



ICS

ACT Inspector
of Correctional
Services

REVIEW OF A CRITICAL INCIDENT

by the

**ACT INSPECTOR OF
CORRECTIONAL SERVICES**

*An Alleged Sexual Assault
of a Detained Person at the
Alexander Maconochie Centre*

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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 Ngunnawal people as traditional custodians of the ACT and recognise any other people or families with connection 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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*An Alleged Sexual Assault
of a Detained Person at the
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ACT Inspector of Correctional Services
November 2023

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GLOSSARY

Term	Meaning
ACTCS	ACT Corrective Services
ACTP	ACT Policing (AFP)
AMC	Alexander Maconochie Centre (ACT adult prison)
CM Act	<i>Corrections Management Act 2007 (ACT)</i>
CO	Corrections Officer
CMH	Custodial Mental Health
Cottage	More 'domestic-style' accommodation compared to other units at the AMC, this accommodation is for detained people who are minimum or medium security classification requiring less supervision and security
Detained person	A 'detainee' under s6 of the CM Act
FAMSAC	Forensic and Medical Sexual Assault Care based at The Canberra Hospital (TCH)
HPR22	OICS Healthy Prison Review of the Alexander Maconochie Centre 2022
HHC	Hume Health Centre at the Alexander Maconochie Centre
ICS Act	<i>Inspector of Correctional Services Act 2017</i>
Inspector	ACT Inspector of Correctional Services
JHS	Justice Health Service
OICS	Office of the Inspector of Correctional Services
PEP	HIV Post Exposure Prophylaxis
TCH	The Canberra Hospital

1. EXECUTIVE SUMMARY

CONTENT WARNING – this report discusses sexual assault and may be distressing for some people.

NOTE – Sensitive personal information and information about the circumstances relating to this incident has been kept confidential (in Annexure B) on public interest grounds under the Inspector of Correctional Services Act 2007 (ICS Act), to avoid the identification of any person detained, working or otherwise at a correctional centre in order to protect their privacy, and for the safety and good order of the centre to reduce risks of reprisals.

In early 2023, a detained person at the Alexander Maconochie Centre (AMC) approached an ACT Corrective Services (ACTCS) Corrections Officer (CO) with concerns he may have been sexually assaulted while asleep in a protection cottage. The detained person reported that he had raised the issue with Justice Health Services (JHS) a day prior but his concerns had been dismissed, though JHS provided a differing account of that consultation to the Review Team.

Corrections Officers referred the detained person to JHS where a GP organised a priority referral to Canberra Health Services' FAMSAC (Forensic and Medical Sexual Assault Care, based at The Canberra Hospital (TCH)) for forensic medical examination including collection of forensic evidence samples, relevant testing, and further medical investigation. He was later admitted to hospital.

The Office of the Inspector of Correctional Services (OICS) was advised of the incident by ACTCS on the basis it was a critical incident under the *Inspector of Correctional Services Act 2017* (ICS Act) (an assault that results in a person being admitted to hospital).

This report does not consider and makes no comment about the veracity of the allegation. This report considers how ACTCS and JHS responded to the reported sexual assault, including what worked well and identifying any areas for improvement.

Despite there being a lack of clear policy guidance, this review finds that the ACTCS COs responded appropriately to the allegation. ACTCS reported the alleged assault in a timely manner to ACT Policing (ACTP) and referred the detained person to JHS for a therapeutic response. However, potential evidence was not handled by ACTCS in accordance with the relevant policy and procedure.

Given the subject matter of the allegations, OICS engaged a clinical reviewer as part of the Review Team, to assess aspects of the JHS response. In relation to the initial consultation, JHS advised the Review Team that its GP formed a view that they were most likely not dealing with a recent sexual assault and that the symptoms the detained person presented with were more likely consistent with other causes. Records considered by this review do not document the reasons for reaching this conclusion.

This review notes there is extremely limited CHS policy guidance for clinical teams in AMC about responding to reports of sexual assault, and none specific to a correctional setting. This review makes recommendations to address this deficiency.

Detaining authorities have a positive obligation under the *Human Rights Act 2004* (HR Act), interpreted according to international human rights law, to take effective measures to prevent assault including sexual assault. Examples of effective measures may include policy, procedure and staff training. This review highlights the lack of policy framework for both ACTCS and JHS in the areas of reporting and response to sexual assault in the AMC generally, and a lack of staff training for ACTCS and JHS specifically on responding to reported sexual assault in a custodial setting. This needs to be addressed.

The lack of a guiding framework to prevent and respond to sexual coercion and violence in AMC was identified by the OICS in the [Healthy Prison Review of the Alexander Maconochie Centre 2022](#) (HPR22). In that review, the OICS recommended:

That ACT Corrective Services consult with key stakeholders to develop a strategy to prevent, track and respond to incidents of sexual coercion and violence in the Alexander Maconochie Centre.

This recommendation was 'Agreed in Principle' by the ACT Government. The Government Response noted that ACTCS was committed to working with stakeholders 'to consider improvements to ACTCS' current policy, training and general approach in this area' to be 'better placed to ascertain the utility of such a strategy and whether it would achieve the intent of the recommendation'.¹ It committed to complete this work by 31 December 2023.

OICS welcomes ACTCS commitment and recommends that output(s) developed from those reflections (e.g. a report or summary) be shared publicly so key stakeholders are aware.

Recommendation 4:

That ACT Corrective Services report publicly on outcomes arising from its commitment made in the Government Response to Recommendation 7 of the Healthy Prison Review of the Alexander Maconochie Centre 2022, by its deadline of 31 December 2023.

Recommendation 5:

That Canberra Health Services review their approach to responding to allegations of sexual coercion and violence in custodial settings and report publicly on the outcome by 31 December 2023.

OICS further welcomes that JHS has already begun updating its Justice Health Operational Guideline to provide the clinical team with greater guidance for situations when allegations of sexual assault are made within the AMC.

This review notes that ACTCS does not capture data on sexual assault specifically. Rather, if any reports of sexual assault are captured in formal incident reports it would come within the broader category of assault in the AMC Incident Register. The capture of data by ACTCS on reported sexual assault specifically in a way that disaggregated these reports from other assaults would assist in some understanding of prevalence and incidence of alleged sexual assaults. Notwithstanding that many sexual assaults do go unreported, capturing data on incidents that are identified could inform any prevention and response strategies developed. The review considers ACTCS must collect detailed information to help understand the nature (patterns, trends etc) of sexual assaults reported, track changes in reporting over time, and inform prevention and response strategies.

¹ [Legislative Assembly for the Australian Capital Territory, 'Report of a Review of a Correctional Centre by the ACT Inspector of Correctional Services – Healthy Prison Review of the Alexander Maconochie Centre 2022 – Government Response' \(2023\)](#).

Recommendation 1:

That ACT Corrective Services improve its collection of reported sexual assaults including disaggregating this data from other assaults.

The alleged incident occurred in a cottage, where there is no CCTV coverage, and limited CO presence. Appropriately placed CCTV cameras in communal areas of cottages may reduce incidents of violence by removing some blind spots and may provide a source of evidence to corroborate or contradict allegations. CCTV should be utilised alongside dynamic security (security based on relationship building and communication between staff and detained people). Placement should not be in bathrooms or cells to protect detained peoples' right to privacy.

Recommendation 3:

That ACT Corrective Services install enhanced security systems, such as CCTV cameras, in communal areas of the Alexander Maconochie Centre cottages not presently subject to CCTV coverage (including cottage entry doors and cell doors) as a protective measure and as a potential source of evidence.

After the incident was reported to ACTCS and the detained person was moved from his accommodation area, his clothes and bedding were left in an unsecured bag and unattended in an officer's station for a significant period. This was poor practice, contrary to relevant policy and procedure, and has the potential to undermine possible sources of forensic evidence that may be used in criminal proceedings.

Recommendation 2:

That ACT Corrective Services provide refresher training to all custodial staff on Crime Scene and Evidence Preservation and that this form part of the routine training schedule.

The objects of the *Corrections Management Act 2007* (CM Act) include ensuring that detained people are treated in a decent, humane and just way. A zero-tolerance approach, and a trauma informed response to sexual assault in prison is an important part of humane treatment when deprived of liberty.

'The short-term effects of sexual assault on prisoners include fear, shame, suicidal tendencies ... Long-term effects include greater drug use, sexual violence and an inability to form lasting relationships. ... [s]uch effects regularly result in re-imprisonment following release.'²

For these reasons, it is important to get systems responses to preventing and reporting sexual assault in prison right.

2 Heilpern, David M (2005) 'Sexual Assault of Prisoners: Reflections' 28(1) *UNSW Law Journal* 286.

2. INTRODUCTION

This review concerns an allegation by a detained person that he was sexually assaulted in the AMC. After reporting the allegation, he was taken to FAMSAC at TCH, and in response to his physical condition or injuries, he was admitted to hospital. The admission to hospital triggered ACTCS reporting this incident to OICS as a critical incident under the ICS Act as ‘an assault or use of force that results in a person being admitted to hospital’.

The Inspector may review a ‘critical incident’ at a correctional centre, or in the provision of correctional services. The Inspector considered it appropriate to conduct a review of this incident based on OICS critical incident review criteria, notably, the seriousness of the alleged incident, public reporting, and prevention considerations. Part of this report has been kept confidential in Annexure B under s 28 of the ICS Act because in the Inspector’s view, the public interest considerations against disclosure (including under part (a) undermining security or good order at a correctional centre through potential risks of reprisals and part (d) avoiding identifying or allowing the identification of any person detained, working or otherwise at a correctional centre) outweigh the public interest in favour of disclosure (transparency considerations).

There was limited evidence available to OICS in relation to the alleged assault as there was no CCTV footage of the area the assault is alleged to have occurred. OICS reviewed medical records from JHS and TCH but did not seek to review any assessment of forensic evidence as it was beyond the scope of the review.

Shortly after the incident was reported by the detained person, ACTCS referred the matter to ACTP, and an investigation was ongoing at the time of writing. Given the police investigation, OICS did not seek to interview the detained person. The focus of this review is the response of ACTCS and JHS to the incident as a *report of alleged sexual assault* in the AMC. This report makes no comment on the veracity of the alleged incident itself.

Although OICS has been made aware of allegations of sexual assault in the AMC in the past, this is the first time an alleged sexual assault resulting in admission to hospital has been reported to OICS as a critical incident since OICS was established in 2018. Noting that there are significant risks of sexual assault in prison but the prevalence is considered to be underreported, the Inspector is of the view there are public interest grounds in conducting this review to provide insight into an example of system response to an allegation of sexual assault in the AMC, with a view to identifying good practices and any areas for improvement and prevention.

3. BACKGROUND

The alleged incident concerned a male detained person accommodated in a cottage at the AMC. He reported to a CO a belief that he had been sexually assaulted, and in his report he informed the CO that he had already raised this issue with JHS who he said had dismissed his concerns. In contrast, JHS advised the Review Team that the detained person had agreed with JHS' planned course of action resulting from this consultation (treatment of symptoms with priority follow-up appointment).

In response to the allegation disclosed to the CO, several COs transferred the detained person from his accommodation area. The detained person's belongings were gathered and placed in an unsealed bag in the officer's station. He was interviewed by senior COs and taken to the Hume Health Centre (HHC), where a different JHS GP made an immediate referral to FAMSAC at TCH, and he was later admitted to hospital.

