

2018

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

**MINISTERIAL STATEMENT
Moss Review Implementation**

**Presented by
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Minister for Corrections**

Madam Speaker

I am pleased to have the opportunity to share with the Assembly and community the significant change that has occurred over the past year to improve the care and treatment of all detainees at the Alexander Maconochie Centre.

Firstly, I take this opportunity to remember Steven Freeman, a 25 year old Aboriginal man, who died in custody at the Alexander Maconochie Centre. I pay my respect to his mother, Mrs Narelle King, and her family and acknowledge their profound loss and grief. I also acknowledge the significant impact that his death has had on our Aboriginal and Torres Strait Islander community.

Steven Freeman's death is the subject of a coronial inquest. All deaths in custody are very serious matters and there are statutory requirements for all deaths to be fully investigated. The Coroner is due to deliver the findings of the Inquest on 11 April 2018, and the Government will consider any findings made in due course.

Any loss of life within the custody of ACT Corrective Services is a serious matter that warrants appropriate scrutiny and review. It was for this reason, that on June 2016, I announced an independent review into Steven Freeman's care and treatment during his time in custody. I subsequently appointed Mr Philip Moss AM as the independent reviewer to lead this process. The scope of the review was to examine Steven Freeman's treatment throughout his time at the AMC.

The review considered whether ACT Corrective Services systems operated effectively and in compliance with human rights obligations during Steven Freeman's time in custody. It further examined the

support services provided by other Directorates and ACT Corrective Services partners.

The Moss Review

Mr Moss titled his review *“So much Sadness in our Lives”, Independent Inquiry into the Treatment in Custody of Steven Freeman*. It was made available to me on 7 November 2016 and I publicly released the Review on 10 November 2016.

The Review found that the Government must do more to ensure people in custody are safe and receive appropriate health care. It highlighted the need for improvements in a range of areas, including increasing cultural proficiency to better manage the welfare of Aboriginal and Torres Strait Islander detainees.

The ACT Government responded to the Moss Review on 16 February 2016, agreeing to eight of the nine Recommendations. These relate to how the management, care and supervision arrangements for detainees might be improved. They include processes that can be further developed to ensure the care of detainees is enhanced. The ninth Recommendation was noted as it relates to the Health Service Commissioner, who is an independent statutory office holder, and is being progressed by that office.

Some of the Recommendations made require long-term planning and have multi-year implementation timeframes and budget impacts. Nonetheless, the Government has already provided \$3.151 million over four years in the 2017-18 Budget to commence implementation of Recommendations coming out of the Moss Review. This is essential work for ACT Corrective Services and remains a high priority for me and the Government.

In addition to this, the Government has provided an additional \$13 million in the 2017-18 Budget Review to further strengthen ACT Corrective Services capability and progress these recommendations.

All conclusions made throughout the Moss Review have been noted and are being acted upon. Some of these are general observations made by the reviewer, findings about particular issues, or constructive suggestions for action and change. Work achieved so far sets a strong foundation for ongoing systems improvement, especially around the needs of Aboriginal and Torres Strait Islander people.

Recommendations made in the Moss Review are directed to a number of Government Directorates and Statutory Office holders, including the ACT Health Services Commissioner, ACT Policing, Office of the Director of Public Prosecutions and the ACT Ombudsman. The review also refers to the Winnunga Nimmityjah Aboriginal Health and Community Service and encourages their increased participation to deliver culturally safe health services to detainees.

Governance arrangements for implementation

To provide assurance to the community on the progress of the Government's response, strong governance arrangements were put in place to oversee and report to me on the implementation of the Moss Review. This work is being progressed by an Inter-Directorate Project team and overseen by a high-level Steering Committee. I appointed an independent Chair, Mr Russell Taylor AM, to lead this work and report directly to me on its progress.

Other members of the Steering Committee include the Directors-General of the Justice and Community Safety Directorate, ACT Health and the Community Services Directorate along with key community

representatives from Winnunga Nimmityjah Aboriginal Health and Community Service, the Aboriginal Legal Service and the Aboriginal and Torres Strait Islander Elected Body to ensure that the interests of the Aboriginal and Torres Strait Islander community are being met.

The formation of the Steering Committee has helped ensure that the recommendations are being fully implemented in the spirit of the Review and in response to community expectations. It has also provided a forum for key representatives of the Aboriginal and Torres Strait Islander community to meet regularly with high-level government officials to discuss issues that their community face. I thank each of the community members for their full participation in this process which has helped strengthen our response.

