

OICS OPERATING PROCEDURE

Monitoring and Assessment of Recommendations

Purpose: To detail the process used by the Office of the Inspector of Custodial Services (OICS) to monitor recommendations made to correctional centres and services in reviews completed under the *Custodial Inspector Act 2017*.

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Context

The ACT Office of the Inspector of Custodial Services (OICS) was established through the enactment of the *Custodial Inspector Act 2017* (ACT) (CI Act) to promote continual improvement of ACT correctional centres and services, and ACT youth detention facilities. The CI Act requires OICS to conduct the following reviews:

- A review of a correctional centre/youth detention centre (whole of centre review) every three years;
- A review of a correctional service (thematic review) no more than every two years; and
- At the Inspector's discretion, a review of a Critical Incident at any time.

Under s 27 of the CI Act, the Inspector must prepare a report about any of these reviews, and may make recommendations to correctional centres, youth detention centres and services.

This policy relates to formal **recommendations**, which are clearly identified and numbered in reports, and may be contrasted with conclusions or findings¹.

As a member of the ACT National Preventive Mechanism (NPM), OICS may examine the treatment of detained people in a situation of deprivation of liberty, and may make a recommendation or observation to an entity responsible for that place of detention in a way the NPM considers appropriate. The ACT NPM legislation is the *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018* (MPOD Act). This Operating Procedure does not apply to recommendations made collectively by the ACT NPM under MPOD Act. Responsibility for assessing the implementation of those recommendations is a matter for the NPM. The NPM Coordinator will generally lead this process.

¹ Which generally offer OICS' opinion on the material before the Inspector without formally recommending any specific action to remedy an issue.

Purpose

The purpose of this Operating Procedure is to specify how OICS will assess and monitor the implementation of recommendations made in OICS reviews, other than those 'not agreed' by government. The government may use various terms to respond to recommendations relevant to this operating procedure including 'agreed', 'agreed-in-principle' or 'noted'. Recommendations that are 'noted' will be treated as 'not agreed' and will not be assessed for implementation.

The operating procedure aims to:

- provide clear understanding internally and externally about how OICS will monitor, assess and report on recommendations.
- support OICS statutory purpose to promote continuous improvement and strategic goal to improve conditions of detention and reduce the risk of ill-treatment.

Making and recording response to recommendations

OICS aims to make S.M.A.R.T recommendations, that are Specific, Measurable, Achievable, Relevant and Time-bound. OICS has an internal recommendation register for recommendations relating to adult and youth detention. This register includes fields to record OICS suggested deadline for implementation.

The ACT Government responds to reports and recommendations made by OICS via a response tabled in the ACT Legislative Assembly, although that is not a statutory requirement.

There is no mandated timeframe in which government must respond to OICS reviews. A timely government response to recommendations (ideally within 4 months) is ideal, to promote a responsive cycle of continuous improvement, and early resolution of matters identified.

Once a government response is received, OICS will upload the government response document to the OICS website, and enter recommendations into the OICS internal register for adult or youth detention, including any further detail contained in the government response. Recommendations relating to the CTU that relate to the transport and care of young people should be entered into both lists.

Monitoring the implantation of recommendations

Monitoring recommendations typically occurs in the period between the recommendation being made and when OICS decides to formally assess implementation (discussed below).

Recommendations may be monitored through information gathered in a variety of ways. This may include:

- 1) a government response to a recommendation that includes information about progress already made against the recommendation;
- 2) updates provided by detaining authorities to OICS. In some cases, OICS may formally recommend updates at specified intervals;

- 3) detaining authorities that deem a recommendation to be implemented may share 'closure briefs' or information/evidence relating to that recommendation;
- 4) information gathered or provided to OICS, including from detained people, community organisations, or through direct observations when OICS is onsite at places of detention.

Information gathered by OICS as part of this ongoing monitoring of recommendations should be entered into the registers of recommendations as it is received. This allows for the Inspector to determine later whether OICS should formally assess the implementation of the recommendation.

Assessing the implementation of recommendations

Assessing implementation of recommendations includes:

- Assessing information already collected in the monitoring phase
- Seeking and obtaining new evidence of implementation
- Reviewing information and evidence to form an impartial, evidence-based assessment of progress
- Identifying any issues that need to be addressed.

This action enables OICS to:

- Measure outcomes and achievements
- Report publicly on outcomes (for example, in reviews and in the annual report), to recognise positive practice, hold agencies to account and to provide assurance to the Legislative Assembly and to the community
- Identify key learnings about the way we write and present recommendations to inform drafting of future recommendations.

Assessing implementation usually includes reviewing evidence and information collected in the monitoring phase. It may also include formally seeking new information from the relevant entity. There is no explicit power in the CI Act to follow up on implementation of recommendations. However, this information may be collected using formal review and information seeking powers under the CI Act, usually either be as part of a whole of centre/prison review, or as part of a thematic or critical incident review.

Types of Evidence	Sources of Evidence	Examples of Evidence
Management Assertion	Management assertion (typically from senior management of the entity) is obtained usually by answers to specific questions.	Written answers to questions, minutes and notes from meetings.
Documentary	Documentary evidence in physical or electronic form is a common form of evidence.	File reviews, websites, spreadsheets.
Observation of physical evidence	Physical evidence is obtained by observing people and events or examining property.	Direct observation, CCTV, photographs.
Testimonial	Oral or testimonial evidence is obtained in the form of statements in response to inquiries or interviews, or through other discussions.	Interviews, focus groups, public submissions, informal discussions.
Information from other bodies including drawn from complaints	Other oversight bodies receive complaints about places of detention and may share systemic data and trends based on those complaints.	Minutes from meetings with other oversight bodies, phone and email discussions.
Expert opinion	Obtained through engaging external experts on a contract basis, where we may not have the required skills.	Expert reports.

A recommendation is considered **implemented** when OICS determines the entity has completed the required actions as described in the recommendation and has provided appropriate evidence to support these claims.

A recommendation is considered **partially implemented** when OICS determines that the entity has completed some of the required actions as described in the recommendation and provided appropriate evidence to demonstrate that the action has been taken. A recommendation is not considered partially implemented where the entity simply advises of further plans to take action, unless the entity demonstrates that action has commenced

A recommendation is considered **not implemented** when OICS considers that either no or very limited action has taken place, or where OICS has not received information that enables us to form a view of the implementation status.

In some circumstances, OICS may find that the entity has met the intention of the recommendation. This may occur where:

- the entity takes action that does not specifically implement what the recommendation said but achieves the intended result by addressing the root-cause of the issue or the risk the issue presents. OICS is interested that the implementation action addresses the issue and is not unduly rigid about the form the action takes
- an entity has not been able to deliver the recommendation in practice as the situation has not occurred, but the entity can demonstrate it has taken steps to support application of the recommendation to the process when it does occur (i.e. through processes, training, policies etc)
- an entity has done everything in their power to implement the recommendation but full implementation is beyond the entity's control and subject to a third party's action. OICS would still expect that the entity provide evidence that demonstrates that they took all action possible (including seeking to influence the appropriate entity to take action).

If this assessment occurs as part of a new review, and OICS concludes the recommendation has not been implemented, the Inspector may decide to remake the original recommendation anew.

Reporting on recommendations

The OICS healthy centre / healthy prison review will provide an update every three years on progress of implementation of previous recommendations made by OICS to ACT Government.

Additionally, commentary on status of implementation will be included in OICS annual report.

This entire process may be summarised as follows:

