

Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre

**A Report by the ACT Human Rights and
Discrimination Commissioner**

April 2014

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Mr Simon Corbell MLA
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CC:
Mr Shane Rattenbury MLA
Minister for Corrections

Ms Katy Gallagher MLA
Chief Minister
Minister for Health

Dear Mr Corbell

Re: Human Rights Audit of Women at the Alexander Maconochie Centre.

I am pleased to provide you with 5 copies of *Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre*.

The Report has been prepared under s17(1), s42(1) and s87 of the *Human Rights Commission Act 2005*, and s41 of the *Human Rights Act 2004*. It considers substantive provisions of the *Discrimination Act 1991* and Human Rights Act.

The Report highlights positive and negative practice against relevant legislation and standards, and makes recommendations for reform. As required under s 80(2) of the *Human Rights Commission Act 2005*, a draft copy of the report was previously provided to those people potentially the subject of adverse comments within the Report.

Yours sincerely

A handwritten signature in grey ink that reads "Helen Watchirs".

Dr Helen Watchirs
Human Rights & Discrimination Commissioner

11 April 2014

This Report is dedicated to the memory of Rachel Shugg

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Part 1. Introduction

1.1 Photographs

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PHOTO 2: WALKWAY WITH TACTILE INDICATORS

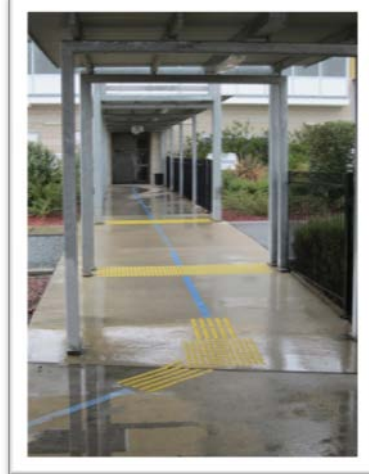


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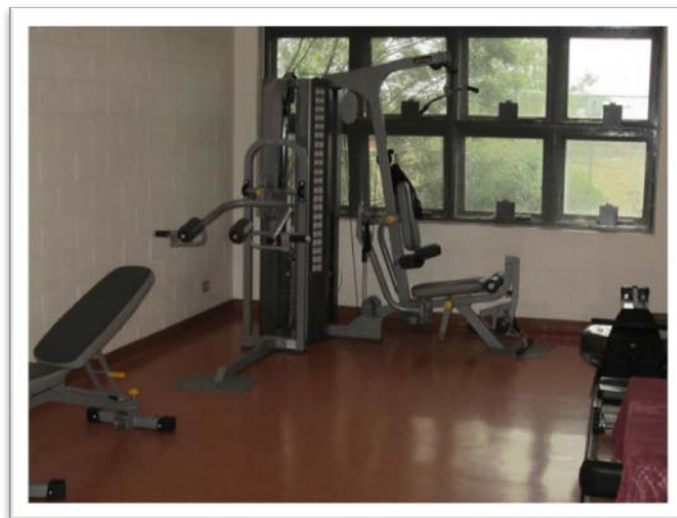


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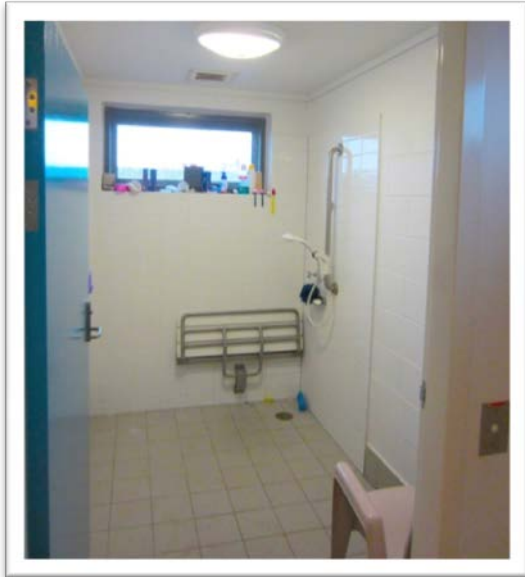


PHOTO 15: CELL IN CRISIS SUPPORT UNIT



PHOTO 16: TOILET IN CRISIS SUPPORT UNIT CELL



1.2 Executive Summary

Introduction

- 1.2.1 On 30 January 2013, the ACT Human Rights and Discrimination Commissioner announced a review of the effect and implementation of Territory laws governing the treatment of women detainees at the Alexander Maconochie Centre (AMC) pursuant to s 41 of the *Human Rights Act 2004 (HR Act)* and her functions under the *Discrimination Act 1991* and the *Human Rights Commission Act 2005*.
- 1.2.2 This Audit was commenced in response to concerns raised with the Commissioner by a number of stakeholders about perceived inequalities faced by the small number of women detained at the AMC compared with the much larger male population in the prison.
- 1.2.3 The Audit assesses the law, policy and practices of the AMC, which has been operational for five years, in relation to the treatment of women detainees against the benchmark of international human rights norms enshrined in the *HR Act*, including the International Covenant on Civil and Political Rights, and other relevant international standards. These include the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

Key issues

- 1.2.4 The ACT is a small jurisdiction with a single full-time prison facility, the AMC, accommodating both male and female detainees within separate precincts.¹ The number of women detainees in the AMC, including remandees, is low, with a daily average of 14 women in 2012-13, compared with 252 men.² In this period, women detainees made up just 5.2% of the total prison population in the ACT, compared to the Australian average for women detainees of 7.5%.³ While there are a small number of women detainees serving long sentences at the AMC, the average stay for other women detainees is around 100 days, including time on remand.⁴
- 1.2.5 Overall, many of the issues identified in the Audit reflect the significant challenges posed by the small and fluctuating population of women detainees with a diverse range of individual needs.
- 1.2.6 In general, the Commissioner found that women detainees at AMC are treated humanely in custody, and that correctional staff and management are respectful of the particular needs and vulnerabilities of women. The cottage accommodation and facilities provided within the women's precinct provide a normalised environment which encourages women to maintain and develop living skills. The Commissioner was

¹ The ACT also has a Periodic Detention Centre, which accommodates male and female detainees over weekend periods.

² Steering Committee for the Review of Government Service Provision, *Report on Government Services 2014*, vol C: Justice (Productivity Commission, 2014), Table 8A.1
<http://www.pc.gov.au/data/assets/pdf_file/0015/132324/rogs-2014-volumec-chapter8.pdf>.

³ Ibid.

⁴ Demographic information provided by ACTCS 2014.

pleased to find that strip searching of women detainees occurs rarely after induction, and that the application of disciplinary processes, segregation and use of force appears to be fair and considered. The extended Throughcare Program to support detainees during the critical months after release from prison is a welcome development. This is available to all women released from the AMC, including those held on remand.

- 1.2.7 Nevertheless, the Commissioner is concerned that rehabilitation services available to women detainees are in some respects more limited than those available to male detainees. In particular, women detainees have significantly less access to structured employment opportunities within the prison than men. Women are also not able to access some programs and facilities available to men such as the Solaris Therapeutic Community, and the Transitional Release Cottage. While there are quality educational courses and programs offered to women, these are not sufficient to fill their days with purposeful activity. Activities and programs that are available are also disrupted by operational issues, and the women's cottages appeared to be locked down more often than other areas of the prison as a result of staffing shortages. The Commissioner considers that more could be done to foster a culture within the women's area where women are expected to follow a routine and participate in daily activities that are conducive to rehabilitation.
- 1.2.8 Another area of particular concern identified in the Audit is the operation of the Women and Children's program at the AMC. Although it was intended that women who are the primary carers of young children could have their children stay with them at the AMC, where this was in the best interests of the child, no application has yet been approved. The assessment process appears to be overly complex and protracted, and the program requires women to have an available carer in the community and another detainee to provide care for the child where needed, which may disadvantage women and children who do not have these supports.
- 1.2.9 The Commissioner also has concerns regarding women detainees with ongoing mental health needs residing in the Crisis Support Unit at the AMC for extended periods. Although improvements have been made to the operation of the Crisis Support Unit, women detainees face isolation and limitations on their privacy in this environment, which was not designed for long term accommodation of detainees. Linked to this is the Commissioner's concern that there are no specific policies for detainees with disabilities.
- 1.2.10 While a number of stakeholders raised concerns regarding the co-location of women detainees in a precinct within a predominantly male prison, in the Commissioner's view, the issues of scale would not be resolved by the establishment of a separate women's prison in the ACT. There are advantages for women in the current co-location with men in having access to a range of facilities such as the health clinic, dentist, education facilities, library and visiting area. It would be cost-prohibitive to provide these facilities and services to the same extent in a stand-alone women's prison.
- 1.2.11 The alternative of transferring women to the NSW prison system, which has greater numbers of women detainees, would increase women's rehabilitation opportunities, and may be a preferable option for the small minority of women serving long sentences. However, this would have the significant disadvantage of taking women away from their families and community supports in the ACT, and would not benefit

the majority of women detainees who are serving relatively short sentences at the AMC.

- 1.2.12 Accordingly, in this Audit the Commissioner has focused on identifying improvements that could be made to service provision for women detainees within the AMC to improve equality, such as the development of a prison industry to provide more structured employment opportunities for all detainees. The Report also highlights areas for consideration over the longer term, such as the development of a transitional release facility for women detainees. Key findings in each section of the Report are summarised below.

Summary of findings

Induction and Accommodation

- 1.2.13 Overall it appears that the induction processes at AMC are respectful of women's human rights and that women are assessed and provided with essential information about the prison on entry.
- 1.2.14 Women detainees of all classifications are accommodated at AMC in shared cottage accommodation, rather than in cell blocks. The design of the women's area of the AMC reflects a focus on the particular needs of women detainees for additional privacy, and the fact that they generally pose less of a security risk than male detainees. The general cottage accommodation is a comfortable environment for women detainees. However, there are limitations on privacy within the High Needs Cottage, where cells are observed by CCTV cameras, regardless of the particular circumstances or needs of each woman in that cottage.
- 1.2.15 Within the women's precinct, sentenced women and women remanded in custody have been accommodated together in the same cottage. Human rights standards, including s 19 of the *HR Act*, dictate that remandees should be separated from sentenced prisoners, unless there are exceptional circumstances. However, this is made more difficult in the ACT due to the small numbers of women detainees, who often know one another in the community and can have significant conflicts with each other. In these circumstances, the Commissioner considers that ACTCS' approach of grouping women so as to minimise conflict and risk of harm is reasonable, even where this involves mixing remanded and sentenced women in a cottage, provided that these issues are carefully considered on a case by case basis.
- 1.2.16 The Commissioner is concerned that women serving longer sentences are not able to access the Transitional Release Cottage to facilitate their transition into the community. It appears that the exclusion of women in practice, despite a policy which on its face applies to both male and female detainees, would amount to unlawful discrimination on the grounds of sex.
- 1.2.17 The Crisis Support Unit (CSU) is a facility within the AMC for detainees who have been assessed as being 'at risk' of harm to themselves or others, and who require close observation and psychological support. This Unit is the only area in AMC that accommodates both men and women. However, it is rare for there to be more than one woman accommodated in the CSU at any one time, and women face significant isolation when placed in the Unit with male detainees. While the CSU is intended to be

used for periods of crisis, the Commissioner is concerned that two women detainees were each placed in the Unit for over 100 days in 2012-13. Privacy at the CSU for women, and the lack of appropriate shower facilities is also a concern. The Commissioner notes that there have been recent improvements in practice at the CSU. A new policy for detainees 'at risk' is being finalised and ACTCS has established a multidisciplinary High Risk Assessment Team which should have an impact in reducing the length of time detainees remain in the CSU.

Staffing

- 1.2.18 Women interviewed generally had good relationships with some or most of the staff, and most did not express concerns about being supervised by male officers. The Commissioner was impressed by the professionalism and humane attitudes of the officers interviewed for the Audit. While some women detainees reported negative experiences at AMC, a majority agreed with the statement that they were "treated as a human being and a person of value at the AMC."
- 1.2.19 However, there has been a fall in the number of female officers since the 2007 Audit of correctional facilities. While correctional officers receive ongoing training in a number of areas, there is also currently no specific training module on the particular needs of women detainees.
- 1.2.20 The Commissioner notes that current staffing levels at AMC appear inadequate to meet the needs of the AMC prison population, particularly as the male detainee population has experienced rapid growth over the Audit period. Staff shortages are the most frequent reason indicated for lockdowns. Women detainees appear to have been locked down more often than cohorts of male detainees. Although women are generally able to access common areas within the cottages during lockdowns, these do disrupt scheduled activities and programs for women.

Minimum Entitlements

- 1.2.21 The opportunity for women at AMC to cook for themselves, and to manage budgeting, shopping and cooking within a shared household, maintains and develops women's life skills, and creates a normalised environment. Generally women detainees enjoy this freedom. Overall, the Commissioner is satisfied that ACTCS meet human rights standards in relation to nutrition, clothing, bedding and personal hygiene.

Visits

- 1.2.22 The AMC has an extensive and generous visiting program and continuity of visits is prioritised by AMC management. It appears that the visit facilities and scheduling of visits at AMC represent best practice. While there is a range of useful information available to visitors, this has not been easy to locate on the ACTCS website, and should be made more accessible. Concerns were raised with the Commissioner regarding inter-prison visits, where family members or couples are both detained at AMC. The procedure regarding decision making in this area is not clear and may not align with detainees' minimum entitlements to contact with family, or with the *Corrections Management Act 2007 (CM Act)*.

Legal Assistance

- 1.2.23 Although there were some initial difficulties with access, women detainees may now participate in a weekly outreach clinic established by the Prisoners' Legal Service. Improvements are being made to the assessment and screening for legal issues as part of the case management process. Some concerns were raised with the Commissioner regarding privacy and confidentiality of legal visits.

Searching

- 1.2.24 The very significant reduction in reliance on strip-searching of women at the AMC from previous practices reported in the 2007 Audit represents a positive achievement in respecting the human rights of women detainees. ACTCS now leads practice in this area compared to other jurisdictions. Strip searching of women detainees occurs infrequently, and generally only on admission. The Commissioner identified some issues with the documentation of reasons for searching, and recommends that alternatives to strip-searching on admission be considered on a case by case basis.

Discipline

- 1.2.25 The application of disciplinary processes and penalties at the AMC appears to have been generally fair and reasonable, and consistent with human rights standards. ACTCS appears to comply with human rights obligations in relation to use of force, using techniques of de-escalation before resorting to physical force, which occurs rarely.

Complaints and oversight mechanisms

- 1.2.26 The report identifies some inconsistency in handling internal complaints by women detainees. It appears, however, that serious complaints have been considered in a thorough and professional way.
- 1.2.27 Two Official Visitors attend the AMC and may talk to detainees and consider complaints from detainees and others on their behalf. Detainees may also make complaints to a number of external agencies including the Ombudsman, the Public Advocate, and the ACT Human Rights Commission. A number of women interviewed said that they had not met either Official Visitor and were not aware of how to contact them. There was also some confusion about the roles of the different agencies. The Commissioner makes recommendations to improve co-ordination and accessibility of these agencies.

Women's Parenting Responsibilities

- 1.2.28 The AMC supports contact between mothers in custody and their children through regular and flexible visits and family days. Visitors' areas include a children's play area with toys and an outside playground. Women detainees were generally very positive about visiting arrangements and the SHINE for Kids program provided for children during visiting sessions. The Commissioner identifies some concerns regarding non contact visits, and termination of visits when children need to use the toilet.
- 1.2.29 A number of women detainees raised the difficulty of arranging contact with their children when they had been placed into care, including problems facilitating their

transport to the AMC. The Commissioner found that communication between Care and Protection Services and parents in custody could be improved.

- 1.2.30 The Report identifies a number of issues relating to the Women and Children's Program, which provides an opportunity for eligible women to care for their children at the AMC until the age of four years. No woman detainee has yet had a child reside with her at the AMC and the Commissioner is aware of only three applications by women to participate in the program. The Commissioner identifies concerns regarding the assessment process and eligibility criteria, including the requirement of a community carer, and the requirement for another detainee to be a temporary carer for the child in a small cohort of women detainees. The Commissioner considers that community options would generally be preferable to detention of a child in custody, and considers that legislative amendments should be considered to allow for conditional release of primary carers into residential community facilities in appropriate circumstances.

Health

- 1.2.31 Generally, women detainees interviewed for this Audit were satisfied with the health service they received at AMC. Women appear to be receiving a level of access to health services that is equivalent to, or slightly higher than that of male detainees. Women have access to a female doctor who provides a full women's health service. Sexual health services and healthcare for pregnant women at AMC are also generally comprehensive. The Commissioner also welcomes the commencement of a specific women's counselling clinic in January 2014.
- 1.2.32 However, a number of women did report delays in receiving specific treatments, as well as delays accessing the Health Centre due to staffing issues, as detainees generally require escorts to attend an appointment at the Centre. Concerns were also raised about delays in provision of medication that women had been prescribed in the community. The Commissioner recommends improvements in the induction assessment process to avoid the possible effects of withdrawal from prescription medication.
- 1.2.33 Detainees with mental health issues may receive treatment at the AMC, and may in some cases be admitted to the CSU. Detainees may also be transferred to health facilities, such as the Adult Mental Health Unit at the Canberra Hospital, if requiring specialised care. During this Audit the clinical management of detainees with mental health issues at the AMC was reviewed and improved to provide a more multi-disciplinary service.

Case management

- 1.2.34 There are many positive aspects of case management for women at AMC, and women expressed positive regard for the Women's Case Manager. However, it does appear that the case management model could be strengthened to play a greater role in assisting rehabilitation and to encourage women's engagement in programs and activities. Case management plans reviewed by the Commissioner were generally fairly brief documents, noting key criminogenic needs and the corresponding programs or services that women had been referred to. Case managers would benefit from specific

training on effective case management and motivational techniques, and training on the gender based needs of women offenders.

- 1.2.35 The engagement of a Women's Services Co-ordinator for a short period created additional capacity in this small area to improve co-ordination of external services, as well as meeting women's individual needs and requests. The Commissioner recommends that ACTCS be funded to continue this position on a permanent basis.

Education and Training

- 1.2.36 Education for all detainees at the AMC is provided by contractor Auswide Projects. In the AMC, the education program is available to remanded and sentenced women on the same basis, which is a positive practice. Women spend less time in the Education Building than some cohorts of male detainees, however this is supplemented by courses offered within the women's precinct, so that total hours of education/vocational training available to women detainees is equivalent or greater than hours available to men. Currently women have the same course choices as male detainees, except for the Automotive Certificate II, which is available to men only. The Commissioner recommends that this restriction be reviewed. Limited periods in the Education Building have made it difficult for women to study computer based courses in their own time, which could be improved through compatible computers in the women's precinct. Women serving longer sentences would benefit from continuing vocational courses offered beyond an introductory level.

Rehabilitation Services

- 1.2.37 A number of community agencies visit women detainees at the AMC, at regular times or by appointment. While some agencies reported difficulties with co-ordination of appointments, and being affected by operational issues, this appeared to have improved significantly with the engagement of a Women's Services Co-ordinator. Provision of outreach services to the AMC can be resource intensive for small agencies and can be difficult without specific funding. Rehabilitation programs offered by ACTCS, including those co-facilitated with other agencies, were generally found to be helpful by women detainees, although concerns were raised about programs being disrupted by lockdowns or being cancelled due to small numbers. Women detainees have access to a more limited range of rehabilitation programs than men, although their small numbers mean that it is easier for women to access programs as required. The Commissioner recommends that further programs be considered to meet particular needs of women detainees.
- 1.2.38 The Commissioner is concerned that women are not able to access the Solaris Therapeutic Community which is an intensive four-month residential program operating in a separate cottage, which has a focus on addressing alcohol and other drug addiction. The Commissioner recommends that a modified version of the Therapeutic Community be considered for women detainees.

Employment

- 1.2.39 Employment opportunities for detainees at AMC are based around operations within the prison, as there is currently no prison industry. Women are disadvantaged in relation to employment available to them as they are not able to hold positions

working with male detainees, and the scope of employment available within the women's area is very limited. There are insufficient women available to fully staff shifts in areas such as the kitchen or laundry, thus they are not able to access this employment. Most positions available to women are self-directed, without set working hours or supervision, and do not provide the discipline of structured work equivalent to employment outside the prison. One exception is the barista program which is a positive model for detainee employment, combining accredited vocational training with structured work that is equivalent to barista positions in the community. Unfortunately this program is only available to a few women for a small number of hours per week.

- 1.2.40 A structured day where detainees who wish to be employed are expected to rise, dress and leave their accommodation at a designated time to participate in meaningful work, as well as undertaking programs and education, would provide greater opportunities for rehabilitation.

Exercise and Recreation

- 1.2.41 Women at the AMC are generally given substantial time out of cells during the day. Women generally have access to outdoor areas during the day, apart from a lockdown period over lunchtime from 12-1pm, and have access to a small gym facility. However there are limited recreational activities available. It would be helpful to facilitate constructive activities for women detainees that would allow women detainees to contribute positively to the community.

Aboriginal and Torres Strait Islander Women

- 1.2.42 Although Aboriginal and Torres Strait Islander women are significantly over-represented in custody in the ACT, they represent a very small percentage of the total detainee population at the AMC, which presents particular challenges in meeting their specific needs. ACTCS demonstrates a commitment to meeting the human rights of Aboriginal and Torres Strait Islander detainees through a specific policy, identified positions, celebration of cultural days, and targeted education courses. ACTCS has also developed a number of partnerships with Aboriginal and Torres Strait Islander organisations to provide support for Aboriginal and Torres Strait Islander women in the AMC. The establishment of an Elders and Community Leaders Visitation Program is a positive practice which is likely to reduce cultural isolation for Aboriginal and Torres Strait Islander women at the AMC and to assist their transition back into the community. This program also provides opportunities for Elders and Community Leaders to provide advice on rehabilitation programs, to ensure that these are culturally safe and accessible.

Women from culturally and linguistically diverse backgrounds

- 1.2.43 The Commissioner interviewed only a small number of current or former women detainees from culturally and linguistically diverse (CALD) backgrounds. The Commissioner was pleased to find that reasonable adjustments and support were generally provided to such detainees. Specific English teaching was provided through a tutor, and interpreters were available if required. The Commissioner also found that such women were able to participate in some standard programs and education, despite limited English.

Women with disabilities

- 1.2.44 A number of procedures and adjustments are in place at the AMC for detainees with disabilities, including staff training in disability for new recruits and the availability of speaking books in the library and access to interpreters where necessary. Issues of accessibility were given careful consideration in the design and construction of the AMC. One of the women's cottages is wheelchair accessible, with an accessible shower and handrails in the bathroom. The living areas within the cottages are spacious and in the accessible cottage, benches are lowered in the kitchen to accommodate a wheelchair. ACTCS is currently piloting the use of an ability screening tool that identifies the level of a person's individual functioning and may identify the presence of intellectual disability, for detainees entering the AMC.
- 1.2.45 While there are many positive aspects of practice, the AMC does not have specialist programs or services for detainees with cognitive disabilities, and AMC Case Managers do not have specialist knowledge in disability. The Commissioner is concerned that this may lead to programs not being suitably tailored to detainees with particular disabilities. Detainees who may be unable to undertake education programs due to their disability should not be disadvantaged when participating in rehabilitation programs, particularly if the completing of programs is considered in assessing the suitability of a detainee for parole. The Commissioner considers that these issues could be addressed through a specific policy for detainees with disabilities at the AMC.

Detainees with diverse sexual orientation, sex, or gender identity

- 1.2.46 The AMC Transgender and Intersex Policy provides a detailed approach to the issue of placement of transgender and intersex prisoners at AMC which recognises the complexity of the decision making process, and the need to consider the safety and human rights of these detainees and others. The Policy could be broadened to consider the needs of detainees who are not intersex, but who do not identify as exclusively male or female. While the Policy provides a useful framework for decision making, in practice, it appears that there have been few transgender or intersex people detained at the AMC, and decisions regarding placement have been a protracted process. There is a need to ensure that placement decisions are made in a timely way, and that transgender or intersex detainees are not placed in isolation for extended periods. The Commissioner considers that the *CM Act* should be amended to enable transgender and intersex detainees to elect whether to be strip-searched by male or female correctional officers where such searches are required.
- 1.2.47 The Audit did not identify concerns regarding the treatment of lesbian or bisexual women detainees at the AMC.

Transition and Throughcare

- 1.2.48 The extended Throughcare Program commenced in June 2013 and it is not yet possible to determine the full impact of this program on recidivism rates. However, the implementation of this pilot Program, in partnership with the community sector, is a significant and positive development in meeting the human rights and needs of detainees exiting prison. It is offered to all women, remanded or sentenced, exiting the AMC, and is likely to play an important role in breaking the cycle of re-offending and re-incarceration over the long term. The Commissioner was pleased to see that, since

the implementation of the pilot program in June 2013, all women exiting the AMC chose to enrol in the Throughcare Program.

- 1.2.49 While there are many positive features of transition planning and throughcare, there remain gaps in service provision and uncertainty regarding the ongoing funding of these initiatives. It is vital that the extended Throughcare Program is funded on an ongoing basis, to assist detainees in their transition to the community, and to reduce re-offending and cycles of incarceration.

1.3 Recommendations

Recommendation 1: That ACTCS ensure that cameras in cells in the High Needs Cottage are covered or turned off where women do not require this greater level of observation.

Recommendation 2: That ACTCS review the Transitional Release Policy to give specific consideration to the management of transitional release for women, and clarify whether they are eligible for placement in the Transitional Release Cottage.

Recommendation 3: That ACTCS be funded to develop options for open security accommodation for women detainees in the ACT, whether in a facility adjacent to the existing Transitional Release Cottage or elsewhere in the community.

Recommendation 4: That the ACT Government fund ACTCS for design modifications to cells used for accommodating women in the CSU to improve privacy. The bathroom currently used by women in the CSU should be upgraded to ensure it is safe and fit for purpose for detainees at risk.**

Recommendation 5: That ACTCS ensure that women detainees in the CSU have equal access to therapeutic support programs as male detainees, whether through one-on-one programs or through a group operating in the women's precinct.

Recommendation 6: That ACTCS take steps to increase the ratio of women correctional officers working within the women's precinct at the AMC.

Recommendation 7: That ACTCS develop specific training modules for correctional officers on the particular characteristics and needs of women detainees, and effective ways of working with women detainees.

Recommendation 8: That the ACT Government fund ACTCS to recruit additional staff to prevent staff shortages.**

Recommendation 9: That ACTCS ensure that women detainees are not disproportionately affected by lockdowns compared with other cohorts of male detainees.

Recommendation 10: That ACTCS ensure that information for visitors to the AMC is linked more prominently on the ACTCS website, and that copies of the Visitors' Handbook are available at AMC reception.

Recommendation 11: That ACTCS amend the Visits Policy to provide transparent criteria for decision making regarding intra-prison visits, reflecting detainee's minimum entitlements to visits with family members.

Recommendation 12: That ACTCS ensure there is a current hard copy of the *CM Act* and associated policies and procedures in the library for all detainees

Recommendation 13: That ACTCS ensure as far as possible that scheduled visits between women detainees and their lawyers are able to occur in private interview spaces, rather than in common areas in the women's precinct.

Recommendation 14: That ACTCS consider whether the SOTER x-ray scanner could be used to search women on admission rather than strip-searching in some cases, based on an individualised assessment.

Recommendation 15: That ACTCS ensure that training programs for officers emphasise the importance of correctly filling in strip-search forms and indicating the grounds for suspicion where relevant, and regularly review practice to ensure this occurs.

Recommendation 16: That ACTCS remind officers of the value of complaints in improving practice, and the importance of responding respectfully and seriously to detainee complaints.

Recommendation 17: That the Official Visitors develop a schedule of regular visits to the women's precinct within the AMC, as well as continuing to see detainees on request and undertaking unannounced visits.**

Recommendation 18: That ACTCS amend the Prisoner Handbook to provide further information for detainees about how to contact the Official Visitors.

Recommendation 19: That the ACT Ombudsman, Official Visitors for the AMC, Public Advocate and the Human Rights Commission consider meeting at their offices on a regular basis in addition to the oversight meetings convened by ACTCS at the AMC.**

Recommendation 20: That ACTCS establish appropriate procedures to allow young children to go to the toilet during a visit, without this adversely affecting their visit with a parent.

Recommendation 21: That ACTCS ensure that officers consider the human rights of any children affected when imposing an administrative penalty of non-contact visits, and make exceptions where reasonable and practicable.

Recommendation 22: That ACTCS allow children to sit with their parent who is in custody during non-contact visits unless there are reasonable grounds to suspect that this would result in the transmission of contraband.

Recommendation 23: That the Community Services Directorate develops and implements procedures within its practice guide for Care and Protection Workers (in consultation with ACTCS) regarding children in the care of the Director General who have a parent in custody at the AMC. This should include arrangements for communication between Care and Protection Services and parents at AMC, and facilitation of regular contact visits with their children where appropriate. **

Recommendation 24: That the Community Services Directorate consider contracting an agency such as SHINE for Kids to transport children to and from the AMC and to facilitate contact visits between children who are in out of home care and their parent at AMC, where this is in the child's best interests, and contact has not been occurring regularly.**

Recommendation 25: That ACT Government provide ACTCS with sufficient funding to ensure that parents in custody have opportunities for regular extended visits with their children.**

Recommendation 26: That in reviewing the Private Family Visits Policy, ACTCS should not reduce opportunities for parents to have visits with their children in a normalised family environment.

Recommendation 27: That the ACT Government explore amendments to ACT sentencing legislation similar to s26(2)(l) of the *Crimes (Administration of Sentences) Act 1999* (NSW), to allow the conditional release in certain circumstances of a detainee who is the primary carer of a young child or young children, to serve her sentence in an appropriate and approved environment away from the AMC.**

Recommendation 28: That ACTCS revise the Women and Children's Program Policy to better meet the objectives of the Program of maintaining the bond between women detainees and their young children, where this is in the best interests of those children.

Recommendation 29: That ACTCS ensure that the Revised Policy should:

- a) ensure that the possibility of conditional release of a primary carer into the community to care for her child (if available) is considered as the first option, in preference to a child residing at the AMC.
- b) reduce the complexity of the assessment process, to focus primarily on whether it is in the child's best interests to reside with their primary carer in prison and the capacity of the primary carer to care for her child in prison and in the long term.
- c) seek to reduce the delay in assessing applications, particularly where a woman is already separated from her young child, and enable assessments to occur while a woman is on bail in the community.
- d) modify eligibility criteria relating to the availability of a community carer and a co-resident carer. Where these natural supports are not available, but it is in the best interests of the child to remain with their primary carer, Care and Protection Services should be resourced to provide additional support for the placement.
- e) adopt more nuanced eligibility criteria regarding drug use, for example, reducing the period within which a woman must have had clean urinalysis tests from six months to three months.
- f) formalise the agreement with NSW Corrective Services to allow transfers to the Jacaranda Program in NSW for women with young children, where it would be in the best interests of those children to remain with their primary carers in prison for an extended period. Where a woman consents and is transferred to the Jacaranda program, resources should be provided to support any older children to visit her regularly.

Recommendation 30: That the Justice Health induction process include alerting a doctor as quickly as possible, and at least within 24 hours, if a detainee discloses that they have been prescribed medication which may need to be continued in custody**

Recommendation 31: That ACTCS conducts training with all staff to reinforce the current policy which enables detainees to retain their medical alert bands.

Recommendation 32: That the ACT Government continues to advance the introduction of a Needle and Syringe exchange program at the AMC.**

Recommendation 33: That ACTCS establish regular meetings and information sharing mechanisms between the Education provider Auswide and AMC Case Managers.

Recommendation 34: That ACTCS and Auswide review the current restriction on access by women detainees to the Automotive Certificate II course to ensure that women are afforded equal access to educational opportunities.

Recommendation 35: That ACTCS liaise with the education provider Auswide Projects to ensure that computers are made available in the women's precinct that are reliable and compatible with the education courses delivered by the provider, to improve women's access to computer-based studies outside the hours allocated in the Education Building.

Recommendation 36: That ACTCS consider the feasibility of offering selected vocational training courses to a Certificate III or IV level to improve detainees' employment prospects on release, particularly for detainees serving longer sentences.

Recommendation 37: That ACTCS be funded to establish the Women's Services Co-ordinator role as a permanent position to co-ordinate the provision of rehabilitation programs and services for women, to meet the high level of needs of women detainees.

Recommendation 38: That the ACT Government consider providing specific funding to key non-government services to facilitate outreach to the AMC to provide rehabilitation services.

Recommendation 39: That ACTCS review the gender responsiveness of rehabilitation programs provided to women detainees and consider the provision of additional programs to meet their particular needs such as parenting, victimisation and trauma.

Recommendation 40: That ACTCS give further consideration to the feasibility of a modified residential Therapeutic Community program for women at AMC, and consult with Karralika Programs regarding this issue.

Recommendation 41: That ACTCS develop programs to meet the needs of women serving longer sentences, and develop capacity to provide one-on-one rehabilitation programs to meet individual needs.

Recommendation 42: That ACTCS further investigate options for establishing a prison industry at the AMC to provide greater structured employment opportunities for detainees. Any proposal for industry should ensure that women are not disadvantaged in opportunities to access employment.

Recommendation 43: That ACTCS consult with women detainees regarding the re-location of the textile repair industry to the Women's Community Centre, and to implement this re-location, if feasible, to provide a broader range of employment opportunities for women detainees.

Recommendation 44: That ACTCS consider providing regular fitness instruction to women detainees to improve their physical and mental health. The option of using student volunteers could be considered.

Recommendation 45: That ACTCS consider opportunities to enlist community volunteers to facilitate constructive activities for women, including activities that allow women detainees to contribute positively to the community.

Recommendation 46: That ACTCS review current practice and accountability regarding payment of wages for participation in programs, work and education, to ensure that the payments work effectively as incentives.

Recommendation 47: That ACTCS seek the ongoing advice of the Elders and community leaders, including those appointed under the Elders and Community Leaders Visitation Program about rehabilitation and other programs offered to women at AMC, and whether these could be adapted to better meet the needs of Aboriginal and Torres Strait islander women detainees.

Recommendation 48: That ACTCS develops and implements policies relating to detainees and visitors with disabilities including: on the reception and management of detainees with disabilities, on making reasonable accommodations for people with disabilities with regard to education programs in particular, and ensuring that visitors with disabilities are able to access the AMC.

Recommendation 49: That ACTCS correctional staff receive periodic disability awareness training, including on specific disabilities, to complement existing general awareness training for new recruits.

Recommendation 50: That ACTCS reintroduces an induction DVD at AMC with up to date information.

Recommendation 51: That ACTCS screens new and current women detainees where suitable, at the AMC using the HASI assessment tool.

Recommendation 52: That ACTCS consider asking an optional General Question on induction whether a person has a disability that may affect their stay at the AMC.

Recommendation 53: That ACTCS ensures that all women with disabilities can access rehabilitation programs and that adjustments are made to allow women detainees with disabilities to complete courses particularly if completion of a course could impact on the likelihood of being granted parole.

Recommendation 54: That ACTCS develops a Disability Action Plan to ensure it is providing the best possible service to detainees and visitors with disability.

Recommendation 55: That ACTCS amend the Corrections Management (Reception and Management of Transgender and Intersex Prisoners) Policy to further recognise the needs of gender diverse detainees who do not identify as exclusively male or female.

Recommendation 56: That ACTCS amend the Corrections Management (Reception and Management of Transgender and Intersex Prisoners) Policy to include a reasonable time frame for making a determination regarding the placement of detainees under the Policy.

Recommendation 57: That the ACT Government amend s 109 and s 114 of the *CM Act* to provide that transgender and intersex detainees may elect to be strip searched by either male or female correctional officers. ACTCS staff should be consulted before any change is made.**

Recommendation 58: That ACTCS engage with experts and support groups to consider options for providing advice to management on placement issues, and awareness training for staff and detainees regarding issues faced by sex and gender diverse detainees.

Recommendation 59: That ACTCS make special arrangements to lessen the costs for foreign nationals and other detainees where applicable to contact immediate family living overseas.

Recommendation 60: That the ACT Government provide ongoing funding for the Throughcare program, and enhance the funding if necessary to ensure a sustainable model of case management.**

Recommendation 61: That the ACT Government evaluation of the Throughcare pilot program examine relevant gaps in service provision and case management for detainees exiting the AMC, and consider issues regarding sharing of clients' personal information within the Throughcare Advisory Group.**

** reflect recommendations directed to agencies other than ACTCS

Part 2. Background

2.1 Terms of Reference

2.1.1 On 30 January 2013, the ACT Human Rights and Discrimination Commissioner, Dr Helen Watchirs wrote to the Attorney-General Simon Corbell MLA and Shane Rattenbury MLA, Minister for Corrections, informing them of her intent to conduct a Human Rights Audit of the conditions of detention of women at the AMC. The terms of reference for the review were stated as follows:

I intend to review the effect and implementation of Territory laws governing the treatment of women detainees at the Alexander Maconochie Centre ('AMC'), pursuant to s 41 of the Human Rights Act 2004, and my functions under the Discrimination Act 1991 and the Human Rights Commission Act 2005.

The Audit will assess the law, policy and practices of the AMC in relation to the treatment of women detainees against the benchmark of international human rights norms enshrined in the HR Act, including the International Covenant on Civil and Political Rights, and other relevant international standards, such as the UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders.

The Audit will examine the current legal framework and operational practices in relation to high priority areas that engage fundamental human rights, such as:

- Accommodation;
- Privacy;
- Educational and vocational programs,
- Opportunities for sport and recreation;
- Opportunities for work;
- Detainees' ability to observe their religion;
- Discipline;
- Searches;
- Segregation and seclusion;
- Classification;
- Staffing;
- Independent monitoring;
- Freedom of information and communication;

- Support for women to maintain relationships with families and dependent children;
- Treatment of pregnant women, breastfeeding mothers and provisions for women to have their young children reside with them at the AMC;
- Personal hygiene for women prisoners;
- Appropriate health care for women, including mental health care, drug and alcohol services and reproductive health care; and
- Transitional programs and support for women leaving the AMC.

Attention will be given to issues of equity in programs, education, work and other resources provided to men and women detainees at the AMC. The Audit will also focus on the treatment of vulnerable women within the small population of women detainees, such as Aboriginal and Torres Strait Islander women, women with disabilities (including those with mental illnesses), women from culturally and linguistically diverse backgrounds, and lesbian, bisexual, transgendered and intersex women.

2.2 Background: Women detainees in the ACT

Profile of women detainees

- 2.2.1 While women detainees make up only a small percentage of the prison population in Australia, as a group they are particularly disadvantaged, and have high levels of victimisation and trauma, and other complex needs.
- 2.2.2 As at 30 June 2013, there were a total of 2,349 women detained in Australian prisons, out of a total population of 30,775 detainees.⁵ So far it appears that the ACT has not followed a concerning national trend of increases in the rate of incarceration of women detainees.⁶ In 2012-13 women detainees made up just 5.2% of the total prison population in the ACT, compared to the national figure of 7.5% over the same period.⁷
- 2.2.3 The daily average number of women detainees in the AMC, including remandees, was 14 women in 2012-13, compared with 252 men.⁸ Although Aboriginal and Torres Strait Islander women are significantly overrepresented in custody in the ACT, based on population size, in 2012-13 there was a daily average of two women who identified as Aboriginal or Torres Strait Islander at the AMC.⁹

⁵ Australian Bureau of Statistics, 2013. *Prisoners in Australia* (Cat. No. 4517.0). Canberra: ABS.

⁶ Australian Bureau of Statistics, 'Women prisoners increasing at a faster rate than men,' Media Release, 6 December 2012.

⁷ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2014*, vol C: *Justice* (Productivity Commission, 2014), Table 8A.1
<http://www.pc.gov.au/data/assets/pdf_file/0015/132324/rogs-2014-volume-c-chapter8.pdf>.

⁸ Ibid.

⁹ Ibid.

- 2.2.4 The majority of women detainees at the AMC over 2012-13 were sentenced women, with a daily average of four remandees and ten women serving custodial sentences. During the Audit period, three women were serving longer sentences of several years, however ACTCS report that the average length of stay for the remaining women is less than 100 days. The average age of women detainees was 34 years, with women between 18 years and 60 years old at AMC over 2012-13.¹⁰
- 2.2.5 As Sisters Inside note in their submission to this Audit, there is a lack of comprehensive, gender-specific data about women in Australian prisons. This is particularly the case in the ACT, due to the very small population of women detainees, which can make statistical analysis more difficult. However it appears that women detainees in the ACT, like women detainees in other jurisdictions, often have high and complex needs, and have different patterns of offending to male detainees.
- 2.2.6 A review conducted by the Australian Centre for the Study of Sexual Assault (ACSSA) found that available Australian research indicated a high prevalence of child sexual abuse and other forms of victimisation of women detainees, of between 57% and 90%.¹¹
- 2.2.7 This report also indicates that women's pathways into offending, and the characteristics of their offending, are different from those of male detainees. The report notes that as a whole women commit fewer and less serious crimes, and are more likely to be involved in drug offences, fraud and property offences than repeated violent offending.¹²
- 2.2.8 The ACCSA report notes that women offenders as a group have high and complex needs which play a causal role in their offending behaviour, and present particular challenges in rehabilitation:
- Specifically, when compared to male offenders, women offenders demonstrate higher levels of previous victimisation, poor mental health and serious mental illness, substance misuse, unemployment, and low educational attainment. Their time in custody is different, with shorter but more frequent periods of imprisonment. In short, despite the small size of the female correctional population, they present significant challenges, both from a management and rehabilitation perspective (ie reducing re-offending) and, correspondingly, in terms of their general wellbeing.*¹³
- 2.2.9 This is consistent with themes identified by Wybron and Dicker, in interviews with women in the ACT with lived experience of imprisonment. Their report explores themes in women's stories about their lives, including intergenerational cycles of imprisonment; cultural issues; childhood trauma, including sub-themes of sexual abuse and abandonment; adulthood trauma, including sub-themes of sexual abuse and

¹⁰ Demographic information provided by ACT Corrective Services, 2014.

¹¹ Mary Stathopoulos, 2012. 'Addressing women's victimisation histories in custodial settings'. Australian Centre for the Study of Sexual Assault: <http://www.aifs.gov.au/acssa/pubs/issue/i13/i13d.html>.

¹² Ibid

¹³ Ibid

domestic violence; self worth; social isolation; lack of skills; drug and alcohol issues; mental health concerns, and the 'merry go round' of institutionalisation.¹⁴

- 2.2.10 As the Castan Centre suggests in their submission to the Audit, imprisonment can have a disproportionate impact on women and their families, with significant numbers of women in prison being the primary caregivers for dependent children.¹⁵ These children often have to be cared for by relatives during their incarceration, or are taken into care. Research has found that 'when mothers are incarcerated it is typically maternal grandmothers and other kin, not children's fathers, who step up to care for them if they are not fostered out'.¹⁶ These issues are discussed further in Part 5 of this Report.

Consideration of Women in the development of an ACT Prison

- 2.2.11 Prior to the AMC becoming operational in 2009, male and female sentenced prisoners were incarcerated in NSW prisons, with ACT facilities accommodating only remandees and those serving periodic detention. The decision to accommodate women in the same facility as men within the AMC was not without controversy. It was recognised that repatriation of women prisoners would allow women to maintain closer connections with family and community in the ACT, and to benefit from the Territory's more progressive approach to correctional services.¹⁷ However, the potential for women detainees to be disadvantaged as a result of their small numbers compared to male detainees was a consistent concern raised throughout the planning and development of the ACT prison.
- 2.2.12 In December 2000 the Standing Committee on Justice and Community Safety tabled its third interim report in the prison series, reporting on learnings from prisons around Australia. In tabling the Report Trevor Kaine MLA noted that:

We found, by and large, that women in the prison system... are marginalised because of small numbers. Prisons are generally designed and operated and run for the majority of their population – men. To the extent that there are opportunities in prisons and in the prison system, those opportunities are not equally available to women and men. How we treat our women prisoners, how we house them, how we manage them, how we make resources available for rehabilitation and the like are matters of some

¹⁴ Deb Wybron and Kiri Dicker, Women's Centre for Health Matters, *ACT Women and Prisons Invisible Bars: The Stories behind the Stats*, 2009.

¹⁵ Citing Alannah Burgess and Catherine Flynn, 'Supporting Imprisoned Mothers and Their Children: A Call for Evidence' (2013) 60 *Probation Journal* 73, 74.

¹⁶ Citing Dawn Cecil, James McHale, Anne Strozier and Joel Pietsch 'Female Inmates, Family Caregivers, and Young Children's Adjustment: A Research Agenda and Implications for Corrections Programming' (2008) 36 *Journal of Criminal Justice* 513, 514.

¹⁷ Australian Capital Territory, Standing Committee on Justice and Community Safety, *The Proposed ACT Prison Facility: Philosophy and Principles* (Second Interim Report in the Prison Series, Report No 4, October 1999), 63 [3.166]: "Female prisoners should also be accommodated, although it is recognised that this will create some planning challenges for the designer. This is justified because these prisoners should have the opportunity for close family contact and they are more likely to be rehabilitated if the ACT has control over the prison conditions and programs".

concern here, even more so than in the states, where female prison populations are greater than ours.¹⁸

2.2.13 The Committee's Report noted that:

*The committee believes there is a need for the Government to open up a community debate on sentencing options for ACT women offenders. We need to be imaginative when designing corrections facilities and programs to accommodate and rehabilitate the small but diverse female prisoner population. At this stage, alternative options such as bail hostels, community-based housing and diversionary programs should be explored seriously. Innovative programs could be established instead of establishing a more traditional women's prison facility. Or, if there is a clear need for a traditional women's prison facility, innovative programs could be developed to complement the facility. In any case, a women's prison facility should not be located inside the men's prison, although it should be co-located for administrative reasons.*¹⁹

2.2.14 Although there was significant community consultation and debate in the development of an ACT prison, women's services and advocates raised concerns about a lack of genuine engagement in the early planning stages regarding innovative design to reflect best practice in meeting the particular needs of women in prison.²⁰

2.2.15 The Functional Brief for the AMC developed in 2005, and informed by the *HR Act* included facilities for women within the main prison complex, but reflected the principle of "separation of male and female prisoners such that it is appropriate to refer to separate male and female prisons within the one complex". It provided for cottage style accommodation only for women, and noted that:

*The design of the Centre will need to include features which support social needs of women, such as social areas for small groups and private space, which provide an opportunity to exercise a degree of control over the environment, to avoid potentially difficult encounters and to control stressors.*²¹

2.2.16 The Functional Brief recognised that the profile of the female prisoner population "is marked by more damage, disadvantage, disease and disaffection than is the male prisoner population." It provided that the management of women detainees would be underpinned by principles of personal responsibility and empowerment of the individual; family responsibility; community responsibility and respect and integrity.

¹⁸ Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 7 December 2000, 3895 (Trevor Kaine).

¹⁹ Australian Capital Territory, Standing Committee on Justice and Community Safety, *Committee Visit to Western Australia, The Northern Territory and South Australia* (Third Interim Report in the Prison Series, Report No 11, December 2000), 27.

²⁰ See for e.g. Kerrie Tucker, tabling a letter from the Women and Prison Working Group, raising a range of issues including that "there is no evidence that the needs of women will be met with the provision of separate facilities, separate management, distinct programs and separate staff": Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 21 June 2001, 2394 (Kerrie Tucker).

²¹ Australian Capital Territory, *ACT Correctional Centre Alexander Maconochie Centre: Functional Brief* (Department of Justice and Community Safety, March 2005), 70.

Concerns regarding women at the AMC

2.2.17 Nevertheless, following the opening of the AMC in 2009, and the repatriation of prisoners from NSW, concerns have continued to be raised regarding the situation of women detainees and whether their access to services and programs is equitable.²²

2.2.18 In 2011 Amanda Bresnan MLA noted that:

*An issue which...remains problematic is the lack of service provided to women in the AMC. My office recently attended a women in prisons quarterly meeting which highlighted the lack of access to medical, educational and recreational services. The government said in that quarterly meeting that it was taking steps to rectify these problems, and the Greens would like to receive an update about that so that we can be assured that women in the AMC are not denied access to services because of their limited numbers.*²³

2.2.19 Similar concerns had also been consistently raised with the Commissioner by community organisations and advocates for women in prison. The Commissioner considered that although there had been recent reviews at the AMC, the particular concerns raised regarding potential structural and systemic discrimination against women detainees at the AMC had not been fully investigated by these reviews.

2.3 Previous Reviews

Human Rights Audit on the Operation of ACT Correctional Facilities under Corrections Legislation 2007

2.3.1 The ACT Human Rights Commission conducted an Audit of ACT remand and periodic detention facilities while planning and development of the AMC was well underway. One aim of this review was to identify systemic problems to be avoided in the new prison, as well as current practices that required change to ensure that a successful transition to a human rights compliant prison was achieved.

2.3.2 The 2007 Audit identified a range of human rights concerns, including a number of areas of systemic discrimination against women detainees. In particular, the Audit noted the transfer of women from Belconnen Remand Centre to the Symonston Temporary Remand Centre each weekend, due to overcrowding, to allow for the accommodation of men serving weekend detention sentences. This practice caused significant disruption and distress for women, who were subjected to additional strip searching, missed and delayed meals and medication over the weekends. The Audit also highlighted the need for training for correctional officers on the particular needs and vulnerabilities of women detainees.

²² See for e.g. Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 24 August 2010, 3791 (Caroline Le Couteur): who asked the Minister whether “the location of the women's cottages within the AMC or the number of female prisoners [was] preventing the delivery of any other services.” The Minister responded that it did not prevent the delivery of services: Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 25 August 2010, 3888 (Simon Corbell).

²³ Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 30 June 2011, 3073 (Amanda Bresnan).

Independent Review of Operations at the Alexander Maconochie Centre 2011

2.3.3 Under a Services Agreement dated 16th April 2010 the Territory engaged Knowledge Consulting Pty Ltd to conduct an independent review of operations at AMC, to fulfil a Government commitment to conduct a review of the AMC after 12 months of operation. The independent consultants, led by Keith Hamburger, provided a Report in March 2011.

2.3.4 The extensive report provides a comprehensive review of operational aspects of the prison and issues such as security, healthcare and nutrition. However, it provides comparatively brief coverage of issues specifically affecting women detainees. Key findings of the Knowledge Consulting report in relation to women were that:

Female detainees interviewed had no complaints about the accommodation or access to outside visits. They were satisfied with opportunities regarding visitations and gave positive feedback about dental services. No concerns were expressed about excessive force, excessive strip searches or inappropriate supervision by male officers.²⁴

The Report also found:

That there is a challenge in achieving motivation by female detainees to participate in programs and employment.²⁵

2.3.5 The Report identified concerns regarding the management of women who were detained in the Crisis Support Unit at the AMC, and deficiencies in the policy under which women could apply to have a young child stay with them at the AMC.²⁶

Burnet Institute Report 2011

2.3.6 The Burnet Institute conducted an evaluation of drug policies and services at the AMC pursuant to a commitment in the ACT Drug, Alcohol and Tobacco Strategy 2010-2014 and the ACT Health Adult Corrections Health Services Plan 2008-2012. This Report was also released in 2011.

2.3.7 While the Burnet Report was not focused on issues for women prisoners more broadly, it made findings regarding access by women to services and therapeutic programs. The Report notes that:

Inequitable access to services for women persists and where inequities have been identified and advocacy has occurred, implementation of changes has been slow. The small number of female prisoners at the AMC may be considered an impediment to the provision of comprehensive service to women. However, flexible solutions that may entail the integration of service delivery to multiple prison populations (e.g., male/female, sentenced/remand) could potentially be considered... Policy regarding

²⁴ Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre ACT Corrective Services* (2011), 144 (Finding 7).

²⁵ Ibid 145 (Finding 8).

²⁶ Ibid 228.

*gender inequities and practice responses to treating women as a priority population for service access need to be implemented as a matter of urgency.*²⁷

- 2.3.8 The findings of each of these reviews are discussed where relevant in specific sections of this Audit.

2.4 Human Rights Standards

Overarching principles

- 2.4.1 This Audit draws upon a range of human rights principles and standards for detention of sentenced prisoners and remandees. Of central importance is the principle, reflected in s 19 of the *HR Act*, that except so far as the fact of incarceration itself requires that rights be limited, all detainees are owed human rights. Section 19(1) provides that:

Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.

- 2.4.2 In focusing specifically on the conditions of detention for women at the AMC the Audit is also particularly informed by the right to equality, and the right to non-discrimination, recognised in s 8(2) and (3) of the *HR Act*:

(2) Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.

(3) Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

- 2.4.3 Given the concerns that gave rise to the Audit, regarding the potential for women to be marginalised because of their small numbers at the AMC, a key focus of the Audit is to assess the treatment of women at the AMC, and their access to services and rehabilitation programs, in comparison to male detainees.

- 2.4.4 The scope of the right to equality goes beyond formal equality, where men and women are treated in exactly the same way, and also encompasses substantive equality, which requires recognition of the particular biological and gender based differences of women, to avoid entrenching disparity and disadvantage.

- 2.4.5 As noted by the Committee on the Elimination of All Forms of Discrimination against Women:

It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and

²⁷ Mark Stooze and Amy Kirwan, External Component of the Evaluation of Drug Policies and Services and their Subsequent Effects on Prisoners and Staff within the Alexander Maconochie Centre (Burnett Institute, 2010), 160.

*men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences.*²⁸

- 2.4.6 Rather than simply allowing women access to programs and facilities designed for the mainstream male population, the differing needs and vulnerabilities of women detainees in prison need to be specifically catered for to achieve substantive equality.
- 2.4.7 It is also important to recognise that it is not only detainees who have human rights. Every human being has human rights, and the rights of all those affected need to be considered in any assessment of policy or practice. In particular, staff and service providers at AMC, visitors, families and children of detainees, and victims of crime have human rights that need to be considered and protected. These human rights inform the Audit and are considered throughout this Audit Report.

Provisions of the Human Rights Act 2004

- 2.4.8 The *HR Act* was the first legislative bill of rights to be introduced in any State or Territory in Australia, and came into effect on 1 July 2004. The *HR Act* applies to everyone in the ACT, and protects a range of human rights, primarily drawn from the International Covenant on Civil and Political Rights (ICCPR).²⁹ In 2012 the *HR Act* was amended to introduce the right to education, the first right drawn from the International Covenant on Economic Social and Cultural Rights (ESCR).³⁰ The right to education came into effect on 1 January 2013, albeit with more limited effect than other existing rights.³¹
- 2.4.9 The rights under the *HR Act* are given effect in the ACT through a number of mechanisms. Under s 30 all Territory laws must be interpreted in a way that is compatible with human rights, so far as it is possible to do so consistently with the purpose of the law.
- 2.4.10 Section 40B of the *HR Act* also imposes a direct obligation in on public authorities to comply with human rights. This section provides that:
- (1) It is unlawful for a public authority—*
- (a) To act in a way that is incompatible with a human right; or*
(b) In making a decision, to fail to give proper consideration to a relevant human right.
- 2.4.11 Section 40B(2) provides an exception where the law requires a public authority to act in a particular way or the law cannot be interpreted to be consistent with human rights.

²⁸ Committee on the Elimination of Discrimination against Women, *General Recommendation No 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures*, 30th sess, (30 January 2004) [8].

²⁹ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

³⁰ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

³¹ *Human Rights Amendment Act 2012 (ACT)*, s 6 inserting Part 3A into the *Human Rights Act 2004 (ACT)*.

2.4.12 Government agencies such as ACT Corrective Services (ACTCS), Justice Health, Care and Protection Services and individual public servants and correctional officers are public authorities under the Act and thus are directly bound by these human rights obligations.

2.4.13 Rights that are particularly relevant as benchmarks for this Audit include the following:

- Section 8 Recognition and equality before the law
- Section 9 Right to life
- Section 10 Prohibition on torture, cruel, inhuman or degrading treatment or punishment
- Section 11 Protection of the family and children
- Section 12 Privacy and reputation
- Section 14 Freedom of thought, conscience, religion and belief
- Section 16 Freedom of expression
- Section 17 Taking part in public life
- Section 18 Right to liberty and security of person
- Section 19 Humane treatment when deprived of liberty
- Section 22 Rights in criminal proceedings
- Section 26 Freedom from forced work
- Section 27 Rights of minorities

2.4.14 The Audit is also informed by the right to education, drawn from the ESCR. Section 27A(2) of the *HR Act* provides that “Everyone has the right to have access to further education and vocational and continuing training.” This aspect of the right to education is currently limited to the entitlement to enjoy this right without discrimination. The direct obligation on public authorities does not apply to the right to education, but the right is relevant to the interpretation of legislation such as the *CM Act*, and to the Commissioner’s function of reviewing the effect of laws on human rights.

2.4.15 Human rights protected in the *HR Act* are not absolute, as in some situations they must be weighed against competing rights and community interests. However human rights cannot be limited arbitrarily. Under s 28 of the *HR Act*, human rights may only be subject to reasonable limitations, authorised by law, that are demonstrably justifiable in a free and democratic society. In the prison environment human rights will necessarily be subject to some limitations, namely restrictions on a detainee’s liberty, but other limitations need to be carefully assessed to determine whether they are reasonable and proportionate.

2.4.16 Section 28(2) provides that in deciding whether a limit is reasonable, all relevant factors must be considered, including the following:

(a) The nature of the right affected;

(b) The importance of the purpose of the limitation;

(c) The nature and extent of the limitation;

(d) The relationship between the limitation and its purpose;

(e) Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

2.4.17 Although s 28 applies to all rights protected under the *HR Act*, it will be more difficult to justify any limitations on those few rights that are recognised as absolute under international law. In particular, the prohibition on torture and other cruel, inhuman or degrading treatment or punishment in s 10 of the *HR Act* is drawn from Article 7 of the ICCPR, which is considered an absolute right.

UN Standards concerning women in detention

2.4.18 Section 31(1) of the *HR Act* provides that international law may be referred to when interpreting a human right. The *HR Act* dictionary includes in its definition of international law “declarations and standards adopted by the United Nations General Assembly that are relevant to human rights”.

2.4.19 These standards may therefore be referred to when interpreting the provisions of the *HR Act*. The following instruments are of key importance for the purposes of this Audit.

- *Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment ('Body of Principles');*³²
- *The Basic Principles for the Treatment of Prisoners ('Basic Principles');*³³
- *The Standard Minimum Rules for the Treatment of Prisoners ('SMR');*³⁴ and
- *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('Bangkok Rules').*³⁵

2.4.20 The 2010 *Bangkok Rules* are particularly important as a contemporary statement of the specific human rights standards relevant to the treatment of women prisoners. The *Bangkok Rules* were developed to complement and supplement the SMR in connection with the treatment of women prisoners, to give greater attention to women's

³² GA Res 43/173, UN GAOR, 43rd sess, 76th plen mtg, UN Doc A/RES/43/173 (9 December 1988).

³³ GA Res 45/111, UN GAOR, 45th sess, 68th plen mtg, UN Doc A/RES/45/111 (14 December 1990).

³⁴ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1955), and approved by the Economic and Social Council in resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

³⁵ GA Res 65/229, UN GAOR, 65th sess, 71st plen mtg, Agenda item 105, UN Doc A/65/PV.71 (21 December 2010).

particular needs in custody.³⁶ These rules were not developed when the Commissioner undertook her 2007 Human Rights Audit of ACT Correctional Facilities.

Discrimination Act 1991 (ACT)

- 2.4.21 The *Discrimination Act* prohibits discrimination in areas of public life in relation to a range of attributes including sex; sexuality; gender identity; relationship status; status as a parent or carer; age; pregnancy; breastfeeding; race; religious or political conviction; and disability.³⁷
- 2.4.22 Discrimination may be direct, where a person is treated unfavourably because of the attribute; or indirect, where a condition or requirement is imposed that has, or is likely to have, the effect of disadvantaging people because they have an attribute, and the condition or requirement is not reasonable.³⁸
- 2.4.23 The prohibition against direct and indirect discrimination applies to the services provided to women at the AMC, and requires that they be treated fairly, and not disadvantaged because of their sex or other protected attributes.
- 2.4.24 Section 27 of the Act provides an exception for special measures intended to achieve equality. It provides that it is not unlawful to do an act if it is done to ensure that members of a relevant class of people have equal opportunities with other people; or to give members of a relevant class of people access to facilities, services or opportunities to meet the special needs they have as members of the relevant class.
- 2.4.25 This provision allows ACTCS to take special measures for women detainees to assist them to achieve substantive equality, or to meet their particular needs.

Corrections Management Act 2007 (ACT)

- 2.4.26 The *CM Act* was introduced in conjunction with the development of the AMC, to govern the treatment and management of prisoners and other detainees in the ACT, replacing *the Remand Centres Act 1976*. It is directly informed by the *HR Act* and intended to be applied in a way that is consistent with human rights.
- 2.4.27 In introducing the legislation, the Attorney-General noted the Government's intention:
- [T]hat the Alexander Maconochie Centre will be a secure and safe place that will have a positive effect on the lives of prisoners held there, and on staff who work there. The aim of the prison's management and operations is to give substance to Sir Alexander Paterson's observation that offenders are sent to prison "as punishment, not for punishment."*³⁹

³⁶ Ibid annex [1]-[2].

³⁷ *Discrimination Act 1991* (ACT), s 7.

³⁸ *Discrimination Act 1991* (ACT), s 8.

³⁹ Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 14 December 2006, 4132 (Simon Corbell).

2.4.28 The Preamble to the *CM Act* specifically recognises that “[t]he criminal justice system should respect and protect all human rights in accordance with the *Human Rights Act 2004* and international law.”

2.4.29 Section 9 of the *CM Act* provides an overarching framework for the exercise of functions under the Act in a way that is consistent with human rights:

Functions under this Act in relation to a detainee must be exercised as follows:

To respect and protect the detainee’s human rights;

To ensure the detainee’s decent, humane and just treatment;

To preclude torture or cruel, inhuman or degrading treatment;

To ensure the detainee is not subject to further punishment (in addition to deprivation of liberty) only because of the conditions of detention;

To ensure the detainee’s conditions in detention comply with section 12 (Correctional centres—minimum living conditions);

If the detainee is an offender—to promote, as far as practicable, the detainee’s rehabilitation and reintegration into society.

Policies and procedures

2.4.30 Over 180 policies and procedures have been notified on the ACT Legislation Register under the *CM Act*.⁴⁰ These policies and procedures provide greater detail and guidance for correctional practice in a wide range of areas, and key policies have been reviewed and revised since the AMC became operational.

2.4.31 The Corrections Management (Human Rights) Policy 2010 sets out the approach of ACTCS to respecting detainees’ human rights. It confirms that:

*ACTCS is committed to meeting or exceeding the minimum standards for the treatment of prisoners in accordance with the *Human Rights Act 2004*, which reflects the internationally agreed framework of human rights standards.*⁴¹

2.4.32 Relevant policies and procedures and their effect on human rights are considered in each area of this Audit.

2.4.33 Of particular relevance to this Audit is the Corrections Management (Reception and Management of Female Prisoners) Policy 2007,⁴² which deals with issues such as equality of access to programs, education, recreation, medical, and mental health services; women’s health, including pregnancy, birth and breastfeeding; women’s role as primary carer of children; safeguards regarding the supervision, escorting and searching of women, and separation of women from male detainees.

⁴⁰ Policies and procedures are available at: <http://www.legislation.act.gov.au/a/2007-15/ni.asp>

⁴¹ Notifiable instrument NI2010-281, 1, made under *Corrections Management Act 2007* (ACT) s 14(1).

⁴² Notifiable instrument NI2007-468, made under *Corrections Management Act 2007* (ACT) s 14(1).

- 2.4.34 Another policy specifically relevant to women detainees at AMC is the Corrections Management (Women and Children Program) Policy 2010,⁴³ which establishes a program to provide an opportunity for eligible women to care for their infants and young children at the AMC. This Policy is considered in Part 5.2.

2.5 Audit Methodology

- 2.5.1 This Audit is informed by a range of sources including primary documents and data; interviews of current and former detainees, staff, management, service providers and other stakeholders; site visits; stakeholder forums and public submissions. ACTCS has been helpful and co-operative in accommodating requests made by the Commissioner in this Audit, and has actively assisted and facilitated interviews and visits.
- 2.5.2 The Commission has an ongoing monitoring role in relation to the AMC, and the Human Rights Commissioner and her staff attend monthly oversight meetings at the prison. The Commission is on the list of free-call numbers for detainees, and regularly receives calls from detainees to discuss issues that concern them. This ongoing oversight role at the AMC provides the Commissioner with background and insight into relevant issues at the prison, and provided context for this Audit.
- 2.5.3 During the course of the Audit, the Commissioner and the Principal Researcher made a number of visits specifically to visit the women's precinct of the AMC to meet with women detainees. Visits were also made to the Education Building and library, visits area, Health Centre and CSU.
- 2.5.4 ACTCS invited the Commissioner and Principal Researcher to accompany Corrections staff on a visit in February 2013 to the Mothers and Children's Program operating at Jacaranda Cottages at Emu Plains women's prison NSW. ACTCS also facilitated a further visit to the Emu Plains and Dillwynia Women's Correctional Centres in October 2013. These visits were useful and informative, and the Commissioner is grateful to ACTCS and to NSW Corrective Services for arranging and hosting these visits.
- 2.5.5 The Commissioner sought and received access to a range of primary documents and data from ACTCS which informed the Audit, including women's case files, records of searches, use of force, disciplinary action, segregation, complaint and request forms, muster lists, applications under the women and children's programs and attendance records for education and programs.
- 2.5.6 During the Audit, interviews were conducted with 55 participants including current and former AMC detainees and family members, ACTCS management and staff, non-government agencies providing programs and services to women at the AMC, education providers, chaplaincy services, Care and Protection Services, Victims services and Throughcare service providers.
- 2.5.7 Included in these interviews were eight in-depth interviews with women detained at the AMC. These interviews used a template questionnaire based on previous questionnaires developed for the Commissioner's 2007 Audit of Correctional Facilities.

⁴³ Notifiable instrument NI2010-449, made under *Corrections Management Act 2007* (ACT) s 14(1).

- 2.5.8 The Commissioner also held a group forum for women detainees at AMC to provide a more informal environment to contribute to the Audit and raise any issues. This forum was attended by 14 detainees, being all women detained at the AMC at that time, apart from one woman in protective segregation.
- 2.5.9 A further ten women who had previously been detained at the AMC were interviewed for the Audit. Three of these women were interviewed by the Principal Researcher. It proved difficult to reach further women in this population, so the Commissioner entered into a consultancy agreement with the Women's Centre for Health Matters, which auspices the Women and Prisons Group, to undertake a further seven interviews with former detainees, drawing on the contacts and expertise of this Group. These interviews used the Commissioner's questionnaire and were recorded and transcribed for the Commissioner.
- 2.5.10 The Commissioner held a stakeholder forum for statutory office holders and legal service providers in June 2013 which was attended by representatives from the ACT Ombudsman, Public Advocate of the ACT, Official Visitor, Aboriginal Official Visitor, Legal Aid Commission and the Aboriginal Legal Service. This forum was facilitated for the Commissioner by Amy Kilpatrick.
- 2.5.11 The Commissioner also called for public submissions to the Audit. The Commissioner received ten written submissions from organisations including a number of detailed submissions from women's services and advocacy groups. Where authors of submissions consented to the publication of their submission, these were placed on the Commission's website.
- 2.5.12 In August 2013 the Minister for Corrective Services, Shane Rattenbury MLA held a stakeholder forum for agencies providing services to women at AMC. This forum was held in response to issues of concern raised by a number of agencies in submissions to the Audit. The Commissioner and staff members attended this forum as observers. This forum was positive and productive in clarifying a range of factual issues raised in submissions, and identifying ways in which agencies might work together more closely with ACTCS to assist women detainees in future.

Part 3. Conditions of Detention

3.1 Introduction

This Part considers the conditions in which women are detained at the AMC, including the processes of induction and classification, and the accommodation provided for women detainees, including those placed in the Crisis Support Unit. It examines staffing issues and minimum entitlements such as nutrition, clothing and bedding, as well as visits, access to information, legal assistance and provision for detainees to practice their religion.

3.2 Induction

Relevant Standards

Bangkok Rules

Rule 2.1: *Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.*

Rule 2.2: *Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children.*

3.2.1 Admission to prison can be a time of heightened risk and vulnerability for detainees, particularly for those who are facing incarceration for the first time. Respectful and humane treatment of detainees during the induction phase is particularly important to minimise potential trauma associated with being ‘processed’ through a range of unfamiliar security and risk assessment procedures. It is also a critical time for detainees to be given information about their rights and prison rules and operations, to assist their transition into prison life.

Current Practice

3.2.2 Upon entry into custody, the Corrections Management Induction Policy 2009¹ provides that all detainees are allowed to make a phone call, and are to be given an initial induction. They are issued with a copy of the Alexander Maconochie Centre Prisoner Handbook which provides information about admissions and induction, accommodation and classification, life at the AMC, visits and contact, healthcare,

¹ Notifiable instrument NI2009-130, made under *Corrections Management Act 2007* (ACT) s 14(1).

discipline, legal services, programs and employment, release and transitional release and the role of the Official Visitor.²

3.2.3 Detainees are verbally informed about their basic entitlements at this initial stage, and a mental and physical risk assessment is completed by an ACT Health officer, generally within the first four hours of arrival. Detainees are referred to other health professionals at this stage if required. Women are strip searched by female officers on induction, often by the Court Transport Unit.

3.2.4 Current and former detainees interviewed generally found the induction process at AMC respectful and professional, and did not raise concerns about this process. One detainee stated that:

“It was a huge shock for me being brought to prison...When I first arrived I was very scared, I thought it would be like prison in the movies. But I found it is not so bad, they treated me pretty well.” [woman detained at AMC 2013]

3.2.5 All current and former detainees interviewed reported having a health check on induction. Most reported being given an opportunity to make a phone call on admission, although some had difficulty making contact with friends or relatives, and others were affected by drugs or alcohol and not able to exercise this opportunity. Most reported being given a copy of the Prisoner Handbook, although several could not recall being provided with any information.

3.2.6 A number of current and former detainees suggested that other women were a more comprehensive source of information about how things worked in the prison:

“They give you a pamphlet, told you some stuff, but not everything you needed to know. When I got in the other women sat me down and told me all about how the buy ups worked and all the other stuff.” [woman detained at AMC 2012]

“You get the AMC handbook, but it doesn’t tell you much, the other girls tell you what to do.” [woman detained at AMC 2013]

3.2.7 The Reception and Management of Female Prisoners Policy provides that:

*If, during the initial interview, a female prisoner indicates that she is the primary care giver of any children, the prisoner’s Case Manager must interview the prisoner within 24 hours of induction or, in the case of a weekend reception, on the next working day.*³

3.2.8 However, it is not clear that this policy has been followed in all cases. A number of detainees with young children reported that they had not seen their Case Manager for days or sometimes weeks after their admission, although this appears to have improved following the relocation of the Women’s Case Manager to the women’s precinct. Case management is discussed in more detail in Part 7.2.

² ACTCS: Alexander Maconochie Centre Prisoner Handbook. This handbook contains some references to policies and practices such as the use of RFID devices which are no longer current at the AMC. We have been informed that the Handbook is being updated and that a new version will be issued.

³ Notifiable instrument NI2010-448, 1, made under Corrections Management Act 2007 (ACT) s 14(1).

- 3.2.9 The Induction Policy provides that a more detailed induction process should take place within seven days, to be conducted by a member of the programs team in conjunction with a corrections officer, covering the content of the Prisoner Information Handbook.⁴ The Reception and Management of Female Prisoners Policy further provides that:

*Information will be provided to female prisoners relating to the women's area specific programs available to female prisoners, and any other information deemed appropriate by the area CO2.*⁵

- 3.2.10 From interviews with staff and detainees, we understand that further information is provided by a correctional officer, however it does not appear that a more detailed induction always happens as systematically as indicated by the Induction Policy. In practice it appears that other women take on the role of providing a more comprehensive informal induction for new detainees introduced to their cottage. ACTCS advise that a new case management induction package is being developed, which may enhance the formal induction process.
- 3.2.11 Overall, however, it appears that induction processes at AMC are respectful of women's human rights and that women are assessed and provided with essential information about the prison. The issue of routine strip searching on induction is discussed further at Part 4.2 below.

3.3 Accommodation

Relevant Standards

Bangkok Rules

Rule 4: *Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services.*

Women's Cottages

- 3.3.1 Women detainees of all classifications are accommodated at AMC in shared cottage accommodation, rather than in cell blocks. The only exception is women deemed at risk of self-harm, or at risk of harm to others as the result of a mental illness, who may be placed in the Crisis Support Unit, discussed below at Part 3.4.1. The women's precinct is in a separate area of the prison from male detainees, and at a lower elevation of the site to facilitate privacy.⁶
- 3.3.2 There are three cottages for women, which are designated as: the 'High Needs' Cottage; 'Women's Sentenced' Cottage; and 'Women's Remand' Cottage (although as discussed below, the allocation of detainees to the sentenced and remand cottages

⁴ Notifiable instrument NI2009-130, 1, made under *Corrections Management Act 2007* (ACT) s 14(1).

⁵ Notifiable instrument NI2010-448, 2, made under *Corrections Management Act 2007* (ACT) s 14(1).

⁶ John Paget, *Human Rights and Prison Architecture: The Alexander Maconochie Centre from Conception to Construction* (PhD Thesis, Charles Sturt University, 2008) 278.

has not always maintained a strict separation between these categories of detainee). Each cottage has two self-contained pods with five rooms, with a shared kitchen and lounge area. The High Needs Cottage provides greater security and capacity for observation, with CCTV cameras in each cell. The women's precinct includes a grassed yard with a paved area that may be used for tennis or other sport, and a small Community Centre with facilities including a kitchen, interview room, activities area and small hairdressing salon. The Community Centre also includes a small gymnasium/weights room.

- 3.3.3 The design of the women's area of the AMC reflects a focus on the particular needs of women detainees for additional privacy, and the fact that they generally pose less of a security risk than male detainees. John Paget who led the design implementation team, notes that:

*Provision of accommodation in the form of cottages encourages an approach to the management of women prisoners based on need, rather than on security classification. The selection of a capacity of five in the cottages was made to assist in prisoner decision making.*⁷

- 3.3.4 The ACTCS website states that "The cottages enable detainees to interact in a 'group house' style environment, developing social skills such as cooking, cleaning and successful social interaction with others, all of which will be needed on their release."⁸

- 3.3.5 Current and former detainees interviewed generally expressed positive views about the general cottage accommodation. Many commented on the significant improvement from the facilities at the Symonston Remand Centre, and some NSW prisons.

"The cottages, they looked nice, you know...As far as comfort wise, for a jail, it's actually not bad." [woman detained at AMC 2011]

"The place is nice and new, compared to places like Berrima, it's better to have a nicer place like this than the older buildings." [woman detained at AMC 2013]

- 3.3.6 Women interviewed noted that living in cottage accommodation had many benefits, as it was a more normal domestic environment, where they could be supported by other women and cook for themselves:

"When you are in a house with other girls everyone pitches in so it works a lot better, other people help and share jobs." [woman detained at AMC 2013]

- 3.3.7 However they also identified challenges with sharing accommodation, as the environment could change quickly with the introduction of a new detainee. Tensions could develop over issues such as sharing responsibility for cleaning and cooking. One woman stated that:

⁷ Ibid 271.

⁸ ACT Corrective Services, *Cottages (including detention for women)* (29 March 2012) <<http://www.cs.act.gov.au/page/view/862/title/cottages-including-detention-for-women>>.

“Some people don’t know how to do that, it is not normal functioning for drug users or people with mental health, just simple things like cleaning, shopping, having a shower.” [woman detained at AMC 2013]

- 3.3.8 Overall, the standard of accommodation for women in the main cottages reflects the attention to women’s human rights that informed the cottage design, and represents best practice for medium/minimum security accommodation for women detainees. While in some other areas discussed in this Report, women detainees may be disadvantaged compared to male detainees, they do have an advantage in generally being allocated immediately to more comfortable and domestic cottage accommodation rather than cell blocks.

Limitations

- 3.3.9 Although the women’s cottages are modern and represent a high standard of accommodation, there are limitations inherent in having no designated open security or transitional release facilities for women. Concerns have also been raised regarding privacy issues in the High Needs Cottage.