Independent Oversight

Effective independent oversight is important to build and maintain public confidence in the ACT's corrections system. Following the Moss Review, and due to the unique make-up of the ACT's correctional system and growing population pressures, I determined that a new model of oversight was required.

In response, the ACT Government allocated \$1.661 million over four years to establish an external and independent Inspectorate of Custodial Services to strengthen and improve oversight arrangements.

On 30 November 2017, the ACT Legislative Assembly passed the *Inspector of Correctional Services Act 2017*. This legislation establishes an independent Inspector, tasked with conducting biennial reviews of ACT Adult Correction facilities, and within two years, youth justice centres. The Inspector will provide a high level of transparency and accountability through reports to the Legislative Assembly. The Inspector

must make these reports public, unless there are public interest grounds against disclosure.

The Inspector will also examine and review critical incidents. Critical incidents are defined to include circumstances where a person's life has been endangered, there is an escape, hostage situation, a riot, fire or a serious assault. This function will also provide insight into broader systemic issues that may be raised by individual incidents.

The Inspectorate model also recognises the importance of having a diverse monitoring team made up of a range of professionals with a range of cultural backgrounds and life experiences. If a matter involving a detainee requires examination or review by the Inspector, the Inspector may be required to consult with or include staff with the appropriate experience and/or cultural background of that detainee.

An expression of interest for the position of a suitably qualified Inspector was advertised nationally and closed in November 2017. I hope to make an announcement about this important appointment soon.

Further to this, Australia's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2017 will now allow visits from the United Nations (UN) Subcommittee on Prevention of Torture.

The Monitoring Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2017, debated in this Chamber last week, provides for UN Subcommittee visits and enables their access to places of detention, information including detainee records, and to interview detainees and other people.

The OPCAT provides a framework for the 'preventive approach' to oversight which entails visits (including unannounced visits) to all places where people are deprived of their liberty, in order to assess risks of ill-treatment and make recommendations for improvement.

This will provide further transparency and accountability and contribute to strengthening and improving oversight arrangements not only at the AMC, but also in other places of detention in time.

With respect to Recommendation 7, the Health Services Commissioner has initiated an 'own motion investigation' into matters relating to the delivery of health services within the AMC, including matters associated with methadone prescription. I understand that the Commissioner's final report will be released this month, and look forward to receiving it to consider any recommendations made.

Separate Facility

The Moss Review concluded that AMC management needs to meet both the obligations of detainee safety and human rights protection.

Recommendation 6 suggests that in order to achieve this balance ACT Corrective Services needs to establish a separate remand prison within the AMC to ensure remanded detainees are segregated from sentenced detainees.

To respond to this recommendation, and to provide advice and further options for Government around the AMC, an external consultant was engaged to undertake a feasibility study around the 'AMC Centre Logic'. ACT Corrective Services received one-off funding of \$0.700 million in 2017-2018 to progress this work, which will provide options for Government to consider infrastructure needs for the AMC for the next 5-20 years.

In addition, reforms have already commenced within the AMC to help satisfy the long-term intent of Recommendation 6 and related conclusions to enhance detainee management and security. By way of example, in November 2017 all female detainees were relocated to another accommodation unit within the AMC due to increased detainee numbers. This new arrangement has provided an opportunity for ACT Corrective Services to establish a structured day within the unit. This will progress to a pro-social model of detainee management that includes the introduction of an incentive and earned privilege scheme within the AMC. Once these initiatives are refined within the women's area they will be rolled out to all detainees in the AMC in a staged approach. These changes further address some of the conclusions under Recommendation 9 to improve the management, care and custody of detainees in compliance with human rights obligations.

Since the assault on Steven Freeman, the admission process in the AMC has been further developed and strengthened noting that Mr Freeman was seriously assaulted soon after his initial admission. In response, new admissions are now initially accommodated in a section of a cell block at the AMC for a period of 5-7 days, where they are placed on an observation regime. During this time a number of assessments are conducted with the detainee by ACT Health and ACT Corrective Services. Further intelligence checks are undertaken to gain additional information about the detainee's history and any potential association risks. An assessment of safety and security risk is undertaken with final review of all the information being made by a senior Corrective Services Officer before a detainee is placed in more permanent accommodation. This process is vital to ensuring appropriate placement of detainees and reducing risk. Further work to refine

assessment and intelligence processes continues and the addition of the ACT Corrective Services Intelligence Unit for which additional funding was announced last week, will strengthen risk assessment processes.

