



ICS

ACT Inspector
of Correctional
Services

REPORT OF A REVIEW OF A CRITICAL INCIDENT

by the

**ACT INSPECTOR OF
CORRECTIONAL SERVICES**

*Hostage taking incident at the
Alexander Maconochie Centre
on 27 March 2021*

(CIR 02/21)

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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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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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on 27 March 2021
(CIR 02/21)*

Neil McAllister
ACT Inspector of Correctional Services
October 2021

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GLOSSARY

Term	Meaning
ACTCS	ACT Corrective Services
ACTP	ACT Policing (AFP)
AMC	Alexander Maconochie Centre (ACT adult prison)
AU-S	Accommodation Unit - South (high security unit in AMC)
CM Act	<i>Corrections Management Act 2007 (ACT)</i>
CO	Corrections Officer ("prison officer")
EMF	ACTCS Emergency Management Framework 2018 (restricted publication)
ICS Act	<i>Inspector of Correctional Services Act 2017</i>
Inspector	ACT Inspector of Correctional Services
OICS	Office of the Inspector of Correctional Services
Winnunga	Winnunga Nimmityjah Aboriginal Health Service

1. EXECUTIVE SUMMARY

On Saturday, 27 March 2021 an incident occurred in the Accommodation Unit – South (AU-S) of the Alexander Maconochie Centre (AMC) which involved a detainee ("Detainee Z") taking another detainee ("Detainee V") hostage in a cell. Detainee Z had armed himself with a jail-made weapon and threatened to cut Detainee V's throat if staff tried to enter the cell. He demanded to speak to his psychologist and a member of the AMC Indigenous Services Unit, neither of whom were on duty that day.

Detainee Z, an Aboriginal man in his 30s, has an extensive and serious criminal history commencing as a child and has diagnosed mental health conditions. He also has a history of serious and repeated misconduct at the AMC involving, among other things, assaults on other detainees.

A senior Corrections Officer (CO), who had some rapport with Detainee Z, commenced discussions with him which led to Detainee Z releasing the victim and surrendering peacefully to officers after about 90 minutes. Detainee V was physically unharmed but was visibly shaken during and after the incident. It is not clear as to why Detainee V was chosen as the hostage other than he owed Detainee Z tobacco.

Detainee Z told us that he had not planned the incident, rather it was a spontaneous act arising from his frustration with his accommodation in his current unit.

The review team found that the incident was appropriately managed and was not reasonably foreseeable by ACT Corrective Services (ACTCS). However, we identified some matters that require attention by ACTCS:

1. There are inconsistencies between the ACTCS Hostage Procedure and the ACTCS Emergency Management Framework, which while not impacting directly on the management of this incident, need to be addressed.

Recommendation 1:

That ACT Corrective Services amend the *Corrections Management Code Brown (Hostage) Procedure 2014 (No 1)* (RESTRICTED) and the ACTCS Emergency Management Framework 2018 to reflect current ACT Corrective Services position titles and responsibilities.

2. There is no guidance to staff as to when or in what circumstances a hostage victim's next-of-kin must be notified of an incident in progress.

Recommendation 2:

That ACT Corrective Services amend the *Corrections Management Code Brown (Hostage) Procedure 2014 (No 1)* (RESTRICTED) and the ACTCS Emergency Management Framework 2018 to provide clear direction to staff as to when a victim's family must be notified of a hostage incident so that a decision is not left to the discretion of an individual officer.

3. During the incident, Detainee Z asked for his "meds" (prescribed medication related to his mental health condition). This request was denied by the Incident Controller in accordance with the principle of not acceding to demands in such situations, however, no advice was sought from Justice Health/ Winnunga Nimmityjah Aboriginal Health Service (Winnunga) on medical considerations. While the principle of not acceding to hostage taker demands is understandable, the review team are concerned about the issue of medication for the victim or perpetrator in a hostage incident spanning several hours or even days.