Further factual background is set out in Annexure B, which is fully redacted under s 28 of the ICS Act.

4. MATTERS ARISING FROM THE INCIDENT

4.1 ACT Corrective Services response

Responding COs appear to have acted appropriately to the detained person's report of alleged sexual assault. In particular, and based on the information available to OICS, they took his report seriously and acted promptly to remove him from the accommodation unit and any further potential risk. Further, they referred the detained person to JHS for a therapeutic response and notified ACTP.

The response of COs is commendable, particularly noting that there is no specific training, policy or procedure to guide ACTCS staff on responding to reports of sexual assault, which is discussed in detail in section [4.7](#) of this report.

That the detained person reported the alleged incident to COs may indicate a level of trust and rapport which is an important part of sexual assault response, that people feel safe to report and that they will be believed, and the report will be treated seriously.

Dynamic security and preventing sexual violence in prison

Dynamic security can be especially effective in preventing [sexual and gender based violence] because when staff are regularly interacting with detainees/prisoners they are more likely to detect indicators of vulnerability or detect that someone is a potential perpetrator of abuse. This can help prevent problems before they arise. Similarly, facilities that practice dynamic security methods will be in a better position to identify the first signs of abuse. Victims may also feel more comfortable reporting incidents to staff that they know and trust. Staff will therefore be better equipped to respond appropriately.

[Organisation for Security and Cooperation in Europe \(OSCE\) Office for Democratic Institutions and Human Rights \(2019\) Preventing and Addressing Sexual and Gender-Based Violence in Places of Deprivation of Liberty Standards, Approaches and Examples from the OSCE Region](#), 119.

ACTCS does not have a separate incident reporting category for recording reported sexual assault, which means that data on prevalence of reported sexual assault cannot be easily de-aggregated from general assaults.

OICS 2022 survey of people in detention conducted over several months as part of HPR22 noted that 25% (n=138) of detained people self-reported being 'sexually harassed or sexually assaulted by another detainee' during their time at the AMC. Notwithstanding limitations around asking this sensitive question as part of a broad ranging online survey (albeit that survey responses are anonymous), this number is significant.

There is limited data on the incidence of sexual assault in Australian prisons. One study of the prevalence of sexual assault on prisoners aged 18–25 years in New South Wales prisons throughout 1995 and 1996 found that approximately 1 in 4 (77 out of 300) reported experiencing sexual assault in prison,³ although other studies suggest lower figures.⁴ Capturing data on reported sexual assault in prisons is important to help understand the nature (patterns, trends etc) of sexual assaults reported, track changes in reporting over time, and inform prevention and response strategies.

Finding 1:

That data on reports of sexual assaults in ACT Corrective Services custody cannot currently be easily disaggregated within the category of 'serious assault'.

Recommendation 1:

That ACT Corrective Services improve its collection of reported sexual assaults including disaggregating this data from other assaults.

4.2 Separation of detained people on protection

The alleged sexual assault occurred in a protection unit at AMC. Protection at AMC is defined in the [Corrections Management \(Placement and Shared Cell Policy\) 2022](#) as '[t]he status afforded to detainees who may be at risk from others due to the nature of their offending, or other factors creating a risk to the safety of the detainee.' Admissions Officers (COs) at AMC may identify immediate risk factors on admission and note immediate placement risks. People in detention can be placed on protection at the written direction of a senior manager, or in response to a request from a detained person that they be placed on protection.

The detained person was on protection at his own request due to being assaulted in a mainstream accommodation unit previously. At the time of the alleged assault he was accommodated in a cottage with other detained people who were also on protection for reasons including risks relating to offence types (sex offences, child sex offences), non-associations (previous assaults in custody, debts owed to other detained people etc) and gang affiliations.

This critical incident highlights that detained people at the AMC who are separated from the mainstream population due to their protection status may still face risks to their safety from others on protection status. This issue is not unique to AMC – a comprehensive review of protection in Western Australian (WA) prisons by the Western Australian Inspector of Custodial Services noted:

'within protection units some prisoners were vulnerable to other protection prisoners – even more vulnerable perhaps in this closed environment than they might have been in mainstream.'⁵

The WA Inspector found in that jurisdiction an implicit assumption with protection units that 'one size fits all' was false, and that intimidation and bullying can and does occur in these units.

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- 3 Heilpern, David M (2005) 'Sexual Assault of Prisoners: Reflections' (2005) 28(1) *UNSW Law Journal* 286. Online at <https://www.unswlawjournal.unsw.edu.au/wp-content/uploads/2017/09/28-1-5.pdf> (accessed 20 June 2023).
- 4 See eg Butler, T and Milner, Lucas M (2003) 'The 2001 New South Wales Inmate Health Survey' 134. Online at <https://www.justicehealth.nsw.gov.au/publications/inmate-health-survey-2001.pdf> (accessed 20 June 2023).
- 5 Western Australian Inspector of Custodial Services (2003) 'Vulnerable and predatory prisoners in Western Australia: a review of policy and Practice' 20 May, v.

In the AMC there are limited accommodation options for further separating people on protection based on offence type or risk. One area, the Assisted Care Unit, is an important exception to note, as it may accommodate some detained people on protection who are vulnerable because of a disability such as cognitive impairment or intellectual disability.

