



# ICS

ACT Inspector  
of Correctional  
Services

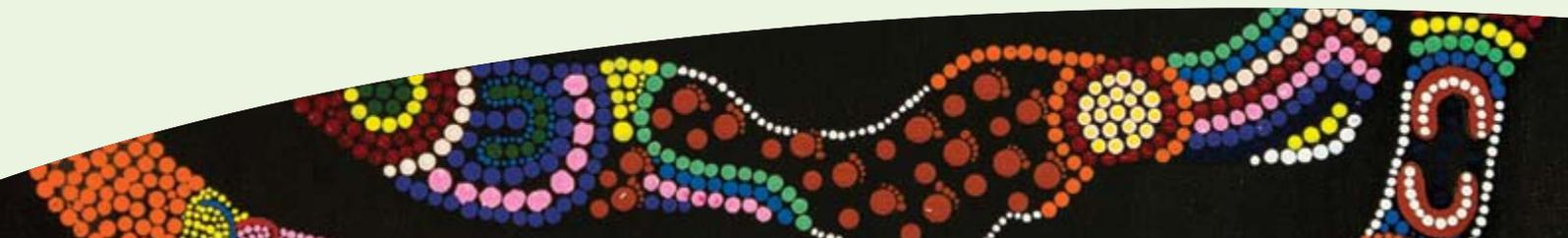
## REPORT OF A REVIEW OF A CRITICAL INCIDENT

by the

**ACT INSPECTOR OF  
CORRECTIONAL SERVICES**

*Assault of a detainee at  
the Alexander Maconochie  
Centre on 15 April 2019  
(CIR 02/19)*

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

## **ABOUT THIS REPORT**

This report may be cited as:

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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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**ACT INSPECTOR OF  
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*Assault of a detainee at  
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Centre on 15 April 2019  
(CIR 02/19)*

Neil McAllister  
ACT Inspector of Correctional Services  
14 August 2019



**ACT INSPECTOR OF CORRECTIONAL SERVICES**

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Letter of Transmittal

The Speaker  
ACT Legislative Assembly  
Civic Square, London Circuit  
CANBERRA ACT 2601

Dear Madam Speaker

I am pleased to provide you with a report entitled 'Report of a Review of a Critical Incident by the ACT Inspector of Correctional Services: Assault of a detainee at the Alexander Maconochie Centre on 15 April 2019' for tabling in the Legislative Assembly pursuant to Section 30 of the *Inspector of Correctional Services Act 2017* (ACT) (the Act).

This report was prepared pursuant to Section 17(1)(c) and (d) of the Act.

As required under Section 29 of the Act a draft copy of the review has been provided to The Hon Shane Rattenbury MLA, Minister for Corrections and Mental Health and Mr Richard Glenn, Acting Director-General of the Justice and Community Safety Directorate, and comments have been considered.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Neil McAllister', written over a light blue horizontal line.

Neil McAllister  
ACT Inspector of Correctional Services  
14 August 2019

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## 1. EXECUTIVE SUMMARY

- 1.1 On 15 April 2019 a male detainee (Detainee V) was assaulted in his cell at the Alexander Maconochie Centre (AMC) by one, and possibly two, other detainees. Detainee V suffered facial injuries that resulted in his admission to hospital.
- 1.2 The incident occurred at about 5:30pm just before the evening lock-in. It was not observed by staff, who learned of the incident at about 7pm (after lock-in) when Detainee V's cell mate used the cell intercom to alert staff that Detainee V needed assistance.
- 1.3 There was no documented intelligence available to ACT Corrective Services (ACTCS) to suggest that there were "issues" between the victim and the other detainees at AMC prior to 15 April 2019.
- 1.4 Detainee V was remanded in custody on traffic offences.
- 1.5 The review found that the "named" detainees were properly classified as Medium Security and that their placement in the same unit was reasonable.
- 1.6 Overall, the review team finds that the assault was not reasonably foreseeable by ACTCS and the actions of ACTCS following the assault were appropriate in the circumstances.
- 1.7 As required under s 29 of the *Inspector of Correctional Services Act 2017* (ACT) a draft copy of this report was provided to the Hon Shane Rattenbury MLA, Minister for Corrections and Justice Health and Mr Richard Glenn, Acting Director-General of the Justice and Community Safety Directorate. Comments received from the Minister and the Acting Director-General were considered in the preparation of the final report.

