 Healthy Prison Review of the AMC

The ACT Government agreed to the recommendation in the 2019 Healthy Prison Review and stated 'ACTCS has committed to having all current policies reviewed by the end of June 2020 and notified by the end of 2020. All associated procedures will also be completed by the end of 2020.' Even noting this commitment, the fact that in 2020 the *Functions, Court Transport Unit Policy* and the *Receiving Prisoners from Watch-House, Court Transport Unit Operating Procedure*, both from 2008, have still not been reviewed is lamentable. The movement of the CTU into the new court cell facilities was an ideal time for ACTCS to review CTU-specific policies and procedures to ensure they reflect the new operational environment. This was a missed opportunity.

Finding 1:

That the core policies and procedures that relate specifically to the functions of the Court Transport Unit are out of date and lack detail on the functions and operational environment of the Court Transport Unit.

Recommendation 1:

That ACT Corrective Services' existing policy review project take into account the need for policies and procedures that reflect the operational requirements of the Court Transport Unit.

CHAPTER 3: OPERATIONS

3.1 The court cells

There are 23 cells of different sizes in the court cell complex. This includes three cells designated for young detainees. However, these three cells and seven of the adult cells are unable to be used until Phase 2 of the court cell build is completed. ACTCS could not provide us with an expected completion date for Phase 2 as it was out of their control.

Photo 1: Separate cells area for children and young people (3 holding cells)



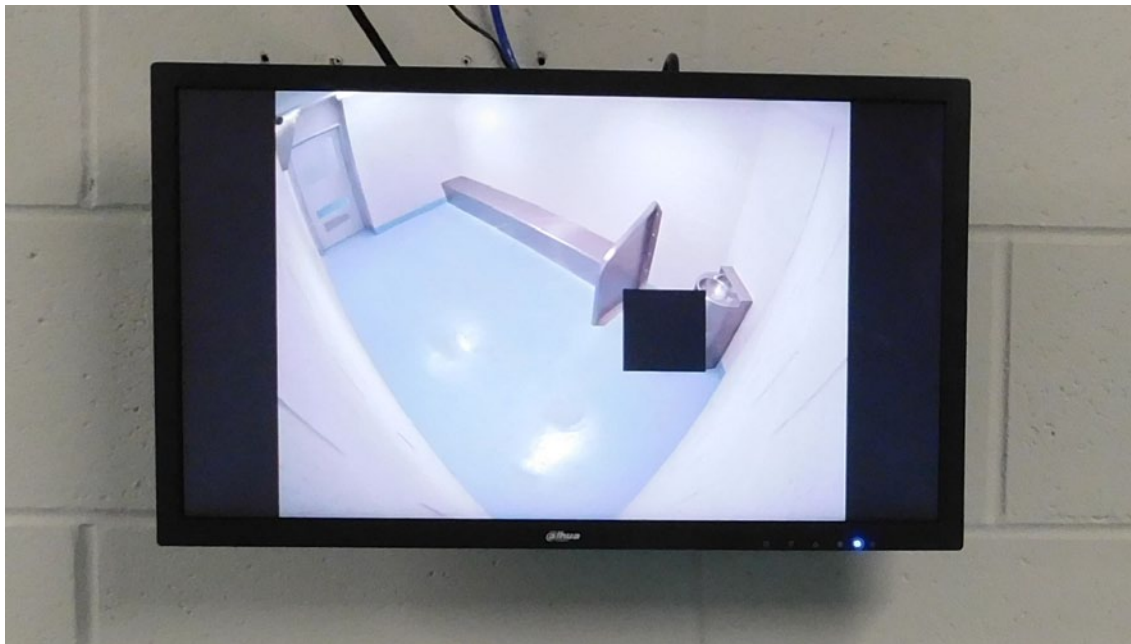
Source: OICS 2020

The cells are only used during court sitting days and are not used to hold people overnight. Seating is by way of steel benches, which have been the subject of complaints made to the Corrections Official Visitors about being cold to sit on for long periods. The cells have a toilet, wash basin, intercom, CCTV cameras and a fixed TV with an in-cell control panel.

For privacy reasons, the CCTV cameras have been digitally modified to obscure the image of a person using a toilet in the cell where necessary.¹

¹ Not all cameras provide a direct view of toilets.

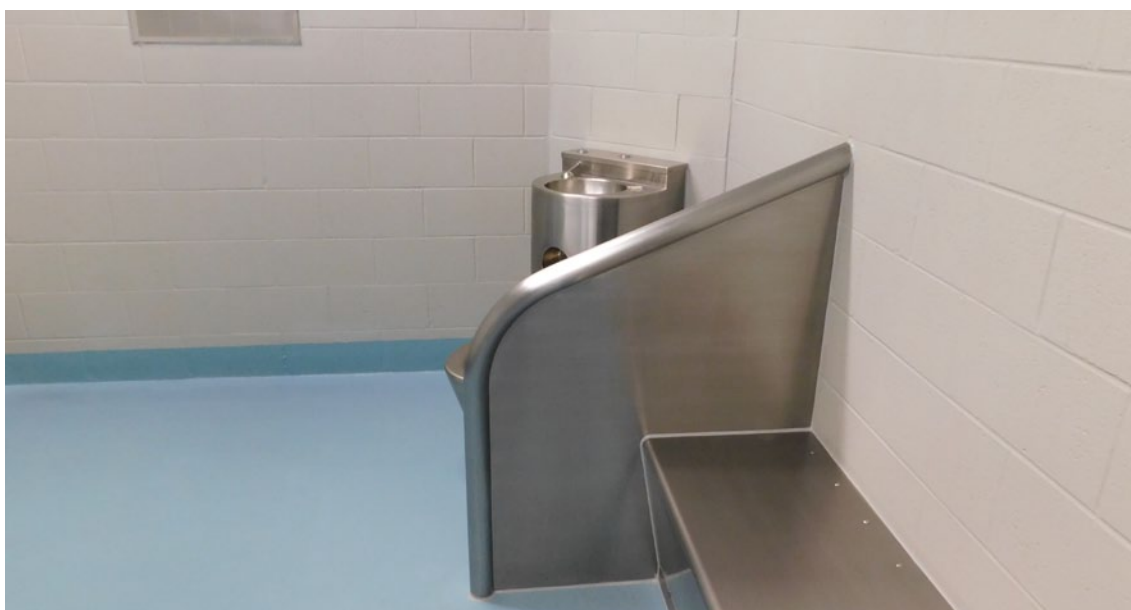
Photo 2: Toilet obscured on CCTV monitor



Source: OICS 2020

ACTCS informed us that each cell does not have a specified capacity because they are not accommodation spaces. CTU officers told us that they have not been given any instructions or guidance about how many people that they can have in a cell. This information gap is surprising and concerning given that it is common practice in community settings to display and enforce occupancy limits in various venues for health and safety reasons. We note that there is only one toilet in each cell, with minimal privacy for someone using a toilet.

Photo 3: Group holding cell toilet



Source: OICS 2019

Recommendation 2:

That ACT Corrective Services obtain clear guidance from an appropriate regulatory body (e.g. WorkSafe ACT) about reasonable occupancy limits for each of the court cells and affix appropriate signage on each cell door to assist Court Transport Unit officers to safely manage people in their custody.

3.2 The vehicle fleet**3.2.1 Vehicle types**

The CTU fleet comprises:

Unit	Make/model	Year of build	Service start	Detainee Capacity
Romeo 1	Toyota HiAce	2014	2015	8
Romeo 3	Hyundai iLoad	2014	2015	4
Romeo 4	Mercedes Benz Sprinter	2007	2015	9
Romeo 5	Mitsubishi Fuso	2016	2018	4*
Romeo 6	Hyundai iLoad	2014	2015	4
N/A	Toyota Camry	2019	2020	1

* See comment on this vehicle's configuration below

ACTCS advised that all escort vehicles are still under lease with SG fleet, a private fleet management and leasing company. However, two vehicles have transitioned to a month to month arrangement where ACTCS can terminate where required. The maintenance and consumables for the vehicles are still provided under the ongoing lease.