CCTV

The safety and care of detainees in the AMC is fundamental. ACT Corrective Services responded quickly to Recommendation 1 to provide improved security and care of detainees at the AMC. Improved security measures, including enhanced CCTV coverage were implemented across the AMC to provide a safer environment and to reduce incidents of violence.

Since Steven Freeman's assault, additional CCTV cameras have been installed at the AMC bringing the total number of cameras to 525. CCTV is an important evidentiary tool to support the successful investigations of assaults in the AMC so that offenders can be held accountable. The enhanced CCTV system has strong maintenance support through a service provider to meet monthly compliance checks. The system has the capacity to capture footage for 90 days, and any footage that is reviewed is stored electronically for an indefinite period.

ACT Corrective Services policies and procedures for camera setting, movement and recording have been updated to establish best practice standards for operating CCTV in a custodial environment. ACT Corrective Services has also introduced a training package that will see all relevant staff trained in operating the CCTV system by March 2018. The training program is also embedded into new recruit training and regular refresher training is provided to Corrections Officers.

In July 2017, the Steering Committee visited the AMC to see the AMC's Master Control Room in operation and inspect upgrades that have been

implemented to the CCTV. The Chair of the Steering Committee wrote to me after this site visit stating *“I am satisfied that ACT Corrective Services are striving for best practice and optimal coverage in the operation of CCTV cameras. The changes implemented to date embrace the spirit of the Moss Review”*. The improved quality of the images captured by the CCTV cameras has also since assisted ACT Policing with investigations of other assaults and incidents at the AMC. It is the view of the Oversight Steering Committee that this recommendation has now been satisfied.

Investigation of Assaults at the AMC

Recommendations 2 and 3 of the Moss Review relate to the investigation of assaults at the AMC and the prosecution of the alleged offenders.

The Director of Public Prosecutions has confirmed that its existing Prosecution Policy supports the intent of Recommendation 3, and where sufficient evidence exists, a prosecution can be undertaken. This includes prosecutions that may involve reluctant or vulnerable witnesses, such as in a custodial setting.

In addition, to address both recommendations, ACTCS and ACT Policing have worked collaboratively to update an existing Memorandum of Understanding (MOU), as noted in the Government’s response to the Moss Review. The new MOU was signed by both agencies on 28 April 2017. It sets out the working relationship between ACT Policing and ACT Corrective Services. It includes procedural details relating to information-sharing arrangements, cooperative management arrangements relating to serious incidents and operations, and details the nature of incidents to be reported to and responded to by ACT Policing.

Since the signing of the MOU and enhancements being made to the CCTV system at the AMC, ACT Policing has investigated a number of allegations of assault at the AMC that have proceeded to prosecution. This demonstrates that the intent of the Moss Review around pro-investigation and prosecution is being achieved.

The Moss Review also concluded that notification about a death in custody of an Aboriginal and Torres Strait Islander detainee needs to be made by an Aboriginal and/or Torres Strait Islander person. This is the most culturally appropriate and sensitive way to deliver such devastating news. The MOU between ACT Corrective Services and ACT Policing establishes such a protocol should it be required in the future. This approach is in the spirit of Recommendation 19 of the Royal Commission into Aboriginal Deaths in Custody around notifications to next of kin.

Moving forward, ACT Policing and ACT Corrective Services continue to meet quarterly to review their working relationship and ensure appropriate information sharing arrangements are being met, and to discuss how both agencies can work together to create a safer environment for detainees and the broader community.

The Chair of the Steering Committee has informed me that there has been extensive discussion and deliberation by the Committee about the ACT Policing investigation into the serious assault of Steven Freeman in 2015. These discussions focussed on what measures are necessary to improve the identification of detainees that commit assaults in the AMC. Senior representatives from ACT Policing, ACT Corrective Services and the ACT Director of Public Prosecutions have met with the Steering Committee on a number of occasions. As a result of these discussions,

the Steering Committee has been able to better clarify the roles and responsibilities of each agency in investigating assault matters and how the investigative and prosecution processes work.

The Chair subsequently reported that the consensus of the Committee is *“the work done since the review to implement Recommendation 2 and 3 does substantially improve the situation moving forward”* and *“the work achieved in these improvements is in the spirit of what Mr Moss intended in his review”*. In December 2017, the Committee agreed both Recommendations 2 and 3 have been satisfied.

Health Care

Detainees at the AMC often have significant and complex health needs and require additional care. The health needs of Aboriginal and Torres Strait Islanders detainees with complex health issues are a particular area of focus.