## 2. FINDINGS & RECOMMENDATIONS

**Finding 1:**

That AMC staff responded in a timely manner to the incident when it was reported by the victim's cell mate.

**Finding 2:**

That the "named" detainees in this report were appropriately classified as Medium security.

**Finding 3:**

That there was no intelligence information available to ACTCS to suggest that Detainee V was at risk of assault.

**Finding 4:**

There were no failings of security procedures or practices that contributed to the assault on Detainee V.

**Finding 5:**

That notifications of the incident to ACT Policing and the Office of the Inspector of Correctional Services were made in accordance with relevant policies but the approved process of notifying next-of-kin, and recording of the notification, was not followed.

## 3. INTRODUCTION

### 3.1 Authority to conduct a review of a critical incident

Section 18(1)(c) of the *Inspector of Correctional Services Act 2017* (ACT) (the Act) provides that the Inspector 'may review a critical incident on the inspector's own initiative or as requested by a relevant Minister or relevant director-general.' This review was conducted at my own initiative.

### 3.2 What is a 'critical incident'?

Section 17(2) of the Act provides a list of events that are critical incidents, including;

(g) *an assault or use of force that results in a person being admitted to a hospital;*

This review concerns an event relevant to section 17(2)(g) in that it was an assault resulting in the victim being admitted to The Canberra Hospital.

### 3.3 What must the Inspector report on?

Section 27 of the Act requires that the Inspector include certain things in a report of a review. In a previous report the Inspector noted that this section was directed towards the content of 'examinations and reviews' of correctional centres and correctional services but was ambiguous in relation to the content of reviews of critical incidents.<sup>1</sup> This report, like the previous critical incident reports tabled in the Legislative Assembly, has been structured to capture the spirit and intent of section 27 but without specific reference to some of the topics.

### 3.4 Public interest considerations relating to this report

Section 28(1) of the Act provides that *'the inspector must consider whether any part of the report must be kept confidential because—*

(a) *there are public interest considerations against disclosure; and*

(b) *those considerations outweigh the public interest in favour of disclosure.'*

Section 28(2) details grounds of public interest against disclosure. In accordance with section 28(2)(d), certain information that might reveal the identities of detainees and staff involved in the incident has been withheld in this report.

### 3.5 The Review Team

The review team comprised:

- Neil McAllister, Inspector of Correctional Services
- Rebecca Minty, Deputy Inspector of Correctional Services; and
- Holly Fredericksen, Research and Inspection Officer

The review notes with appreciation assistance provided by Ingrid Osmond from the ACT Human Rights Commission.

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<sup>1</sup> ACT Inspector of Correctional Services (2018), *Report of a review of an assault of a detainee at the Alexander Maconochie Centre on 23 May 2018*, OICS, Canberra, 6.

## 4. FORM OF THE REVIEW

- 4.1 The Act does not specify what form a review must take. In order to take a consistent approach to the review of critical incidents, the Inspectorate has devised two types of reviews that may be conducted.
- 4.2 The first is a “desk-top” review of documents and reports, including audio/visual records if applicable, provided by ACT Corrective Services and other agencies e.g. ACT Health. A desk-top review does not involve the Inspectorate in direct action such as interviewing staff or detainees and is more likely to be conducted where the circumstances of an incident are reasonably self-evident.
- 4.3 The second form of a review is one carried out by the Inspectorate utilising if necessary, the full powers of the Inspector under the Act. This type of review could be conducted following or instead of a desk-top review and is more likely to be conducted in response to very serious or problematic incidents such as an escape from secure custody.
- 4.4 In the case of the incident that is the subject of this report, I decided to conduct a desk-top review because I was of the opinion that the CCTV recording and officer reports were such that further enquiries were not warranted.