Romeo 4

The Mercedes Benz Sprinter van (Romeo 4) was manufactured in 2007 and is the oldest in the fleet. CTU staff raised serious concerns regarding the safety of this vehicle given its age and condition (see also section 3.2.2 and Recommendation 4). Further, Romeo 4 has a serious design flaw, being the internal double-padlocked "box" inside the double-padlocked outer door (visible to the right in Photo 6b). In the event of an accident or vehicle fire, it could be very difficult to extract detainees from the "box" in a timely manner if at all.

Finding 2:

That there is a design flaw with the Romeo 4 transport vehicle that could put the lives of detainees at risk in the event of a vehicle accident or fire.

At the time of this review, ACTCS advised they were investigating replacement options for Romeo 4 and the two Hyundai iLoads (Romeo 3 and Romeo 6).

Photo 4: CTU secure vehicles Romeo 3 and Romeo 6



Source: ACTCS 2019

Toyota Camry

During the review, the CTU received a Toyota Camry to replace their eight-seat Toyota HiAce van (Romeo 1). ACTCS advised the review that the vehicle was ‘purchased specifically for detainees at risk of suicide or self-harm...’ and that ‘the seating configuration is driver, and two staff in the back seat on either side of the detainee.’²

The *Corrections Management (Escort) Policy and Procedure 2017* specifies that detainees at-risk ‘due to suicide or self-harm concerns must be escorted in a sedan or station wagon’. However, CTU officers believe the Toyota Camry is too small in situations where staff need to wear bulky personal protection equipment (PPE), such as body pads, on escorts of potentially violent detainees. One officer described it as ‘unfit for purpose’.

In reality, and even leaving aside the PPE issue, a Toyota Camry is a mid-sized family car with a back seat that would be a tight squeeze for three average size adults. It is unclear to us why an at-risk detainee could not be transported safely in a larger-seat capacity vehicle that would provide more room for the detainee and safe-distancing of staff. Further, as the Camry is unsuitable as a general-use escort vehicle it may end up being underutilised and poor value for money.

Due to the evident unsuitability of the Camry, the CTU reverted to using the old Romeo 1 Toyota HiAce even though it had partly been stripped of its ACTCS decals. The future of the Camry was unknown at the time of writing.

Finding 3:

That there are anomalies concerning the decision-making process that resulted in the acquisition of the ACT Corrective Services Toyota Camry detainee transport vehicle as to whether it was ever “fit for purpose”.

Romeo 5

Romeo 5 is a Mitsubishi Fuso truck, manufactured in 2016 and brought into ACTCS service in April 2018. Essentially, a unit containing eight individual pods (cells) was fitted to the Fuso chassis. Unfortunately, and inexplicably, it was found that if all eight pods were occupied at the same time by detainees (plus the two escort officers) the vehicle would exceed its legal load weight i.e. it could not be driven under any circumstances.

² Email from ACTCS on 22/05/20.

Consequently, the ACTCS Commissioner issued a procedure³ specifically about Romeo 5 which included the following advice:

- 1.2 The R5 vehicle has a maximum weight of 4500kg. There is no ability for the vehicle to be driven at a weight above 4500kg irrespective of the class of license held by the driver.
- 1.3 To ensure the vehicle weight remains below 4500kg, the R5 vehicle must only carry a maximum of six (6) people, including:
 - a. two (2) staff; and
 - b. up to four (4) detainees only.

In effect, an eight-passenger vehicle became a very big and expensive four-passenger vehicle. There have also been issues with the height and manoeuvrability of Romeo 5 which have frustrated CTU officers.

At the time of writing (June 2020), the matter of the acquisition of this vehicle was under consideration by the ACT Auditor-General.

Photo 5: Romeo 5 Mitsubishi Fuso



Source: OICS 2020

Finding 4:

That the Mitsubishi Fuso detainee transport vehicle ("Romeo 5") has never been "fit for purpose" and there are serious questions around the vehicle procurement process.

Recommendation 3:

That the Justice and Community Safety Directorate conduct a review of the process(es) by which ACT Corrective Services makes decisions about the acquisition of Court Transport Unit vehicles, with particular attention to the principles of sound corporate governance.

³ Corrections Management (R5 Vehicle – Mandatory Checks) Operating Procedure 2019.

3.2.2 Vehicle maintenance

The consistent feedback from CTU officers was that the vehicles in the CTU fleet are not maintained to an appropriate standard and urgently need to be replaced with newer vehicles to ensure the safety of officers, detainees and young detainees.

The condition of Romeo 4 when inspected by OICS in June 2020 was disgraceful.

Photo 6a: Romeo 4 driver's seat damage and worn interior

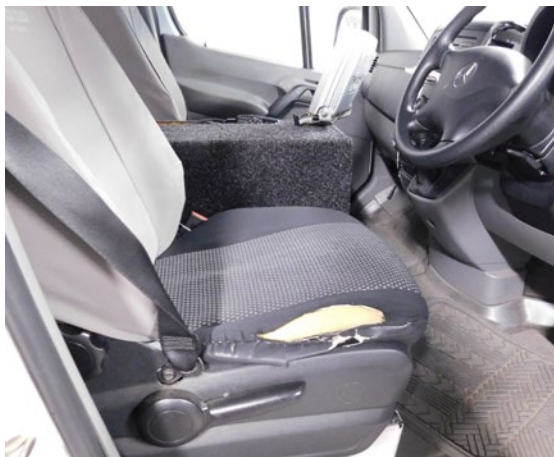


Photo 6b: Romeo 4 unsightly secure pod (note cigarette lighter graffiti)



Photo 6c: Romeo 4 damaged mirror taped up



Photo 6d: Romeo 4 old fender damage



Source: OICS 2020

Recommendation 4:

That ACT Corrective Services replace the Romeo 4 vehicle as soon as possible.

While smoking is not permitted in CTU vehicles or the court cells, OICS saw evidence of cigarette lighter graffiti in two CTU vehicles (see Photos 6b and 7).

Photo 7: Lighter graffiti in vehicle pod



Source: OICS 2019

Staff advised that the cleanliness of the vehicles is not kept to a high standard and that CTU officers are often required to clean the vans themselves which can be difficult when the CTU is busy and/or short staffed. In the [detainee survey](#) conducted by OICS in 2019 for the Healthy Prison Review of the AMC, 62.6% ($n=174$) of respondents reported that CTU vehicles they were transported in were unclean.

OICS is firmly of the view that CTU officers should not have to routinely clean the passenger compartments of vehicles, which could be contaminated with bodily fluids, and that this function should be undertaken by properly trained and equipped cleaners.⁴

Recommendation 5:

That ACT Corrective Services establish a sustainable process to outsource the cleaning of the Court Transport Unit vehicles to ensure cleaning vehicles is not the responsibility of Court Transport Unit officers on a regular basis.

Recommendation 6:

That ACT Corrective Services implement a procedure that is notified on the ACT Legislation Register for checks on all Court Transport Unit vehicles. This procedure must include a clear process for reporting maintenance issues.

⁴ It is accepted that CTU officers may have to do urgent cleans on occasions, but this should not be regarded as normal practice.