There is an expectation from Government that Justice Health Services and ACT Corrective Services share information, clearly understand their roles and responsibilities, and work together to improve detainee safety and wellbeing.

In response to Recommendation 4, a formal Arrangement was signed by the Directors-General of Justice and Community Safety and ACT Health on 14 August 2017. This Arrangement sets a clear statement of intent for the provision of health services for detainees. It outlines the community and government expectation that staff will work together and share information to ensure that detainees have access to regular health checks and timely physical and mental health treatment when necessary. The Arrangement will be supported by a number of schedules. The first schedule developed addresses Information Sharing

to enhance service delivery arrangements for detainees by the improved transfer of relevant and timely information between agencies. Further schedules and protocols will be jointly developed to support the Arrangement and improved service delivery outcomes. I am pleased to see strong work towards this by both agencies. On 24 January 2018, the Steering Committee found that the development of the Arrangement and supporting schedules satisfied this recommendation.

The Moss Review also recognised the significant proportion of Aboriginal and Torres Strait Islander detainees at the AMC, and concluded there is a need to better integrate Winnunga Nimmityjah Aboriginal Health and Community Service to provide a holistic approach to health care at the AMC in a culturally safe way. The Royal Commission into Aboriginal Deaths in Custody also made several Recommendations for the inclusion of appropriate Aboriginal and Torres Strait Islander organisations in the design and delivery of services and programs for Aboriginal and Torres Strait Islander offenders. The ACT Government recognises the importance of giving a central role to Aboriginal and Torres Strait Islander people in the delivery of services in the criminal justice and health systems. This is vital to a holistic model of care for Aboriginal and Torres Strait Islander detainees.

Increased participation from Winnunga in delivering health services to detainees at the AMC also supports the ACT Government's goal to close the gap in indigenous disadvantage. ACT Health and ACT Corrective Services have been working collaboratively with Winnunga to develop and agree to a best practice model of Aboriginal and Torres Strait Islander Health Service Delivery at the AMC. I take this opportunity to particularly recognise and thank Ms Julie Tongs OAM, CEO of Winnunga for her strong leadership and support in this process. This

work has resulted in an agreed set of principles and model of care that would integrate Winnunga into the service offering at the AMC while maintaining its independence as an Aboriginal Health Service.

In November 2017, a new partnership approach was commenced with Winnunga and ACT Corrective Services in the female detainee's area. Winnunga staff were available daily to support female detainees during their accommodation move and have since established an enhanced service offering within the area.

This partnership will expand over time in a staged approach, and in 2018 Winnunga will move to full delivery of health, social and emotional wellbeing services in the AMC in partnership with ACT Corrective Services and Justice Health Service. Under this model, Winnunga health services will be available to all detainees, regardless of their gender or cultural background.

The Moss Review Steering committee acknowledged that full implementation of Recommendation 5 will take time and that positive progress against this recommendation is being made. It also noted the genuine commitment by all parties to progress towards full implementation this year.

Criminal Justice System

The ACT Government is working to address elements of the criminal justice system that disproportionately impact on Aboriginal and Torres Strait Islander people and to support the government's commitment to reducing recidivism by 25 per cent by 2025.

On 7 December 2017, I launched a Bail Support Trial known as 'Ngurrambai' (Nuh-ram-buy), which is a Ngunnawal word that means

perceive (I see, I hear, I understand). The trial is designed to reduce the number and amount of time that Aboriginal and Torres Strait Islander people spend on remand. This program funds the Aboriginal Legal Service to provide Bail Support Officers to deliver a culturally appropriate operational model that includes conducting assessments, developing a bail plan, the provision of culturally appropriate intensive case management and referral to services and programs. The Justice and Community Safety Directorate continue to consider opportunities to divert persons from the criminal justice system through its Justice Reinvestment and Justice Reform work.

Efforts to address the over-representation of Aboriginal and Torres Strait Islander people in our justice system include the Yarrabi Bamirr trial (meaning “Walk Tall” in Ngunnawal), which involves a collaborative approach between the Justice and Community Safety Directorate and Winnunga, using a family centric service support model for Aboriginal and Torres Strait Islander families to improve life outcomes and reduce or prevent contact with criminal justice system. Where appropriate, clients will also be provided with timely and relevant legal advice, support in dealing with statutory agencies (including Care and Protection), support prior to, during, and following the serving of a sentence, and referrals to relevant diversionary programs.