High Needs Cottage

- 3.3.10 The High Needs Cottage is used for segregation of women for disciplinary and other reasons, including a step-down placement for women with mental health and other complex needs and for management of women detainees who are at risk of harming themselves or others and require observation. Women detainees who had spent time in the High Needs Cottage generally found this environment challenging:

“But it is very boring and it’s not really like – your room’s comfortable but outside it’s shit. Like it’s cold and it’s just not a nice place. There’s a kitchen but you can’t use anything – you can’t have pots and pans, but you’re allowed to have a kettle...” [Can’t] cook anything. [woman detained at AMC 2011]

- 3.3.11 A number of women interviewed commented on the lack of privacy for using toilets and showers in the cells in this area, as the cells are observed by CCTV cameras. One former detainee commented that:

*“I guess I feel differently today than I did back then. Because I thought I was a heap of shit, I could just sit on the toilet and do what I wanted to do anyway. But today, if they put me in a camera room I’d be horrified, I’d feel like my rights were violated. But back then I really didn’t give a f***k because that was the life I lived.” [woman detained at AMC 2011]*

- 3.3.12 One woman detainee noted concerns about being watched by male guards on camera while showering:

“So I’d get tissue paper with water and just peg it up on the camera and then they’d tell me to put it down, and I said ‘I’m not putting it down until I have my shower. And the shower screen’s clear. I have to get dressed in my shower that’s soaking wet because I don’t want them to see me’. You can’t wash yourself properly because they could see you.” [woman detained at AMC 2012]

- 3.3.13 While cameras may be necessary for women assessed to be at risk of self-harm and requiring observation, it appears that for women who are in this area for disciplinary or other reasons, this level of observation may not be required. To avoid unnecessary intrusion on women's privacy, cameras in cells in the High Needs Cottage should be able to be covered or clearly turned off where not strictly necessary.
- 3.3.14 ACTCS note that while it is technically possible to cover or turn off cameras, it would be very difficult and time consuming, and question whether it is operationally desirable. Nevertheless, we consider that the intrusion on women's privacy through cell cameras can only be justified where this level of observation is necessary for safety or security reasons, in each individual case.

Recommendation 1: That ACTCS ensure that cameras in cells in the High Needs Cottage are covered or turned off where women do not require this greater level of observation.

Lack of Access to the Transitional Release Cottage

- 3.3.15 One clear limitation of the range of accommodation provided for women at the AMC is the lack of any open security accommodation or transitional release facility designated specifically for women outside the secure perimeter, to facilitate the transition of women back into the community. Although the Corrections Management (Transitional Release) Policy 2010 applies to all detainees,⁹ and women detainees are eligible to apply to be accommodated in the Transitional Release Cottage, only one woman has been placed in this cottage (in the first year of operation of the AMC) and ACTCS have indicated that they no longer consider it appropriate to mix women and men in this cottage. Instead, ACTCS consider that women eligible for work release could participate in these programs but return to the women's cottages inside the secure perimeter after work each day. Throughcare and transition to the community are discussed further at Part 9.
- 3.3.16 The Commissioner is concerned that a policy that applies on its face to both men and women equally would in practice be applied in a way that discriminates against women. Although the issue has not arisen recently, as there have not been any applications from eligible women to be placed in the Transitional Release Cottage, the approach indicated by ACTCS is not consistent with the Policy, and could amount to unlawful discrimination in the provision of services on the grounds of sex.
- 3.3.17 In the longer term, we consider that ACTCS should develop options for open security facilities for women detainees, whether in an additional Transitional Release Cottage for women outside the secure perimeter at the AMC, or in a facility elsewhere in the community. The Commissioner acknowledges that issues of scale and the small number of women serving longer sentences make this challenging, as there is a need to manage issues of potential isolation. Nevertheless, there may be innovative options available to provide a work release program for women in the community.
- 3.3.18 In the meantime, the Transitional Release Policy should be reviewed to make specific provision for women detainees, and to clarify whether they are eligible to be placed in the existing Transitional Release Cottage.

⁹ Notifiable instrument NI2010-576, made under *Corrections Management Act 2007* (ACT) s 14(1).

Recommendation 2: That ACTCS review the Transitional Release Policy to give specific consideration to the management of transitional release for women, and clarify whether they are eligible for placement in the Transitional Release Cottage.

Recommendation 3: That ACTCS be funded to develop options for open security accommodation for women detainees in the ACT, whether in a facility adjacent to the existing Transitional Release Cottage or elsewhere in the community.

- 3.3.19 Women are also ineligible to be placed in the Therapeutic Community Cottage, as discussed further at Part 7.4.22 below.

Separation of Sentenced Women and Remandees

- 3.3.20 Section 19 of the *HR Act*, which sets out the right to humane treatment when deprived of liberty, provides that: “An accused person must be segregated from convicted people, except in exceptional circumstances.”

- 3.3.21 Section 44(2) of the *CM Act* provides that “The director-general must also ensure that convicted detainees are accommodated separately from non-convicted detainees.” However, s 44(4) provides an exception where the Director-General suspects, on reasonable grounds, that it is necessary to ensure the safety of the detainee or anyone else.

- 3.3.22 The human rights principle in s19(2) of the *HR Act* reflects the presumption of innocence in relation to detainees who are remanded in custody, but have not been found guilty of an offence. The right to separation is intended to protect remandees from risks posed by sentenced detainees.

- 3.3.23 In the women’s precinct separate cottages are designated for women on remand and those who are sentenced. However, in practice this separation has not been strictly maintained. Although generally women will be allocated to a cottage reflecting their remand or sentenced designation, different placements have occurred to avoid conflict between women, and to promote stability (for example by putting a woman likely to be on remand for a considerable period with sentenced women, where this will minimise conflict).

- 3.3.24 It is notable that although the right to be separated from sentenced detainees is intended to provide protection for remandees, interview participants generally consider the Sentenced Cottage to be safer, more stable and more desirable accommodation, as it is less subject to disruption from short term remandees who may be unsettled when they arrive at AMC. Most women did not object to mixing occurring, but those who did were sentenced women who did not want to mix with remanded women. As one sentenced detainee stated:

“Sentenced prisoners should be separated from remandees because they are more settled, need to get on with serving their time, remandees are very unsettled, coming and going. They still do education, but they don’t usually have jobs or do so many programs.”[woman detained at AMC 2013]

- 3.3.25 Given the very small numbers of women at the AMC, and the history of serious and violent conflict between some women detainees, the current approach to accommodating remanded and sentenced women in a cottage together where necessary to ensure their safety is reasonable and likely to fall within the definition of

“exceptional circumstances” in s 19(2). However, it is important that the starting point for allocation remains that remanded and sentenced detainees should be accommodated separately, and that mixing of remanded and sentenced women within a cottage occurs only where there is a clear justification in each case.

3.4 Crisis Support Unit

Relevant Standards

HR Act

Section 10(1) *Protection from torture and cruel, inhuman or degrading treatment etc*

10(1): *No-one may be—*

(a) *Tortured; or*

(b) *Treated or punished in a cruel, inhuman or degrading way.*

Bangkok Rules

Rule 16: *Developing and implementing strategies, in consultation with mental health care and social welfare services to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialised support to those at risk shall be part of a comprehensive policy of mental health care in women’s prisons.*

Rule 41(d): *Ensure that those with mental health care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems*

SMR

Rule 8: *The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus, in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;*

- 3.4.1 The Crisis Support Unit (CSU) is a ten bed facility adjacent to the health centre within the AMC. The CSU is intended be used to accommodate detainees who have engaged in suicide or self-harming behaviour or who have been assessed as being ‘at risk’. Detainees at risk of harm to others, as the result of a mental illness, may also be accommodated in the CSU.¹⁰
- 3.4.2 The CSU facility is comprised of nine cells (one with two single beds) surrounding a central officers’ station. Cells are bare and stark, containing little furniture other than a bed and toilet and sink. Televisions were not originally included, but were installed in each cell following the Knowledge Consulting Review. The CSU has a small common

¹⁰ Corrections Management (Management of Prisoners in the Crisis Support Unit) Policy 2009, Notifiable instrument NI2009-135, made under *Corrections Management Act 2007* (ACT) s 14(1).

area for making tea and coffee, and a single couch and television. The CSU has an enclosed concrete exercise yard which allows detainees to have some access to natural light and fresh air during time out of their cells, although cigarette smoke from detainees smoking in the yard also filters back into the unit. Three of the cells also have a small private external exercise yard at the back of the cell. Cells do not have individual showers, and a shared shower is provided at one end of the unit. A number of interview participants commented that it is not a “therapeutic” environment.

3.4.3 In part, the stark environment of the CSU reflects a deliberate design choice, as the facility was primarily intended to manage detainees at acute risk of self harm, who require intense observations for short periods of crisis. The unit was thus designed to be a secure and low stimulus environment where detainees could be effectively stabilised and then quickly returned to the general prison population.¹¹

3.4.4 However, the Knowledge Consulting Review of operations of the AMC found that in the first years of operation, the CSU was being used for a different purpose than originally intended, and that rather than being limited to use for acute crisis periods, a number of detainees had remained in the CSU for much longer periods. This was found to occur for a range of reasons including the need to monitor detainees with ongoing serious mental health conditions, and detainee concerns about mixing with others, which led to some detainees seeking to remain in the CSU. The Report noted that:

*The CSU is designed for a short stay but a significant number of detainees remain for a long term. Some of the detainees had been in the CSU for nine months. As a result of real and or perceived pressures, some detainees exhibit signs of anxiety and stress including threatening to self-harm or feigning suicidal states of mind so as to get transferred to and or to remain in the CSU.*¹²

3.4.5 It concluded that “the CSU has extended in scope considerably – and is not capable of satisfactorily addressing the tasks to which it is put.”¹³

Limitations for women detainees in the CSU

3.4.6 In 2012-13, there were 16 women detainees who spent time in the CSU over 21 separate admissions, mostly for short periods, with 13 of the 21 admissions being for less than three days. However one woman spent a consecutive period of 116 days in CSU, and another woman spent 111 days in the facility.

3.4.7 Women in the CSU for long periods face significant isolation, as there is usually only one woman in the CSU at any time. The Coming Home Program submission notes that:

There are a number of cells in the area but usually only one woman (if any). Men and women detainees are not meant to interact so if a lone woman is in this area she is inevitably isolated, lonely and unlikely to get much time out of the cell. .. The isolation and lack of exercise and space combined with intense scrutiny in [their] cells can only contribute further to the lack of well-being that is meant to be addressed here.

¹¹ Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre ACT Corrective Services* (2011) 146.

¹² Ibid.

¹³ Ibid 152.

- 3.4.8 One former detainee, while acknowledging the kindness and respectful attitude of staff at CSU, reported the severe impact of ongoing isolation:

"It was hard going through all that being isolated at CSU, I'm a quiet person, but still like to get out and about to talk to people. It was just depressing. An hour exercise every day, never on the oval or outside, just in the little yard there, or walking around inside by myself." [woman detained at AMC 2012]

- 3.4.9 It is clear that the design of the CSU imposes significant limitations for women who are held in the CSU with male detainees. Management and staff at the CSU make efforts to protect women from contact with male detainees, by accommodating them at one end of the unit, where they do not have to walk past male detainees when leaving their cell. Women are given time out of cells separately from men. However interview participants report that contact between men and women still occurs, and that male detainees will often call out to women from their cells or approach women's cell doors when the men have time out of cells. One participant noted that women in the CSU may be particularly vulnerable to harassment, as they have often been subject to family violence or abuse in the community, and find it difficult to assert themselves where attention is unwelcome.
- 3.4.10 Privacy for women in the CSU appears to present a real concern, as there are clear windows in the cells which could allow a male detainee who is out of his cell to view a woman using the toilet. Interview participants reported that in practice, women have been allowed to put paper over the window, provided that the camera was not obscured, but that this was not ideal, particularly where a woman was at high risk of self harm.
- 3.4.11 It was also noted that the shared shower facility in the Unit presents a difficulty for women detainees, as a woman would have to walk past male detainees' cells to get to the shower, and might be able to be observed while showering if a male detainee was out of his cell. To avoid this risk staff have instead allowed women in the CSU to use an accessible staff bathroom near the cells designated for women. This is not ideal, however, as it is not designed for detainee use, and requires that women be constantly monitored to ensure their safety. Women at very high risk of self harm are not able to use this facility, and may be unable to shower at all until they are more stable.
- 3.4.12 ACTCS has been successful in obtaining funding for initial upgrades to the CSU to improve cell safety and to increase protection and safety in the officers' station at the CSU. While these safety upgrades remain a priority, it appears that further design modification of the CSU could improve separation and privacy for women accommodated there.

Recent improvements in Practice

- 3.4.13 It appears that the use of the CSU will continue to be necessary for women with a need for high levels of observation and for treatment from forensic mental health. While the High Needs Cottage provides a step down placement option for women once they are stabilised, it is not able to provide an equivalent level of monitoring and treatment for women at high risk. Issues of privacy, potential harassment and isolation will continue to be a concern for women detainees accommodated at the CSU.

- 3.4.14 However, ACTCS has informed the Audit of significant improvements in the approach to the operation of the CSU in the second half of 2013.
- 3.4.15 A key step has been the establishment of the multidisciplinary High Risk Assessment Team (HRAT), now led by the Senior Manager Corrections Psychological and Support Service, and comprising representatives from Forensic Mental Health, Justice Health, Clinical Support and Corrections. This team meets every morning, and is responsible for decision making regarding detainees at risk across the prison, including the admission and placement of detainees in the CSU and for managing their transition back into the mainstream prison.
- 3.4.16 The role of the Manager of the CSU has also been restructured to become the Senior Manager Corrections Psychological and Support Service, responsible for oversight of clinical and support services for all detainees at risk. A small support team provides transitional support for detainees leaving CSU and integrating back into the mainstream prison.
- 3.4.17 A new policy regarding the management of detainees who are 'at risk' is being finalised, which will provide a more nuanced approach to identification of different types of risk, such as risk from self harm, and risk from psychiatric conditions.
- 3.4.18 It is reported that the establishment of the HRAT by ACTCS, and the Senior Manager Corrections Psychological and Support Service role has had an impact in reducing the length of time detainees remain in the CSU, and in aligning CSU operations more closely with its original objectives. Data is not yet available to determine the impact of this change. However, in September 2013, there were no women currently in the CSU, but five women were receiving support from the Senior Manager Corrections Psychological and Support Service in their cottages.
- 3.4.19 The Senior Manager has advised that there is a high degree of support from Corrections Management for decision making by the HRAT, and for the use of the High Needs Cottage for women in preference to the CSU, wherever possible.
- 3.4.20 The Knowledge Consulting Report identified concerns for all detainees in the CSU having very little access to exercise outside the confines of the small enclosed yard, and not participating in activities or programs while at CSU.¹⁴
- 3.4.21 ACTCS report that a structured program of activities has now been introduced in CSU, including regular exercise on the oval, and painting and drawing activities, which are available to both male and female detainees at separate times. A therapeutic support group has also been established for detainees in the CSU. At present this group is only available to male detainees, and it is not considered appropriate to mix males and females in this group. ACTCS state that it is intended that the same program will be provided on an individual basis to those women.

Detainees with chronic mental health conditions

- 3.4.22 An ongoing area of concern is the use of the CSU to accommodate detainees who have chronic mental health conditions, and who are not able to be integrated into the

¹⁴ Ibid 155, 159.

mainstream prison population. This appears to have been the situation with at least one woman detainee who was held in CSU for an extensive period. Case notes relating to this detainee suggested that her mental health condition meant that she did not understand where she was, or why she was unable to leave the prison:

...the detainee has difficulty understanding why she is incarcerated. Talking usually helps but this was to no avail today.

- 3.4.23 While we accept that ACTCS had no feasible alternative to accommodating this detainee in the CSU for her own protection, in our view the CSU is not a therapeutic environment for detainees who need ongoing mental health treatment and care. Although there have been improvements to the operation of the CSU, through tailoring activities and engagement to stabilise and improve acute mental health conditions, it is not a mental health treatment facility.
- 3.4.24 In the 2007 Audit of Correctional Facilities, the Commission recommended that the secure mental health facility to which the ACT Government has committed to developing should be established as soon as possible. It recommended that an interim facility should be established as a matter of urgency.¹⁵
- 3.4.25 Although progress on the development of the Secure Mental Health Unit has not been as swift as anticipated, an architect has now been appointed to design the Unit, and a draft Model of Care for the Unit was released by the ACT Chief Minister and Minister for Health, on 23 November 2013.¹⁶ The Secure Mental Health Unit is intended to provide a safe and structured environment with 24 hour clinical support for people with moderate to severe mental illness who cannot be safely cared for in a less restrictive environment. It is hoped that the Secure Mental Health Unit will provide more therapeutic long term accommodation for detainees with serious and chronic mental health conditions, who are not well catered for in the CSU environment.
- 3.4.26 The provision of mental health services for women is discussed further in Part 6.11.

Recommendation 4: That the ACT Government fund ACTCS for design modifications to cells used for accommodating women in the CSU to improve privacy. The bathroom currently used by women in the CSU should be upgraded to ensure it is safe and fit for purpose for detainees at risk.**

Recommendation 5: That ACTCS ensure that women detainees in the CSU have equal access to therapeutic support programs as male detainees, whether through one-on-one programs or through a group operating in the women's precinct.

¹⁵ ACT Human Rights Commission, *Human Rights Audit on the Operation of ACT Correctional Facilities under Corrections Legislation* (2007) 33 Recommendation 1.2.

¹⁶ ACT Health, 'Model of care released and architect engaged as project gains momentum' (2013) 2 *Secure Mental Health Unit Newsletter* 1 <www.health.act.gov.au/HIP>.

3.5 Classification

Bangkok Rules

Rule 40: Prison administrators shall develop and implement classification methods addressing the gender-specific needs and circumstances of women prisoners to ensure appropriate and individualized planning and implementation towards those prisoners' early rehabilitation, treatment and reintegration into society.

Rule 41: The gender-sensitive risk assessment and classification of prisoners shall:

(a) Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high security measures and increased levels of isolation can have on women prisoners;

3.5.1 The security classification given to women detainees at the AMC has, in some respects, less practical significance for them than for women in other jurisdictions, as all women detainees (apart from those placed in CSU) are placed in the cottage accommodation, regardless of their classification. By contrast, male detainees may only progress to cottage accommodation once they have achieved a minimum security classification.

3.5.2 The Corrections Management (AMC Detainee Classification) Policy 2012 states that:

*Females classified to maximum and medium security will be placed in more domestic like accommodation than that provided for males, although more challenging behaviours and/or higher levels of risk may necessitate a locked room restricting access to common areas unless directly supervised by staff.*¹⁷

3.5.3 Security classification does not affect eligibility of women to attend education or rehabilitation programs held within the AMC. However, classification does have an impact on eligibility to participate in programs such as work release outside the prison. Only detainees classified as minimum security 3 are eligible for work release or external leave programs.

3.5.4 When the AMC was opened in 2009, and women were repatriated from NSW, the classifications they had been given in NSW were not recognised, and those who had progressed to work release programs in NSW had to start again at higher security classifications in AMC. One former detainee noted that:

"Nothing was in place when they first opened that prison. So I'd gone from being a minimum security prisoner in NSW not even living inside the prison boundaries, to coming back here and being thrown into a kindergarten yard. That's how it felt."
[woman detained at AMC 2010]

3.5.5 In 2012 the Policy was revised to provide a more structured process for risk assessment and classification including an assessment of a range of evidence, including history of detention in other prisons.

¹⁷ Notifiable instrument NI2012-299, 3, made under *Corrections Management Act 2007* (ACT) s 14(1).

- 3.5.6 Under the Policy detainees must be given a provisional security classification within 14 days of admission, and this classification is to be reviewed by the Sentence Planning Group (SPG) within 21 days. The SPG consists of the Case Management Co-ordinator, the Case Manager and the Area Manager, and is chaired by the Classification Co-ordinator. Detainees are to be promptly notified of the decision regarding classification and have the right to submit a written appeal to have the decision reviewed.
- 3.5.7 The Queensland Anti-Discrimination Commission's Women in Prison Report¹⁸ and the Victorian Human Rights and Equal Opportunity Commission's Report on Koori Women and the Justice System¹⁹ raised concerns about the higher security classifications generally given to Aboriginal and Torres Strait Islander women detainees compared with other women detainees in those jurisdictions. These reports noted the impact of assessments that rely heavily on static factors such as the number of offences, which may generally be higher for Aboriginal and Torres Strait Islander women detainees, due to earlier contact with the justice system.
- 3.5.8 Given the very small numbers of Aboriginal and Torres Strait Islander women at the AMC, statistical analysis of comparative classification is likely to be less meaningful as it would be influenced by individual factors. However, it appears that the 2012 Classification Policy adopted by ACTCS is likely to offer greater scope for a more evidence-based assessment of risk, which is not so heavily dependent on static factors such as criminal history.
- 3.5.9 The Corrections Management (Aboriginal and Torres Strait Islander Detainees) Policy 2011 (No. 2)²⁰ also provides that the Indigenous Liaison Officer will attend the SPG and Remand Review Team meetings whenever Aboriginal and Torres Strait Islander detainees are being reviewed, including reviews of classification. This is a positive practice which should assist the determination of classification in a way that is fair to Aboriginal and Torres Strait Islander women.
- 3.5.10 Overall it appears that the classification process and practice for women detainees at AMC is consistent with human rights standards.

3.6 Staffing

Bangkok Rules

Rule 29: *Capacity-building for staff employed in women's prisons shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities. Capacity-building measures for women staff shall also include access to senior positions with key responsibility for the development of policies and strategies relating to the treatment and care of women prisoners.*

Rule 30: *There shall be a clear and sustained commitment at the managerial level in prison administrations to prevent and address gender-based discrimination against women staff.*

¹⁸ Anti Discrimination Commission Queensland, *Women in Prison* (March 2006) 48.

¹⁹ Victorian Human Rights and Equal Opportunity Commission, *Unfinished Business: Koori women and the Justice System* (August 2013) 65.

²⁰ Notifiable instrument NI2011-723, made under *Corrections Management Act 2007* (ACT) s 14(1).

Rule 33.1: *All staff assigned to work with women prisoners shall receive training relating to the gender-specific needs and human rights of women prisoners.*

SMR

Rule 53(1): *In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.*

Rule 53(2): *No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.*

- 3.6.1 The culture of correctional staff is key to the humane and respectful treatment of detainees. Correctional officers working with women detainees require particular skills and training to meet the gender-based needs of these detainees.

Human rights of staff

- 3.6.2 To create a culture of respect for human rights, it is vital that the human rights of correctional officers and other staff are also acknowledged and that staff are supported in what can be very challenging work.

- 3.6.3 The Knowledge Consulting Review reported that most staff appeared to be happy in their work and proud of what they do. They concluded that:

ACT Corrective Services has taken the issue of a healthy work place for staff into account in the design, technology and operational procedures of the AMC.²¹

- 3.6.4 Staff we spoke to during this Audit also appeared to take pride in their work and showed strong professionalism. However, some staff we spoke to felt that their rights to be treated with respect and dignity (by detainees and others) were not always given the same attention as the rights of detainees. Some staff felt that detainees' sense of entitlement and human rights made it difficult to enforce discipline at the AMC over minor issues, and that staff therefore had to put up with high levels of verbal abuse and disrespect.

- 3.6.5 While it is important that approaches to discipline are not overly punitive, a human rights approach to prison management does not require that detainees be allowed to abuse officers. Provided that rules are clear and enforcement is fair and reasonable (for example having regard to detainee's mental health issues) officers should be supported in enforcing appropriate behaviour and language by detainees. Modelling respectful behaviour and attitudes with detainees is also an important part of creating a healthy prison environment. ACTCS management we spoke to were supportive of staff, and of enforcing discipline in a way that was fair and consistent.

- 3.6.6 The Commissioner provides a half day training session on human rights for all new correctional officers, and emphasises in this training that human rights apply to staff as

²¹ Knowledge Consulting, above n 11, 300 (Finding 1).

well as detainees. It is important that this message is reinforced in all training (including refresher training) and in management of staff.

Women's relationships with staff

- 3.6.7 Women interviewed generally had good relationships with some or most of the staff, and most did not express concerns about being supervised by male officers:

"Most of the screws are pretty good and respectful. It's ok having male screws working in the female section, they will knock on the door and wait for you to invite them to come in. Most are cool. When you are doing a long time they get to know you better." [woman detained at AMC 2013]

"My relationship with some of the staff at AMC was pretty reasonable, although I didn't get on with some of the staff as well." [woman detained at AMC 2012]

- 3.6.8 Some women felt that they were unfairly targeted by particular officers:

"I think it's very unfair, the screws, they're bad, they have their favourites." [woman detained at AMC 2011]

- 3.6.9 However, other women suggested that this sometimes also reflected the attitudes and approaches of the detainees:

"I got on well with the screws, if you were nice to them they were nice to you. One girl got a mouth on her, treated the screws like shit, when she wanted her clothes changed they took their time because it wasn't a right, they didn't have to do it straight away." [woman detained at AMC 2012]

- 3.6.10 While some women interviewed had had negative experiences at AMC, a majority agreed with the statement that 'they were treated as a human being and a person of value at the AMC.' Some women suggested that staff at AMC were more concerned for their welfare than staff they had encountered in the NSW system. One woman stated that:

"The officers, their attitude to us, they didn't treat us like animals, treated us like human beings, understood we did the wrong thing but that not everyone is perfect. Not like other jails I've been to in NSW where the officers treated you like a piece of shit, it was wrong, they were only there to receive the pay... [the AMC is] the best jail for human kindness I suppose." [woman detained at AMC 2012]

- 3.6.11 Although the Commissioner interviewed only a small number of officers working in the women's precinct, we were impressed by the professionalism and humane attitudes of these officers. One officer had shown particular insight into a woman detainee's state of mind. This officer's decision to check on the detainee before the required observation time led her to discover the detainee in the midst of a very serious self-harm attempt, and almost certainly saved the detainee's life.