CHAPTER 4: SECURITY AND SAFETY

4.1 Physical security

The review did not identify any significant security concerns at the court cells complex, noting that it is essentially a new build (2018/19). Because it is underground there are no perimeter fences and only one highly controlled external access point. Internal access via lifts and fire escapes to and from the courts is protected from unauthorised use by electronic access controls and CCTV monitoring. The lifts are fitted with a “cage” to secure detainees if necessary.

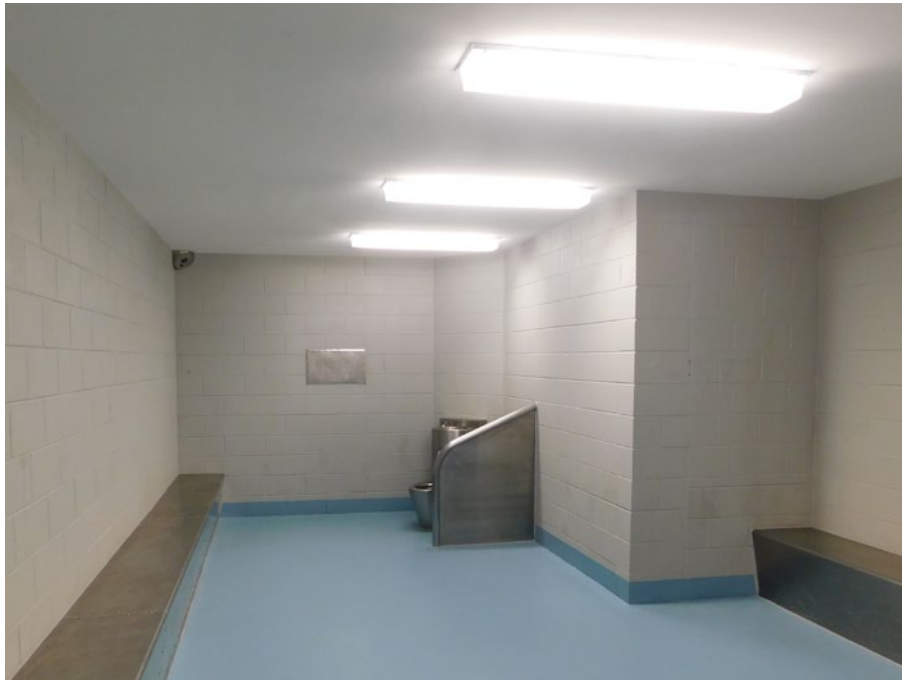
Photo 8: Courts complex lift



Source: OICS 2019

Searching of cells is quite straightforward because, unlike prison cells, they are effectively bare spaces with no hiding places (furniture, cupboards, etc.). Similarly, there are no hiding places within the secure vans (see photo 7).

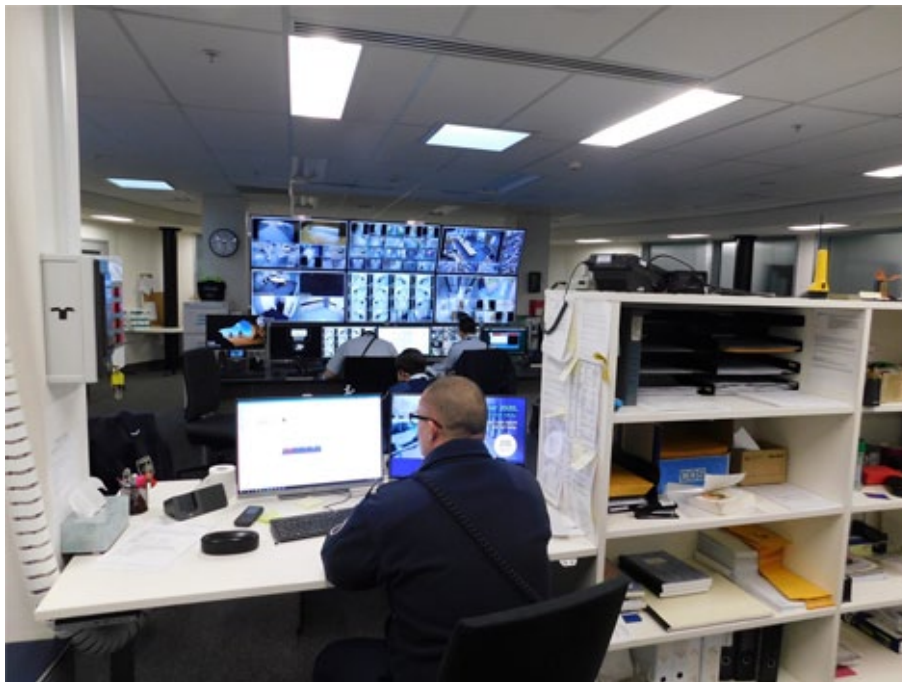
Photo 9: Group holding cell



Source: OICS 2019

There are 63 CCTV cameras and numerous staff duress alarms throughout the complex that feed into the central control room.

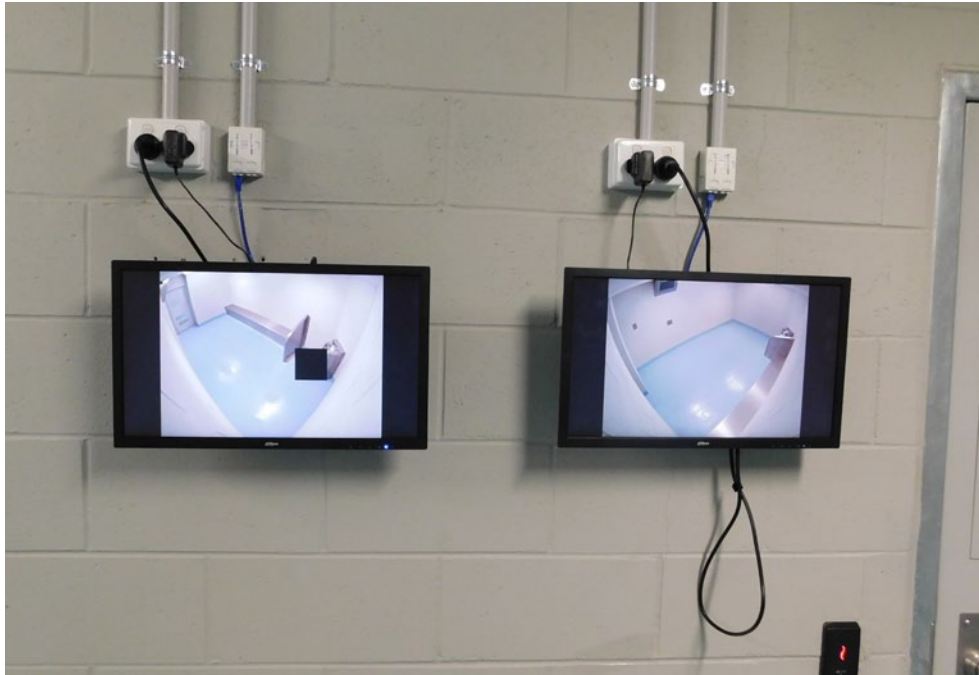
Photo 10: CTU control room



Source: OICS 2020

When they began working in the new cells complex, CTU officers raised concerns with OICS about the lack of visibility they have in some cells where the door placement leaves blind spots. For example, a detainee could be standing in a corner of the cell that a CTU officer cannot see into when they are about to enter the cell. ACTCS decided to install screens outside these cells linked to the CCTV camera in that cell. Installation of secure casings to protect the screens was not completed until July 2020, due to delays beyond ACTCS' control.

Photo 11: Cell monitor screens



Source: OICS 2020

Staff also raised concerns about privacy frosting on cell windows which they believe restricts their ability to look into cells. They are concerned the frosting limits their ability to visually identify detainees before removing them from a cell or applying handcuffs through the hatch. While we understand that the design rationale for the frosting is privacy for detainees, there may be scope for some compromise solution.