Recommendation 3:

That ACT Corrective Services amend the *Corrections Management Code Brown (Hostage) Procedure 2014 (No 1)* (RESTRICTED) and the ACTCS Emergency Management Framework 2018 to require the Incident Controller to seek clear advice from Justice Health and/or Winnunga about:

- Whether essential medications need to be provided to the hostage-taker or hostage;
- When and how the medications need to be administered; and
- The possible consequences of non-medication (e.g. mood swings, anxiety, pain)

If in doubt, health advice should take precedence over the general principle of not acceding to hostage-taker's demands.

4. ACTCS does not have trained hostage negotiators, which is not surprising given that siege/hostage incidents are not a common occurrence in Australian prisons, although they do happen from time to time in the larger jurisdictions. The 27 March 2021 incident was the first hostage incident at the AMC since it commenced operation in 2009. While it may seem logical for the AMC to have trained in-house negotiators, this would be difficult to operationalise given the relatively small size of the AMC workforce and rostering complexities. However, it may be possible to enhance the skills of senior COs to deal with hostage incidents through, for example, role-playing exercises.

Recommendation 4:

That ACT Corrective Services enhance the skills of senior Corrections Officers to deal with hostage situations.

5. The bladed weapons recovered from Detainee Z were not photographed by AMC staff before they were handed over to police. This means that information about materials and techniques used to fashion the weapons could not be provided to the ACTCS Intelligence and Integrity Unit. Reviewing 'self-manufactured' weapons seized from detainees is an important area of work for corrective services' intelligence units as it can provide valuable information about the sources of weapons, and in some cases, the maker of the weapons.

Recommendation 5:

That ACT Corrective Services ensure that key exhibits from incidents are photographed and catalogued before being handed over to ACT Policing or if that is not possible, photographs be obtained from ACT Policing before items are disposed of.

6. Although it did not become necessary, a trained CO was on standby to deploy a chemical agent (Oleoresin Capsicum spray (OC)) in the event of an emergency that required an immediate intervention. The review team notes that ACTCS does not have a notified policy or procedure specific to the use of 'chemical agents', although there is reference to one in the *Corrections Management (Use of Force and Restraint) Policy 2020* (NI2020-562).

Recommendation 6:

That ACT Corrective Services pause the use of chemical agents until there has been a policy notified on their use, accompanied by a procedure which sets out how chemical agents may be used and matters such as post-incident decontamination.

7. The Formal Staff Debrief Report on the incident noted that there were communication problems between the staff on the scene and the Incident Controller, with messages being passed orally via one of more officers.

Recommendation 7:

That ACT Corrective Services explore ways of improving communications between frontline staff and Incident Controllers during serious incidents.

2. INTRODUCTION

2.1 Authority to conduct a review of a critical incident

Section 18(1)(c) of the *Inspector of Correctional Services Act 2017* (ACT) (ICS 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.' (emphasis added). However, the ICS Act does not provide guidance as what the Inspector should consider when deciding whether to review a critical incident, noting that we have elected not to review some relatively low-level ACTCS' incidents in the past (detailed in our annual reports). In order to provide some clarity around this decision making process, we have developed and published an [operating procedure](#) on our website.

We determined that this critical incident met our review criteria (see the procedure) of:

- Seriousness;
- Public reporting considerations; and
- Prevention considerations.

Under the 'prevention considerations' we note that to the best of our understanding, this is the first serious hostage-taking situation that has occurred at the AMC and given it is a new situation for many of the staff involved, the potential for lessons learned for ACTCS are significant.

2.2 What is a 'critical incident'?

Section 17(2) of the Act provides a list of events that are critical incidents. This review concerns an event relevant to section 17(2)(d) in that a detainee took another detainee hostage at the Alexander Maconochie Centre on 27 March 2021. It is noted that the ICS Act does not define "hostage", and nor is hostage defined in other ACT legislation. In that regard, OICS has relied on section 7 of the *Crimes (Hostages) Act 1989* (Cth) which defines hostage taking as where a person:

- (a) seizes or detains another person (in this section called the hostage); and
- (b) threatens to kill, to injure, or to continue to detain, the hostage;
with the intention of compelling:
- (c) a legislative, executive or judicial institution in Australia or in a foreign country;
- (d) an international intergovernmental organisation; or
- (e) any other person (whether an individual or a body corporate) or group of persons;

to do, or abstain from doing, any act as an explicit or implicit condition for the release of the hostage.