Staffing Ratios

- 3.6.12 Where possible, a high ratio of women correctional staff working with women detainees is desirable, as women detainees are particularly vulnerable to abuse and exploitation, and may have difficulties trusting male staff. The AIC literature review of

good practice in women's prisons suggests that a target of 70-80% female staff working in women's areas is ideal.²²

- 3.6.13 In 2012/2013, of 173 correctional officers at AMC, 37 were women. This ratio of around 21% female officers appears to have decreased since the review of Correctional facilities in 2007.²³
- 3.6.14 Within the women's precinct, the ratio of female staff is generally higher. However, we were informed that there were only three women correctional officers on the roster, with seven or eight males, which made it difficult to ensure that there were always two female officers available on each shift. If female officers are required, for example to perform a strip search on a woman detainee, they may need to be diverted from other areas of the prison.
- 3.6.15 In our view, ACTCS should seek to continue to increase recruitment of women correctional officers, and should encourage women officers to work within the women's precinct if their attitudes and skills are a good fit for this area.

Recommendation 6: That ACTCS take steps to increase the ratio of women correctional officers working within the women's precinct at the AMC.

Staff training

- 3.6.16 AMC correctional officers receive a 9-11 week initial training course on operational requirements and policies and procedures, and refresher training over the course of each year. We understand that within their first year, new recruits complete a Certificate III in Correctional Practice, provided by in house trained assessors, and are encouraged to complete a Certificate IV in Correctional Practice. ACTCS has also approved officers to complete other studies including a Diploma of Community Welfare delivered by the Canberra Institute of Technology.²⁴
- 3.6.17 As part of their recruitment training, correctional officers receive training on cultural awareness, and disability issues, ethics, effective communication and first aid, among other modules. The Human Rights and Discrimination Team at the Commissioner also provides a half-day introductory session on the *HR Act* for officers. However, there is currently no specific training module on the particular needs of women detainees. In the Commission's 2007 Audit the Commission recommended that:
- 3.1.3. Extensive training concerning issues for women in prison and sensitivity towards women prisoners should be compulsory for all custodial officers.*²⁵
- 3.6.18 The Women's Legal Centre in their submission note concerns about Security Awareness training that was arranged by ACTCS for external agencies providing services within the prison:

²² Lorana Bartels and Antonette Gaffney, 'Good practice in women's prisons: A literature review', (Australian Institute of Criminology Reports: Technical and Background Paper 41, 2011), 6.

²³ ACT Human Rights Commission, above n 15, 64, where it was reported that women made up 27% of custodial staff.

²⁴ Knowledge Consulting, above n 11, 314.

²⁵ ACT Human Rights Commission, above n 15, 9, 66 (Recommendation 3.1.3).

The clear message was “them and us,” that prisoners can’t be trusted and that prisoners are to be “controlled” at all times. There was no mention, theoretical or otherwise, of attempts to address the systemic issues that contribute to imprisonment in the first place. There was no mention of the particular circumstances of women prisoners, in fact the WLC staff were told at this session that women detainees were far more difficult than the men.

- 3.6.19 It is not clear whether this training is indicative of the nature of the in-house training provided to correctional officers. If so this would be a matter of serious concern, as such messages reinforce negative stereotypes about women detainees, rather than exploring issues such as victimisation and trauma that may underlie women’s offending behaviour, and effective ways of working with women.
- 3.6.20 Correctional officers interviewed indicated that they would welcome further training in this area. It is important that this training is provided to all correctional officers to increase understanding about women detainees, and address any concerns that officers may have about working within the women’s precinct.

Recommendation 7: That ACTCS develop specific training modules for correctional officers on the particular characteristics and needs of women detainees, and effective ways of working with women detainees.

Staffing Shortages and Lockdowns

- 3.6.21 A number of stakeholders raised concerns about women being frequently subject to lockdowns in their cottages as a result of staffing shortages. The Coming Home Program submission states that:
- Lockdowns occur frequently in the women’s section of the prison. This most often occurs because of a shortage of Corrections Officers on shift. I think they need 2 officers on for the women to come out of their cottages. If the jail as a whole is short staffed then Officers will be moved around to ensure that as many prisoners across the jail are able to do “what needs to be done”. Because of the low number of women and the relative speed they are able to do what is pressing, the women get less time out of their cells.*
- 3.6.22 A woman detainee explained that:
- “When there are shortages the women’s cottages always get locked down. Most of the time they try to keep visits going but programs and other stuff gets affected. There were lots of lockdowns a few months ago, not so many lately, they do affect programs.” [woman detained at AMC 2013]*
- 3.6.23 Figures provided by ACTCS indicate that in the 2012-13 financial year, there were 92 unscheduled lockdowns in the women’s precinct, ranging in duration from 30 minutes to a full day lockdown. ‘Staff shortage’ is the most frequent reason indicated for these lockdowns, with 74 of the 92 lockdowns in the women’s area being attributed to staff shortages.
- 3.6.24 It does appear that women detainees may have been disproportionately affected by lockdowns compared to male detainees. It has been reported that in the first 304 days of the 2012-13 financial year there were 150 lockdowns in total across all areas of the

prison.²⁶ Within this period, 75 of these lockdowns occurred in the women's precinct (and only one of these lockdowns involved the whole prison). Given that the women's precinct is only one of many discrete areas of the prison (others include the Men's Sentenced Cell Block, Remand Cell Block, Remand Cottage, Sentenced Cottage, Protection Cottage and Management Unit), it seems likely that women detainees have been affected by lockdowns more than other cohorts of male detainees.

- 3.6.25 The Commissioner recognises that in determining staffing allocation, AMC have prioritised visits, and that visits are rarely, if ever, disrupted by lockdowns. This is a reasonable approach, given the distances many visitors travel to visit detainees, and the adverse effect that unpredictable lockdowns would have on maintaining relationships with family and friends.
- 3.6.26 We also acknowledge that for women detainees, being locked down prevents them from accessing outdoor areas and the Women's Community Centre, but does still allow them to have access to the common areas within their cottage, and to associate with other women. It is thus less restrictive than being locked into a cell, as would be the case with many male detainees. Nevertheless, the pattern of repeated lockdowns disrupts scheduled activities and programs and is likely to negatively affect women's routine and motivation to participate in activities.
- 3.6.27 It is not appropriate that women detainees should bear a disproportionate burden of lockdowns compared to male detainees. Given the frequency of lockdowns due to staff shortages, it appears that current staffing levels at AMC are inadequate to meet the needs of the AMC prison population, particularly as this population has experienced rapid growth over 2012-13. Additional staff should be funded to address staff shortages.

Recommendation 8: That the ACT Government fund ACTCS to recruit additional staff to prevent staff shortages.**

Recommendation 9: That ACTCS ensure that women detainees are not disproportionately affected by lockdowns compared with other cohorts of male detainees.

²⁶ Christopher Knaus, 'Concern inmates' rights breached', *The Canberra Times*, 27 May 2013
<<http://www.canberratimes.com.au/act-news/concern-inmates-rights-breached-20130526-2n5mh.html>>.

3.7 Minimum Entitlements

3.7.1 This section examines key entitlements such as food, clothing and personal hygiene.

Food

CM Act

Section 40 Food and drink

40(1): The director-general must ensure that—

- (a)** Sufficient nutritional food and drink are provided for detainees to avoid hunger and poor nourishment; and
- (b)** Meals are provided for detainees at times consistent with the cultural norms of Australia; and
- (c)** Clean drinking water is provided to meet the needs of detainees.

40(2): The director-general must also ensure, as far as practicable, that allowance is made for the religious, spiritual and cultural needs of detainees in relation to the provision of food and drink.

40(3): If a doctor, other than a doctor appointed under section 22 (Health practitioners—non-therapeutic functions), prescribes a particular diet for a detainee, the director-general must ensure that reasonable steps are taken to provide the detainee with the diet.

40(4): For chapter 10 (Discipline), subsections (1), (2) and (3) are taken to provide an entitlement for each detainee in relation to food and drink.

SMR

Rule 20(1): Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

Rule 20(2): Drinking water shall be available to every prisoner whenever he needs it.

3.7.2 Women detainees in the Sentenced and Remand Cottages purchase food and prepare their own meals in their cottages. Each pod is equipped with a full kitchen. Women are given a ‘cottage buy up’ allocation which is currently \$45 per detainee per week, and may make a selection from a list of grocery items available from a local supermarket. These groceries are delivered weekly to the cottages.

3.7.3 In addition to the cottage buy ups, women are able to purchase a range of snack foods and other items, with their own funds, from the ‘activities buy up’ list.

3.7.4 Current and former detainees interviewed generally enjoyed being able to cook for themselves in the cottages, rather than being dependent on institutional meals. It is accepted practice that cottage ‘buy up’ money is pooled in each pod, and most participants noted that the process of budgeting, selecting and cooking food together was managed effectively by the women in each group:

“Generally we all sit down and order together, we don’t have a roster for cooking as such, we just decide what we are going to cook together that night. It works ok.”
[woman detained at AMC 2013]

“We looked after our own breakfast and lunch, but we would cook together in the evening. One girl couldn’t cook at all, but she was happy to clean up, so it worked.”
[woman detained at AMC 2013]

- 3.7.5 This system of allowing women to cook for themselves, and to manage budgeting, shopping and cooking within a shared household maintains and develops women’s life skills, and creates a normalised environment.
- 3.7.6 The provision of life skills and hospitality (cooking) classes through the education provider Auswide also assists women to further develop their living skills, and to have a greater understanding of issues such as nutrition and food hygiene.
- 3.7.7 A number of women noted the lack of variety in the food items available, and many commented on limited selection of fresh fruit and vegetables available, and expressed a desire for more fresh produce in the cottage and activities ‘buy up’ lists.

“Some things we are limited with what we can cook based on what we can buy. We have recipe books, but can’t make things if we are missing ingredients.” [woman detained at AMC 2013]

“The cottage buy up list is ok, but you can’t get a wide range of fruit and veg.” [woman detained at AMC 2013]

“We think they should just change the buy up like every six months, change a couple of little things, or have like four terms so each term it changes.” [woman detained at AMC 2013]

- 3.7.8 The Knowledge Consulting report conducted a very detailed study of nutrition issues at the AMC, and also noted some restrictions on the variety of fresh fruits and vegetables in the cottage ‘buy up’ lists. However, the Report found that “recommended portions of foods to meet nutrient requirements could be achieved just within the \$50 budget allocated to detainees.”²⁷
- 3.7.9 Current detainees raised some concerns about the amount allocated for the cottage ‘buy up’ being reduced from \$50 per detainee to \$45, and changes to the buy ups supplier which occurred during the Audit period. Some noted that they had to supplement the cottage ‘buy up’ with their own purchases because of this decreased budget allocation. However, ACTCS advise that the reduction was in response to audits by the AMC Catering Team which found a significant quantity of food being stored unhygienically and going to waste rather than being consumed.
- 3.7.10 Women placed in the High Needs Cottage do not cook for themselves, but instead receive meals from the prison kitchen. Detainees we spoke with in the High Needs Cottage were generally less satisfied with these pre-prepared meals, and were keen to move back to the main cottages where they could prepare their own food.

²⁷ Knowledge Consulting, above n 11, 181.

- 3.7.11 Women interviewed stated that additional milk and supplements were provided for detainees when pregnant. Participants also reported that vegetarians and those with special dietary requirements could generally be catered for within the cottage 'buy up' system, although it appears that the variety of food available to them would be more limited:

"There are some vegetarians here, they are ok, they can eat pasta, vegetable patties, spinach and ricotta rolls, there are things that are pre-made and things we can make from scratch." [woman detained at AMC 2013]

- 3.7.12 The self-catering system in the cottages is a positive practice which maintains and improves women's living skills and helps to reduce institutionalisation. Provision of food to women detainees at AMC appears to comply with human rights standards.
- 3.7.13 It is important that the budget and items available on buy ups are regularly reviewed, in consultation with women detainees, to provide variety and to ensure that the budget remains sufficient without the need for women to supplement the budget from their own funds to prepare meals with appropriate nutritional value.

Clothing

SMR

Rule 17(1): Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

Rule 17(2): All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

- 3.7.14 Women detainees are provided with maroon tracksuits, collared t-shirts, underwear, pyjamas and shoes. They are able to have other approved clothing items, such as black leggings and additional underwear, brought in by visitors. Women wash their own clothes in the laundry area in the cottages. Women are not required to change into overalls for visits, regardless of their security classification. Women are able to wear their own clothes to go to court, and can get assistance to obtain suitable court clothes if they do not have these.

- 3.7.15 Most women interviewed were reasonably satisfied with the clothing provided:

"It's fine, they give you two sets of clothes and you can get other clothes, underwear and stuff brought in, black tights now. It's practical." [woman detained at AMC 2013]

- 3.7.16 Others reported that the clothing was 'worn out' and needed replacing more regularly. All women stated that they would prefer to wear their own clothes if given the option. One detainee explained that this had been raised with management:

"We tried to get that in there at the meetings you know, like white or black t shirts with a little plain long, black pants, just like trackie clothes...he's like 'no because it will cause fights and standovers,' but you know there's fights and standovers over no matter what...So I think it'd be heaps better, because it doesn't make you feel good."

You're punished enough as it is, you should still be able to feel nice and stuff." [woman detained at AMC 2012]

3.7.17 However others considered that this might create difficulties:

"I don't know if it would cause arguments in the long run for the people that don't have anything, to the people that do." [woman detained at AMC 2012]

3.7.18 Some family members reported difficulties in bringing in additional clothing items for detainees where permitted, as there were a number of requirements (such as the packaging being unopened, and the item matching the description on the form exactly) that were not made clear, resulting in wasted trips and purchases. This could be improved through more information being provided in the Visitor Handbook, discussed further at Part 3.8.8.

3.7.19 Overall, it appears that ACTCS complies with human rights standards in relation to clothing, and that the clothing is accepted by most women at AMC. Nevertheless, clothing is relevant to issues of women's self-image, and it may assist women's rehabilitation to have more autonomy over their clothes and self-presentation. Accordingly, the issue of providing further clothing options for women on buy ups, or to be provided by visitors, should be further considered by ACTCS.

Personal Hygiene

Bangkok Rules

Rule 5: *The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating.*

SMR

Rule 15: *Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.*

3.7.20 Women at AMC are provided with some basic toiletries free of charge, including toothbrushes, toothpaste, soap, sanitary pads and tampons. They have free access to running water and shower and toilet facilities.

3.7.21 In addition to the basic products provided, women are able to purchase toiletries such as shampoo and conditioner, deodorant, skincare products and a small range of makeup products on their weekly 'buy ups' and 'activities buy ups'.

3.7.22 One issue raised by many women detainees was that while they were provided with very basic toiletries on induction, there was often a delay before additional toiletries such as shampoo could be purchased on 'buy ups'. Lack of toiletries at this initial stage of imprisonment added to women's concerns and distress about being in prison. As noted in the Coming Home program submission:

Personal hygiene is difficult for women coming into the AMC. Many have no money for shampoo and conditioner and other toiletries. Even if they have money, 'buy up' is ordered one Sunday and delivered the following Saturday so women sometimes have to do without for some time. Sometimes current women will share what they have but at what cost? In this situation toiletries become a currency. Who you are in the prison system dictates your access.

3.7.23 A woman interviewed stated that:

"When you first get in you get all your clothes and stuff, but don't get shampoo and conditioner, you only get a toothbrush and you have to wait until the next buy up, which if you come in on a Monday could be a whole week. I was lucky the other girls let me use theirs for the first week. Some people who don't have any friends wouldn't have anything." [woman detained at AMC 2012]

3.7.24 This issue was raised by detainees and referred as a formal complaint to the Health Services Commissioner during the course of this Audit. ACTCS responded promptly to these concerns and reported that the General Manager has approved the provision of shampoo, conditioner and deodorant on admission for all detainees. We understand that the AMC has now sourced travel-sized kits from NSW Corrective Services to be provided on admission to detainees.

3.7.25 Given that this issue of concern has now been rectified, we are satisfied that ACTCS meet human rights standards in relation to women's personal hygiene.

3.8 Visits

SMR

Rule 37: *Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.*

3.8.1 Maintaining relationships with support networks including family and friends in the community is important for the wellbeing of detainees and assists their prospects of rehabilitation.²⁸ Visits as well as other forms of communication play a vital role in supporting these connections. Consideration of particular issues for women detainees maintaining relationships with their children appears at Part 5.2.

3.8.2 The Human Rights Audit of Correctional Facilities in 2007 and the Standing Committee on Community Services and Social Equity Inquiry into families of offenders found a range of deficiencies with the visiting facilities and regimes at the Belconnen Remand Centre, including the lack of a reception area, an unwelcoming and cramped visiting area and lack of facilities for children.²⁹

3.8.3 These issues were addressed in the design of the AMC, with the inclusion of a reception area for visitors which is welcoming and normalised, and does not expose

²⁸ Standing Committee on Community Services and Social Equity, Legislative Assembly for the Australian Capital Territory, *The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence* (2004) 7.

²⁹ Ibid 70; ACT Human Rights Commission, above n15, 57.

visitors to obvious security features. The reception waiting area is spacious, with approximately 45 seats, lockers and an enclosed children's play area. The visiting area is bright and open and contains seating in a café style. There are toys in the visit area and a children's playground adjacent to this area.

- 3.8.4 The AMC has an extensive and generous visiting program, with detainees able to receive visitors for 90 minutes, six days per week (every day except Monday), with up to four adults and a reasonable number of children at each visit. Visit times are staggered through the day to provide a range of times to meet visitors' schedules. Women may attend visit sessions at the same time as male detainees, which gives them access to a wider range of scheduled visit times. Although some interview participants raised concerns about this practice, most women were comfortable with shared male and female access to visits.
- 3.8.5 Visitors may purchase snacks from a vending machine, and beverages from the café, which is staffed by detainee baristas. As discussed further at Part 5, the non-government agency SHINE for Kids has been contracted to provide craft activities for children and support for parents to interact with their children at some visit times.
- 3.8.6 Continuity of visits is prioritised by AMC management, and visits are not interrupted by operational issues or staffing shortages. This is a positive practice, as families and friends may have travelled long distances, often by public transport to attend a visit.
- 3.8.7 Overall, it appears that the visit facilities and scheduling of visits at AMC represent best practice, and exceed visiting provisions in comparable NSW prisons.

Limitations

Information for visitors

- 3.8.8 Some family members interviewed for the Audit reported having difficulty locating information about the visiting program on the ACTCS website, and finding the process of visits initially confusing and challenging:

"They need to have the information available. We looked and looked and looked. Go to the AMC website, there is virtually nothing there. The website is all about the prison being human rights compliant, but nothing helpful for visitors." [Family member of woman at AMC 2013]

- 3.8.9 From the ACTCS main website, it is difficult to navigate to find more detailed information on the AMC, as this is not directly linked from the homepage. However, there is in fact a substantial amount of relevant and useful information for visitors to AMC including a Visitors' Handbook on this website,³⁰ which could be more prominently referenced on the ACTCS homepage. We understand that ACTCS is currently reviewing its website, and this issue should be easily rectified. Copies of the Visitor Handbook should also be provided at AMC reception. Prisoners' Aid is also located onsite within the reception area and available to assist with family members.

³⁰Alexander Maconochie Centre 'Visiting' (29 March 2012)

<http://www.cs.act.gov.au/custodial_operations/types_of_detention/alexander_maconochie_centre/visiting>.

- 3.8.10 Some family members also reported feeling that they were treated in a way that was unfavourable because of their association with a detainee:

"You do actually get treated a lot like you are part of the problem, not as a support network for the person who is in there. I understand they have to guard against things coming in to the prison, but it's the attitude with which you are being treated that makes you believe that you're actually in prison as well, you're a part of the criminal network. Just doesn't seem to be problematic to treat families or visitors as if you didn't do anything wrong, and here are the rules, are some helpful hints to make things easier." [Family member of Woman at AMC 2013]

- 3.8.11 Our observation of visitors being processed through the gatehouse was that correctional officers were generally courteous and respectful to visitors, although this appeared to vary with officers. The Visitors' Handbook states prominently that:

*Your visits and continuing contact with the prisoner are very important and much appreciated. We understand that visits can often involve a great deal of time and effort. We are always pleased to receive suggestions as to how we could improve the visits arrangements and processes.*³¹

- 3.8.12 This statement sends an important message to visitors, and reflects a commendable and positive approach to visitors from ACTCS. It is important that this respectful message be reinforced regularly with staff to ensure that visitors are treated as innocent members of the public and that their time and commitment in attending the visit is valued.

Recommendation 10: That ACTCS ensure that information for visitors to the AMC is linked more prominently on the ACTCS website, and that copies of the Visitors' Handbook are available at AMC reception.

Intra-prison visits

- 3.8.13 A number of women detainees at AMC have partners or family members who are also incarcerated in the prison. Difficulties in obtaining approval for intra-prison visits between these detainees was raised as a concern by several women detainees and stakeholders.

- 3.8.14 The Coming Home Program Submission states that:

Partner visits within the jail are allowed or denied according to unknown (to women and self) criteria. I recently asked a woman when or if she would be able to see her partner who was also incarcerated. The woman replied that she knew someone else was getting weekly visits with her partner but she didn't know what would happen for her as it "depended who you were". At the least there should be clarity about the policy regarding these visits and equity across detainees.

³¹ Alexander Maconochie Centre, *Visitor's Handbook 12*, available at:

http://cdn.justice.act.gov.au/resources/uploads/ACTCS/publications/Visitor_handbook_WEBSITE_VERSION_April_2010.doc.

- 3.8.15 Intra-prison visits are dealt with in the Corrections Management (Visits) Policy 2013 (No 2) which provides that:

*The General Manager, Custodial Operations, may approve intra- jail (between detainees at the AMC) and inter-centre (between detainees at different correctional centres). These visits may be contact or non-contact and will be subject to restrictions as deemed appropriate by the General Manager, Custodial Operations. The Operations Manager will determine whether the detainees are required to wear overalls in such visits.*³²

- 3.8.16 The Policy does not provide any criteria on which an intra-prison visit may be approved, or the restrictions that may be imposed on these visits.
- 3.8.17 The Commissioner reviewed a number of Prisoner Request forms from women requesting intra-prison visits, which indicated that these decisions are made on the basis of both detainees' behaviour. Intra-prison visits appear to be denied if either detainee has had any disciplinary breaches prior to the request. The forms suggest a change in approach from approving regular intra-prison visits to requiring detainees to re-apply for each intra-prison visit.
- 3.8.18 While there are some particular issues that require consideration in relation to intra-prison visits, such as concerns about verifying that two detainees have a pre-existing relationship, or preventing alleged co-offenders meeting to discuss evidence in a case still before the court, it is not clear why discipline issues are a key factor in these decisions.
- 3.8.19 The *CM Act* in s 12(g) provides that as a minimum entitlement, detainees must have reasonable opportunities to receive visits from family members, which is defined to include domestic partners. Section 49(2) provides that a detainee may have at least one visit, of at least 30 minutes, each week by a family member. The Director-General may deny or restrict this visit only if the Director General suspects, on reasonable grounds, that the visit may: undermine security or good order at a correctional centre; revictimise a victim; circumvent any process for investigating complaints or reviewing decisions under this Act; or have the purpose of causing community distress.
- 3.8.20 It appears that the current Policy and practice regarding intra-prison visits does not clearly align with detainees' minimum entitlements, and with criteria for denying minimum visits under the *CM Act*. We consider that the Policy should be reviewed and amended to provide transparent criteria for decision making regarding intra-prison visits, based on the *CM Act*. These amendments should reflect the nature of family visits as a minimum entitlement rather than a privilege.

Recommendation 11: That ACTCS amend the Visits Policy to provide transparent criteria for decision making regarding intra-prison visits, reflecting detainee's minimum entitlements to visits with family members.

³² Notifiable instrument NI2013-468, 5, made under *Corrections Management Act 2007* (ACT) s 14(1).

3.9 Access to information

CM Act

Section 14 *Corrections policies and operating procedures*

14(3): *Each corrections policy or operating procedure—*

(a) *Must be available for inspection by anyone at each correctional centre.*

Section 52 *News and educational services*

52(1): *The director-general must ensure, as far as practicable, that detainees have reasonable access to—*

(a) *Newspapers, radio and television broadcasts and other mass media (including the internet) for news and information; and (b) a library or library service.*

- 3.9.1 Women at AMC have access to news on television, and to newspapers which can be purchased on buy ups or read in the library. Women have access to the library on Wednesday mornings and can borrow from a range of fiction and non-fiction works which are regularly restocked.
- 3.9.2 Some women raised concerns about difficulties accessing relevant correctional policies and legislation to enable them to understand their rights and entitlements:
- “I’ve been trying to get a copy of the policy for long term detainees, no one can find it for me. I also want to see the new classification policy and leave policy...You can’t access all the policies and the legislation at the library, you have to ask for what you want, but if you don’t know the names it’s hard to find out, you can’t access the internet site. I put in a bluey [prisoner request form] but no one can find it for me”*
[woman detained at AMC 2013]
- 3.9.3 It appears that there is no hard copy of AMC policies and procedures available to detainees to inspect as required in s 14 of the *CM Act*. Instead, the legislation and policies are available on the prison intranet in the library, but only to detainees who have registered for computer access and who have been given a log-in code. When we inspected policies available on the intranet they had not been updated with more recently developed policies.
- 3.9.4 While it is useful to have policies and procedures available on the intranet, these require updating when new policies and procedures are notified on the Legislation Register. An up to date hard copy of the *CM Act* and of current policies and procedures should be kept in the library to provide greater access for all detainees.