Photo 12: Frosting on cell windows



Source: OICS 2019

Recommendation 7:

That ACT Corrective Services review the privacy frosting on court cells and find a solution which strikes a reasonable balance between privacy for detainees and the concerns of Court Transport Unit officers about their vision into cells.

4.2 Searching of detainees

4.2.1 Non-intrusive searching

The *Corrections Management (Escort) Policy and Operating Procedure 2017 (No 2)*, the *Corrections Management (Searching) Policy 2010* and *Corrections Management (Searching) Procedure 2010* apply to the searching of people entering or leaving the court cells complex.

This includes:

- AMC detainees for court appearances or Sentence Administration Board hearings;
- Bimberi young detainees for court appearances; and
- PIC from the police Watch-House for court appearances.⁵

⁵ The *Receiving Prisoners from Watch-House Procedure 2008* directs CTU officers to 'Conduct a frisk search of each prisoner unless it is justified to conduct a strip search at the Watch House'.

In its submission to this review, CSD stated that Bimberi staff search the young detainees before they are handed over to CTU officers and then CTU officers also undertake their own search before the young detainee enters the vehicle. CTU officers confirmed that they conduct their own search as a standard practice. In our opinion, it is both unnecessary and undesirable to subject young detainees to two searches before boarding an escort vehicle.

Recommendation 8:

That ACT Corrective Services and Bimberi Youth Justice Centre establish an agreed procedure to ensure young detainees leaving Bimberi Youth Justice Centre on court escorts are not subjected to unnecessary searches.

4.2.2 Strip searching

CTU officers may strip search an adult detainee pursuant to ss113B and 113C of the CM Act, or a young detainee pursuant to s258 of the CYP Act.

Strip searching is not carried out routinely by the CTU, i.e. only when there is a reasonable suspicion that a person is concealing something that was not found by a scan or frisk search.⁶ The court cell complex has a room where strip searches are undertaken that is separate from the cells area. This physical design affords some privacy to people being strip searched by limiting general visibility.

The CTU strip search register revealed that no strip searches have been recorded at the CTU since the *General Manager's Instruction (05/2019) Escort Risk Assessments – Searching Requirements* was circulated to staff on 9 October 2019. At that time, CTU officers were instructed not to conduct routine strip searches on detainees who were remanded in custody and being admitted to the AMC because the strip search would be conducted at the AMC.

4.3 Incidents of violence experienced by CTU officers

In the period 3 June 2019 to 10 February 2020 there were 15 reported incidents of violence experienced by CTU officers.⁷ Four of the incidents involved young people as the perpetrators, one of whom was involved in three incidents on different dates. Arguably, officers were not actually targeted by the perpetrator but rather experienced physical contact during use of force incidents (see below). No officers or detainees were reported to have suffered serious injuries during these incidents.

⁶ Currently a direction from ACTCS which is to be incorporated in a new strip-searching policy.

⁷ ACTCS data provided to OICS.

4.4 Use of force by CTU officers

In 2019 ACTCS recorded 35 use of force incidents involving CTU operations, including four instances where the subject was a child or young person:

Table 1: CTU operations – use of force 2019

Month	Adult	Juvenile	Total
Jan	1	1	2
Feb	0	0	0
Mar	1	0	1
Apr	1	0	1
May	1	0	1
Jun	8	0	8
Jul	3	0	3
Aug	9	1	10
Sep	3	0	3
Oct	0	2	2
Nov	1	0	1
Dec	3	0	3
Total	31	4	35

Source: ACTCS incidents register 2019

Typical scenarios where force was used were detainees “acting out” in court rooms in response to proceedings that were not to their liking and refusing to return to cells or enter vehicles. All use of force incidents involved the physical restraint of detainees by one or more officers, including the application of handcuffs on some occasions.

In our opinion, given the high CTU “traffic” of detainees and PIC (about 20 per working day), 35 use of force incidents in a one-year period is a relatively small number.

However, it is noted that two incidents, both involving adult detainees, resulted in disciplinary action being taken against staff concerning use of force.⁸ It is concerning that on the reading of the incidents register it was not at all obvious that there had potentially been excessive use of force. It would be helpful if the incidents register indicated that there may be matters that require further review.

⁸ Privacy issues preclude further description of these incidents or the charges.

OICS are concerned that the incident register that currently records uses of force lacks sufficient detail to be an effective human rights safeguard given the importance of the rights engaged (most notably, for detainees, the right to humane treatment when deprived of liberty, and for staff the right to just and favourable conditions of work). The register should contain sufficient detail about the use of force incident to enable independent oversight agencies to identify any potentially problematic incidents – for example, a column indicating if follow up action was required in relation to that incident. A sufficiently detailed register may also assist in identifying patterns and trends to improve practices and identify training needs. Problematic incidents could be flagged in a way that protects the privacy and presumption of innocence of staff involved.

Section 142 of the CM Act deals with record keeping on use of force causing injury or death, and requires that the director-general of JACS give reports of such uses of force to OICS. The Inspector has not received any copies of such records under this section since the office was established in early 2018.

Finding 5:

That the current requirements under the *Corrections Management Act 2007* (ACT) to record use of force are not sufficient for appropriate independent oversight of this important human rights issue.

4.5 Emergency management

At the time of the review, there were no written emergency management policies or procedures specific to the new court cell complex. The feedback we received from CTU officers was that the information and training regarding emergency management practices at the CTU and broader courts precinct is inadequate.

CTU officers expressed confusion about what to do in some emergency situations. For example, some CTU officers told us they are to evacuate all detainees to the sally port but were unsure what to do if the source of the emergency was in the sally port. It also needs to be clear what CTU officers are to do if they are with a detainee in a courtroom when an emergency occurs. If there is an emergency situation before these procedures are written and staff trained in them, there could be serious consequences.

OICS viewed a draft version of the ACT Courts and Tribunal Emergency Management Framework. The Sheriff's Office advised us that the purpose of this document is to identify the areas of responsibility and structures such as the Emergency Planning Group (EPG) and Wardens.⁹ Emergency management procedures will then be developed and reviewed by the EPG prior to implementation. We were also advised that 'CTU will be required to develop their own Emergency Management procedures due to the unique requirements of evacuating detainees.'¹⁰

ACTCS advised that 'ACTCS is currently developing an additional Evacuation Operating Procedure for the CTU in collaboration with JACS Work Health and Safety.'

⁹ Email from the ACT Sheriff's Office on 13/08/20.

¹⁰ Email from the ACT Sheriff's Office on 13/08/20.

Finding 6:

That the written procedures in place for the Court Transport Unit do not sufficiently address the details required for detainee management and control in emergency and/or evacuation scenarios.

Recommendation 9:

That ACT Corrective Services urgently address the lack of understanding Court Transport Unit officers have about what to do in emergency situations, including evacuation, that may occur at the court premises.

It also needs to be noted that fire evacuation notices displayed in CTU are stuck on the wall with sticky tape. We acknowledge that ACTCS is waiting until the final stage of construction is complete before affixing permanent signage.

Recommendation 10:

That professional signage for the court cells evacuation plan be affixed in the control room and elsewhere around the complex as soon as possible.

ACTCS have confirmed that there was one emergency evacuation exercise conducted at the CTU in 2019. However, CTU officers advised that not many officers attended because it was voluntary and conducted after hours.

Recommendation 11:

That ACT Corrective Services conduct regular emergency management exercises for Court Transport Unit officers in the court precinct. These exercises should be conducted at a time that captures the maximum number of Court Transport Unit officers or be made mandatory.