The ACT has one adult jail. Therefore, affiliations, conflict and grievances from the community may inform dynamics inside the AMC. Previously, ACTCS adopted the protection category of 'strict protection' – primarily people charged with sex offences and child sex offences. This cohort was accommodated separately from protection and mainstream. AMC's previous practice was also to separate people due to Outlaw Motorcycle Gang affiliation. Yet having many 'cohorts' can create further complexity in a prison with AMC's characteristics. The AMC has 19 different accommodation units and introducing further limitations on mixing may result in fewer opportunities for access to open space, recreation facilities, employment, visits, education, the library and programs.⁶

The approach to protection at AMC is on paper, less structured compared to some other jurisdictions. In the AMC a recommendation for placing a detained person on protection is made by an Area Manager on the basis of their assessment of risk, and approved by the Senior Director – Accommodation. There is no requirement for a 'protection plan' or similar to be prepared to identify and mitigate further risks once on protection. There is no mandated periodic review of protection status, instead the Area Manager will review the requirement for protection status 'where there is new information or a change in the detainee's circumstances.' Examples of other approaches include:

- In Western Australia, each prison has a Protection Multi-Disciplinary Team to assess applications for protection (or removal from protection). There is a Protection Risk Assessment Matrix to assist with assessing and articulating risk, and a protection management plan must be completed for people on protection.⁷
- In Queensland, Corrective Services Custodial Operations Practice guidelines note '[w]hen determining the most appropriate placement of a prisoner, consideration must be given to the risk the prisoner may present to existing prisoners if placed in protection.'⁸

The *Placement and Shared Cell Policy 2022* should consider risk *within* the cohort. Capturing data to enable consideration at any point in time of the number and reason for detained people on protection and how long they have held this status would also assist in managing the protection cohort. The way detained people on protection are managed impacts the whole functioning of the jail – for example, the flow of detained people through the health centre, to programs, activities and visits.

Finding 2:

That when placing a detained person on protection, there is currently no mandatory requirement in ACT Corrective Services policies or procedures to consider risks to that person within the protection cohort, or to implement strategies to mitigate that risk.

6 The AMC population is currently under 400 detained people that include men, women (and non-binary and transgender people although they will be accommodated with men or women); security classifications of minimum, medium and maximum; people on remand and people that are sentenced. The challenges of having many cohorts has been previously identified by the Inspector in reviews including HPR22.

7 Western Australian Department of Justice, Commissioner's Operating Policies and Procedures: Prisons [4.0 Management of Specific Prisoners – 4.10 Protection Prisoners](#) (accessed 15 August 2023).

8 Queensland Corrective Services, Custodial Operations Practice Directive, [Prisoner Accommodation Management ACC – Cell Allocation](#) (accessed 15 August 2023).

4.3 Separation of remand and sentenced persons

Section 44(2) of the CM Act reflects the human rights requirement that detained people on remand be separated from detained people serving a sentence.⁹ Despite this requirement, the AMC does not currently provide separate accommodation for people on remand. This issue has been raised in a number of OICS reports and was covered at length in a previous review.¹⁰

OICS notes that at the time of the alleged offence, the detained person was on remand for charges relating to non-violent offences. He was placed in a unit with detained people convicted of a range of offences.

Finding 3:

Contrary to the *Corrections Management Act 2007* and ACT and international human rights standards, detained people on remand are not accommodated separately from detained people serving a sentence.

4.4 Evidence management practices

Following the detained person being escorted to the Admissions area, AMC temporarily relocated all remaining detained people in the cottage pod to another unit under investigative segregation orders. The area was secured as a crime scene and ACTP were notified. ACTP later advised ACTCS that the cottage pod could be returned to ACTCS for use. The area was then searched, and a number of items of contraband were found and seized.

In relation to collection of physical evidence (the detained person's belongings), this review notes significant concerns around the mishandling of his property by ACTCS. Contrary to the [Corrections Management \(Evidence Management\) Operating Procedure 2022](#) the detained person's property was left unsecured in the officer's station for two days before being taken to the security office to be tagged and secured. The officer's station is a busy environment with traffic of COs and visitors. Leaving evidence in this environment introduces a high risk of contamination limiting the value of the evidence to a criminal investigation. The detained person's property should have been taken into evidence as a matter of priority when the incident was reported to COs as per the *Evidence Management Operating Procedure 2022*.

Furthermore, when ACTP attended the AMC to collect the detained person's belongings, ACTCS provided ACTP the wrong bag of evidence. This had to be swapped for the correct bag when ACTP returned several days later.

OICS has raised concerns about the adherence to policies concerning the management of evidence in previous reviews.¹¹

⁹ See, [Mandela Rules Rule 11\(b\)](#) 'untried prisoners shall be kept separate from convicted prisoners'.

¹⁰ [ACT Inspector of Correctional Services \(2019\), Report of a review of the care and management of remandees at the Alexander Maconochie Centre, Canberra.](#)

¹¹ [ACT Inspector of Correctional Services \(2021\), Report of a review of a critical incident: Hostage taking incident at the Alexander Maconochie Centre on 27 March 2021, Canberra.](#)

Finding 4:

When they were notified of the incident, ACT Corrective Services handling of the detained person's personal property did not meet the standards of evidence management set out in the *Corrections Management (Evidence Management) Operating Procedure 2022*.

Recommendation 2:

That ACT Corrective Services provide refresher training to all custodial staff on Crime Scene and Evidence Preservation and that this form part of the routine training schedule.

4.5 CCTV and cottage accommodation

This alleged incident occurred in a cottage and was not captured by CCTV as there are no cameras inside men's cottages. This means there is no visual evidence available that may have corroborated or contradicted the detained person's allegations that another person/s entered his cell after he fell asleep.

The cottages at AMC are not subject to the regular presence by COs (i.e. staff attending periodically). The officer's station for all cottages is physically separate from the cottages, limiting COs ability to actively monitor what goes on in cottages, compared to cell block accommodation where they can easily observe activity such as people congregating in particular cells or interactions in the dayroom.

OICS has raised the matter of CCTV coverage in cottage accommodation in an earlier critical incident report, of a serious fire that occurred in the stairwell of one of the men's cottages;¹²

Electronic records indicate that one of the Pod doors had been breached ten minutes prior to the fire being detected. Based on the scene of the fire, it appeared that the fire started near the skylight, and spread down to the stairwell from there. Whilst the Review Team were presented with a number of theories as to the chain of events, **there is no CCTV coverage of the cottages and the precise circumstances cannot be determined**. Further, the motive for lighting the fire is unclear.