Recommendation 12: That ACTCS ensure there is a current hard copy of the *CM Act* and associated policies and procedures in the library for all detainees

3.10 Legal assistance

CM Act

Section 12 *Correctional centres—minimum living conditions*

12(1): *To protect the human rights of detainees at correctional centres, the director-general must ensure, as far as practicable, that conditions at correctional centres meet at least the following minimum standards:*

(h) *detainees must have reasonable opportunities to communicate with their lawyers;*

Section 51 *Visits—protected communications*

The director-general must not listen to, or record, a communication at a visit between a detainee and any of the following people:

(a) *a lawyer representing the detainee;*

Section 103 *Electronic communications between a detainee and a lawyer representing the detainee must not be monitored.*

Bangkok Rules

Rule 2.1: *Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.*

Rule 7.1: *If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.*

3.10.1 Women detainees may have a range of legal needs, including, but not limited to the need for assistance with their criminal charges or appeals. They may also have matters relating to family law and child protection, rights as victims of violence or sexual assault, personal injury claims, housing matters, debt (including unpaid fines) and other financial issues, and migration matters, among others.³³ They may also have rights to take action to the Supreme Court where a public authority (including ACTCS) has breached their human rights under the *HR Act*.³⁴

3.10.2 Women detainees may have issues that they do not recognise as legal needs, as they may not be aware of their rights, or may be focused on more immediate criminal matters, or other concerns. However, timely recognition of legal issues and assistance

³³ See for e.g. Anne Grunseit, Suzie Forell and Emily McCarron, *Taking justice into custody: The legal needs of prisoners* (Law and Justice Foundation of NSW, 2008).

³⁴ *Human Rights Act 2004 (ACT)* s 40C.

with them may be vital to a positive outcome, which may assist their rehabilitation, for example preserving their ACT Housing tenancy, commencing victim's compensation proceedings within a statutory time limit, or being represented in Family Court proceedings to seek contact with their children.

Current provision of legal assistance to Women at AMC

- 3.10.3 Women detainees at AMC are allowed to contact a lawyer on admission if required. They also have ongoing access to the Prisoner's Legal Service provided by Legal Aid ACT through the freecall line on the prison phone system. This service allows women to make an appointment to receive legal information and advice about any legal problems they may have, including family law and children's issues, civil law, prison issues and criminal law issues, and assistance applying for parole.³⁵ As discussed below, there was a delay in women detainees being given access to a new weekly outreach clinic recently established by the Prisoner's Legal Service, but we understand that this has now been rectified.
- 3.10.4 The Women's Legal Centre (WLC) is not funded to provide outreach to the AMC, but a representative of the Centre, (the Co-ordinator) has been attending monthly service 'expos' in the women's precinct to meet with women and allow them to engage with the WLC.
- 3.10.5 Women in the AMC are able to telephone the WLC for legal advice and referrals, and WLC solicitors have attended the AMC by appointment to provide legal assistance within their areas of specialisation, including family law, domestic violence, victim's compensation and employment.
- 3.10.6 Women may in some cases be escorted to attend civil proceedings in person. ACTCS also provide detainees with access to video link on request for Court and Tribunal matters, including mental health proceedings.

Limitations on access to legal assistance

Lack of systematic screening for legal issues

- 3.10.7 It does not appear that the initial induction assessment or the subsequent case management planning process includes a systematic screening of women's needs for legal assistance, and considerations of referrals.
- 3.10.8 For example, one case file we reviewed noted that a woman's tenancy with ACT Housing had been terminated, as the result of eviction proceedings during the initial weeks she had been at AMC. It appeared that her Case Manager had not been aware of this issue and the detainee had not received assistance to contest these proceedings. It is important that women detainees are pro-actively asked about housing issues as soon as possible, as they may not be aware of steps that can be taken to maintain their tenancy while in prison.
- 3.10.9 WLC in their submission note that:

³⁵ ACT Legal Aid Commission, *Annual Report 2012/13* (ACT Government, 2013), 28.

In one case, a woman needed advice about a Victims of Crime compensation claim. This matter was brought to the attention of the WLC staff person by another detainee some time after this woman had been in the AMC. We extrapolate that at no point to the knowledge of the WLC had this woman had an assessment to determine what her needs were.

- 3.10.10 These issues indicate a need for training for Case Managers on potential legal issues and appropriate referrals, together with the development of a screening tool to identify potential legal issues to ensure that women detainees are able to receive timely assistance where required.
- 3.10.11 ACTCS advise that Legal Aid delivered training at AMC for Case Managers in early 2013 about legal issues (focused on criminal matters), and that StreetLaw attended the AMC in October-November 2013 and delivered training on “how to spot a legal issue” for Case Managers. This training focused more on civil and family law matters.
- 3.10.12 ACTCS further advise that StreetLaw and Legal Aid ACT have provided ACTCS with a screening tool and that this will be incorporated into the new case management induction package.

Access to the Prisoner’s Legal Service outreach clinic

- 3.10.13 Legal Aid ACT has been funded to provide a Prisoner’s Legal Service at the AMC since the prison’s establishment. Until 2013 this service was provided by appointment only, requiring detainees to call Legal Aid and book a time for a solicitor to attend. In 2013, to increase the accessibility of this service Legal Aid commenced an outreach clinic at the AMC, with a Helpdesk paralegal available one day each week to provide advice and assistance to detainees. If the matter requires the involvement of a lawyer, the Helpdesk refers the client either to the in-house Legal Practice, or a private lawyer as appropriate. However, this outreach clinic was not initially made available to women detainees. ACTCS advise that this issue has been rectified, and that Helpdesk paralegals are able to visit women within the women’s precinct as required.

Difficulties with seeing women detainees privately

- 3.10.14 In their submission WLC raise concerns about difficulties in ensuring privacy for legal visits with women detainees. The submission states that client appointments between legal staff and detainees have only once occurred in a private meeting room. The other appointments between legal staff at the WLC and women detainees have generally been undertaken in the large meeting room in the Community Centre where AMC staff and other detainees have access.
- 3.10.15 The submission notes that:

On one occasion, a WLC solicitor who had booked a legal visit with a woman detainee, was required to have the legal appointment in the detainee’s cottage. The solicitor had waited sometime in the legal visit room but was then told the prisoner was unable to attend the main building as the other group of women were attending the hairdresser. Although it would have been possible for WLC to reschedule the appointment to another day, the solicitor agreed to attend the cottage. During the entire legal appointment, another prisoner was sitting on the lounge which was approximately three metres away from the dining table where the legal appointment was taking

place. An AMC Corrections Officer was also present within the cottage, standing near the front door.

- 3.10.16 WLC report that this lack of privacy and confidentiality in the legal appointment made it difficult to obtain instructions from the client. It appears that this situation occurred during the period where there was significant conflict between groups of women detainees who were unable to safely associate together. Nevertheless it indicates a need for greater awareness of privacy and confidentiality issues for women detainees in accessing legal assistance.
- 3.10.17 The issue of co-ordination and timetabling of appointments with external services is discussed further at Part 7.4 It appears that the engagement of a Women's Services Co-ordinator was helpful in reducing clashes and allocating available spaces for confidential interviews.

Recommendation 13: That ACTCS ensure as far as possible that scheduled visits between women detainees and their lawyers are able to occur in private interview spaces, rather than in common areas in the women's precinct.

3.11 Religion

SMR

Rule 41(3): *Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.*

Rule 42: *So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.*

- 3.11.1 There is a Chaplaincy service available to women at AMC, provided by the Pastoral Care Council of the ACT. There is one official Chaplain position, which is shared at the AMC by a male and a female Chaplain, and the Chaplaincy team is currently assisted by four volunteers.
- 3.11.2 Religious services are provided to women on Friday mornings on a voluntary basis in the Women's Community Centre. Over a six weekly cycle there are three chapel services and three meditation services. These services are non-denominational, but are provided by Christian Ministers (the Chaplaincy team includes Catholic, Anglican and Uniting Church Ministers). The Chaplains explained that although services have a 'gently Christian flavour', they welcome women of all faiths and seek to incorporate other religions into their service. One Buddhist woman is reported to come to the service regularly and they make efforts to ensure that the service is respectful of her beliefs.
- 3.11.3 The Chaplaincy team provide religious texts and religious materials for women of all faiths. They have Jewish, Muslim, Buddhist and Christian religious texts available and can source others as needed, for example, Scientology texts were obtained for a detainee who requested these. The Chaplains also distribute religious materials such as Muslim prayer mats and Catholic rosary beads.

- 3.11.4 The Chaplaincy team also take responsibility for arranging visits from spiritual leaders from other faiths where requested. They have arranged visits from a Rabbi for Jewish detainees and an Imam for Muslim detainees. We understand that efforts have been made to have an Imam attend AMC on a more regular basis, and that ACTCS have been supportive of this, but that the time commitment has proved difficult for the individual Imam.
- 3.11.5 In addition to the provision of weekly services, the female Chaplain normally attends the women's area three mornings and one afternoon per week to provide pastoral care and assistance to women as required, including support for women from culturally and linguistically diverse backgrounds to participate in programs and activities.
- 3.11.6 Women detainees interviewed for the Audit did not raise any concerns about lack of access to religious services or materials. One detainee commented that although she was not Catholic she requested and was given rosary beads which she found helped her, and she was appreciative of this.
- 3.11.7 The Women's Centre for Health Matters in their submission to the Audit raised concerns about a lack of private spaces for women to meet with religious advisers. They also note that:
- ...there are no other facilities set aside for the purposes of religious worship since plans to build a chapel were abandoned.*
- 3.11.8 The Chaplains report that they are able to access the interview room in the Women's Community Centre where required for private conversations with women. Although it may be preferable in the long term to have a dedicated space for religious services, it appears that services are currently able to be provided for women appropriately within the Community Centre.
- 3.11.9 Current practice at AMC appears to be consistent with human rights standards in enabling women detainees to observe their own religion and to have access to pastoral care, services, texts and religious materials as required. Particular issues relating to Aboriginal and Torres Strait Islander women at AMC and their connection to culture and spirituality are discussed at Part 8.2.

Part 4. Treatment of Women Detainees

4.1 Introduction

- 4.1.1 This Part of the Audit examines practices that are particular features of prison life, and have the potential to significantly limit detainees' human rights, such as strip searching, discipline and use of force. It also considers internal and external complaint mechanisms available to women detainees at the AMC.

4.2 Searching

Bangkok Rules

Rule 19: *Effective measures shall be taken to ensure that women prisoners' dignity and respect are protected during personal searches, which shall only be carried out by women staff who have been properly trained in appropriate searching methods and in accordance with established procedures.*

Rule 20: *Alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.*

- 4.2.1 Searching a detainee, whether by frisk searching, search of clothing or a full strip search significantly limits detainee's right to privacy. Although in some circumstances this restriction may be justified in order to protect the detainee or others from harm, or to ensure safety and security of the prison, routine strip searching in conjunction with other strict security measures has been held by the European Court of Human Rights to amount to inhuman or degrading treatment.¹

- 4.2.2 Strip searching has the potential to be particularly degrading and re-traumatising for women detainees, who as a population have a high prevalence of victimisation and sexual abuse.² As the Queensland Anti-Discrimination Commission has stated:

Being compulsorily required to strip-search in front of prison officers is a demeaning and humiliating experience for any human being, male or female. Even if a strip-search is conducted in a totally professional and impersonal manner, the humiliation is compounded by the fact that prisoners then have to be supervised and relate on a daily basis with prison officers who have observed them in a naked and vulnerable state. In our western society where public nakedness is far removed from the accepted norm, this immediately reduces the dignity of any relationship between the prison guard and prisoner.

¹ See for e.g. *Van der Ven v the Netherlands* (2004) 38 Eur Court HR 46; See also *Lorsé v the Netherlands* (2004) 37 Eur Court HR 3.

² Mary Stathopoulos, 'Addressing women's victimisation histories in custodial settings' (2012) 13 ACSSA Issues 1-20. Australian Centre for the Study of Sexual Assault, Addressing women's victimisation histories in custodial settings, ACSSA Issues Paper no. 13, 2012

*However, for a woman who has been sexually abused, strip-searching can be more than a humiliating and undignified experience. In some instances, it can re-traumatise women who have already been greatly traumatised by childhood or adult sexual abuse.*³

- 4.2.3 Strip searching was identified as a significant concern in the Commission's 2007 Audit of Correctional Facilities.⁴ In 2007, although improvements to the method of strip searching had been recently introduced (so that detainees always remained half clothed during the search), women detainees were still being strip searched before and after every visit, and whenever their cells were searched. Women were also being subjected to additional strip searches as a result of their relocation to the Symonston Temporary Remand Centre on weekends.
- 4.2.4 The *Corrections Management Act 2007* (ACT) ('CM Act') provides greater protection for the rights of detainees in relation to searching than the former *Remand Centres Regulation 1976* (ACT) and standing orders. Section 108 of the CM Act sets out the general principle that, as far as practicable, officers should use the *least intrusive kind of search* that is reasonable and necessary in the circumstances; and that the search must be conducted *in the least intrusive way* that is reasonable and necessary in the circumstances.
- 4.2.5 Section 113 of the CM Act provides that the Director-General of ACTCS may only authorise strip searching in two situations:
- Where the Director-General suspects, on reasonable grounds, that the detainee is concealing a seizeable item; or
 - Where the detainee has recently not been under the control or immediate supervision of a corrections officer for a period and may have had an opportunity to obtain a seizeable item. In this case the Director-General must believe, on reasonable grounds that a strip search is prudent, and that a scanning search (including the SOTER x-ray body search) is not available or would not be sufficient.
- 4.2.6 Where a strip search is conducted, the CM Act mandates that women (including transgender or intersex detainees who identify as female) must only be searched by women officers, and not in the presence of anyone of the opposite sex.⁵ Strip searching must not involve the removal of more than half a detainee's clothes at one time, and the CM Act does not authorise any touching of the detainee's body, unless the detainee resists the search, and use of force is necessary.⁶
- 4.2.7 The Corrections Management (Searching) Policy 2010 provides that all detainees will be strip searched on admission to the AMC.⁷ Any subsequent strip searches must be authorised by a senior correctional officer.

³ Anti Discrimination Commission Queensland, *Women in Prison* (March 2006), 72

⁴ ACT Human Rights Commission, *Human Rights Audit on the Operation of ACT Correctional Facilities under Corrections Legislation* (2007), 42-46.

⁵ *Corrections Management Act 2007* (ACT) ss 114 and 115.

⁶ *Corrections Management Act 2007* (ACT) s 115.

⁷ Notifiable instrument NI2010-42, 3, made under *Corrections Management Act 2007* (ACT) s 14(1).

- 4.2.8 The *CM Act* also sets out criteria for less intrusive searches such as frisk searches, searches of clothing, and scanning searches. The Corrections Management (SOTER X-Ray Body Scanner) Policy 2010 (No 2) sets out a detailed regime for use of the SOTER scanner, including requirements for regular auditing and maximum permissible radiation limits for male and female detainees.⁸ The Policy provides that women detainees must not be scanned using the SOTER scanner if known to be pregnant.

Current searching practice

- 4.2.9 17 of 18 women interviewed for the Audit reported being strip searched on admission to the AMC, with one woman stating that she was simply asked to change into prison clothes. For most women interviewed induction was the only occasion they had been strip searched at the AMC, although a small number had been subject to a strip search based on a suspicion of possessing seizable items. These women consistently stated that they were not subject to strip searching before or after attending visits:

“We don’t get strip searched before or after visits. They have cameras and officers watching, don’t seem to need strip searching. Only if something is suspected. At NSW everyone is searched after a visit”. [woman detained at AMC 2013]

- 4.2.10 No women detainees reported being strip searched in the presence of a person of the opposite sex.
- 4.2.11 Our review of the Strip Search Register indicates that in 2012, 18 strip searches of women detainees were conducted, with 17 of these searches being conducted on admission, and the other search based on suspicion. From January to November 2013, records indicate that 5 strip searches of women were conducted for reasons other than admission. None of these searches resulted in the detection of any seizable item.
- 4.2.12 This low level of strip searching is consistent with the submission of Women’s Centre for Health Matters which notes that:

The use of strip searches and other kinds of searches (including the ‘ramping’ of rooms) appear to be happening at acceptable and appropriate rates in the AMC women’s area. WCHM and WAP understands that women detainees are strip-searched only once upon admission—given the invasiveness of this procedure and the potential it has for re-traumatisation, it is encouraging to see that its use is being kept at a minimum.

- 4.2.13 The very significant reduction in reliance on strip-searching of women at the AMC from previous practices reported in 2007 represents a positive achievement in respecting the human rights of women detainees. ACTCS leads practice in this area, as other jurisdictions such as NSW still adhere to a policy of strip searching women detainees after every visit.

⁸ Notifiable instrument NI2010-339, made under *Corrections Management Act 2007* (ACT) s 14(1).

Limitations

Routine strip search on admission

- 4.2.14 Records reviewed establish that overall, strip searching of women detainees occurs infrequently, and generally only on admission. Nevertheless, the policy of strip searching all women detainees on admission still subjects them to this potentially damaging and re-traumatising experience at a time when women are at their most vulnerable, when first entering prison.
- 4.2.15 Given the lack of seizeable items found in strip searches on induction, the Commissioner recommends that ACTCS consider the feasibility of an individual assessment of the need to strip search women detainees on admission, and whether it may be possible to instead rely on SOTER scanning searches for more women at this time.

Recommendation 14: That ACTCS consider whether the SOTER x-ray scanner could be used to search women on admission rather than strip-searching in some cases, based on an individualised assessment.

Record keeping – reasons for non admissions searches.

- 4.2.16 In reviewing records from the Strip Search Register, it is also apparent that the strip search form is often not being filled out fully to record relevant reasons for searches other than admissions. In 5 out of 6 forms reviewed by the Commissioner where the box had been ticked indicating that the detainee was being searched based on reasonable suspicion that they were concealing a seizeable item, the space provided for the officer to specify the reasons for suspicion was left blank. The other form simply stated “suspected weapon” as the reason, but did not indicate why it was suspected that the detainee had a weapon. Given that it is a necessary criterion for a strip search on suspicion that the suspicion be based on reasonable grounds, it is important that these grounds are adequately recorded.

Recommendation 15: That ACTCS ensure that training programs for officers emphasise the importance of correctly filling in strip-search forms and indicating the grounds for suspicion where relevant, and regularly review practice to ensure this occurs.

4.3 Discipline

SMR

Rule 27: *Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.*

Rule 30(1): *No prisoner shall be punished except in accordance with the terms of law or regulation, and never twice for the same offence.*

Rule 30(2): *No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.*

Rule 30(3): *Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.*

Rule 23: *Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.*

4.3.1 A disciplinary regime is necessary for maintaining order, and the safety and security of detainees, staff and visitors within the prison environment. From a human rights perspective discipline must be fair and transparent, set out in law or policy, adhere to procedural fairness, and not impact on minimum human rights standards of treatment of detainees.

4.3.2 The Knowledge Consulting Review reported that stakeholders found the disciplinary process unnecessarily complex and burdensome for correctional staff to administer, as it involved layers of investigation and review. This led to delays in determining and reviewing disciplinary penalties and caused difficulties for ACTCS staff and management. It also caused frustration for detainees, as the penalty had often been served by the time the review concluded. The Review made a formal finding:

*That the complex detainee disciplinary process has been a contributing factor to difficulties in administering the AMC during the post commissioning period.*⁹

4.3.3 In 2012, the *CM Act* was amended to streamline the disciplinary regime to ensure that matters were dealt with more swiftly, while still adhering to the principles of natural justice and preserving rights of appeal to a Magistrate.¹⁰ The revised regime is set out in Chapter 10 of the *CM Act* and the Corrections Management (Detainee Disciplinary) Policy 2012.¹¹ The Policy sets out the philosophy of the discipline regime at AMC which reflects a human rights approach:

*The guiding principle in achieving compliance with legislated requirements, centre rules and acceptable behavioural norms by detainees is to make effective use of the case management system and positive interaction between detainees and staff. When use is made of the disciplinary provision sanctions, the punishment is to be the minimum possible consistent with the objectives of correcting behaviour and general consistency.*¹²

4.3.4 The *CM Act* identifies a range of disciplinary breaches and sets out a process for determining an appropriate penalty. Penalties include a period of separate confinement (segregation), loss of privileges, fines, and loss of contact visits. Warnings and reprimands may be given less formally, but other penalties require a formal charge process and investigation by a senior officer. Where a detainee admits the charge an agreed penalty may be imposed by consent, otherwise the matter is referred to an internal inquiry.

⁹ Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre ACT Corrective Services* (2011) 114 (Finding 25).

¹⁰ *Corrections and Sentencing Legislation Amendment Act 2012* (ACT).

¹¹ Notifiable instrument NI2012- 627, made under *Corrections Management Act 2007* (ACT) s 14(1).

¹² *Ibid* 3.

- 4.3.5 The Corrections Management (Schedule of Penalties) Policy 2012 sets out guidance on appropriate penalties for different disciplinary breaches, depending on the nature and severity of the breach, and whether it is a first or repeated breach.¹³
- 4.3.6 The *CM Act* recognises that detainees should not be punished twice for the same offence, and provides that disciplinary penalties will not be applied where a detainee is being prosecuted for the matter as a criminal offence.¹⁴

Application of discipline for women detainees at AMC

- 4.3.7 A majority of the women detainees interviewed had been subjected to disciplinary penalties at the AMC at some stage, and although they did not appreciate being disciplined, most women considered that their treatment had been fair:
- “Yes, I got put in segregation, but I deserved it, at the time I didn’t like it but afterwards I realised it was fair, if they hadn’t done it, it would have looked bad.” [woman detained at AMC 2012]*
- 4.3.8 The Women’s Centre for Health Matters submission states that:
- As far as WAP and WCHM are able to ascertain, disciplinary measures appear to be fair and reasonably consistent; these include the removal of privileges such as visits and buy-ups, or the implementation of a segregation order.*
- 4.3.9 A review of disciplinary penalties given to women detainees over 2012-13 indicates that most detainees were given formal warnings for the same or similar breaches before other more serious disciplinary penalties were imposed. In general, penalties appear consistent with, or more lenient than those suggested in the Schedule of Penalties Policy.
- 4.3.10 Where loss of privileges was imposed, this generally appeared to have been done in a nuanced and humane way, restricting only certain privileges such as buy ups or additional phone calls, but not work or organised leisure activities. One discipline form noted the Presiding Officer’s decision that although a detainee was to have non-contact visits with adult visitors for a period, she was to be able to continue to have contact visits with her child, indicating that the needs and interests of the child were appropriately taken into account in this decision.

Limitations

Fighting

- 4.3.11 A number of women did raise concerns about being penalised for fighting when they felt that they had not instigated the fight and were simply defending themselves:
- “Even if you are attacked if there is a fight both people get punished, that’s not fair, you can’t stop someone attacking you. That happened to me last time. I was in segro for three days.” [woman detained at AMC 2012]*

¹³ Notifiable instrument NII2012-629, made under *Corrections Management Act 2007* (ACT) s 14(1).

¹⁴ *Corrections Management Act 2007* (ACT) s 155

4.3.12 Another woman said that she was assaulted by another detainee:

“She hit my head against the wall... While I was injured they asked me to sign a paper saying I was involved in a fight. I told them to look at the camera footage, she hit me, I didn’t do or say anything to her.” [woman detained at AMC 2013]

4.3.13 Where a serious fight occurs, often both women are placed in investigative segregation until a disciplinary investigation occurs. Thus even if a detainee challenges the charge of fighting, she may remain in segregation for a period of time, even if the breach is not ultimately established.

4.3.14 This is a difficult issue as it involves issues of safety, so investigative segregation for a short period may be justified to prevent further conflict until the facts can be established. In many cases it may be hard to determine who is responsible for starting the fight unless witnesses or CCTV footage provide clear evidence.

4.3.15 On balance, although there may have been some cases where women may have been segregated without being at fault, it appears that correctional officers approach these issues fairly, and that disciplining both parties is intended to reduce instances of fighting between detainees where it is not clear who started the fight. The issue of conflict and bullying between women is discussed further below.

Consistency

4.3.16 Another concern raised by several detainees was that disciplinary action was not always consistently applied to different women, with some women seen as receiving more favourable treatment. One woman detainee stated that:

*“Like I was saying with [detainee] kicking in the glass window. She gets nothing and I call her a name and I get f***ing 26 days segro.” [woman detained at AMC 2012]*

4.3.17 A supervising officer explained that for some detainees who have particularly challenging mental health and behavioural issues, it is important to develop plans and strategies that respond to their individual needs, even if this is seen as favouritism by other detainees. The officer suggested that one woman was responding well to an individualised behaviour management plan, which enabled her to stay out of segregation and significantly reduced her episodes of violence and deliberate confrontation with officers.

4.3.18 Again this is a difficult issue, as the perception of consistency and fairness in the application of discipline for all detainees is important. Nevertheless, where women have particular behavioural issues that are a symptom of their mental health conditions or other disability, it is appropriate that these conditions are taken into account in responding to their challenging behaviours. The High Risk Assessment Team, which meets each morning to share information about detainees at risk, is a useful forum for addressing these issues and ensuring that behaviour management strategies are adapted to individual needs.