## 5. THE REVIEW

### 5.1 How, when and where the incident occurred

- 5.1.1 Based on CCTV evidence, the incident occurred at approximately 5:30pm on 15 April 2019 (before the evening lock-in) in a high security male unit at the Alexander Maconochie Centre (AMC). Staff became aware of the incident at about 7pm (after the evening lock-in) when Detainee Z alerted officers via the cell intercom that Detainee V needed medical attention.
- 5.1.2 On entering Detainee V and Z’s shared cell, officers observed that Detainee V *‘had significant bruising and swelling to his left eye and was holding his left arm across his chest’* and Detainee V said that he was *‘having trouble breathing’*.<sup>2</sup> Officers checked Detainee Z’s knuckles but saw no signs of injury.
- 5.1.3 Detainee V told officers that he was jumped from behind and did not see his assailant(s). According to the CCTV footage of the alleged assailants entering the cell, it seems unlikely that Detainee V did not see his alleged assailant(s) as they were in the cell for a few minutes. Detainee Z said that he did not know what had happened even though he was in the cell at the time of the assault – this is the prison “code of silence” at work.
- 5.1.4 At about 7:10pm officers placed Detainee V in a wheelchair and took him to the Hume Health Centre in the AMC. Later that evening he was transported to The Canberra Hospital (TCH) where he was admitted (largely) for observations concerning his head injuries. He was released back to the AMC a few days later.

2 Officer report dated 15/04/19

5.1.5 Viewing of CCTV footage<sup>3</sup> by the review team shows that Detainee Z (Detainee V's cell mate) was in their cell when the assault occurred. At about 5:30pm Detainee X can be seen talking to Detainee V outside the cell.<sup>4</sup> Then, they both entered Detainee V's cell followed by Detainee Y who immediately began throwing punches in the direction of Detainee V before the cell door was closed. Detainee Z exited the cell about 30 seconds later followed a few minutes later by Detainees X and Y. The CCTV recording does not show whether Detainee X physically assaulted Detainee V but it is reasonable to conclude that he was a party to it.

## 5.2 The timeliness and effectiveness of ACTCS' response to the incident

5.2.1 Staff become aware of the incident when contacted by Detainee Z at about 7pm, through the cell intercom. However, it would appear from the timeline that Detainee V had facial injuries when the cell was locked at about 6pm. The officer who conducted the lock-in reported that Detainee Z was in the shower at the time and only the (uninjured) right side of his face was visible. While it is odd that neither detainee reported the injuries at that time it may be that one or both of them became concerned about Detainee V's "breathing difficulties" a while later (Paragraph 5.1.2 above).

### Finding 1:

That AMC staff responded in a timely manner to the incident when it was reported by the victim's cell mate.

## 5.3 Assessment, classification and accommodation of the detainees

5.3.1 Detainee V (victim) was on remand for numerous motor vehicle-related offences. He has a negligible criminal history. This was his first imprisonment episode. He had been admitted to AMC about two weeks prior to the assault.

5.3.2 Detainee X (suspected perpetrator or accomplice) was a convicted detainee, sentenced for violent offences. He has a limited criminal history. This was his first imprisonment episode.

5.3.3 Detainee Y (suspected perpetrator or accomplice) was on remand for breach of court orders, motor vehicle-related offences and a property offence. He has a significant criminal history mainly related to motor vehicle and theft offences and had previous episodes of imprisonment.

5.3.4 Detainee Z (suspected witness) was on remand for numerous motor vehicle-related offences. He has an extensive criminal history involving motor vehicle, property and minor assault offences. This was his first imprisonment episode.

## Security Classification

5.3.5 The AMC detainee classification policy sets out the factors that must be considered in determining a detainee's security classification and the effects of security classification on accommodation placements.<sup>5</sup> Medium security is the default classification for new receptions to custody where high levels of risk are not identified.<sup>6</sup>

<sup>3</sup> The footage was from a camera in the common area. There was no camera in the cell.

<sup>4</sup> There were no obvious signs of an argument between the two detainees.

<sup>5</sup> *Corrections Management (AMC Detainee Classification) Policy 2012*, Notifiable Instrument NI2012-299.