Initial intelligence information gathered after the event identified a number of suspects that may have been involved. However, **due to a lack of further evidence**, no discipline charges were laid against detainees for lighting the fire. (emphasis added)

In preparing this report, OICS sought ACTCS' views in relation to there being no CCTV coverage in men's cottage accommodation. ACTCS noted:

Cottage accommodation is for detainees who are minimum or medium security classification as such requiring less supervision and security. However, ACTCS acknowledges where incidents do occur in these areas there is limited capability to investigate the matter by viewing CCTV footage. Detainees also retain a right to privacy under s 99(d) of the [*Corrections Management Act 2007* (ACT) CM Act] and this needs to be considered especially for detainees who are minimum security.

¹² [ACT Inspector of Correctional Services \(2021\), Report of a review of a critical incident: Serious fire at the Alexander Maconochie Centre on 14 November 2020, Canberra.](#)

While OICS agrees with this comment in principle, there are other considerations under s 99 of the CM Act which are also relevant when making decisions about CCTV monitoring:

99 Monitoring—general considerations

In exercising a function under this part, the director-general must ensure that the following are balanced appropriately:

- (a) the need to protect the safety of detainees, corrections officers, other people who work at or visit correctional centres, and the community;
- (b) the need for security and good order at correctional centres;
- (c) the benefits of detainees maintaining contact with the community outside correctional centres;
- (d) the need to protect the privacy of detainees;
- (e) the need to prevent intimidation and corruption at correctional centres, and the commission of offences;
- (f) the need to detect prohibited things entering, at, or leaving correctional centres;
- (g) anything else the director-general considers, on reasonable grounds, to be relevant.

Most relevant to this review is the potential positive impact that CCTV in cottages may have on protecting the safety of particularly vulnerable people in detention by deterring violence and providing evidence to support accountability when violence does occur (s99(a)-(b) CM Act). Importantly, however, CCTV should not replace dynamic methods of security.

It has been observed in the context of South Australian prisons that perpetrators engage in abusive behaviour such as assaults, standovers and other coercive practices in prison CCTV blind spots. For example, the [South Australian Independent Commission Against Corruption's 2011 Evaluation of the Practices, Policies & Procedures of the Department for Correctional Services](#) noted in relation to effectiveness of CCTV:

The risks created by blind spots, especially when they are known to both staff and prisoners, are obvious. Prisoners and staff may exploit those weaknesses.¹³

Corrections Victoria is expanding CCTV coverage in Victorian prisons and noted that: 'the minimum standard for CCTV for all medium and maximum-security locations, is 100% coverage of all 'holding' or common areas, 100% of the time.'¹⁴

Placing CCTV in only the common areas of cottages (not in cells or bathrooms where the balance between safety and privacy must shift towards the right to privacy) may discourage some people from engaging in dangerous behaviours, and may also provide evidence to support accountability when offences or discipline breaches occur (for example, providing evidence of who enters/exits cells). This would bring cottages more in line with current CCTV coverage in the AMC's higher security cell block accommodation where communal areas are monitored but individual cells are not. Granted (and as noted by ACTCS) cottages are generally utilised for people on a lower security rating. Nonetheless, the protection offered by CCTV is particularly compelling in the case of detained people placed on protection due to potential risks to their safety and security.

¹³ South Australian Independent Commission Against Corruption, 'Evaluation of the Practices, Policies & Procedures of the Department for Correctional Services' (2011), 111.

¹⁴ Victorian Ombudsman (2022) '[Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison](https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/report-on-investigations-into-the-use-of-force-at-the-metropolitan-remand-centre-and-the-melbourne-assessment-prison/)' <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/report-on-investigations-into-the-use-of-force-at-the-metropolitan-remand-centre-and-the-melbourne-assessment-prison/>

An alternative approach of having all people on protection accommodated in medium or maximum-security cell blocks should not be pursued as it may unreasonably discriminate against this cohort.

In the United States, enforceable standards under a 2003 bipartisan national law to eliminate sexual abuse in prison refer to the need for adequate levels of staffing, and, where applicable, video monitoring, to protect inmates against sexual abuse.¹⁵ The standards require that '[w]hen installing or updating a video monitoring system, electronic surveillance system, or other monitoring technology, the agency shall consider how such technology may enhance the agency's ability to protect inmates from sexual abuse.'¹⁶

The introduction of CCTV cameras in cottages, in a way that does not unreasonably limit the right to privacy, could prevent some sexual violence and enable collection of evidence to contribute to accountability mechanisms. CCTV should only be used for protective or investigatory purposes and should not replace dynamic methods of security. This may also be relevant to other safety and security matters, for example, identification of detained people involved in the introduction of contraband or commission of other disciplinary offences (see [OICS Critical Incident Review of a Riot and serious fire at the Alexander Maconochie Centre on 10 November 2020](#)).

Finding 5:

That cottage accommodation for men at the Alexander Maconochie Centre lack CCTV coverage or regular physical monitoring from staff, creating a higher risk of assaults, standover, and introduction of contraband.

Recommendation 3:

That ACT Corrective Services install enhanced security systems, such as CCTV cameras, in communal areas of the Alexander Maconochie Centre cottages not presently subject to CCTV coverage (including cottage entry doors and cell doors) as a protective measure and as a potential source of evidence.

4.6 Justice Health response

According to records considered by the review, the detained person presented to JHS at the HHC and discussed the possibility that he may have been sexually assaulted while asleep. The material further suggests that the detained person did not have any recollection of being assaulted but that the pain was similar to that experienced following being sexually assault in the past.