Resolution of Conflict between Women Detainees

4.3.19 One of the challenges of a prison in a small jurisdiction such as the ACT is that many detainees know each other in the community, and disputes and grievances between

families and individuals in the community often carry over into custody. As the ANUPA submission states:

The small population of the ACT and its geographical scale means that women are often incarcerated with fellow prisoners with whom they share an antagonistic and hostile past. In a larger jurisdiction, they may be housed in facilities many hundreds of kilometers away. In the AMC women live a few meters apart, with the result that hostility festers...

- 4.3.20 Levels of tension and conflict between women detainees have fluctuated at the AMC, however all of the women interviewed for the Audit reported conflict, bullying and harassment between women, whether or not they had been involved or affected personally. As one woman explained:

"With the amount of girls that are here, there is some bullying that goes on. You go to jails where there are 200 or 300 girls there is less conflict, but here everything everyone does is nitpicked, lots of bitchiness, nothing for people to do." [woman detained at AMC 2013]

- 4.3.21 Another stated:

"There's fights and standovers no matter what, you know what I mean? Over your food, over your 'done, over your 'bupe, over your undies, over your socks, your pillow, everything, you know, your toothbrush..." [woman detained at AMC 2013]

- 4.3.22 Some women detainees considered that seeking help from correctional officers could exacerbate the problem:

"Even if they talked to staff, a lot of them don't, they won't cos it ends up getting stirred more with the girls, they say you're a dog, they might tell them to behave nicely but doesn't really help." [woman detained at AMC 2012]

- 4.3.23 However, detainees generally reported that correctional officers were concerned for the safety of the women, and would respond to these issues if they became aware of them. One detainee who had been in prison in NSW and the AMC stated that:

"I think I preferred the AMC safety-wise – like I think, myself, I was a bit safer there. I think the AMC screws are more onto you. In Mulawa they don't worry if you are being picked on sort of." [woman detained at AMC 2011]

- 4.3.24 The Corrections Management (Conflict Resolution) Policy 2011 encourages staff to identify conflict and assist detainees to resolve issues through negotiation.¹⁵ It provides that:

While resolving the conflict is the most desirable aim, some conflicts present a serious risk to the security and good order of a correctional centre. Therefore, corrections officers will need to consider whether some form of preventative action is required. This may involve (where the conflicting parties are prisoners):

- *A change of accommodation location for one or more parties;*

¹⁵ Notifiable instrument NI2011-135, made under *Corrections Management Act 2007* (ACT) s 14(1).

- *Transferring one or other party to the Management Unit; and/or*
- *Disciplinary action against one or more parties.*¹⁶

4.3.25 In 2012-13, for a period of over eight months a personal conflict between two women escalated into a more serious problem, with the cottages at AMC becoming polarised into opposing camps around each protagonist. A number of assaults between these groups of women led to AMC management restricting their association and implementing a split regime. This regime meant that the two groups of women were not allowed to have time out of their cottages together, nor able to attend programs or education at the same time, significantly limiting their opportunities for exercise, recreation and structured activity.

4.3.26 Detainees reported that:

"Two girls were making a lot of trouble with everyone else." [woman detained at AMC 2013]

"They didn't really handle the women fighting very well, we were all locked in hour in hour out, all segregated for months." [woman detained at AMC 2012]

4.3.27 ACTCS responded to this ongoing conflict by arranging a mediation through Relationships Australia in late 2012. It is reported to have taken some months to get the agreement of all women to participate. Mediators attended and met with groups of detainees over a two week period, then brought the groups together for mediation, where an agreement was reached regarding behaviour and how officers would respond to conflict if it occurred. Correctional officers were present during the mediation, which was reported to have assisted resolution of the issues.

4.3.28 Following the mediation, restrictions on association were immediately lifted. Around the same time, one of the key women involved was released from custody, which also helped to resolve the situation. However, it appears clear that the mediation assisted to de-escalate tensions between other detainees, and facilitated the return to a single regime.

4.3.29 Some stakeholders have suggested that the introduction of the split regime allowed tensions between groups to continue, to the detriment of all women detainees, and that other options such as segregating the protagonists in the High Needs Cottage may have been preferable.

4.3.30 It is unfortunate that the conflict became so protracted, and that this affected women's opportunities to participate in a range of activities essential to their rehabilitation. In hindsight, it may have been possible to resolve this conflict at an earlier stage. Nevertheless, actions taken by AMC management were aimed at ensuring the safety of detainees and others, and appear reasonable in the circumstances. Long term segregation of individual women is a significant limitation of their human rights, and may have been difficult to justify in these circumstances.

¹⁶ Ibid 2.

- 4.3.31 Instead, arranging a mediation was an important positive step in resolving the conflict between groups of detainees, consistently with the Conflict Resolution Policy, and this enabled women to return to normal association patterns.
- 4.3.32 A fence has since been constructed between the Women's Remand and Women's Sentenced Cottages, with a gate which is normally left open to allow women to associate, but may be closed if required. This provides greater flexibility for the AMC to separate groups of women without locking them into their cottages.
- 4.3.33 As discussed in Part 7.5, the lack of full time employment options or sufficient structured activities for women appears to have been a contributing factor in the high level of conflict between women at AMC. A number of women detainees interviewed made this point:
- "Nothing to do here, that's why people always fighting." [woman detained at AMC 2013]*
- "When there is not much to do the smallest thing ends up being blown out of proportion and becoming the biggest thing, it plays on people's minds because there is nothing else to do." [woman detained at AMC 2013]*
- 4.3.34 Development of an industry and more structured activities for women is likely to have a positive impact in reducing tensions and conflict between women detainees at AMC. Recommendations about these issues are made in Part 7.5.22.

4.4 Use of force

SMR

Rule 54(1): *Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.*

- 4.4.1 Use of force against a detainee limits the detainee's human rights to liberty and security of person, and may amount to inhuman and degrading treatment. It is vital that force is used only where strictly necessary, and that it is carefully recorded and monitored to guard against abuse.
- 4.4.2 The *CM Act* provides that the Director-General must ensure, as far as practical that the use of force in relation to the management of detainees is always a last resort; and in accordance with the Act.¹⁷ As far as practical a corrections officer must first give a warning of the intention to use force and allow time for the warning to be observed.¹⁸

¹⁷ *Corrections Management Act 2007 (ACT)* s 137(1).

¹⁸ *Ibid* s 139.

Use of force against women at AMC

- 4.4.3 Use of force by correctional officers was not raised by women detainees or stakeholders as an issue of concern in relation to women at AMC.
- 4.4.4 A review of records of use of force indicates that there were eight uses of force against women detainees during 2012. These included use of force:
- To separate women who were fighting,
 - To prevent women from self-harming, and
 - To compel women to leave or return to their cell when they refused to do this and other options had been unsuccessful.
- 4.4.5 Each use of force is documented by the officers involved and reviewed by the AMC General Manager, who considers CCTV footage and provides feedback to officers where necessary to improve practice. The Executive Director reviews all the information and decisions. Where a use of force is planned, it is also recorded on hand held camera. None of the incidents reviewed appeared to indicate inappropriate use of force, or to have resulted in injury to the women detainees.
- 4.4.6 One senior officer interviewed noted that practice at the AMC was to rely on de-escalation techniques to a much greater degree than had been the case at the Belconnen Remand Centre, and that this represented a cultural change. He gave examples of situations where officers would spend extended periods 'talking a detainee out of her cell' rather than going in and using force where a detainee refused a direction. This approach is a positive practice in reducing the need for intrusive and potentially degrading physical force on detainees.
- 4.4.7 It appears that ACTCS complies with human rights obligations in relation to use of force.

4.5 Complaints and Oversight

SMR

Rule 35(1): Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

Rule 35(2): If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

Rule 36(1): Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

Rule 36(2): It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

Rule 36(3): Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

Rule 36(4): Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

Bangkok Rules

Rule 25(1): Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation.

Rule 25(3): In order to monitor the conditions of detention and treatment of women prisoners, inspectorates, visiting or monitoring boards or supervisory bodies shall include women members.

- 4.5.1 In the closed environment of a prison, where prison officials have a high degree of control over every aspect of a detainee's life, including communication with the outside world, detainees can be vulnerable to abuse and inhumane treatment. Accordingly, it is vital that detainees have a range of avenues for raising complaints and concerns to senior prison management and to independent agencies outside the prison. Women detainees are recognised as particularly vulnerable to abuse, and may be reluctant to speak about personal issues to male officials.
- 4.5.2 The Optional Protocol to the Convention against Torture (OPCAT) recognises the importance of independent oversight and inspections of prisons and other places of detention to prevent torture and inhuman and degrading treatment of detainees.¹⁹ The OPCAT provides for an international inspection regime and the establishment of national preventive mechanisms to conduct inspections. The Australian Government has signed but not yet ratified this international treaty, so is not currently bound by its provisions; however this preliminary endorsement demonstrates a willingness to serious consideration of accession, and the Government should act consistently in anticipation of its ratification. The ACT was the first jurisdiction in Australia to introduce a Bill to allow international and national inspectors to visit the AMC if the OPCAT is ratified and comes into effect.²⁰
- 4.5.3 In the absence of this mechanism, the ACT has a number of independent agencies with oversight responsibilities in relation to the AMC.

Complaints and oversight mechanisms at the AMC

- 4.5.4 Women detainees at the AMC may raise a concern or complaint about their treatment in prison, through an internal complaints process within the AMC, or may make a complaint to the Official Visitor, Aboriginal Official Visitor or an external agency such as the Ombudsman or the Public Advocate of the ACT. Although the ACT Human Rights

¹⁹ *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 18 December 2002, 2375 UNTS 237 (entered into force 22 June 2006)

²⁰ Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2013 (ACT).

Commissioner does not have jurisdiction to consider individual human rights complaints, detainees may make complaints within other areas of the Commission's jurisdiction.

Internal complaints

- 4.5.5 The Corrections Management (Prisoner Complaints and Grievances) Policy 2010 provides that detainees may make complaints regarding the AMC's management of their incarceration or the operations of the AMC.²¹ Detainees are to be encouraged to make complaints internally as the most effective and fastest way to resolve their concerns.
- 4.5.6 The AMC Prisoner Handbook provides information to detainees about requests, grievances and complaints:
- All requests are to be submitted on a request form, which can be obtained from staff. Grievances and complaints may be made verbally to staff or in writing on a prisoner complaint form – all grievances and complaints will be assessed and feedback given.*
- 4.5.7 These complaints can be made on a blue Prisoner Request Form, commonly known within the AMC as a 'bluey', or a Prisoner Complaint Form. These forms are submitted to the correctional officer within the women's area for resolution, but if an issue cannot be resolved at that level, it will be escalated to higher level. Serious allegations involving abuse or misconduct must be immediately escalated to the Deputy General Manager.
- 4.5.8 In 2012 four written complaints were made by women detainees. The majority of these complaints appeared to relate to dissatisfaction with actions of particular officers. While some complaints relate to seemingly minor matters, and we do not know the full context in which they were made, the responses noted on the forms suggest that there may not always be a sufficiently serious effort made to resolve these issues. For example, one complaint related to an allegation of an officer speaking to a detainee in a disrespectful way. The outcome of the complaint is simply reported as:
- Detainee feels that [officer] could of [sic] handled the situation better. I informed the detainee that not everything has the outcomes that we expect. Resolved.*
- 4.5.9 However another more serious complaint regarding alleged misconduct by male officers in dealing with a self-harm incident was investigated by a senior officer, and CCTV footage was reviewed to determine what had occurred. This complaint appears to have been considered in a thorough and professional way.
- 4.5.10 Internal complaints are a valuable mechanism for identifying areas where practice could be improved, and resolving issues before they become more serious. If detainees are to have confidence in the internal complaints system, it is important that all complaints are dealt with respectfully and objectively, even if officers initially consider them to be trivial or possibly unfounded.

²¹ Notifiable instrument NI2010-387, made under *Corrections Management Act 2007* (ACT) s 14(1).

Recommendation 16: That ACTCS remind officers of the value of complaints in improving practice, and the importance of responding respectfully and seriously to detainee complaints.

External Oversight Agencies

- 4.5.11 The Official Visitors, ACT Ombudsman, Public Advocate and Human Rights Commissioner are each recognised in the *CM Act* as having an important role in relation to the oversight of prisons, and are given particular rights in relation to entry and inspection and to have confidential protected contact and communication with detainees.²²

Official Visitors

- 4.5.12 Under the *Official Visitor Act 2012* at least two Official Visitors must be appointed to visit correctional facilities in the ACT and one must be an Aboriginal or Torres Strait Islander person. There are currently two Official Visitors appointed to visit the AMC, the Official Visitor, and the Aboriginal Official Visitor.
- 4.5.13 The functions of the Official Visitors are to visit the AMC and other facilities (such as the Periodic Detention Centre); to be available to talk to detainees and other people concerned about them; and to receive and consider complaints from detainees and others on their behalf. The Official Visitors provide reports directly to the Minister for Corrections.²³
- 4.5.14 The role of the Official Visitors is important, as they are often able to resolve detainees' concerns with AMC management in a relatively informal way, but with the ability to raise serious issues directly with the Minister where these cannot be resolved with ACTCS. It is nevertheless a challenging role, as Official Visitors generally work alone, and have to maintain a good working relationship with ACTCS while also overseeing their activities.
- 4.5.15 It is a positive practice to have a female Official Visitor who is able to meet with all women detainees, although her role is concentrated primarily on the needs of Aboriginal and Torres Strait Islander detainees across the prison. For many women detainees, a female Official Visitor may be more accessible and approachable, particularly where they wish to raise a sensitive or personal concern. Women detainees who had met with the Official Visitors appreciated their support and assistance.
- 4.5.16 However, a number of women we interviewed had not met either Official Visitor, and were not aware of how to contact them. The Women's Centre for Health Matters similarly note in their submission that:

According to information gathered during WAP's peer support visits, women detainees at AMC are not routinely seen by the Official Visitor and do not know who this position is currently held by or how to contact them.

²² *Corrections Management Act 2007* (ACT) ss 51, 103 and 105.

²³ *Official Visitor Act 2012* (ACT) s 14(1).

- 4.5.17 It does not appear that there is a regular schedule of visits to the women's area, and the Official Visitors are not contactable by telephone. The Prisoner Handbook does not provide contact information for the Official Visitors. We understand that requests to see the Official Visitor must be made through a detainee request form, or through a correctional officer. The Corrections Management (Official Visitor) Policy 2011 provides that "[a]ny request from a prisoner to see an Official Visitor will be passed on to the Official Visitor as soon as practicable."²⁴
- 4.5.18 Although the Policy provides that detainees are not required to explain to Corrections Officers why the detainee has requested to see the Official Visitor, the need to go through an officer may discourage detainees from seeking assistance.
- 4.5.19 In the Commissioner's view, it would be helpful if the Official Visitors could develop a schedule of regular visits to the women's precinct, as this would enable women to get to know the Official Visitors and their role, and to raise concerns confidentially, without submitting a formal request.

Recommendation 17: That the Official Visitors develop a schedule of regular visits to the women's precinct within the AMC, as well as continuing to see detainees on request and undertaking unannounced visits.**

Recommendation 18: That ACTCS amend the Prisoner Handbook to provide further information for detainees about how to contact the Official Visitors.

Other oversight agencies

- 4.5.20 The ACT Human Rights Commission, Public Advocate of the ACT and the ACT Ombudsman have overlapping areas of oversight and complaints handling roles in relation to AMC detainees. These agencies are each accessible on freecall numbers on detainee phones, and communications with these agencies are confidential and protected.
- 4.5.21 The ACT Ombudsman has jurisdiction to take individual complaints from detainees about all areas of prison management and administration. The Ombudsman also conducts systemic reviews and audits of compliance with policy and procedure.
- 4.5.22 The Public Advocate has jurisdiction as an advocate for detainees with mental health, disability and guardianship issues, and is involved in the assessment of applications for women to have children reside with them at the AMC under the Women and Children Policy (discussed at Part 5.3.1).
- 4.5.23 The ACT Human Rights Commission comprises three Commissioners of equal standing, the Human Rights and Discrimination Commissioner, the Health Services and Disability Services Commissioner, and the Children and Young People Commissioner. The Commissioners may take individual complaints from detainees in relation to a range of issues, such as discrimination complaints, complaints about a health or disability service provided to detainees, or complaints about services provided to children of detainees. The Human Rights Commissioner does not have an individual complaint handling role in relation to breaches of human rights, but has a monitoring role in

²⁴ Notifiable instrument NI2011-137, 2, made under *Corrections Management Act 2007* (ACT) s 14(1).

relation to these issues at a systemic level. Under s 56 (1)(d) of the *CM Act*, the Human Rights Commissioner has power to enter and independently inspect a correctional centre at any reasonable time.

- 4.5.24 The differing functions and jurisdictions of the oversight agencies can be confusing for AMC detainees, and detainees often express surprise and frustration that the Human Rights Commission does not have a complaint handling role regarding individual complaints of breaches of human rights at the prison.
- 4.5.25 To address this issue the oversight agencies have developed a poster which has been placed near detainee phones explaining the different functions of each agency. Agencies also frequently refer detainees to another agency where this is more appropriate.
- 4.5.26 Representatives of the Ombudsman, Public Advocate, Human Rights Commission and the Official Visitors attend a monthly oversight agencies meeting with the AMC General Manager and other staff, which is convened by ACTCS at the AMC. These meetings are very useful in allowing agencies to share information and raise general concerns with ACTCS, and to receive briefings on current operational and policy issues.
- 4.5.27 It appears that it would be helpful for the oversight agencies to have some meetings without ACTCS to enable these agencies to work more effectively together, for example through developing joint policy positions, or working on systemic issues of joint concern. In the area of youth justice, following the Commission's 2011 review of the youth justice system, agencies having oversight roles at Bimberi Youth Justice Centre have met monthly independently of the Community Services Directorate. These meetings, convened by the ACT Children & Young People Commissioner, have proved to be a useful way of improving co-ordination and working relationships between the agencies.

<p>Recommendation 19: That the ACT Ombudsman, Official Visitors for the AMC, Public Advocate and the Human Rights Commission consider meeting at their offices on a regular basis in addition to the oversight meetings convened by ACTCS at the AMC.**</p>
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Part 5. Women's Parenting Responsibilities

5.1 Introduction

Relevant Standards

HR Act

Section 11 *Protection of the family and children*

11(1): *The family is the natural and basic group unit of society and is entitled to be protected by society.*

11(2): *Every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind.*

United Nations Convention on the Rights of the Child:

Article 3.1: *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

Bangkok Rules

Rule 28: *Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible.*

Rule 49: *Decisions to allow children to stay with their mothers in prison shall be based on the best interests of the children. Children in prison with their mothers shall never be treated as prisoners.*

Rule 50: *Women prisoners whose children are in prison with them shall be provided with the maximum possible opportunities to spend time with their children.*

Rule 51.1: *Children living with their mothers in prison shall be provided with ongoing health-care services and their development shall be monitored by specialists, in collaboration with community health services.*

Rule 51.2: *The environment provided for such children's upbringing shall be as close as possible to that of a child outside prison.*

Rule 52.1: *Decisions as to when a child is to be separated from its mother shall be based on individual assessments and the best interests of the child within the scope of relevant national laws.*

Rule 52.2: *The removal of the child from prison shall be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national prisoners, in consultation with consular officials.*

Rule 52.3: *After children are separated from their mothers and placed with family or relatives or in other alternative care, women prisoners shall be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.*

5.1.1 For many women in custody, separation from their dependent children, and concern about their children's welfare, is the most difficult aspect of their incarceration. A majority of detainees at AMC are parents, with the ACT Health Survey indicating that 57% of those in custody have between one and five dependent children.¹ Women detainees are more likely than men to be the primary carers of their children.² Of the 18 current and former detainees interviewed for this Audit, ten women were mothers of young children at the time of incarceration. Women may also be pregnant when they enter prison, and give birth while in custody.

5.1.2 Incarceration and the resulting separation and family disruption can have profoundly negative impacts on both mothers and their children. For infants and younger children, separation from their primary attachment figure at a vulnerable time may compromise their ability to form a secure attachment, with long term consequences for their development and well-being.³ In a literature review, Woodward found that:

Imprisonment of a mother can be particularly damaging to the emotional wellbeing of her children. Numerous experts have identified early maternal separation and interruptions to the attachment-bonding process as causing "long-term difficulties, including impairment of attachments to others, emotional maladjustments and personality disorders".⁴

5.1.3 Separation from their mother, and the stigma associated with imprisonment also has significant effects on older children and adolescents. Recent research conducted by the Institute of Child Protection Studies with young people in the ACT who had experienced parental incarceration found that they faced a range of challenges related to family relationships, including: increased caring responsibilities; education; shame and stigma; challenges in accessing supports; emotional distress; financial disadvantage; and instability and homelessness.⁵

5.1.4 As Burgess and Flynn note:

Maternal incarceration and its associated separation can disrupt the mother/child relationship, partly because mothers can no longer fulfil the roles associated with being a parent. Maternal imprisonment also has significant practical, economic,

¹ ACT Health, '2010 ACT Inmate Health Survey: Summary Results', *Health Series No 55* (July, 2011), 7 [3.3].

² Lorana Bartels and Antonette Gaffney, 'Good practice in women's prisons: A literature review', (Australian Institute of Criminology Reports: Technical and Background Paper 41, 2011), 58.

³ See e.g. Julie Poehlmann, 'Representations of attachment relationships in children of incarcerated mothers' (2005) 76 *Child Development* 679-696.

⁴ Rosemary Woodward, 'Families of prisoners: Literature review on issues and difficulties' (Occasional Paper No 10, Australian Government Department of Family and Community Services, September 2003), 8 (citations omitted).

⁵ Vicky Saunders and Morag McArthur, *Children of Prisoners: Exploring the needs of children and young people who have a parent incarcerated in the Australian Capital Territory* (SHINE for Kids, 2013), 5.

*interpersonal, social and emotional implications for families. Therefore, children as well as offenders are punished through imprisonment.*⁶

- 5.1.5 Women detainees are often sole parents, or have partners who are not willing or able to take on caring responsibilities, so their children are more likely to be placed with grandparents or relatives, or in foster care.⁷ For these children, not only are they separated from their mothers, but they may also move house, be separated from siblings, change schools and lose contact with friends and other supports in their lives. While difficult issues of separation also arise for fathers in custody, and their children suffer a range of disadvantages, incarceration of a father is less likely to result in the placement of children into care, and the family unit is more likely to remain intact.⁸
- 5.1.6 Mothers in custody at AMC have often had some contact with ACT Care and Protection Services prior to incarceration (and some were in care themselves as children). For some women, one or more of their children may already have been in care when they enter custody. Nevertheless, most mothers remain in contact with their children. This ongoing contact and aspect of their parenting role is also affected by being in custody.
- 5.1.7 Ideally, mothers should remain in the community to care for their dependent children where this is in the best interests of the child, and incarceration should be considered only as a matter of last resort. This does not mean absolving mothers of criminal responsibility for their offending behaviour, but instead ensuring that decisions about sentencing have clear regard for the impact that parental incarceration may have upon children, who are not responsible for any offence. Where mothers are incarcerated, relationships with their children must be supported as far as possible in the prison environment, where this is in the best interests of children, to avoid punishing children for the actions of their parents, and to reduce intergenerational cycles of disadvantage and offending.
- 5.1.8 The disruption of the relationship between mothers in custody and their children potentially limits a number of human rights. These include the rights of women detainees to have their families protected, and to humane treatment while in custody. Importantly, it also impacts upon the rights of children to protection, and to have their needs, wishes and best interests taken into account as a primary consideration in all decisions that affect them.
- 5.1.9 As the Standing Committee on Community Services and Social Equity has noted, there is also significant evidence that maintaining family and community bonds and being reconnected with family after release is a key factor in reducing recidivism of offenders.⁹

⁶ Alannah Burgess and Catherine Flynn, 'Supporting imprisoned mothers and their children: A call for evidence' (2013) 60 *Probation Journal* 73, 74.

⁷ See e.g. Dawn Cecil et al, 'Female inmates, family caregivers, and young children's adjustment: A research agenda and implications for corrections programming' (2008) 36 *Journal of Criminal Justice* 513-521.

⁸ See e.g. Danielle Dallaire, 'Incarcerated mothers and fathers: A comparison of risks for children and families' (2007) 56 *Family Relations* 440-453.

⁹ Standing Committee on Community Services and Social Equity, Legislative Assembly for the Australian Capital Territory, *The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence* (2004) 7 (citations omitted).

5.2 Current provision for women to maintain relationships with children

- 5.2.1 Mothers in custody at AMC may have contact with their children through regular visits, family days, or, potentially, through private family visits. In addition, the AMC has a Women and Children's Program which provides that women may be approved to have their young children reside with them in custody where eligible. These options are discussed further below.

Visits

- 5.2.2 As discussed at Part 3.8 the AMC has an extensive general visiting program, with detainees able to receive visitors for 90 minutes, six days per week (every day except Monday). The AMC was designed to be welcoming to visitors, including children, with a large reception area that includes a fenced play area with toys for children, and a pleasant open café style visits area, with children's play areas and an outside playground. Visitors can purchase hot beverages and milkshakes from the café in the visits area which adds a level of comfort and normality to visits. Families can also pre-purchase BBQ packs for the family to cook and enjoy together. AMC also provides prams, nappies and change facilities for infants.

