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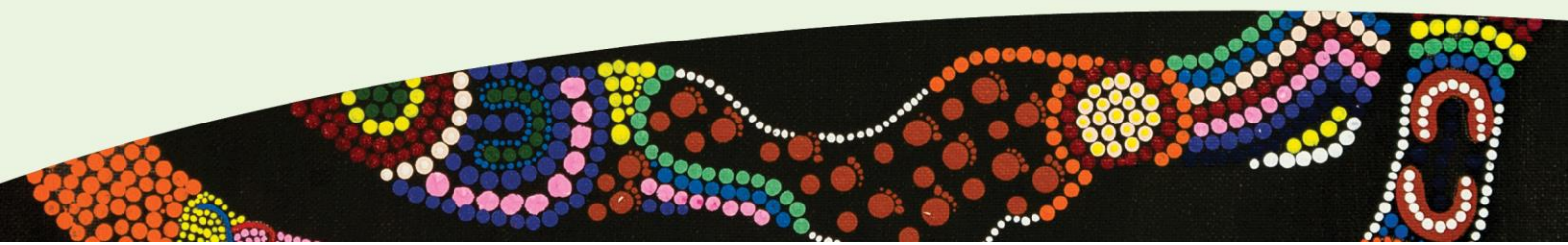
ACT Inspector
of Custodial
Services

ACT Inspector of Custodial Services

REVIEW FRAMEWORK

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

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ACT Inspector of Custodial Services

We acknowledge the Ngunnawal people as the traditional custodians of the land and recognise any other people or families with connections to the lands of the ACT and region. 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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Table of Contents

1. INTRODUCTION	4
2. OPERATING CONTEXT	4
2.1 Mandate/Purpose.....	4
2.2 Legislation.....	5
2.3 Vision, Mission and Values.....	5
2.4 Relationships with other oversight bodies	6
2.5 Review Standards	6
3. THE REVIEW PROCESS	7
3.1 Review programming.....	7
3.2 Investigative Powers	8
3.4 Privacy and record keeping considerations	9
3.5 Natural justice and procedural fairness	10
3.6 Working with children and young people.....	10
3.7 Reprisal.....	10
3.8 Healthy Prison/Centre Review and thematic review methodology.....	10

1. INTRODUCTION

The ACT Office of the Inspector of Custodial Services (OICS) was established by the *Custodial Inspector Act 2017* (ACT) (CI Act) to provide independent oversight of ACT correctional and youth detention facilities.

This document sets out the framework for preventive review process used by OICS. It puts our preventive oversight work into context, against relevant legislation and within the ACT's obligations under the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT). OPCAT is an international human rights treaty designed to strengthen the protection of persons deprived of their liberty.

Under the CI Act, OICS must examine and review at least once every three years each correctional centre and youth detention centre in the ACT. OICS conducts these as 'healthy prison/centre' reviews. OICS may also conduct a 'review of a correctional service' which is a review of a particular theme. Finally, the CI Act defines certain types of serious incidents as 'critical incidents' which the Inspector may review at their discretion. This framework explains the methodology and processes used for these reviews.

As a public authority under the *Human Rights Act 2004* (HR Act), OICS must act compatibly with human rights and in making a decision, give proper consideration to relevant human rights. Relevant rights are likely to include the right to recognition and equality before the law (s 8) protection from cruel, inhuman or degrading treatment or punishment (s 10), the right to humane treatment while deprived of liberty (s 19) and rights of the child (s 11).

2. OPERATING CONTEXT

2.1 Mandate/Purpose

OICS was established with the passage of CI Act. This was in response to a number of critical incidents that had occurred at the Alexander Maconochie Centre (AMC) since it opened in 2009, in particular the death of Mr Steven Freeman at the AMC in May 2016. This prompted an independent inquiry (the Moss review) into his treatment and care. The ACT Government's response to the Moss review included a commitment to establish an independent Inspector of Correctional Services.