<sup>6</sup> *Ibid.*

- 5.3.6 Having reviewed the criminal histories and related materials the review team is satisfied that the “named” detainees were appropriately classified as Medium security.

### Finding 2:

That the “named” detainees in this report were appropriately classified as Medium security.

## 5.4 Whether there was any intelligence or other information in existence prior to the incident which might have indicated that the incident was reasonably foreseeable

- 5.4.1 The review team examined ACTCS intelligence notes made on the “named” detainees prior to the incident:

### Detainee V (victim)

No notes/flags<sup>7</sup>

### Detainee X

While not specific to Detainee V, there is suspicion that he has been an accomplice in similar assaults at AMC

### Detainee Y

No apparently relevant notes/flags

### Detainee Z

No notes/flags

- 5.4.2 There were no reports of Detainees X or Y having any “issues” with Detainee V at AMC prior to the incident on 15 April 2019. The motive for the assault is not known, however intelligence information available to ACTCS subsequent to the incident suggests that it may have been related to matters external to AMC. This is not unusual given that the ACT is a relatively small community with a commensurately small criminal population, which can lead to “community issues” being imported into the AMC unbeknown to ACTCS.

### Finding 3:

That there was no intelligence information available to ACTCS to suggest that Detainee V was at risk of assault.

## 5.5 Whether agency and centre procedures and practices relating to security and detainee supervision were complied with

- 5.5.1 There were no officers in the unit when the assault occurred. While staff make regular inspections and enter the unit for various reasons (musters, talking to individuals, etc.), they operate from a central officers’ station, which acts as an office and control room for the block, including monitoring of local CCTV cameras. This “model” is common in prisons throughout Australia.

### A comment about CCTV

- 5.5.2 It is evident from this and previous assault incidents we have reviewed at AMC that CCTV does not deter assaults. Detainees are well aware of the presence of CCTV cameras in units and other places but are equally aware that, with the exception of a few “observation cells”, there are no cameras in general accommodation cells. Once inside a cell with the door closed, assailants are out-of-sight of cameras and staff eyes.
- 5.5.3 The CCTV footage of this and previous assaults shows detainees making no attempt to disguise themselves when entering/leaving a victim’s cell, which suggests they were not concerned about being caught or punished. It also needs to be said that the actions of detainees involved in assaults we have reviewed were subtle to the extent that staff monitoring live CCTV feed would not have seen

<sup>7</sup> An intelligence flag is an alert indicating that a person *may* be involved in some illegal activity.

anything untoward prior to the incident. In essence, while CCTV can be a useful investigative tool after the event it often does not provide real-time warnings of incidents as they occur.

#### Finding 4:

There were no failings of security procedures or practices that contributed to the assault on Detainee V.

### 5.6 Whether agency and centre procedures and practices relating to notifications of serious incidents were complied with

- 5.6.1 The ACTCS policies and procedures relevant to incident notification are the Incident Reporting, Notifications and Debriefs Policy<sup>8</sup> and the Incident Reporting Operating Procedure.<sup>9</sup>
- 5.6.2 The Incident Reporting Operating Procedure requires that ACT Policing be notified of incidents that may require their attendance (e.g. alleged assault). ACT Policing was advised of the assault on Detainee V by email at 9:08am on 16 April 2019, the morning after the assault. It is understood that police attended AMC on or about 17 April to interview the suspect(s).
- 5.6.3 The Incident Reporting Operating Procedure also requires that ACTCS is to notify the next-of-kin as soon as practicable in the event that a detainee 'has experienced a serious injury or illness and been admitted to a health facility'.

Detainee V's next-of-kin was not contacted by ACTCS when he was taken to hospital on 15 April, presumably because it was unknown at that time whether his injuries were serious. When, on 16 April, he was actually *admitted* for observations he was given the opportunity to telephone his next-of-kin.<sup>10</sup> However, this action was not in accordance with the procedure, because it is ACTCS that should notify next of kin not the detainee. It is not known whether Detainee V availed himself of this phone call offer (no Case Note).