In our opinion, the incident on 27 March 2021 meets the definition of 'hostage' as set out in the *Crimes (Hostages) Act 1989* (Cth).

2.3 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.¹ 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.

2.4 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.

Further, the Inspector decided that for security reasons this report does not describe the operational/tactical response to the incident in detail. This is particularly important in the case of a hostage incident where discussion of operational responses could provide valuable information to a future hostage-taker.

2.5 The review team

The review team comprised:

- Neil McAllister, Inspector of Correctional Services
- Rebecca Minty, Deputy Inspector of Correctional Services
- Pip Courtney-Bailey, Assistant Inspector of Correctional Services

2.6 Form of the review

The Act does not specify what form a review must take. In order to take a consistent approach to the review of critical incidents, OICS has devised two types of reviews that may be conducted.

The first is a "desk-top" review of documents and reports, including audio/visual records if applicable, provided by ACT Corrective Services (ACTCS) 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.

The second form of a review is one carried out by OICS 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.

In this case, the Inspector decided to conduct a full review because of the serious nature of the incident and because it was the first hostage incident to have occurred at the AMC since operations commenced in 2009.

¹ 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.

3. HOW, WHEN AND WHERE THE INCIDENT OCCURRED

3.1 The incident

On Saturday, 27 March 2021, at approximately 10:50am, two COs were securing detainees in the AU-S unit when they were unable to locate a detainee ("Detainee V"). As a CO conducted a cell check he identified that there were two detainees in a cell which should have only been occupied by Detainee Z. The CO opened the door and observed Detainee Z holding Detainee V from behind with a bladed weapon to his throat. Detainee Z then threatened to cut Detainee V's throat if the CO did not leave the cell. The CO closed and secured the door and called for an emergency response on his radio.

Staff responded and a full centre lock-in was called when it was identified the incident was a hostage situation. This lock-in included the cancellation of detainee visits. A CO3 commenced negotiations² with Detainee Z, who was demanding that two (non-custodial) staff members be called up so that he could speak to them. Detainee Z did not tell COs at the time why he wanted to speak to these people, neither of whom were working on the day.

While the CO3 was attempting to de-escalate the situation and facilitate the release of Detainee V, health staff were briefed and requested to be present in AU with their response bag in case they were needed. An ambulance was called to provide a paramedic response if required. The Duty Manager was notified, attended the AMC, and subsequently requested the Senior Director Accommodation and Director of the Court Transport Unit to attend as well to provide assistance if required. The drafting of rapid intervention and surrender plans commenced but were not completed prior to the conclusion of the incident. A response/extraction team was also assembled in preparation for a rapid intervention, including the deployment of chemical agent³ if necessary. ACT Policing were contacted and informed of the hostage situation but did not attend the AMC until after the incident was resolved (to process the crime scene).⁴

At approximately 12:20pm, the CO3 negotiator indicated that Detainee Z had agreed to release Detainee V. The cell door was opened to allow Detainee V to exit. He was assessed by nursing staff and Forensic Mental Health and whilst he did not have any physical injuries, he appeared quite shaken up and was relocated to the Crisis Support Unit to allow monitoring⁵. Staff reports indicate that Detainee V played an active part in de-escalating the incident by engaging Detainee Z in conversation about various things, including Detainee Z's religious beliefs.

Detainee Z subsequently surrendered two bladed weapons⁶ and was relocated to the Management Unit. The cell was secured as a crime scene until ACT Policing officers attended and cleared the cell for use at approximately 3:00pm.

2 The CO3 who engaged with Detainee Z was not a trained negotiator. In that regard references in this and ACTCS reports to "negotiator" and "negotiations" are figurative only.

3 The AMC holds a supply of a chemical agents including CS (2-chlorobenzylidene malononitrile – "tear gas") and OC (Oleoresin capsicum – "pepper spray"). On this occasion, a CO who had recently completed chemical agents (OC) training was equipped with a cannister of OC.