The focus of OICS is promoting continual improvement and the prevention of ill-treatment in the ACT's adult correctional centres and youth detention facilities.

In February 2022 the ACT Inspector of Custodial Services' role was expanded when the office was appointed to be part of the ACT National Preventive Mechanism (NPM) under the OPCAT, along with the ACT Human Rights Commission and ACT Ombudsman. These three entities are jointly responsible for monitoring places of deprivation of liberty in the ACT to fulfil ACT's

obligations under this international human rights treaty. OICS has designed its review methodology to be consistent with the approach required by OPCAT.

2.2 Legislation

The functions of OICS are set out in section 17 of the CI Act. They are to:

- examine and review correctional centres¹ and correctional services;
- review critical incidents at correctional centres or in the provision of correctional services, and
- report to the ACT Legislative Assembly on these reviews.

The powers of OICS are set out in section 19 of the CI Act and include the power to:

- enter a correctional centre at any time and inspect any part of, or vehicle or equipment used at, a correctional centre;
- inspect any document, including health records, relating to a detained person at the correctional centre or the provision of a correctional service;
- speak to, or privately interview, detained people, staff and visitors at a correctional centre.

This includes the power to make unannounced visits to correctional centres. OICS also has powers to require the production of information and for people to attend interviews, discussed further below.

2.3 Vision, Mission and Values

Vision

Detention of adults and young people in the ACT is in a way that everyone feels and is safe, all people are treated with respect and dignity, detained people have sufficient purposeful activity and are prepared for release.

Mission

OICS seeks to:

- Promote and bring about transparency of and accountability for conditions and treatment in places of detention.
- Centre the lived experiences of detained people in our work, and value the perspectives of staff and other stakeholders.
- Engage in constructive dialogue with detaining authorities to promote and support continuous improvement.
- Produce reliable reports drawing on evidence, research and expertise.
- Exercise our preventive mandate to identify root causes and systemic risks of ill-treatment across the criminal legal system and promote strategies to reduce risk.

¹ Section 7 of the CI Act defines 'correctional centre' broadly and it includes adult correctional centres and youth detention places.

- Contribute to ending the overrepresentation of Aboriginal and Torres Strait Islander people in the criminal legal system by listening & being guided by their expertise and making relevant recommendations.

Values

Our work is driven by a number of key values and principles:

Integrity: We are ethical and honest in our work. We are responsible and accountable for our actions and decisions.

Independence: Independence is fundamental to the role of the Inspector and the Office to ensuring our work is impartial and unbiased.

Curiosity: We are always learning and growing. We strive for innovative ways to have impact and foster a culture of continual improvement.

Respect: We recognise the fundamental human rights of every human being and treat people with dignity and respect.

Inclusion: We value the diverse experiences of our staff and stakeholders and centre the voices of people with lived experience.

Perseverance: We are focused and motivated, even when the journey toward achieving our goals seems complex and challenging.

2.4 Relationships with other oversight bodies

We work cooperatively with other bodies that provide oversight of ACT correctional centres and youth detention facilities, including the ACT Human Rights Commission, ACT Ombudsman, ACT Corrections and Children and Young People Official Visitors and the ACT Aboriginal and Torres Strait Islander Official Visitor.

Section 31 of the CI Act provides for OICS' cooperation with other entities to avoid unnecessary duplication of functions. We do this through, referring complaints to other entities, and working with these entities to identify trends, patterns and system-wide issues.

Where these arrangements are contained in agreements or protocols, we will publish these on our website. Our [Collection and Release of Information Policy](#) further sets out how we may, and at times must, release information.

2.5 Review Standards

OICS reviews are carried out against published criteria known as *ACT Standards*. The *ACT Standards for Adult Correctional Services* and the *ACT Standards for Youth Detention Places* available on our website. The *ACT Standards* are informed by international human rights law and practice and detention oversight standards from other jurisdictions. They are tailored to the unique situation of the ACT – that is a geographically small jurisdiction with one adult and one youth detention facility each of which must cater to a range of cohorts (remand and sentenced, all genders, mainstream and protection, and all security classifications). The Standards provide

an independent tool for the Inspector to examine whether correctional centres and services in the ACT meet the 'healthy prison/centre' test.