Records do not detail any actions considered or initiated during the initial consultation in response to the possible alleged sexual assault. The material does not discuss any potential follow up in relation to determining the detained person's mental state and/or risk of self-harm or suicidal ideation following the disclosure of a possible alleged sexual assault.

In addition to these records, JHS informed the review that due to the reportedly delayed development of symptoms, past history, physical examination and the lack of clear recall, JHS initially felt the possibility of a sexual assault was low although not impossible. JHS told the review that it organised a priority follow-up appointment at the HHC to enable the detained person to reflect further on events and allow for review of his symptoms. JHS informed the review that the detained person agreed with this plan.

15 See *Prison Rape Elimination Act of 2003* (PREA) 34 USC Ch 303.

16 See Standard 115.18(b). PREA Standards in Focus – 115.18 [Upgrades to facilities and technologies](#).

There are no JHS policies or procedures specific to a correctional environment to guide health staff responses to disclosures of alleged sexual assault in the AMC. The only two relevant documents relate to processes for clinician's referral of patients to FAMSAC ([Canberra Health Services Procedure – Referral to Forensic and Medical Sexual Assault Care](#))¹⁷ as well as a 2015 Mental Health, Justice Health, Alcohol and Drug Service Clinical Procedure on Management of Sexual Assault, that is not specific to AMC.

After the detained person discussed the alleged sexual assault with a JHS GP the following day, an urgent referral and timely transfer to FAMSAC at TCH occurred. On return to AMC after discharge from TCH, there was follow up by JHS Primary Health and Custodial Mental Health (CMH) and there was clear and detailed information captured in the health records.

Clinical approaches to responding to sexual violence

The [World Health Organization](#) (WHO) provides guidance to improve the response of professional health practitioners responding to individuals who have been the victim of sexual violence.¹⁸ The guiding principle demonstrates a person-centred approach, ensuring the safety and physical and psychosocial wellbeing of the person is prioritised. The WHO highlights the need to ensure that the person feels believed and that their experience is validated. The guidelines aim ensures that the persons autonomy is respected and that they are provided with all the relevant information to make an informed decision about their healthcare as well as their rights and options for making a formal report to police if they choose to do so.

These guidelines highlight that sexual violence against men is largely underreported due to men being reluctant to report sexual assault for fear of shame and embarrassment at being the victim of sexual violence. It is also noted that there are certain settings where sexual violence against men is more prevalent than for women, including in prison. It is acknowledged that men experience many of the same physical and psychological responses to sexual violence as women, such as depression, suicidal ideation, anger and sexual and relationship problems. This further enforces the need for a person-centred approach to responding to disclosure of sexual assault and ensuring that the person feels safe and believed to disclose their experience.

Further guidance for the clinical management of patients presenting following a recent sexual assault in the [Australian Journal of General Practice](#) highlights that the initial assessment and response of a person following a disclosure of sexual assault can have a significant impact on their recovery and feelings of safety.¹⁹ It is also an important opportunity to address medical, safety and psychological concerns including referral to specialist forensic medical care. There is also advice on the importance of clear and precise clinical documentation following a disclosure of sexual assault. Given that there is no statute of limitations on reporting a sexual assault and that clinical notes may be subpoenaed for future legal proceedings, it is important that notes include a detailed record of the patient's version of events, details of injuries and documentation on the treatment and management of the person.

17 CHS21/238, issued 19/04/2021.

18 The World Health Organization 2003, Guidelines for medico-legal care of victims of sexual violence.

19 Freedman, E. (2020), 'Clinical management of patients presenting following a sexual assault', Australian Journal of General Practice, Vol. 49, No. 7, July 2020, pp 406–411, [Clinical-management-of-patients-presenting-followi.aspx \(racgp.org.au\)](#).

4.7 Lack of policies and procedures

Neither ACTCS nor JHS have a policy or procedure specific to sexual assault in a correctional environment, including, for example, to guide staff responses to disclosure of potential sexual assault. Responding to allegations of sexual assault in a correctional environment can be complex and involve a range of entities (including health, corrections and ACTP). Allegations must be treated with sensitivity and discretion, there are obligations on ACTCS to assess any potential risks to the health and safety of the person making the report and others after an allegation is made. There may be significant follow up and support required, as well as other considerations for example accommodation placement.

Although aspects of this incident were handled well, including staff displaying sensitivity and discretion, OICS is of the view there is the need for further guidance through policy and procedures and training for staff including staff new to a correctional setting.

It would be beneficial for a JHS policy, procedure, or clinical guidance to provide clear requirements for staff when dealing with reported or potential sexual assault, including the range of matters to consider (such as follow up tests, Post Exposure Prophylaxis (PEP) and mental health support etc) and how this should be documented in the clinical records.

In HPR22, OICS noted that the lack of any ACTCS strategy or policy document on the management of sexual coercion and violence in the correctional setting was impacting on ACTCS's duty of care to keep people in detention safe from sexual violence. As noted above, results from HPR22 survey of people in detention show that 25% (n=138) 'reported being sexually harassed or sexually assaulted by another detainee' during their time at the AMC. In OICS view there is a need for policy direction and staff training to assist staff to identify risks and respond appropriately to a report of sexual assault.

HPR22 made the following recommendation about this matter:

That ACT Corrective Services consult with key stakeholders to develop a strategy to prevent, track and respond to incidents of sexual coercion and violence in the Alexander Maconochie Centre.

The [Government Response](#) to HPR22 was tabled in the Legislative Assembly on 29 June 2023. OICS notes that Recommendation 7 was 'Agreed in Principle' by the ACT Government with the comment:

'...Noting that no jurisdiction appears to have a solution to this issue, ACTCS will investigate the learnings from the Sexual Assault Prevention and Response Program, and work with CHS, HRC and other stakeholders to consider improvements to ACTCS' current policy, training and general approach in this area. ACTCS will then be better placed to ascertain the utility of such a strategy and whether it would achieve the intent of the recommendation.'