4 ACTCS Formal Debrief Report, 13/04/21.

5 Detainee V was subsequently granted bail and had not returned to AMC at the time of writing this report.

6 Detainee Z described these weapons to the review team as disposable razor blades melted on to toothbrush handles.

Finding 1:

That the incident was resolved quickly without physical injury to the victim and without use of force by Corrections Officers.

Finding 2:

That the incident was not reasonably foreseeable by ACT Corrective Services.

Detainee Z was invited to speak to OICS about his motivations that lead to the incident and did so on 24 June 2021.

3.2 Background on Detainee Z

Detainee Z is an Aboriginal man in his 30s with mental health conditions⁷ and an extensive and serious criminal history.⁸ He is currently serving a lengthy sentence for violent offences. Detainee Z has a poor history of institutional conduct at AMC⁹ and has strong affiliations with well-known NSW/ACT prison gangs. His accommodation options at AMC are limited due to his security classification, history of violence and frequent threats to harm a cell mate if he was forced to share a cell. Detainee Z had been placed on protection at his request in 2019 due to his concerns about being assaulted by another detainee(s). However, he was removed from protection in 2021 following a number of incidents, including an assault on another detainee with a jail-made weapon.¹⁰

3.3 What prompted the incident?

Detainee Z had been relocated from the Management Unit to AU-S on 4 February 2021. This placement was explained to him as a six to eight weeks transition arrangement to mainstream accommodation, subject to him maintaining good behaviour.¹¹ On 8 February 2021, Detainee Z refused to be locked in his cell and asked to be moved back to the Management Unit. It was explained to him that even if this did occur for a period of time, he would still have to transition through AU-S and begin the whole process again.¹²

Detainee Z told the review team that he did not plan the hostage taking and had no particular “issues” with Detainee V other than Detainee V owed him tobacco. He said that his motivation was fear for his safety if he remained in AU-S, which at that time was accommodating mainstream detainees and newly arrived receptions.

Detainee Z said that he believed that a new reception, unknown to him, could be out to assault or kill him in relation to matters he had been involved in outside AMC. He also told the review team that he had been given a cleaning job in the unit which meant he was out of his cell all day mixing with the other detainees, but he was feeling “paranoid” about mixing with people he didn’t know (new receptions). Detainee Z’s Case Notes also mention his concerns about his friends leaving the unit.¹³

7 ACTCS Community Services Pre-Sentence Report, 09/07/19.

8 Detainee Z has a 40-page criminal history.

9 ACTCS Community Services Pre-Sentence Report, 09/07/19.

10 ACTCS intelligence summary report, 30/03/21.

11 Case Note, 08/02/21.

12 Case Note, 08/02/21.

13 Case Note, 08/02/21.

Detainee Z told OICS that he had raised his concerns with COs on several occasions without success¹⁴ and that the hostage taking was aimed at bringing about this relocation. However, Detainee Z's Case Notes indicate that on or about 15 March 2021 he declined a move to (specific unit) because he believed he was at-risk from another detainee in that unit and it would have resulted in sharing a cell, which he did not want to do.

We note that there is no mention in CO Incident Reports of Detainee Z making any specific demands about relocation during the incident. However, he reportedly made comments to the effect that he was upset about inconsistent changes being made to his out of cell times.

When asked why he had weapons, Detainee Z told us that they were for protection in case he was attacked.

3.4 Matters arising from the incident

3.4.1 ACTCS policy and instructions for dealing with hostage incidents

There are two documents directly relevant to managing hostage situations.¹⁵ They are:

Corrections Management Code Brown (Hostage) Procedure 2014 (No 1) (RESTRICTED) – this is a Notifiable Instrument on the ACT Legislation Register which briefly sets out how ACTCS is required to respond to hostage situations. In some instances, it refers to ACTCS position titles that were changed in 2020 e.g., Operations Manager, General Manager, Custodial Operations and Executive Director. The policy needs to be updated to reflect current position titles and responsibilities to avoid any confusion.