The healthy prison test is based on four pillars:

1. *Safety*: detained people, particularly the most vulnerable, are held safely. Staff and visitors feel safe.
2. *Respect*: everyone, particularly the most vulnerable detained people are treated with respect for their human dignity.
3. *Purposeful activity*: detained people engage in activity that is likely to benefit them.
4. *Rehabilitation and preparation for release*: detained people are supported to connect with their family and the community; supported to rehabilitate; and prepared for release back into the community.

Under each of these four pillars there are detailed standards, a non-exhaustive list of outcomes that may be indicative of that standard being met, and in the case of the adult Standards, examples of sources of evidence that OICS may use in assessing that standard.

3. THE REVIEW PROCESS

Custodial reviews seek to identify factors that may lead to ill-treatment or poor outcomes, and making recommendations to detaining authorities to address and reduce those risks. They are also an opportunity to commend and share good practice by highlighting the correctional centres and services that are humane and effective.

3.1 Review programming

Section 18 of the CI Act provides timeframes for reviews. The minimum review cycle is:

	<i>Frequency of review</i>	<i>Method of review</i>
Correctional centres, which currently means: - Alexander Maconochie Centre (AMC); - Bimberi Youth Justice Centre; and - ACT court cells.	At least every three years	These are conducted as healthy prison/centre reviews, with a review of the court cells incorporated into the Healthy Prison Review of the AMC.
Correctional services , meaning the management, control or security of a correctional centre or the security, control, safety, care and welfare of a detainee at a correctional centre.	Not more than every two years	This is conducted as a thematic review.

<p>Liaison visits which are an opportunity to understand progress made by detaining authorities in implementation of accepted recommendations.</p>	<p>Every six months after the tabling of a whole of prison/centre review.</p>	<p>This will generally be a walk around and informal discussions with detained people, staff, and other stakeholders followed by a meeting with operational management.</p>
<p>Ad hoc visits to correctional centres and correctional services.</p>	<p>On an ad hoc basis</p>	<p>This may be an announced or unannounced visit. Visits are not formally reported on. If required, matters can be raised directly with the centre for follow up or referred to other oversight entities.</p>
<p>Critical incidents, as defined under the CI Act.</p>	<p>On the Inspector's own initiative or as requested by a relevant Minister or director-general</p>	<p>This may be conducted as a 'desk-top' review or a full review depending on the nature and circumstances of the incident. The methodology for critical incident reviews is outlined in the reports of these reviews, which are published on our website. Further information on this function is contained in the policy Operating Procedure – Exercising discretion to review a critical incident.</p>

3.2 Investigative Powers

OICS has the power to require information and documents to be produced under section 22 and can require attendance at an interview relevant to an examination or review under section 23 of the CI Act. Failure to comply with either of these is an offence.

The Inspector may only use these powers if the Inspector believes, on reasonable grounds, that a person can provide information or produce a document or something else relevant to an examination or review.

OICS will consider its obligations as a public authority under the HR Act prior to exercising these powers. Generally, OICS will only use these powers as a last resort as we prefer to work collaboratively with detaining authorities and others. These powers may be especially useful where agencies or people may be reluctant to provide information, the information is particularly sensitive, or there is a statutory secrecy provision that inhibits voluntary disclosure.

Our methodology is also informed by the [Australian Government Investigations Standards](#). For example, all relevant staff have either completed, or are undertaking, a Certificate IV in Workplace Investigations. Our staff are aware of their ethical obligations, including as public servants subject to relevant provisions of the *Public Sector Management Act 1994*, and the ACT Public Sector Code of Conduct. OICS regularly evaluates our approach to risk management.