- 5.6.4 The Incident Reporting, Notifications and Debriefs Policy deals with notification of critical incidents to the Inspector of Correctional Services.<sup>11</sup> More detailed arrangements concerning critical incidents are set out in a Memorandum of Understanding (MOU) between the Inspector and ACTCS (dated August 2018).<sup>12</sup> With regard to this incident, oral and written notifications were provided to the Inspector in accordance with the MOU.

#### Finding 5:

That notifications of the incident to ACT Policing and the Office of the Inspector of Correctional Services were made in accordance with relevant policies but the approved process of notifying next-of-kin, and recording of the notification, was not followed.

8 *Corrections Management (Incident Reporting, Notifications and Debriefs) Policy 2018 (No 2) NI 2018-458* – extant at the date of the incident, revoked 05/05/19

9 *Corrections Management (Incident Reporting) Operating Procedure 2018 (No 2) NI2018-457* – extant at the date of the incident, revoked 05/05/19

10 Report of hospital escort officer dated 16/04/19.

11 As defined in section 17(2), *Inspector of Correctional Services Act 2017*.

12 The MOU is appended to an earlier report, ACT Inspector of Correctional Services (2018), *Report of a review of an assault of a detainee at the Alexander Maconochie Centre on 23 May 2018, Canberra*.

## 5.7 Whether the incident revealed any issues pertinent to the *Human Rights Act 2004 (ACT)*

- 5.7.1 The review team notes that this incident involving detainee on detainee violence potentially engages a number of rights in the *Human Rights Act 2004 (ACT)* (HR Act). Of most relevance to Detainee V as the victim of the assault is the right to protection from cruel, inhuman or degrading treatment in s 10(1)(b), and the right to humane treatment when deprived of liberty in s 19 of the HR Act .
- 5.7.2 These human rights provisions require ACTCS to take positive steps to protect detainees from violence and ill-treatment by other detainees, including by implementing measures such as security screening and risk assessment in accommodation placement, searching and confiscation of weapons. In this case, the review team's opinion is that appropriate positive steps were taken by ACTCS and that the assault was not reasonably foreseeable.
- 5.7.3 The response to an incident such as this (a detainee on detainee assault in the AMC) can be a criminal investigation or an ACTCS disciplinary investigation, but not both concurrently.<sup>13</sup> The reason for this is the rule against double jeopardy: it may be a breach of someone's human rights to punish them twice for the same offence.<sup>14</sup> Being subject to both a criminal conviction and (serious) disciplinary sanctions over the same incident would amount to double punishment.
- 5.7.4 Criminal investigations take priority, but if the police decide there is not enough evidence to continue the investigation, charges are dropped, or charges are heard in court but not proven to the criminal standard of beyond reasonable doubt, it is open for ACTCS to commence a disciplinary investigation. If a breach is proved, ACTCS may apply a disciplinary sanction (for example, a financial penalty, withdrawal of privileges, or segregation – which is called separate confinement when it is imposed for a disciplinary breach).
- 5.7.5 In this case, ACT Policing opened a 'job' on 16 April 2019. ACTCS placed Detainees X and Y on Investigative Segregation (under Section 160(1) of the CM Act) in the Management Unit immediately after the incident. The detainees were removed from segregation on 23 April 2019. It is entirely appropriate for ACTCS to separate an alleged perpetrator immediately after the incident while the incident is being investigated by police or ACTCS.
- 5.7.6 It would not have been unreasonable for ACTCS to have also placed Detainee Z on Investigative Segregation pending police attendance given that he was present when the assault took place, but it appears that staff discounted him as a suspect because his knuckles were not visibly damaged (refer to paragraph 5.1.2 above). In our opinion it is not appropriate for ACTCS staff to make decisions that could affect a criminal investigation, notwithstanding good intentions.

### Post incident segregation

13 Section 155(3), *Corrections Management Act 2007 (ACT)* states '[a] disciplinary charge for the disciplinary breach must not be started, or further dealt with, under this chapter if a prosecution for the criminal offence has been started in a court'.

14 Section 24 *Human Rights Act 2005 (ACT)*

## 6. OTHER MATTERS ARISING FROM THE REVIEW

- 6.1 There were no other matters arising from the review.