CHAPTER 5: STAFF AND TRAINING

5.1 Current staffing profile and key functions

Concerning the staffing profile of the CTU, ACTCS advised that the relevant Enterprise Agreement provides for 21 permanent CO1 positions, 1 CO2 and 1 CO3.¹¹ However:

The number of staff operating within the CTU changes on a daily basis in line with operational needs – i.e. there is not a set number rostered on each day, all available staff from within the establishment are rostered on but this then has allowances for ADO / PL / annual leave. Once this is considered with the operations of the day there may be a need to supplement from the AMC or as has occurred, to redeploy CTU Staff to the AMC. It is noted that until 1 July 2020 and for the period of the review that the CTU was treated like any other business unit within the AMC where the staffing needs are / were met from the wider group.

Recognising the increased work from the courts, ACTCS have increased the establishment currently to include 25 permanent CO1 positions and 2 CO2 and 1 CO 2 as well as introducing a new Director CTU position. It is also noted that whilst this is the establishment ACTCS are currently running with a higher number of FTE allocated to the CTU for the time being.¹²

As at May 2020, the CTU workforce comprised eight females and 20 males with three officers identifying as Aboriginal and/or Torres Strait Islander.

Two of the key functions undertaken by CTU officers are transporting detainees and young detainees and court room escorts.

5.1.1 Servicing the transport function

In a sample period in 2019 (see Table 2), most escorts involved moving people between the AMC and the court cells complex (55.7%) followed by movements from the City Watch House to the court cells (28.8%). Although the Watch House is only about 100 metres away from the court cells, PICs must be moved by vehicles for security reasons.

The most time-consuming escorts were those involving movements to/from the AMC (1548 – 56%), which accounted for some 20,000km travelled and 516 hours in the sample period. Bimberi escorts (276 – 10%) accounted for some 2,200km travelled and 69 hours.

¹¹ ACT Public Sector Correctional Officers Enterprise Agreement 2018–2021.

¹² ACTCS comment on the draft report.

Table 2: Escort tasks 1 March 2019 – 31 December 2019

Task	Number	%	Average trips per working day*	Single trip distance (km)	Single trip time (approx. minutes)**
CTU to AMC	834	30.0	3.2	13	20
City Watch-House to CTU	800	28.8	3.1	<1	5
AMC to CTU	566	20.4	2.2	13	20
CTU to AMC (at-risk detainee)	148	5.3	0.6	13	20
Bimberi to CTU	147	5.3	0.6	8	15
CTU to Bimberi	129	4.6	0.5	8	15
CTU to The Canberra Hospital	120	4.3	0.5	11	14
Priority Escort (security)	34	1.3	0.1	varies	varies
Total	2778	100	10.6	n/a	n/a

* 261 working days

** Travel time only – does not include loading/unloading passengers

Concerning Bimberi escorts, several CTU officers told us that on arrival at Bimberi they frequently wait for long periods for young detainees to be brought to the internal sally port for transport. This should not occur and needs to be addressed by Bimberi management.

Recommendation 12:

That the Community Services Directorate put a system in place that ensures that young detainees are waiting at the internal sally port at Bimberi Youth Justice Centre to board Court Transport Unit vehicles as soon as the escort is ready to do so.

Postscript:

Item 2.8 of the MOU signed by the CSD and JACS on 1 September 2020 addresses this issue, requiring Bimberi to ensure all young detainees to be escorted, and any paperwork are ready at the time of the CTU officers' arrival. The MOU provides for a mandatory review to discuss issues of concern after six months of operation (due March 2021), and thereafter annually. It will be important to evaluate the effectiveness of this provision.

5.1.2 Court room escorts

OICS examined data provided by ACTCS that reported on the number of people who transited through the court cells complex on a sample of 120 days between 1 July and 31 December 2019.¹³ The data needs to be considered in the context of:

- Adults (18+) must be kept separate from juveniles; and
- Males must be kept separate from females.

This results in four cohorts that may have to be managed concurrently on any one working day. In addition to these cohorts there may be other reasons to separate people. For example, a protection detainee from the AMC would have to be kept separate from other (non-protection) detainees.

The *median* number of people per day was 20.4. Of these:

- 16.7 (82%) were adult males
- 2.6 (12.5%) were adult females
- 0.8 (4%) were juvenile males
- 0.3 (1.6%) were juvenile females.

Overall, males accounted for 86% of the clients and females 14%.

These 20 people need to be escorted to and from court rooms and supervised by CTU officers during appearances. This is usually done by two officers, but additional officers could be assigned if it was considered necessary for security reasons. CTU officers may also have to escort people in custody to meet with lawyers in the legal visits area.

A major expansion and refurbishment of the ACT Courts precinct commenced in 2016 and is ongoing at the time of writing. The new ACT Courts building increases the number of courtrooms from 17 to 21, with 19 in operation at the time of the review:

- the Supreme Court went from six courtrooms to eight (with jury courtrooms increasing from three to five); and
- the Magistrates Court stayed at 11 courtrooms.

Further, the ACT Supreme Court was given a fifth judge in mid-2016 and the ACT Magistrates Court an eighth magistrate in August 2018. The combined effect of additional courtrooms and an additional judge and magistrate means that more matters can be conducted concurrently. While no major issues with delays were raised with us in this review, we note that ACTCS will need to continue to monitor whether CTU has enough staff to meet the needs of the additional courtrooms.

¹³ Data was not captured for all days, resulting in 120 days of data.

5.2 Staff training

5.2.1 CTU specific training

Training of CTU officers is the responsibility of the Training and Development Unit (TDU), based in ACTCS Head Office.

About two years ago, ACTCS started doing recruitment rounds specifically for the CTU and these new recruits complete a training course specifically for CTU officers. Prior to this, CTU officers completed the same training as AMC corrections officers.

After completing the recruit course, new recruits are expected to shadow an experienced CTU officer for their first few weeks. Feedback from CTU officers was that this is not consistent and some of the newer officers recalled shadowing inexperienced CTU officers who did not provide adequate guidance regarding procedures and processes. All CTU officers are also expected to complete refresher training on various topics.

Overall, CTU officers told us that they would like more CTU specific training in both the recruit course and refresher courses, as the content of most training is based on working at the AMC. For example, they advised us that cell extraction training did not prepare them for situations where there could be numerous detainees in one cell rather than one or two in a cell like at the AMC. They would also appreciate training in court procedures and etiquette (discussed further in Chapter 8).

CTU officers also identified escort and vehicle awareness as an area they would have appreciated more training in before they commenced work at the CTU. They advised that this training was only provided at a very basic level in the recruit course. OICS reviewed the schedule for the CTU recruit course and we note that escort and vehicle awareness is provided on a single day (8am-4pm) where “theory” and the Radicalisation and Extremism Awareness program are also taught.

CTU officers particularly emphasised that they were not given the opportunity to drive the CTU vehicles before they commence work and have detainees onboard. Notwithstanding that CTU vehicles may be driven by someone with a standard car licence, these vehicles are not family cars. They are used to transport passengers, who may not be wearing the fitted seat belts if they have removed them in transit, in steel pods with basic seats. This leaves the passengers at risk of serious injuries in the event of an occurrence such as hard braking, negotiating speed bumps or cornering. The vehicles are also a lot larger than what many CTU officers are used to driving and officers told us they would appreciate the opportunity to at least practice driving the vehicles before being expected to do so with detainees onboard.

Recommendation 13:

That ACT Corrective Services provide Court Transport Unit officers with more Court Transport Unit specific training, including appropriate vehicle familiarisation training, prior to them commencing at the Court Transport Unit.