OICS recognises that it can be difficult and even confronting for agency staff to respond to questions from an oversight body about treatment in detention including relating to staff's own conduct or role in the matter. The focus of OICS office is on identifying opportunities for continual improvement, and not on apportioning 'blame' to individual staff members.

If a person is required to provide information or produce a document, or is required to answer a question at interview, the person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to provide the information, produce the document or other thing or answer the question.

However, any information, document or other thing obtained, directly or indirectly, because of providing the information, the producing of the document or other thing, or the answering of the question is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—

- an offence under section 22 or section 23; or
- any other offence in relation to the falsity of the information, document, other thing or answer.

Therefore, relevant rights the Inspector will consider in exercising these powers include the rights in criminal proceedings (s 22), right to privacy and reputation (s 12) and fair trial (s 21). OICS must also consider what effect compelling this information will have on other legal processes, such as coronial inquests or criminal investigations, given the information may be inadmissible in those proceedings.

Nonetheless, these are important powers OICS may need to use at times to discharge our obligations under the CI Act. These functions are also relevant to upholding rights, including to humane treatment when deprived of liberty (s 19), protection from torture and cruel, inhuman or degrading treatment (s 10) and protection of children (s 11).

At times, the rights of victims of crime might also need to be considered, including because detained people are often victims of crime themselves both prior to coming into custody and in some cases, during their time in custody.

3.4 Privacy and record keeping considerations

OICS is subject to strict privacy obligations and will wherever possible maintain confidential material and protect anonymous sources. Under s 37 of the CI Act, it is an offence for OICS to divulge information about a person received under the Act except in specific circumstances. Schedule 1.15 of the *Freedom of Information Act 2016* also provides that information in the possession of the Inspector that has been obtained or generated in relation to an examination or review conducted under s 18 is taken to be contrary to the public interest to disclose.

While OICS is generally required to table its reports in the ACT Legislative Assembly, we may redact information from public reports if that is in the public interest.

Examples of when OICS may have to divulge information are included in our [Collection and Release of Information Policy](#).

OICS will keep records according to our obligations under the *Territory Records Act 2002*. This will include retaining at least one, and at times multiple records of formal interview including:

- Audio recording;
- Handwritten notes (usually scanned and saved electronically); and/or
- Typed out summary of interview.

3.5 Natural justice and procedural fairness

The Inspector is required to give a draft copy of a report to the relevant Minister and relevant director-general at least 6 weeks before giving the report to the Legislative Assembly in order to give them an opportunity to provide comments in relation to the draft report. This is an important natural justice function.

In addition, consistently with its obligations under the HR Act, OICS will generally also seek comment from any person or agency that might consider part of a draft report contains an adverse comment about them to ensure they are provided procedural fairness and natural justice. OICS will consider the person's and organisation's responses. We may vary, amend or omit a section of the report in light of the responses and seek to fairly set out the relevant parts of the person's and organisation's response in the final report.

OICS is required to report on a review to the ACT Legislative Assembly within 6 months of completion.

3.6 Working with children and young people

In light of OICS' functions, particularly at the Bimberi Youth Justice Centre, OICS staff and any contractors engaged to work on youth detention reviews must hold a current Working with Vulnerable People (WWVP) Registration. We also prioritise training for staff on working with children and generally our staff have experience in speaking to detained children and young people.

At times we may have to report concerns about the safety and wellbeing of children and young people to other agencies. OICS has a range of internal documents it uses to inform staff and contractors about their obligations working with children and young people.

3.7 Reprisal

The OPCAT and the CI Act provides protections for people that speak to us from suffering any detrimental action as a result of that engagement with us (including criminal penalties). Anyone who believes they have been subject to reprisal should contact OICS.

3.8 Healthy Prison/Centre Review and thematic review methodology

Reviews carried out by OICS are conducted against the Standards. The methodology for conducting reviews draws on international best practice including guidance and publications

from the UN Subcommittee for the Prevention of Torture and the Association for the Prevention of Torture. We also work collaboratively within the broader Australian National Preventive Mechanism to reflect on and learn from others' approaches to preventive monitoring.