Another key project launched in December 2017 is the Aboriginal and Torres Strait Islander Driver Licensing Pilot Project. This is a culturally relevant driver instruction, education and support program designed to increase licensing rates and improve road safety. Targeting Indigenous learner drivers, jobseekers and Aboriginal and Torres Strait Islander people in the criminal justice system from the ACT and greater region, the project seeks to reduce licensing inequality and improve road safety

through tailored, professional driving lessons and community-based support.

These Justice Reinvestment trials form part of our commitment to reducing recidivism. This work is further strengthened by committing to a tough measure in the Ninth Parliamentary Agreement, to reduce recidivism by 25 per cent by 2025. As a comprehensive plan for reducing recidivism is developed, it will focus on the key issue of reducing incarceration of Aboriginal and Torres Strait Islander people.

Justice Reinvestment is about creating a smarter, more cost-effective approach to improving criminal justice outcomes focused on reducing crime, improving public safety, and strengthening communities. It is also about working with people to look at our local situation and develop local solutions.

Unfortunately, our ACT incarceration rates are not where we want them to be – particularly for Aboriginal and Torres Strait Islander people. We must work together and we must work harder to change the current situation and reduce the number of Aboriginal and Torres Strait Islander people in our justice system.

Our work through the Aboriginal and Torres Strait Islander Justice Partnership, Justice Reinvestment Strategy and the Recidivism Plan strives to make this critical change happen. As we commence the development of a new Justice Partnership and our ACT Recidivism Plan, we have the opportunity to bring people and agencies together to focus on the critical issue of reducing over-representation.

Culturally Safe Practice

The ACT Government understands the importance of initial, ongoing cultural awareness training for all staff that provide services to Aboriginal and Torres Strait Islander detainees. The Inter-Directorate Project Team is aware that more needs to be done to provide culturally safe practices to Aboriginal and Torres Strait Islander detainees and sought advice from the Steering Committee on how this could be best achieved. The Committee agreed, as Mr Moss recognised in his Review, that increasing Aboriginal Services within the AMC is essential to maintaining cultural connection and improving overall cultural awareness and safety for detainees. Increasing Winnunga's participation at the AMC is a significant step forward in this area.

The Steering Committee have also suggested an increase in 'trauma informed' cultural enhancement programmes for detainees at the AMC, and Directorates are considering this advice in addition to the good work they already do around cultural awareness and increasing Indigenous employment levels across the ACT Public Service.

ACT Corrective Services employs a number of Aboriginal and Torres Strait Islander staff in both identified and non-identified positions. As of 23 August 2017, 5.12 per cent of the total ACTCS workforce identified themselves as being from Aboriginal and Torres Strait Islander backgrounds. In addition, the ACT Government also engages an Indigenous Official Visitor to visit and interact with detainees within ACT Correctional facilities to ensure cultural needs are being met.

The observations and conclusions that comprise Recommendation 9 of the Moss Review will continue to inform ongoing efforts across government so that changes are implemented in a culturally safe way.

These span several Directorates and will inform future reforms and service delivery arrangements. Additionally, the advice of the Steering Committee continues to help inform the implementation of Recommendation 9, and assist the Government to increase its cultural proficiency to more effectively manage the welfare of Aboriginal and Torres Strait Islander detainees.

A detailed status report on all the recommendations and conclusions has been provided to the Assembly. An Information Brochure has also been created especially to assist the ACT Aboriginal and Torres Strait Islander Community to understand how the Moss Review recommendations are being implemented to improve detainee health and wellbeing. Copies of the Information Brochure will be available online via the JACS website, and hard copies will be provided to the Aboriginal and Torres Strait Islander Elected Body, Winnunga and the Aboriginal Legal Service as well as being made available to visitors and detainees at AMC.

I commend the work of all directorates involved, including the support and advice being provided by the Independent Chair Mr Russell Taylor AM. I also recognise and thank the Aboriginal and Torres Strait Islander community representatives on the Steering Committee, namely Ms Jo Chivers, Ms Julie Tongs OAM and Mr Anthony Longbottom, for their strong contributions in this process. I also acknowledge the remarkable resilience and strong advocacy for change by Mrs Narelle King following the death of her son. The changes being implemented through the Moss Review recommendations will help improve the safety and wellbeing of people in custody at the AMC, especially Aboriginal and Torres Strait Islander people, and ensure Steven Freeman's legacy is a positive one for all Aboriginal and Torres Strait Islander detainees.