We note that Recommendation 26 of the 2019 Healthy Prison Review of the AMC was that the ACT Government commission an independent review of the ACTCS Corrections Officer custodial recruit training course, including a comparative analysis of similar courses in other jurisdictions, and the adequacy of on-going and refresher training provided to all AMC and CTU officers. The government response to this recommendation stated that they will commission an external review and the review is to be completed by 31 December 2020. We expect that this review will cover specialist training provided to CTU officers.

5.2.2 Completion of staff training

Table 3 shows the training courses provided to CTU officers.¹⁴

Table 3: CTU staff training

Course name	Number of CTU officers who have completed course in the last 12 months (n=28)	Number of CTU officers who have completed course since commencing employment at ACTCS (n=28)
Aboriginal & Torres Strait Islander Cultural Awareness	1	24
Breathing Apparatus	14	22
CPR (Cardiopulmonary Resuscitation) Refresher	11	25
Fire Awareness	4	24
First Aid	9	28
Fraud and Ethics Awareness	0	22
Human Rights	0	25
JACS Induction	0	25
Mental Health First Aid	0	1
REAP (Radicalisation & Extremism Awareness Program)	1	18
RED (Respect, Equity & Diversity)	0	27
SASH (Suicide & Self Harm) Awareness	2	26
Security Awareness	1	25
Use of Force	2	26

¹⁴ Data provided in an email from ACTCS on 18/06/2020.

The following gaps are concerning:

- four officers had not completed Aboriginal and Torres Strait Islander Cultural Awareness training;
- six officers had not completed Breathing Apparatus training;
- four officers had not completed Fire Awareness training;
- two officers had not completed Suicide and Self Harm Awareness training; and
- two officers had not completed Use of Force training (with only two officers attending this training in the last 12 months).

In addition, only 11 out of the 28 CTU officers had completed the *mandatory* CPR refresher training in the last 12 months. This is a requirement under ACTCS' internal Training and Development Guidelines.

Finding 7:

That some CTU officers had not completed mandatory training and very few officers received any training in the last 12 months.

Recommendation 14:

That ACT Corrective Services ensure the Court Transport Unit officers who have not completed mandatory training courses complete these courses as a matter of urgency.

Staff training related to young detainees is discussed in Chapter 6.

CHAPTER 6: CURRENT ARRANGEMENTS CONCERNING YOUNG DETAINEES

6.1 The legal framework

Section 103 of the CYP Act allows the Director-General of CSD to make arrangements for the escorting of young detainees with the Director-General of JACS, who is responsible for administering the CM Act, and with the chief police officer. To support this, 'escort officer' is defined in the CYP Act as a police officer, or a corrections officer, or a youth detention officer.

Section 101(2) of the CYP Act authorises an escort officer to have custody of a young detainee for the purpose of escorting them. Section 105 provides this authority for escorting arrested young people (i.e. those in police custody) to court. Regarding the powers of escort officers, s104(2)(c) states:

an escort officer may, for the purpose of escorting the young detainee, exercise any function under this Act that the officer may exercise in relation to a young detainee admitted at a detention place.

Examples—functions—par (c)

- 1 functions delegated to the officer by the director-general (for example, giving directions to young detainees)
- 2 youth detention officer's functions under ch 7 (Criminal matters—search and seizure at detention places), including any use of force in accordance with div 6.6.4

Clearly, CTU officers have the legal basis to escort young detainees and exercise powers in relation to those young detainees e.g. use of force.

6.2. Issues with the current arrangements

6.2.1 CTU officers' concerns about differences in legislation, policies and procedures

In the 2019 Healthy Prison Review of the AMC, CTU officers raised concerns about transporting and managing young detainees. They were particularly worried about the implications, including their legal position, of using force on a young detainee. CTU officers raised these concerns again in their interviews for this review.

As outlined in section 6.1, CTU officers have the required powers in the CYP Act to escort young detainees and carry out other tasks such as searching, using force and restraints where required. However, performing functions under the CYP Act is contextually different to performing the same functions under adult corrections legislation, i.e. the CM Act.

In its written submission to this review, CSD stated that the provisions in the CYP Act and CM Act are 'almost identical' in relation to authority to use force, use restraints and undertake searches. In their view this 'should present limited confusion for CTU staff, particularly when they are provided with the appropriate training' (the issue of training is discussed below). It is simplistic for CSD to suggest that because the legislation is phrased the same way then the use of force and restraints on young detainees is the same as on adults. The legislation contains many discretionary terms,

such as ‘necessary and reasonable’, that can mean quite different things when the person being subjected to force or restraints is a child or young person. The HR Act requires that anything that limits the rights of a child or young person – for example, use of force or restraints – be necessary and proportionate. Furthermore, the HR Act requires that a child or young person has the right to the protection needed by the child because of being a child.

The special status and protection for children and young people outlined in the HR Act is reflected in aspects of the CYP Act. A key difference in relation to use of force is that s223(2) of the CYP Act requires that before using force on a young detainee, youth detention officers (and CTU officers as escort officers) must consider ‘the young detainee’s age, sex, physical and mental health and any history of abuse’. In addition, where any restraint is to be used ‘the physical and developmental capacity of the young detainee’ must be considered. This section also requires that ‘the use of force in relation to a young detainee is not observed by any other young detainee’. While these requirements need not be complied with in urgent circumstances (s223(3)), they understandably create confusion for CTU officers who mainly escort adults (90%) compared to young detainees (10%).

In addition, the policies and procedures on use of force and restraints under the CM Act and CYP Act differ and these are what operationalise the legislation. The *Children and Young People (Use of Force) Policy and Procedure 2018 (No 1)* limits the grounds on which force can be used by removing ‘to compel compliance with a direction’ or ‘to prevent or stop... behavioural breach’ (s224(b) CYP Act) as grounds for using force. This difference from the legislation is itself a potential source of confusion for CTU officers.

The policy also provides restrictions on the use of force, recognising that certain restraint positions pose a high risk of injury or other harm to young people (this is discussed further below in relation to training). This is reinforced in the Bimberi Practice Guideline on Use of Force, though it is not clear if this is easily available to CTU officers as it is not notified on the ACT Legislation Register or available on the ACTCS intranet.

Finding 8:

That there are important differences between the *Corrections Management Act 2007 (ACT)* and the *Children and Young People Act 2008 (ACT)*, and the policies and procedures made under them, in relation to use of force and restraints that, without proper training in the differences, may create confusion for Court Transport Unit officers.

6.2.2 Training specific to young detainees

Many CTU officers do not feel adequately trained to exercise the powers under the CYP Act. This uncertainty stems from the fact that their corrective services training is based on the CM Act and ACTCS policies and procedures that are almost entirely concerned with adult detainees.

Some methods and practices concerning use of force and use of restraints applicable to adult detainees must not be employed on young detainees. For example, in the [Commission Initiated Review of Allegations Regarding Bimberi Youth Justice Centre](#) (March 2019), the ACT Disability and Community Services Commissioner and ACT Human Rights Commissioner discussed the research on the dangers of the use of the prone restraint on children and young people. It is our understanding that CTU officers are trained in the use of the prone restraint on adults. Without clear training, CTU officers could be confused about whether they can use that technique on a young detainee. Further, there is a risk that their training relating to adult subjects could instinctively “kick-in” in a situation involving a young detainee.

Under the *Children and Young People (Escorts) Policy and Procedures 2018 (No. 1)*, the Manager of Bimberi is responsible for ensuring that all persons exercising escort functions for young detainees are appropriately trained. This includes ensuring that escort officers who are not youth detention officers have been trained in the use of approved techniques for use of force and approved instruments of restraint. It also states that only escort officers who have successfully completed the approved training are permitted to use force at or in relation to a detention place. In addition, an escort officer may be criminally liable for any excessive use of force.