ACTCS Emergency Management Framework 2018 (EMF) – this is a restricted internal document which provides detailed instructions for dealing with a number of serious incidents, including hostage situations. There are some inconsistencies between the EMF hostage chapter and the *Code Brown (Hostage) Procedure* which need to be addressed. There is also reference to the (AMC) Intelligence Unit doing certain things, although that unit is no longer located at AMC and has a different title.¹⁶

Like the *Code Brown Hostage Procedure*, there are also references to ACTCS position titles that were changed in 2020, which also need to be updated to reflect current position titles and responsibilities to avoid any confusion.

OICS notes that these issues with the *Code Brown Hostage Procedure* and the EMF did not impede the handling of the 27 March 2021 incident but nonetheless, need to be addressed.

Recommendation 1:

That ACT Corrective Services amend the *Corrections Management Code Brown (Hostage) Procedure 2014 (No 1)* (RESTRICTED) and the ACTCS Emergency Management Framework 2018 to reflect current ACT Corrective Services position titles and responsibilities.

14 A Case Note suggests that Detainee Z had informally requested a move to (specific unit) on or about 15/03/21 but this did not eventuate for some reason that is not recorded.

15 There are other ACTCS policies and/or procedures which may be relevant to hostage situations such as use of force, crime scene preservation, incident reporting, debriefs but these are not specific to a particular type of incident.

16 Now the Intelligence and Integrity Unit is located at ACTS head office, Canberra City.

3.4.2 Notification of a victim's next of kin

The *Code Brown (Hostage) Procedure* and the EMF make references to notification of a hostage victim's next of kin, with the EMF providing quite detailed instructions. However, both appear predicated on the victim being a member of staff rather than a detainee. This is not surprising given that prison hostage incidents usually involve prisoners taking staff hostages.

Although the 27 March incident was resolved quite quickly without physical injury to the victim,¹⁷ it could have lasted many hours or even days. In that event, a detainee's family could notice a lack of contact from them (phone calls, emails or cancelled visits) or become aware of media reporting of an incident at AMC.

A balance needs to be struck between unnecessarily alarming a victim's family, particularly if direct assistance cannot be provided to the family during the incident (e.g. counselling, pastoral or cultural support), and doing nothing, which could have significant negative consequences for the family in the event of a protracted incident or if the victim is injured.

In our opinion, there should be clear guidance given to ACTCS staff as to when a victim's family must be notified of a hostage incident so that a decision is not left to the discretion of an individual officer. The triggers for such notifications could be:

- After a specified period of time from commencement of the incident (e.g. 6 hours); or
- If at any time prior to the deadline if the victim is injured.

Notification should be accompanied by offers of appropriate ACTCS' support and communication arrangements (e.g. a telephone "hotline", cultural liaison).

Recommendation 2:

That ACT Corrective Services amend the *Corrections Management Code Brown (Hostage) Procedure 2014 (No 1)* (RESTRICTED) and the ACTCS Emergency Management Framework 2018 to provide clear direction to staff as to when a victim's family must be notified of a hostage incident so that a decision is not left to the discretion of an individual officer.

3.4.3 Medication issues for hostage takers and victims

Detainee Z was being medicated in relation to his mental health condition, and at one stage during the incident, asked for more "meds" to be provided. This request was refused, noting that the EMF allows for 'medically prescribed' drugs to be provided at the *discretion* of the 'incident controller'. As it happened, Detainee Z found one of his "meds" in his cell and self-administered.

The Formal Debrief Report of the incident (13/04/21) notes that:

A discussion [at the Formal Debrief] on the particular type of medication was had with Justice Health staff who were present at the debrief with the view that that particular (prescribed medication) would have assisted to calm the detainee. It was noted that had the incident become more protracted that advice would have been sought from Justice Health staff regarding (prescribed) medication and impacts of providing access **would have been sought**. (emphasis added)

¹⁷ Reports indicate that Detainee V was visibly distressed during and after the incident.

Notwithstanding that the Incident Controller had discretion to do so, it is of concern to the review team that the Incident Controller denied Detainee Z's request for his prescribed medication without consultation with Justice Health staff who were on standby at the scene.