The stated deadline for completion is 31 December 2023. OICS welcomes consideration of this issue by ACTCS and other stakeholders. Whilst it may seem unattainable to fully eliminate sexual violence in prison, other jurisdictions have taken steps to establish frameworks for prevention and reporting – some of which are highlighted in the box below.

Sexual assault prevention and responses for custodial settings: Approaches from other jurisdictions

Other Australian jurisdictions have developed policies and procedures specific to the response and management of sexual violence in a correctional environment. Corrective Services NSW (CSNSW) [Assaults – Operations Policy and Procedures](#) details responsibilities of CSNSW staff, Justice Health and Forensic Mental Health Network (JH&FMHN) staff, sexual assault response procedures, evidence management and referral processes to health and forensic medical care.

The JH&FMHN have specific guidance in [Sexual Assault Management](#) policy and procedures for all staff on the provision of care for those people who have been sexually assaulted in a correctional centre. The policy outlines a duty of care and partnerships between Justice Health and Forensic Mental Health Network, Private Correctional Centre Operators, CSNSW, Youth Justice NSW and Local Health Districts, emphasising that such partnerships are central to facilitating appropriate and sensitive responses to and management of disclosures of sexual assault in NSW custodial facilities.

Canada recently commenced the first national prevalence study into sexual coercion and violence in Canadian federal corrections to better understand the scope of the issue and risk factors for sexual victimisation. In 2022, Corrective Services Canada released a [Commissioner’s Directive on Sexual Coercion and Violence](#) which seeks to ‘establish and maintain a zero tolerance strategy to prevent, identify, respond to, investigate and monitor incidents of sexual assault, or allegations of sexual assault towards offenders in federal custody.’²⁰ The Commissioner’s Directive provides guidance on the roles and responsibilities of various staff and contractors, outlines procedures for identifying and preventing incidents, responding to incidents and allegations, evidence management, reporting, monitoring and investigations. The policy also directs health staff to health specific guidelines for the [Health Care Response to Sexual Assaults of Offenders](#).²¹

In recognition of the likely high prevalence of rape, underreporting, and harm caused within prison and post release from sexual assault in US prisons, in 2003 US Congress passed the *Prison Rape Elimination Act* (PREA). PREA requires a zero-tolerance policy to sexual assault with measures to encourage reporting and support for victims, mandates enforceable standards, requires audits of each prison every three years against these standards, promotes avenues for reporting of sexual assault, and staff training.

The lack of any ACTCS or JHS policy or procedure specific to the management and response to sexual assault in a correctional environment increases the risk of inconsistent or inadequate responses. This may lead to re-traumatisation, put people’s safety at risk (e.g. risk of further assault), and impede with the prosecution of alleged offenders through inappropriate handling of evidence. While JHS staff rely on guidance from the referral to FAMSAC procedure, this policy is silent on specific responses in correctional environments.

20 Correctional Service Canada (2022) [Commissioner’s Directive 574 on Sexual Coercion and Violence](#).

21 Correctional Services Canada (2022) Guidelines 800–11 – Health Care Response to Sexual Assaults of Offenders.

OICS is not suggesting that these policies should mandate that a health professional must report allegations of sexual assault without a detained person's consent on every occasion. Rather, like any other setting, a health professional would usually only disclose information about an alleged assault to others with the person's consent unless there are exceptional circumstances.²²

Nonetheless, key steps in responding to allegations of sexual assault in a custodial setting should be outlined in local policies and procedures. It is also vital that there is clear guidance for all staff on expectations for communication and information sharing between ACTCS and JHS regarding the ongoing management of a person following an alleged sexual assault at the AMC. This includes required follow up with mental health and welfare needs, safety and accommodation placement. Such policies must be crafted to ensure there is not a deterrent effect on people seeking medical treatment following an assault.

Finding 6:

That at the time of this incident there were no ACT Corrective Services or Justice Health Services policies, procedures, or specific training to guide staff on the management of and response to disclosures of potential sexual assault at the AMC specific to a correctional setting.

4.8 Incident reporting and staff training

Where a report of sexual assault is made in the AMC, it is dealt with under the broader category of 'assault'. The [Corrections Management \(Incident Reporting, Notification and Debriefs\) Policy 2020](#) (Incident Reporting Policy) and associated procedure is to be followed. This approach does not articulate important considerations relevant to sexual assault such as:

- The importance of staff responding to all allegations of sexual assault as per policy, regardless of their opinion as to the credibility of the allegation;
- The importance of taking immediate action to ensure physical safety of alleged victims and others (eg in relation to accommodation placement);
- The importance of discretion in reporting (need to know basis);
- The need for a timely therapeutic response (referral to health service);
- The importance of reducing risks of re-traumatisation, including in escorts to hospital;
- The risk that the incident may trigger mental health concerns (risk of suicide and self harm).²³

22 For example, the CHS FAMSAC procedure notes that 'staff must make a mandated report for people under 18 years who are reporting a sexual assault'. The CHS *Clinical Records Management* procedure also states 'in situations where there is a risk of harm to themselves or others, consent is not required for sharing of information to relevant parties and involvement of others in care delivery'.