Concerning Bimberi-specific training for CTU officers, the ACTCS Commissioner advised that:

Approximately six CTU officers received training at Bimberi on managing juvenile offenders. However, following feedback from participants that the training was not valuable in addressing issues experienced in the CTU, the training program was ceased to allow further work to be undertaken. I understand that the update to this training program has been delayed by recent events at Bimberi. ACTCS is also working closely with Bimberi to develop a training session specific to CTU officers to be included as part of the Custodial Recruit Training program.¹⁵

It is understandable that some CTU officers may feel apprehensive and vulnerable when they are required to use force and restraints on young detainees as they have little to no training. CTU officers also told us that they are not provided training in de-escalation techniques for young detainees, so feel as though they are unable to prevent situations escalating to where use of force is necessary. It is unacceptable that CSD, who under its own policies is responsible for providing this training, has failed to provide basic practical training to all CTU officers in key areas.

Finding 9:

That contrary to the *Children and Young People (Use of Force) Policy and Procedure 2018 (No. 1)*, and the *Children and Young People (Escorts) Policy and Procedures 2018 (No. 1)*, Court Transport Unit officers are not being provided with 'approved training' in the use of force regarding children and young people in their custody.

Recommendation 15:

That the Community Service Directorate and ACT Corrective Services identify where training requirements differ between adults and children and young people regarding use of force and restraints and then ensure that current and future Court Transport Unit officers are trained to required standards.

Another matter of concern is that it is not unusual for AMC officers to fill shift vacancies at the CTU. This means that even if Bimberi-specific training was being provided for core CTU officers it would be unlikely that core AMC officers would be appropriately trained to deal with young detainees. As such, ACTCS needs to ensure that AMC officers working occasionally at the CTU do not escort young detainees.

¹⁵ Letter to the Inspector dated 26/05/20.

Recommendation 16:

That ACT Corrective Services ensure that the Alexander Maconochie Centre officers working occasionally at the Court Transport Unit do not escort children and young people unless they have received the required training.

6.3 Bimberi staff member at the court cells

CSD advised that ‘...when CTU arrive (at Bimberi) to collect a young person for escort, they are provided with the young person’s Bart File¹⁶ and a copy of the Court Transfer Advice form.’ While the Court Transfer Advice form *should* provide adequate information for CTU officers to care for and manage young detainees attending court, CTU officers advised that the forms are often lacking details in the ‘Alerts and relevant information’ section of the form. CTU officers expressed concern that they often have little knowledge of the backgrounds of young detainees, their “normal” behaviours or how they might react in certain situations. We viewed a sample of recent Court Transfer Advice forms and agree that they contain insufficient detail to assist CTU officers to manage the behaviour of young detainees due to both the structure of the form and the way youth detention officers complete them.

Even if these forms were filled out thoroughly, OICS is of the opinion that Bimberi should provide a staff member to accompany young detainees to court, if for no other reason than to provide support to the young detainees. This would also take some pressure off CTU officers who find that young detainees can be very demanding when waiting in cells for court appearances or waiting to return to Bimberi.

OICS also observed significant graffiti in cells that are used by young detainees. Implements used included marker pens, pencils, crayons and biros. Bimberi staff also advised that some young detainees are known to carry small rocks to make markings in cells.¹⁷ CTU staff discussed how they feel powerless to stop young detainees graffitiing the cells when they witness it occurring. This is for a range of reasons, including that they do not feel confident implementing Bimberi’s incentives scheme and that they do not want to escalate the young detainee’s behaviour.

Having a Bimberi staff member available to supervise and engage with young detainees at the court cells may limit the amount of graffiti in the cells and help alleviate the boredom of the young detainees while they are waiting for court or to return to Bimberi. This staff member could help implement the incentives scheme that applies to the young detainees so that there are rewards for positive behaviour in the court cells. In addition, they could provide advice or guidance to CTU officers on positive behaviour supports and ways to avoid behavioural triggers and to de-escalate particular young detainees.

In their written submission to this review, CSD stated that based on their understanding of the CM Act ‘a youth detention officer would not have delegation or jurisdiction to enact any authority in [the court cells], so would not be able to be responsible for the care of young people there.’ OICS is of the view that the authority of youth detention officers would attach to their role as an escort officer under the CYP Act. This means they continue to have the same functions and powers at any place where they are escorting a young detainee as they have at Bimberi.

¹⁶ This file contains current warrants and some other background information.

¹⁷ Objects secreted in underwear will not be detected in frisk searches as genital areas and breasts may not be touched by a searcher and non-metallic objects will not be detected by a wand search.

Whatever the legal position, we believe that a Bimberi staff member should be allocated to support CTU officers to manage young detainees. This means they will not necessarily require powers in relation to the young detainees as this would be the role of the CTU officers escorting the young detainees. We note that if this recommendation is implemented, the exact nature and limits of the role of the Bimberi staff member will need to be communicated to CTU officers to ensure all relevant staff are aware of their responsibilities in relation to young detainees.

Postscript:

The MOU states:

2.11 Where there are identified risks, concerns or special management directions specific to a young person/detainee on the day of an escort, Bimberi will, where appropriate, request the Court utilise an audio-visual link for the young person/detainee's appearance at court. Where that is not possible, Bimberi will consult with ACTCS about any special arrangements required to manage the young person/detainee during the escort, which may include a Bimberi staff member accompanying the young person/detainee and CTU corrections officers to the ACT Courts Precinct.

2.12 Where a Bimberi staff member is required to accompany a young person/detainee during an escort, the staff member will provide support to the young person/detainee and advise CTU corrections officers of strategies or techniques that may assist in the management of the young person / detainee. Operational responsibility for the escort will remain with ACTCS and the Bimberi staff member is to follow safety and security directions given by CTU corrections officers during the escort.

While this is good practice, it does not fully address recommendation 17 which requires this to be the practice for all young detainees, not just where there are risks, concerns or special management directions.

Recommendation 17:

That a Bimberi Youth Justice Centre staff member accompany young detainees to court, is present while they are being held in the court cells complex and support Court Transport Unit officers to manage young detainees on escorts.

CHAPTER 7: ACCESS TO DETAINEES BY LAWYERS AND OTHER PROFESSIONALS

OICS met with members of the Community Liaison Unit and members of the Criminal Law Team at Legal Aid ACT and received a written submission from the Aboriginal Legal Services NSW/ACT (ALS) that incorporated feedback from the Bail Support Program Team and Criminal Law Team.

Overall, both organisations were positive regarding the professionalism and support from CTU officers. The rapport between detainees and CTU officers was reported as a strength and it was noted that CTU officers provide an appropriate level of security in the courtrooms. One Legal Aid lawyer advised that they have 'complete trust in the Corrections staff'. The ALS provided an example of a client escaping from a courtroom recently and noted that CTU officers were quick to respond and managed to bring the detainee back into custody swiftly.

The following issues were identified:

- It is challenging to use interpreter services in the CTU interview rooms, without which lawyers are unable to take instructions from some clients. For example, there is no access to a phone in these rooms.
- That there is not an efficient process for CTU to communicate to lawyers which interview room their client is in. This can result in delays seeing clients and lawyers having to enter numerous interview rooms (which often have other detainees in them) to find their client.
- That there are often delays processing detainees through CTU once they have been granted bail.
- That in acknowledgment of the cultural background and/or trauma history of some female detainees, at least one female officer should escort female detainees rather than two male officers.

It was also raised that previously there have been issues with transport arriving late from the AMC and delays in getting detainees to interview rooms. The ALS noted that this is one of their main issues as having enough time to speak with clients before going into court is essential to them getting instructions or confirming final instructions.