While this incident lasted only about 90 minutes, in a protracted incident the matter of vital medications for hostage-takers and victims could be a significant problem. The EMF does not provide any guidance on this issue.

Recommendation 3:

That ACT Corrective Services amend the *Corrections Management Code Brown (Hostage) Procedure 2014 (No 1)* (RESTRICTED) and the ACTCS Emergency Management Framework 2018 to require the Incident Controller to seek clear advice from Justice Health and/or Winnunga about:

- Whether essential medications need to be provided to the hostage-taker or hostage;
- When and how the medications need to be administered; and
- The possible consequences of non-medication (e.g. mood swings, anxiety, pain)

If in doubt, health advice should take precedence over the general principle of not acceding to hostage-taker's demands.

3.4.4 Trained hostage negotiators

ACTCS does not have trained hostage negotiators, which is not surprising given that siege/hostage incidents are not a common occurrence in Australian prisons, although they do happen from time to time in the larger jurisdictions. The 27 March 2021 incident was the first hostage incident at the AMC since it commenced operation in 2009.

ACT Policing (AFP) does have trained negotiators but has strict conditions about their deployment, including that they be armed and supported by armed tactical officers. This is a problem for ACTCS, which has traditionally not allowed firearms to be taken into correctional centres, notwithstanding that CM Act does not prohibit ACTCS or ACT Policing from doing this if necessary.

The senior CO who talked to Detainee Z on 27 March did an excellent job, partly at least because he knew Detainee Z well and was able to establish a rapport with him quite quickly. However, if the incident had gone on for hours or longer, that CO would have to have been relieved by someone who may not have had the same connection with Detainee Z.

While it may seem logical for the AMC to have trained in-house negotiators, this would be difficult to operationalise given the relatively small size of the AMC workforce and rostering complexities. However, it may be possible to enhance the skills of senior COs on the principles of hostage negotiation, which are set out briefly in the EMF.

Finding 3:

That it is difficult to justify a need for ACT Corrective Services to have professionally trained hostage negotiators.

Recommendation 4:

That ACT Corrective Services enhance the skills of senior Corrections Officers to deal with hostage situations.

3.4.5 Intelligence missed opportunity

The bladed weapons recovered from Detainee Z were not photographed by ACTCS before they were handed over to police. This means that information about materials and techniques used to fashion the weapons could not be provided to the ACTCS Intelligence and Integrity Unit. This is an important area of work for corrective services' intelligence units as it can provide valuable information about the sources of weapons, and in some cases, the maker of the weapons.

Recommendation 5:

That ACT Corrective Services ensure that key exhibits from incidents are photographed and catalogued before being handed over to ACT Policing or if that is not possible, photographs be obtained from ACT Policing before items are disposed of.

3.4.6 Use of chemical agents

Although it did not become necessary, a trained CO was on standby to deploy a chemical agent (OC "pepper spray") in the event of an emergency that required an immediate intervention. OICS notes that ACTCS does not currently have a notified policy or procedure specific to the use of 'chemical agents', although there is reference to the use of chemical agents in the *Corrections Management (Use of Force and Restraint) Policy 2020*:

- 11.5 Chemical agents are only authorised for use by custodial officers who have received training in advanced use of force techniques (*Annex 2 – Authorised mechanical restraints and instruments of force*).
- 11.6 Chemical agents must only be deployed when the General Manager, or Duty Manager in their absence, has approved their use in an incident under this policy or the *ACTCS Emergency Management Framework*.

It is of concern that s 11.6 of the policy is vague as to under what circumstances chemical agents may be deployed in the context of other uses of force in the toolbox that are available (e.g. verbal commands, hands-on techniques, shields, batons, mechanical restraints) given that chemical agents will invariably cause physical discomfort and/or pain to anyone who inhales them, or experiences contact with their eyes.

OICS is aware that ACTCS has a draft of a new chemical agents' policy which was (at the time of writing) under consultation with key stakeholders. It is unclear as to when this policy will be finalised and notified on the ACT Legislation Register.