23 See e.g., [Correctional Service Canada \(2022\) Commissioner's Directive 574 on Sexual Coercion and Violence](#).

The *Incident Reporting Policy* requirements, and ACTCS actions are summarised below:

Requirements under Incident Reporting, Notifications and Debriefs Policy	ACTCS response
Officers involved to complete incident reports forms	Completed
An Incident Summary Form completed (a mandatory requirement for assaults)	Not completed
ACT Policing notified	Completed
Crime scene preserved in accordance with the management of evidence operations procedures	Partially completed
Officer in charge notify the next of kin 'where the detainee has experienced serious injury or illness and is admitted to a health facility' unless the detainee declines. This is to be recorded on the Incident Summary Form	Not clear – no Incident Summary Form completed
Hot debrief required in response to all detainee on detainee assaults	Not completed
Formal debrief required if considered a 'serious assault'	Not completed, unclear if ACTCS considered threshold met

This table illustrates basic aspects of incident reporting were not followed. The lack of completing an Incident Summary Report form for an alleged sexual assault resulting in admission to hospital is unacceptable.

At the time of the alleged incident, neither ACTCS or JHS provided specific training to their staff in relation to responding to allegations of sexual assault or harassment at the AMC. Since this incident, OICS have been advised that JHS has initiated training facilitated by FAMSAC on responses to sexual assault. JHS have also indicated that it is finalising updates to its Justice Health Operational Guideline to provide the clinical team greater guidance for situations where allegations of sexual assault are made within the AMC.

Workforce development that aligns with the principles of trauma informed care not only empower staff to feel adequately skilled and prepared to respond to difficult and traumatic incidents, but also fosters an environment where people in detention feel respected and safe to disclose incidents of sexual violence. Specific training on trauma-informed approaches to responding to reports of sexual coercion and violence would enhance workforce capability.

ACTCS noted in the government response to HPR22, that staff have recently been given additional guidance in working with people who have experienced trauma, however, ACTCS staff do not receive specific training in identifying or responding to reports of sexual assault in prison, nor is there any specific policy or procedure to guide their response. In OICS view, specific training and written guidance on responding to allegations of sexual assault in prison is important, to provide staff a reference point (particularly newer staff) and to ensure a consistent approach. This is important as sexual assault is a serious criminal offence and there are associated obligations on COs around preservation of the crime scene and evidence.

Rather than making specific recommendations to ACTCS and JHS regarding the need for individual policies or training, OICS notes existing relevant government commitments in this area, and recommends outputs related to those commitments be made public.

Finding 7:

That in their response to Recommendation 7 of the Healthy Prison Review of the Alexander Maconochie Centre 2022, ACT Corrective Services committed to work with Canberra Health Services, the ACT Human Rights Commission and other stakeholders to consider improvements to ACTCS' current policy, training and general approach in this area including measures to prevent, track and respond to incidents of sexual coercion and violence in the Alexander Maconochie Centre.

Recommendation 4:

That ACT Corrective Services report publicly on outcomes arising from its commitment made in the Government Response to Recommendation 7 of the Healthy Prison Review of the Alexander Maconochie Centre 2022, by its deadline of 31 December 2023.

Recommendation 5:

That Canberra Health Services review their approach to responding to allegations of sexual coercion and violence in custodial settings and report publicly on the outcome by 31 December 2023.

APPENDIX 1: JURISDICTION, METHODOLOGY AND PROCEDURAL REQUIREMENTS

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 OICS has elected not to review some relatively low-level ACTCS' incidents in the past (detailed in our annual reports). OICS has developed an operating procedure to guide decision making.

We determined that this critical incident met our review criteria of:

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

What is a 'critical incident'?

Section 17(2) of the ICS Act provides a list of events that are critical incidents. This review concerns an event relevant to section 17(2)(g) being an incident involving an assault or use of force that results in a person being admitted to a hospital. In this case, a detained person was allegedly sexually assaulted by another detained person at the AMC resulting in the alleged victim being admitted to hospital.

What must the Inspector report on?

Section 27 of the ICS 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.²⁴ 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.

As part of OICS critical incident review function, OICS confines its assessment, findings and recommendations to its legislated mandate, being to promote the continuous improvement of correctional centres and correctional services, and prevent ill-treatment. The ICS Act gives the example of a 'health facility' in the definition of correctional centre.

²⁴ 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.

Public interest considerations relating to this report

Section 28(1) of the ICS 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 detained people and staff involved in the incident has been withheld in this report.

Further, the Inspector decided that for safety and security reasons this report does not describe background information on any person involved in this incident in great detail or describe the specific details of where the incident occurred. This is particularly important in the case of an alleged sexual assault where discussion of personal information could compromise the ongoing safety and wellbeing of the alleged victim, and may discourage future reporting of incidents.

The Review Team

The Review Team comprised:

- Rebecca Minty, Inspector of Correctional Services
- Pip Courtney-Bailey, Assistant Inspector of Correctional Services
- Maureen Hanly, Clinical Reviewer

Given the subject matter of this review, OICS engaged a clinical reviewer. Ms Hanly has almost 40 years’ experience in the health industry across several jurisdictions in Australia, first as a nurse, and then senior executive, manager and leader. She has undertaken reviews at the facility and organisational level across a range of areas including justice health, community and inpatient mental health, primary health, forensic mental health, pharmaceutical/medication management and workplace culture.

Form of the review

The ICS 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. Canberra Health Services. A desk-top review does not involve the Inspectorate in direct action such as interviewing staff or detained people 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 ICS 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.

This incident was primarily conducted as a desk-top review (review of AMC staff Incident Reports, case notes on the ACTCS information system CORIS, and medical records), with the addition of an interview with a JHS clinician. As required by s 29 of the ICS Act, a draft report was provided to ACTCS and JHS for fact-checking, and comments in response were considered and where relevant amendments were made in finalising the draft.

ANNEXURE B: REDACTED BACKGROUND RELATING TO THE INCIDENT

This appendix has been fully redacted in the tabled version of this report pursuant to s 28 of the *Inspector of Correctional Services Act 2017*. It has been provided to the Minister for Corrections and Minister for Justice Health, the Director-General, Justice and Community Safety Directorate and Chief Executive Officer, Canberra Health Services.