3.8.1 The review team

The ACT Inspector of Custodial Services is the head of the review team. Other OICS staff form part of the review team. A key feature of preventive oversight is to engage an interdisciplinary team drawn from a range of professional backgrounds and with varied experience for the preparation of the review, the onsite review and the preparation of the report. Where appropriate, section 18(2) of the CI Act requires the inspector to consult with people suitable to the cultural background or vulnerability of any detainee involved in a review.

3.8.2 Background research

OICS gathers evidence from diverse sources to inform the review. This may include reports of other entities, including reviews, oversight bodies, the coroner and the media, and data from a range of sources. This allows OICS to identify some key issues to be reviewed. This research is summarised and provided to the members of the review team.

3.8.3 Community engagement

Correctional and youth justice environments do not exist in isolation: they sit within a broad community consisting of staff, community-based service providers, contractors, family and friends, oversight entities and others. For detaining authorities, building and maintaining connections with the community is an important aspect of rehabilitation and preparation for release.

OICS seeks input from relevant oversight groups and community stakeholders. This takes place through inviting written submissions, through community forums and/or focus group discussions prior to the on-site component of the review. This complements ongoing engagement with other entities that oversight closed environments such as Official Visitors, the ACT Ombudsman, ACT Human Rights Commission, and ACT Aboriginal and Torres Strait Islander Children's Commissioner.

3.8.4 Surveys

For most reviews OICS will conduct surveys with detained people, staff, and visitors. Questions are based on the *ACT Standards* and the surveys are confidential and anonymous.

The survey of detained people at the AMC is conducted by OICS prior to the onsite review period. Members of the review team talk to detainees to explain the purpose of the survey and are also available for any detainee who requires assistance to complete the survey. A survey of detained young people is not usually undertaken at Bimberi due to the very small number of potential participants. Other methods of engagement, such as interviews and focus group discussions, are used instead.

3.8.5 Data gathering

Prior to the onsite review, OICS reviews data and information on a range of matters relating to safety, activity and performance. This data must be provided to OICS under section 22 of the CI Act. It is used to inform the onsite review as well as a source of evidence for the review report.

3.8.6 Onsite review

During a review a number of sources of evidence are used to assess the correctional centre against the Standards. The sources of evidence gathered during the onsite review include: individual interviews carried out with staff, detained people, visitors and other stakeholders; group discussions with detainees; documentation; and observation by the review team. Using a variety of sources allows the information to be triangulated to ensure it forms a credible and reliable evidence base from which to understand the correctional environment holistically.

3.8.7 Reporting

Reports include a written assessment of how the detaining authority is performing against the Standards including highlighting good practices and areas of concerns. Reviews will include recommendations for improvement. The usual practice is for the government to provide a response that is tabled publicly in the ACT Legislative Assembly which will include whether recommendations are accepted or not.

3.8.8 Implementation

OICS engages in an ongoing dialogue with detaining authorities to follow-up on the response to and implementation of the findings and recommendations in the report. This may include visiting the correctional centre, discussions with detained people and staff or requesting documents. Actions taken to address findings and recommendations are subject to ongoing assessment by OICS, including through reporting in annual reports and follow up in subsequent Healthy Prison/Centre Reviews.

After the government response has been received to whole of centre reviews, OICS will conduct six monthly 'liaison visits' to the centre. This will usually involve walking around the centre, talking to detained people and staff, observing physical environment and relevant practices and an informal discussion with centre management about the progress towards implementing accepted recommendation. This liaison visit is for internal assurance purposes only and OICS do not publish any reports or documentation relating to these.

3.8.9 Quality Assurance

As well as regular informal self and peer review, including as part of the ACT Government's Staff Performance and Development Framework and learning and development discussions with other custodial oversight bodies, OICS seeks and welcomes feedback from detained people, detaining authorities and the community sector about our performance.