During a discussion with ACTCS on the draft of this report, the Commissioner advised OICS that although AMC held some stock of o-chlorobenzylidene malononitrile (CS) chemical agent, staff had only been trained in the deployment of OC, would not be trained in CS, and were not authorised to use CS. He added that he intended to dispose of the CS stock in the near future.

Given the potential effects of OC¹⁸ on detainees and unprotected staff, there must be very clear policy around their use and clear and detailed procedures for decontaminating people, clothing and premises exposed to the agent. This is not currently the case at AMC.

Given that the AMC has been in operation since 2009 without chemical agents being deployed it is incongruous that they are now being approved for deployment in the absence of a policy or procedure to guide staff in their use.

Further, while we note the advice of the Commissioner that only Duty Managers (AMC Senior Directors or the General Manager) can authorise the use of OC, and only in the context of dealing with a serious incident, OICS is concerned that the absence of a notified policy/procedure leaves Duty Managers potentially exposed should there be a serious medical reaction to an OC exposure by a detainee or other person.

On balance, in OICS view, the use of OC must cease until there is a policy framework in place to govern the circumstances around deployment and necessary safeguards to protect the health and safety of detainees and staff. A documented policy and procedure are also essential, so staff have clear guidance on appropriate use of chemical agents. Staff training on the use of chemical agents should be built around a framework laid out in policy and procedure.

Recommendation 6:

That ACT Corrective Services pause the use of chemical agents until there has been a policy notified on their use, accompanied by a procedure which sets out how chemical agents may be used and matters such as post-incident decontamination.

3.4.7 Control of the incident

The Formal Staff Debrief Report (13/04/21) on the incident noted that there were communication problems between the staff on the scene and the Incident Controller with messages being passed orally via one or more officers. Some staff felt that access to mobile phones for voice and text messaging would be a more effective means of communication during incidents. However, the review team notes that AMC radios can be used with earphones, which may also have improved communication processes.

Recommendation 7:

That ACT Corrective Services explore ways of improving communications between frontline staff and Incident Controllers during serious incidents.

18 Refer to Appendix 1.

APPENDIX 1: POSSIBLE EFFECTS OF OC SPRAY

As the ACT is a human rights jurisdiction, OC spray must be used in a manner that is reasonable and proportionate in the circumstances. This includes clear directives about when it may be used, and safeguards to ensure detainees with particular vulnerabilities (for example due to age, disability, mental health, pregnancy) are considered in advance.

A report by the Queensland Crime and Misconduct Commission (CMC) (OC spray: *Oleoresin capsicum* (OC) spray use by Queensland police, 2005, Brisbane) describes some effects of OC:

'Oleoresin capsicum (OC) spray is an organically based inflammatory agent derived from red (cayenne) peppers. After the peppers have been dried and ground into a fine powder, the oleoresin is extracted using an organic solvent. Once the extraction is complete, the solvent is removed via evaporation or distillation, leaving an oily substance called oleoresin capsicum.

OC is combined with other products in suspension and mixed with a propellant such as nitrogen or carbon dioxide. The spray is aimed in the general direction of a target and vaporises shortly after discharge. Depending upon wind and weather conditions, OC spray has an effective range of between one and three metres. (p.1)'

'The spray's effects, while relatively short-term (usually less than an hour), are both rapid and debilitating. Once a person comes into contact with OC spray, there is an immediate sensation of intense pain and tearing in the eyes, causing the eyes to shut tightly or blink excessively. The respiratory tract becomes inflamed, resulting in uncontrollable fits of coughing and breathing difficulties. Decontamination involves simply washing the face with cool water for 10–45 minutes. Without water, decontamination occurs naturally in about two hours.

One of the biggest concerns and potential criticisms of the use of OC spray is that it may lead to health problems of varying seriousness. An expert opinion commissioned by the CMC from University of Queensland pharmacologist Dr Lindsay Brown concluded that: 'Oleoresin capsicum spray produces acute respiratory and ocular symptoms but there is little evidence that the capsaicins cause long-term damage, although some carriers [propellant] may be more toxic'. (p.57)'