Recommendation 18:

That ACT Corrective Services review the current process for legal professionals to access interpreter services within interview rooms at the Court Transport Unit. This must be done in consultation with Legal Aid ACT, the Aboriginal Legal Service NSW/ACT and other legal professionals that regularly access the interview rooms to meet with clients. The outcome of the review should be reported back to those consulted.

Recommendation 19:

That ACT Corrective Services implement an efficient process for Court Transport Unit officers to notify legal professionals which interview room their client is in that avoids legal professionals entering the wrong rooms while attempting to locate their clients.

CHAPTER 8: RELATIONSHIP BETWEEN THE CTU AND THE ACT COURTS

The Chief Justice of the ACT Supreme Court provided a submission to the review where she raised some matters that had been conveyed to her by the ACT Sheriff's Office. OICS also met with the Principal Registrar and CEO, ACT Courts and Tribunal, the Magistrate's Court Registrar and the Security and Intelligence Coordinator, Sheriff's Office, Supreme Court. Overall, the feedback we received was that the courts have a good working relationship with the CTU. It was also noted that CTU officers appear to have a good rapport with detainees. However, the following areas of concern were identified.

1. Courtroom etiquette

CTU officers have been observed 'joking with detainees' in the court room prior to the judge entering. While acknowledging the importance of officers maintaining rapport with detainees, the Sheriff's Office reinforced that laughing and joking with detainees can be viewed as inappropriate by other people in the courtroom, especially victims and their families.

CTU officers have also allowed detainees in court rooms to interact with people in the public gallery.

2. Delays to court proceedings

There have been a few instances when detainees have not been brought to court on time resulting in delays to proceedings. We were advised that the delays were transport related and not in bringing detainees from the holding cells to the courtrooms. It was reported that when this has been raised with CTU officers they have responded well. It was acknowledged that there is an increase in delays when the CTU is short-staffed. Feedback from the courts is that it would be good if CTU could advise the associates and the Registrars when they are short-staffed as court lists can be rearranged to limit delays.

3. Detainee risk assessments

The Sheriff's Office relies on ACTCS detainee risk assessments (regarding violence, escape etc.) when deciding placement of people in court rooms (e.g. in the open or in a secure cubicle). However, at present the Sheriff's Office only receives risk assessments when they expressly ask for them. The Sheriff would like this system changed by requiring ACTCS to provide a risk assessment to the Sheriff's Office on any detainee where ACTCS considers there is risk relating to the detainee's court appearance.

OICS is of the view that an ACTCS detainee risk assessment *may* not be the best tool to assist the Sheriff's Office in this situation as ACTCS and the Sheriff's Office may have different opinions on what the risks are and the extent to which a particular detainee poses such risks.

4. Communication with CTU

The Court Registrars noted that sometimes there is confusion around who is the responsible manager for CTU. They reported that there is a new management structure for CTU that is making it difficult to identify who in CTU has the authority to handle certain requests. However, overall, the relationship is positive. For example, CTU officers work collaboratively with the Sheriff's Office to develop processes when escorting detainees in unusual circumstance, for example, lift failures or change of locations for hearings.

Finding 10:

That there is a generally good working arrangement between the Court Transport Unit and the ACT Courts.

Recommendation 20:

That ACT Corrective Services notify a policy and/or procedure that sets out the expected standards of detainee and Court Transport Unit officer courtroom etiquette and behaviour and the role of Court Transport Unit officers in enforcing it.

Recommendation 21:

That Court Transport Unit officers be trained in, and adhere to, courtroom etiquette in accordance with notified policies and procedures.

Recommendation 22:

That ACT Corrective Services and the ACT Sheriff develop and implement a protocol or agreement on how best to meet the Sheriff's needs for information on detainees regarding court security.

CHAPTER 9: RELATIONSHIP BETWEEN THE CTU AND THE SENTENCE ADMINISTRATION BOARD

The ACT Sentence Administration Board (SAB) is established under s171 of the *Crimes (Sentence Administration) Act 2005* (CSA Act) which provides the framework for board operations and the legislative power for the board to make decisions.

The Board's main functions, as set out in the CSA Act, concern parole orders and breaches, intensive correction orders, breaches and reinstatements; and release on licence and breaches. The SAB sits in a special hearing room in the courts complex for at least one day per week, and sometimes two days per week, usually from 9am to 5pm. Each sitting day typically deals with 12 matters.

The SAB Chair advised that:

CTU officers are only required if a person is about to (sic) placed into custody i.e. after hearing a breach matter the Board adjourns and, in that adjournment, decides to cancel, then the CTU officers are called. CTU officers are also required if the person is in custody e.g. the person is applying for parole/ICO re-reinstatement or are subject to a breach hearing but are in custody e.g. they are remanded due to other offences. The majority of the Board's work is breach matters where the person is not in custody and the majority of these result in a warning, so the CTU officers are not required in the majority of Board matters. However, it is not possible to predict precisely which matters will require CTU on any day because the Board only calls CTU once it decides that an Order is cancelled i.e. towards the end of any breach hearing.¹⁸

The Chair described the relationship with the CTU as 'excellent' and CTU officers as 'very professional', noting; 'I have observed that the staff are professional in their treatment of detainees, including detainees who are agitated or angry...The CTU ensures that agitated detainees have their concerns about being heard quickly on any day communicated to the Board'.¹⁹

Concerning detainees attending hearings, the Chair expressed concerns about detainees having to be escorted to the SAB hearing room via a public lift and through public areas of the building in handcuffs. This is currently unavoidable because of the location of the hearing room. This practice affords little privacy to detainees and has been referred to by detainees as the "walk of shame".

Finding 11:

That there is a sound, professional relationship between the Court Transport Unit and the ACT Sentence Administration Board.

Finding 12:

That the location of the Sentence Administration Board hearing room is such that Court Transport Unit officers must escort detainees through public areas of the court building, including lifts used by members of the public, which creates security concerns and impinges on the privacy of detainees.

¹⁸ Email from SAB Chair on 28/04/20.

¹⁹ Ibid.

APPENDICES

Appendix 1: Methodology

The review team

The review team comprised:

- Neil McAllister, ACT Inspector of Correctional Services
- Jessica Horua, Acting ACT Deputy Inspector of Correctional Services
- Holly Fredericksen, ACT Assistant Inspector of Correctional Services

The review team was assisted by Rebecca Minty (ACT Deputy Inspector of Correctional Services) who undertook the role of “critical friend” for the final report preparation following her return from extended leave.

Review standards

The OICS carries out its reviews against published criteria known as the [ACT Standards for Adult Correctional Services](#). Standards for ACT youth detention places are currently in an [interim version](#). These Standards provide an independent tool for OICS to examine whether correctional centres and services in the ACT meet the “healthy prison test”. This was first articulated by the World Health Organization and has been adopted as the basis for inspection standards in other jurisdictions. The four “pillars” of the healthy prison test (safety; respect; purposeful activity; and rehabilitation and preparation for release) form the basis for the Standards. The Standards that were relevant to the work of the CTU were used to inform this review.

Research and consultation

The methodology adopted for this review comprised:

- Interviews conducted onsite with 10 CTU officers, including duty managers
- Analysis of data provided by ACTCS on a range of matters concerning the CTU, for example the number of vehicle escorts, the average daily number of detainees held at the CTU
- Review of relevant ACTCS and CSD policies, procedures and practice guidelines
- Written submissions provided by a CTU officer, CSD, the Chief Justice of the Supreme Court and the Sentence Administration Board
- Meeting with ACT Courts Registrars and staff from the ACT Sheriff’s Office
- Consultation with Legal Aid ACT and the Aboriginal Legal Services ACT
- Discussions with WorkSafe ACT
- Meeting with CPSU delegates
- Observations of the court cells complex and CTU vehicles