- 5.2.3 Although the Commissioner was not able to speak to children of detainees for this Audit, over the same period, the Institute of Child Protection Studies conducted interviews with a number of children and young people who had a parent incarcerated at the AMC. The Report found that:

[Y]oung people and parents who had experiences of visiting at other interstate prisons identified that AMC was considerably more pleasant, more child-friendly and less 'scary' to visit. Similar to Beck and Jones (2007), most of the children and young people in this study who had been able to maintain contact with their parent, articulated that this was a positive experience regardless of the crimes committed by their parent.¹⁰

- 5.2.4 The non-government agency SHINE for Kids has been providing programs for children of detainees at AMC since early 2011. For approximately half of the visiting sessions available, a SHINE for Kids worker, who is trained in child care, is present in the visiting area and runs craft and other activities for children. This program aims to make visits a more positive experience and to assist parents to engage with their children through these activities. SHINE for Kids also uses these sessions as an opportunity to get to know families and offer further support to children in the community. As discussed below, SHINE for Kids also facilitate family visit days at the AMC.

- 5.2.5 Women detainees we spoke to were generally very positive about general visiting arrangements, and appreciated the SHINE for Kids program:

"Visits are ok, there's plenty of equipment for the little kids, you can get visits six days a week." [woman detained at AMC 2013]

¹⁰ Saunders and McArthur, above n 5, 46.

“My family come in every weekend so I can see the kids...Visits area is good, play equipment for kids, there is a lady who comes in and does art and activities for kids. I think that’s really good, so that visitors can talk to each other too sometimes, and the kids aren’t getting in trouble all the time for interrupting.” [woman detained at AMC 2013]

- 5.2.6 The Institute of Child Protection report similarly found that the SHINE for Kids program was very helpful for children:

[P]articipants who had a parent incarcerated at AMC at the time of the interview identified the SHINE for Kids program as incredibly useful in that it was non-judgmental, located at the prison, and was child friendly. The ‘art lady’ provided activities that children could engage in and make visiting more enjoyable.¹¹

- 5.2.7 AMC management prioritise continuity of visits, and these are rarely affected by operational or staffing issues. ACTCS note that visits have been closed only once since April 2011, due to electronic systems failure and all visitors were contacted and advised in advance.

Limitations

Children using toilets during visits

- 5.2.8 One issue raised by a number of interview participants was the requirement that a visit be terminated or continued as a non-contact visit, if a child needed to go to the toilet during the course of the visit. This rule is designed to avoid removal and transmission of contraband. However, visitors use separate toilets from detainees, and visits are monitored by officers and security cameras. While it is important that security is maintained, we are concerned about the potential for this rule to be very distressing for young children, who have limited understanding and control over toileting, and are likely to feel that it is their fault that a visit ends prematurely.
- 5.2.9 In the Standing Committee Report on the Forgotten Victims of Crime, the Committee recommended that ‘the Government ensure the new ACT prison has a visiting centre designed to accommodate the needs of child visitors including access to toilet facilities in the visiting room.’¹² It is unfortunate that although toilet facilities have been provided, visits are still being terminated if children need to use them.
- 5.2.10 It appears that there may be less restrictive ways to resolve this situation, for example a SHINE for Kids worker escorting a child to the toilet during visits if required, if the child was willing and the family consented.

<p>Recommendation 20: That ACTCS establish appropriate procedures to allow young children to go to the toilet during a visit, without this adversely affecting their visit with a parent.</p>
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¹¹ Ibid 35-36.

¹² Standing Committee on Community Services and Social Equity, above n 9, Recommendation 19, 77 [7.19].

Non contact visits

- 5.2.11 Where detainees have breached rules regarding contraband, or have tested positive to illicit drugs while in custody, they may be placed on ‘non-contact’ or ‘boxed’ visits, usually for a period of six weeks. Non-contact visits may also be imposed for other disciplinary breaches. Instead of sitting in the open café style seating of the visiting area, non contact visits are held in an enclosed cubicle where the detainee and visitors are separated by glass. This is particularly difficult for young children who are not able to have physical contact with their mother or to move around or access play equipment during the visit. As one interview participant noted:

“We need to think how we could do that better for children. There is nowhere for them to play. It’s hard for them to sit in a tiny cubicle, even if they bring a toy in. Again, we are punishing the child for the adult’s issue.”

- 5.2.12 It is notable that in designing the visits area there was an intention that children be allowed to have physical contact with parents even during non-contact visits. John Paget reported that:

Design of non-contact visits area in the Visits Centre will allow children to be seated with a prisoner to give effect to the principle that children should not suffer for the transgressions of their parents or relatives.¹³

- 5.2.13 However, it does not appear that this has occurred in practice. Human rights standards require that children be allowed to have open contact with their mothers in prison,¹⁴ and this should not be limited unless there is very clear justification (for example if it is suspected on reasonable grounds that a particular adult responsible for the child is likely to use the child to transmit contraband). A blanket ban on contact visits is not consistent with this approach.
- 5.2.14 A positive approach was demonstrated in one disciplinary charge form reviewed by the Commissioner, where a period of non-contact visits was imposed, but it was noted that the detainee could continue to have contact visits with her child. However it does not appear that this is standard practice.
- 5.2.15 In our view children should be able to sit with their parent who is in custody and have physical contact with them during ‘non contact’ visits, unless there are reasonable grounds to suspect that this would result in the transmission of contraband.

¹³ John Paget, *Human Rights and Prison Architecture: The Alexander Maconochie Centre from Conception to Construction* (PhD Thesis, Charles Sturt University, 2008) 277.

¹⁴ See United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), GA Res 65/229, UN GAOR, 65th sess, Agenda Item 105, UN Doc A/RES/65/229 (16 March 2011), Rule 28.

Recommendation 21: That ACTCS ensure that officers consider the human rights of any children affected when imposing an administrative penalty of non-contact visits, and make exceptions where reasonable and practicable.

Recommendation 22: That ACTCS allow children to sit with their parent who is in custody during non-contact visits unless there are reasonable grounds to suspect that this would result in the transmission of contraband.

Reliance on carers to facilitate visits

- 5.2.16 One clear limitation on access to visits is that mothers in custody are dependent upon carers to facilitate contact with their children. Although the AMC is relatively proximate to most areas of Canberra (compared to the geographic isolation of some prisons in NSW), public transport options to the AMC are limited, and lack of transport can add to difficulties faced by grandparents or other carers in facilitating visits. Although we have observed AMC correctional officers to be respectful and professional in dealings with visitors, carers can also find the regime for visits difficult and confronting, as they are required to undergo a range of security checks including sniffer dogs and visual inspection. Interview participants suggested that some foster carers can be reluctant to bring children into prison for regular visits with parents for this reason.
- 5.2.17 In NSW, SHINE for Kids is funded on a fee for service basis to facilitate children's visits to their parents in custody, and will transport them and support them during the visit. This would be of particular assistance where foster carers are unable to bring a child in their care to visit regularly with a parent at AMC, and such visits would be in the best interests of the child.

Role of Care and Protection Services

- 5.2.18 A concern raised by a number of women detainees was the difficulty in arranging contact with their children where their child had been placed into care, either before or as a result of their incarceration. Mothers spoke of problems contacting case workers in Care and Protection Services, and the diminution in contact visits compared to contact they had with their children in the community. The Women's Centre for Health Matters also state in their submission that:

Some detainees have reportedly found it very difficult to maintain contact with children, particularly as ACT Care and Protection Services do not seem to initiate or facilitate contact between the children in care and their detained parent; one woman WAP spoke to apparently went for months without any contact with her children.

- 5.2.19 Care and Protection Services indicated that decision making relating to contact visits is not affected by parental incarceration, but is always assessed on the individual circumstances and best interests of children:

"We don't have a general approach of restricting contact at AMC. Contact should be based on what is in the child's interest. Would that child be having contact if the parent was not in the AMC? Sometimes it may be monthly, sometimes it may be every six months if there is an order until 18. I couldn't tell you if there is a different pattern of contact for children where the parent is at AMC, it is just about the interests of the child."

- 5.2.20 The Commissioner agrees that contact between children and their parents in custody should only occur where this is in the best interests of the child, taking into account the attachment needs of young children, and the ability of parents to meet these needs. The wishes and views of each individual child or young person will be an important factor in determining whether contact is in their best interests. While some children and young people may choose not to visit an incarcerated parent, we note that the Institute of Child Protection Studies Report found that many older children and young people considered it very important to maintain these relationships:

*Children and young people expressed their desire to get to know their parent and experienced significant feelings of anger, loss, and sadness when they were either prevented from seeing their parent, or when their incarcerated parent chose not to maintain contact with them. Similar to the findings of research conducted by Posley (2011) and Muhammad (2012), many children and young people stated a desire to get to know their parents despite their incarceration, and this meant that they strongly elected to see their parent in prison.*¹⁵

- 5.2.21 During the course of the Audit, the Children and Young People Commissioner received a complaint from a woman remanded in custody who was the mother of a young child who had been placed in the care of the Director General for two years. Prior to incarceration she had been allowed to have contact with her child three times per week as part of a restoration plan (although she had missed a number of these visits). Once this mother entered custody, Care and Protection Services did not speak with her or authorise a visit with her child for eight weeks, until they could arrange an assessment with her. The mother was very distressed by the lack of contact, and concerned about the impact on the attachment bond with her child, so had made numerous attempts to contact Care and Protection Services to resume visits. After the complaint was made to the Commission a contact visit was arranged at the AMC, and regular contact arrangements were resumed once the mother was released on bail.
- 5.2.22 We accept that a change in circumstances may require a review of contact arrangements to ensure that contact is in the best interests of the child. However, where an assessment is required before contact may resume, this should occur as soon as possible, particularly where a gap in contact is likely to affect attachment between the detainee and their young child. We accept that the delay in this case was exacerbated by worker illness, and a range of other urgent cases, however in our view, a delay of eight weeks was not reasonable.
- 5.2.23 One issue highlighted in this case is the difficulty for mothers in custody contacting Care and Protection Services directly, as case workers are not generally in the office to accept calls, and women cannot receive incoming phone calls. It also indicates the need for more flexible arrangements where case workers are unable to attend AMC in person, for example because of caseload demands. In such circumstances communication could occur through a telephone conference organised with the Women's Case Manager.
- 5.2.24 We consider that specific policies and procedures should be developed by the Community Services Directorate, with input from ACTCS, to facilitate better

¹⁵ Saunders and McArthur, above n 5, 45.

communication between Care and Protection Services and parents in the AMC, and to enable arrangements for contact between parents at AMC and their children who are in the care of the Director General.

- 5.2.25 Care and Protection Services have reported that they are implementing a comprehensive Integrated Management System (CPS IMS) The CPS IMS is a quality assurance system that embeds all policies, procedures and practice guidelines in a compliance and risk management framework. They note that issues regarding contact with parents will be addressed through a practice guide for Care and Protection workers that will focus on contact with parents in various residential settings, including the AMC.

Recommendation 23: That the Community Services Directorate develops and implements procedures within its practice guide for Care and Protection Workers (in consultation with ACTCS) regarding children in the care of the Director General who have a parent in custody at the AMC. This should include arrangements for communication between Care and Protection Services and parents at AMC, and facilitation of regular contact visits with their children where appropriate. **

Recommendation 24: That the Community Services Directorate consider contracting an agency such as SHINE for Kids to transport children to and from the AMC and to facilitate contact visits between children who are in out of home care and their parent at AMC, where this is in the child's best interests, and contact has not been occurring regularly.**

SHINE for Kids Family Days

- 5.2.26 On one day in each school holidays (four times per year), SHINE for Kids arranges a family day, where parents may apply to have their children visit with them at AMC for a full day. A program of activities and entertainment is organised for children and parents. Mothers and fathers in custody have participated together in these family days, apparently without incident. SHINE for Kids noted that for some families who live interstate, and cannot attend regular visits, these family days are the main form of contact between incarcerated parents and their children.
- 5.2.27 The Commissioner observed a family day in progress, where children and their parents and carers were actively participating in games and activities together in the outdoor playground area, and children were enjoying having their faces painted. The environment was normalised and positive, and there was no obtrusive security presence.
- 5.2.28 Some concerns were raised in interviews regarding the eligibility of parents to participate in family days, and women detainees and advocates raised concerns that access to the family day had apparently been used as an incentive to improve behaviour and reduce conflict between women in the cottages. ACTCS state that family days are not used as rewards or behavioural incentive, but that some detainees may be excluded if they present a risk to the safety of children or other detainees.
- 5.2.29 Family days are a very positive initiative to promote parenting relationships between detainees and their children outside the constraints of the normal visiting arrangements, and with a focus on the particular needs and interests of children. While efforts should be made to maximise the ability of all parents to attend, for the

benefit of their children, it is reasonable for ACTCS to consider safety risks in determining eligibility.

Private Family Visits

- 5.2.30 In addition to visits and family days, the Corrections Management (Private Family Visits) Policy 2010¹⁶ provides that eligible detainees may apply to have private family visits, which are defined to include a visit with family members and children. The Visits Area includes a private family visits suite which is designated for this purpose. The Policy states that:

*PFVs [Private Family Visits] offer eligible prisoners the opportunity to spend extended time with family members in a private, domestic setting located within the visits centre. These visits will take place under reduced supervision. PFVs support prisoners to identify themselves as parents ... and to develop strategies to maintain these roles during and after imprisonment.*¹⁷

- 5.2.31 This Policy has been controversial because it also makes provision for conjugal visits, which have not been strongly supported by AMC management due to concerns about duty of care to visitors and security issues ie contraband such as drugs. It appears that the aspect of the Policy relating to extended visits with children, in a more domestic environment, has not been widely publicised to, or understood by detainees. As far as we are aware, there have been no applications for private family visits with children by women detainees, and no such visits have occurred.
- 5.2.32 We understand that the Private Family Visits Policy is being reviewed. It is important that the opportunities for flexible and extended visits between parents and their children be maintained and that this issue is considered separately to any decision regarding conjugal visits. Additional play equipment, toys and activities could be included in the Private Family Visits suite to make this area more appropriate for visits between parents and children. Monitoring of such visits may also be appropriate in some cases to ensure the safety of children while at the AMC. The Commissioner notes that the current policy allows for extended visits, and ACTCS have approved daily visits of up to six hours for newborn babies and longer visits (half days) for visitors from country areas. ACTCS consider that further regular extended visits would put significant pressure on an already complex and extensive visit regime. However, the Commissioner believes that there should be flexibility to allow regular extended visits with children where this is in the child's best interests and that ACTCS should be resourced to ensure this occurs.

Recommendation 25: That ACT Government provide ACTCS with sufficient funding to ensure that parents in custody have opportunities for regular extended visits with their children.**

Recommendation 26: That in reviewing the Private Family Visits Policy, ACTCS should not reduce opportunities for parents to have visits with their children in a normalised family environment.

¹⁶ Notifiable instrument NI2010-373, made under *Corrections Management Act 2007* (ACT) s 14(1).

¹⁷ Ibid 2.

5.3 Women and Children Program

Current Policy

5.3.1 ACTCS acknowledge the critical importance of maintaining the bond between mothers in custody and their children, where this in the best interests of the child. In the design of the AMC it was contemplated that women may have their young children reside with them, and a specific room was included in the women's precinct for a mother and child.

5.3.2 In 2010 a program was established to give effect to this intention. The Corrections Management (Women and Children Program) Policy 2010¹⁸ sets out details of a program to allow women to apply to have their young children reside with them in the women's precinct at the AMC. The Policy states that:

*The Women and Children Program provides an opportunity for eligible women to care for their infants and young children (up to two children at one time) at the Alexander Maconochie Centre (AMC) where it is considered to be in the best interests of the child and the security of the AMC is not compromised. Caregivers may be granted approval to have their children reside with them on a full-time, part-time or short-term basis.*¹⁹

5.3.3 Women who are primary care givers for a child under four years old are eligible to apply to participate in this program, whether or not they are the biological mother of the child. The Policy provides that women on remand as well as sentenced detainees are eligible, and women may apply while on bail (in contemplation of a sentence of imprisonment). The Policy states:

*All women admitted to the AMC including women on remand or who are on bail from a court who are the caregivers of children up to the age of four years or who are pregnant may apply to participate in the Women and Children Program.*²⁰

5.3.4 The Policy provides that women may not be considered suitable to participate in the program if they have previously abused or neglected a child, if they have been convicted of sex related offences or if they have had a positive urinalysis test for illicit drugs within 6 months prior to making an application.

5.3.5 To be considered for this program, women must nominate an appropriate and responsible adult as a 'community carer' to provide part-time and emergency care and transport for the child outside of the AMC. Women must also nominate another woman detainee to be a 'co-resident temporary carer', to care for the child for short periods of time where necessary. Other women detainees are also asked to complete an information sharing consent form to allow the Office for Children Youth and Family Support (OCYFS) to share information regarding their care and protection history, to be used in risk assessment.

5.3.6 The Policy sets out a detailed process for assessment of applications, with an initial assessment conducted by the Superintendent (now called the General Manager), and

¹⁸ Notifiable instrument NI2010-449, made under *Corrections Management Act 2007* (ACT) s 14(1).

¹⁹ Ibid 2.

²⁰ Ibid 6.

suitable applications then referred for consideration by the Parenting and Children's Committee (PCC). Standing members of the PCC are:

- Director, Corrections Health Program;
- Offender Services Manager, ACTCS;
- The Senior Advocate or Principal Advocate, Children and Young People, the Public Advocate of the ACT;
- Principal Psychologist, OCYFS – necessary for the initial recommendation of the PCC with subsequent attendance as required;
- OCYFS Representative – necessary for all meetings not attended by the Principal Psychologist;
- Community Paediatrician, ACT Health;
- OCYFS case management staff where the Director General has full or shared parental responsibility for the child;
- An Aboriginal or Torres Strait Islander representative, if the applicant or child is Aboriginal or Torres Strait Islander, with the proposed primary caregivers consent.

5.3.7 All members of the PCC must provide input prior to making a final recommendation to the General Manager regarding the best interests of the child and the suitability of an applicant to meet the best interests of the child through this program. The PCC must consider a range of information including the woman's Case Manager's assessment of the mother's suitability; reports of any prior engagement with Care and Protection Services; a health assessment; an expert assessment of the child's best social, emotional and environmental interests and a detailed risk register which attempts to calculate the likelihood of a range of risks eventuating, and includes issues relating to all other women detainees in the precinct. The PCC makes a recommendation to the General Manager who has authority to make the final decision.

5.3.8 If an application is approved the Policy provides that caregivers, co-residents and correctional staff working in the women's precinct will receive training in child awareness and caregiver requirements to ensure responsible and safe child-rearing practices are applied. Training is stated to include ante and post natal awareness; parenting skills; modelling/attachment behaviours; child development; positive discipline skills; and nutrition/hygiene/safety. The Policy provides that ACTCS will supply 'age appropriate aids to foster a caring environment such as toys, educational material, bath tubs, high chairs and strollers for use by the caregiver.'²¹

5.3.9 The Women and Children Program Procedure provides that wherever possible, the decision regarding participation in the program will be made within a three month period from the date the application is submitted by the detainee to her Case Manager.

²¹ Ibid 7.

Application in practice

- 5.3.10 Although the Policy has been in place since 2010, and a number of women detainees at AMC have had care responsibilities for young children when they entered custody, no woman detainee has yet had a child reside with her at the AMC on a full time, part time or short term basis. The Commissioner is aware of only three applications by women to participate in the Women and Children's Program. One application was made in relation to a four month old child, while the other applications were made by women who were pregnant and sought to have their babies reside with them at AMC once born.
- 5.3.11 The first application was made in 2010 by a pregnant detainee. The application was given initial approval by the General Manager, and referred to the PCC. The PCC deliberations and the processes of assessment took many months. During this period the applicant was moved into the designated women's and children's cabin in the Women's Sentenced Cottage, and preparations were commenced to have the facility ready for the arrival of her newborn child. A bassinet was purchased and installed and baby clothes obtained. The expectant mother and other detainees received training in parenting, occupational health and safety and first aid. However, two weeks before the applicant's due date, she was given notice that the application had been refused, due to child protection issues, and that her child would be allowed to visit with her for extended periods each day, but not to reside with her. The applicant had lodged an appeal against her conviction, and was released by the Court before the birth, on bail, to reside at a community facility for mothers and children.
- 5.3.12 The second application was made in May 2012, by a mother who had primary care responsibility for her four month old baby and was breastfeeding before she came into custody. This application was supported by her Case Manager, but refused by the General Manager at first instance. ACTCS note that this was due to the detainee's previous urinalysis results and serious behaviour issues. The case notes indicate that the mother was upset by this decision, but does not record whether any advice was given regarding appeal rights. ACTCS report that although the child was not able to reside at the AMC, the mother was allowed access to her baby for 6 hours per day, 7 days per week, and that extensive support was provided to the detainee by correctional and case management staff.
- 5.3.13 The third application was made in February 2013, with the mother due to deliver her child in June 2013, three weeks before the expiration of her sentence. The application was still under consideration two weeks before the applicant's due date, and she did not know at that stage whether she would be separated from her newborn child after the birth. In this case the PCC recommended against the application, as although there were no concerns about the applicant's parenting skills, the PCC was concerned about risks posed by other detainees. Rather than separating the mother from her child for the brief remaining period of her sentence, the General Manager authorised consecutive local leave permits under s 205 of the *CM Act* to allow the detainee to return to her home and family after the birth of her child. This decision was made on the basis of the behaviour of the woman while in custody; including her attitude and that she was drug free.
- 5.3.14 In relation to the applications made by pregnant detainees, ultimately a humane approach was taken in releasing these women to care for their children in the

community, and the rights and best interests of the children were prioritised. For these families, living in the community with access to a range of supports is a better outcome than remaining in custody.

- 5.3.15 Nevertheless, in our view, the issues raised by the three applications, and the absence of other applications to the Program indicates that the Women and Children's Program is not working effectively. Some women detainees we spoke to considered that the Program existed on paper only, but was not a real option available to them:

"If they are going to boast about this fantastic program they should have something, but it doesn't even exist... We explored the option of having [my child] here with me but it just wasn't viable, there is no program set up here although it says that there is."
[woman detained at AMC 2013]

- 5.3.16 ACTCS note that they dispute the accuracy of these comments.
- 5.3.17 Another interview participant noted that in investigating options for a single mother of a young child, who was facing the prospect of a custodial sentence, ACTCS was not prepared to consider an application from a mother on bail who was not yet sentenced. ACTCS note that it is their practice to refuse to comment or speculate on the viability of a person before the courts being eligible to have their child in custody. One rationale suggested for this approach was that considering an application by a woman before conviction would engage the presumption of innocence.
- 5.3.18 The Commissioner is concerned that this practice is inconsistent with the Policy, which explicitly recognises that a woman on bail is eligible to make an application to the program. The purpose of allowing such an application is to avoid a period of separation of a mother from her child if ultimately sentenced to imprisonment. In the Commissioner's view, the eligibility of a woman on bail to make an application to the women and children's program does not engage the presumption of innocence. First, any application would be made voluntarily by the woman on bail, presumably based on an assessment and advice from her lawyer about the likelihood of a custodial sentence. Secondly, any risk of prejudice to the woman from making such an application could be eliminated by the ACTCS Policy explicitly preventing ACTCS from passing on details of the application to any external body, particularly relevant criminal justice entities (such as the DPP, police, or Courts).
- 5.3.19 ACTCS recognise that the Women and Children's Program could be improved, and the Program has been under review by ACTCS throughout the course of this Audit. The Commissioner has been consulted in the course of this review, and has provided feedback on the Policy to ACTCS.

Limitations of the Women and Children Program

Limitations of the AMC environment

- 5.3.20 A major challenge in establishing an appropriate residential program for women and children at AMC is the small number of women in custody, including women of different statuses (remandees and sentenced women) and classifications. Pregnant women, and women who are the primary carers of young children, make up a smaller subset of this group. On this basis it would be unusual for there to be more than one woman approved to have her child reside with her at AMC at any time.

- 5.3.21 Jurisdictions with larger populations of women detainees are able to establish programs where a number of women detainees live together with their children, which provides a more supportive and normalised environment for parents and children. Although these are often women of minimum security classification, Western Australia and Victoria have mother and baby programs in their maximum security prison.
- 5.3.22 During the Audit, ACTCS arranged for the Commissioner and Principal Researcher to visit the Jacaranda Cottages Mothers and Children's Program at Emu Plains prison in NSW. Jacaranda consists of eight self-contained Queenslander style cottages, each with five rooms, and a share kitchen, dining room, and lounge area. The program can accommodate up to 16 women with children at a time. The cottages are set within the pastures of the prison's dairy farm, and women with children share cottages with women detainees who work on the farm. The Jacaranda facility includes a children's playground and a community centre where a playgroup is held for children and women attend parenting and other classes. The program is for women classified as minimum security and their children up to school age. Older children up to 12 years may stay with their mothers on weekends and during school holidays. Transport is provided for women to take their children to activities such as kindergym and swimming lessons, and some children attend childcare.
- 5.3.23 While the Jacaranda Cottages program provides a very positive and successful model for a residential program for mothers in custody and their young children, ACTCS consider that it would not be possible to replicate this minimum security environment at the AMC, unless a specific precinct was built within the prison. It would also not be possible to provide the peer support that underpins this program for the very small numbers of women who may be eligible to have their child reside with them at AMC.
- 5.3.24 It appears that the AMC could appropriately accommodate women with newborn infants and young children within existing facilities and resources for relatively short periods of time. However, to provide an appropriate program to enable children to reside with their mother at AMC until four years of age, additional resourcing is likely to be needed to facilitate children's access to external early childhood education and other activities with peers, and to provide professional support to meet their developmental needs within the prison.
- 5.3.25 If this is not feasible, ACTCS could assist mothers to apply to transfer to Jacaranda Cottages to have access to the full program and facilities there. Where these women also have older children not eligible to reside with their mothers, they could be supported to participate in the extended visits at Jacaranda Cottages on weekends and school holidays.
- 5.3.26 ACTCS have indicated that they would support an application for transfer to Jacaranda Cottages in appropriate circumstances, should there be agreement from the mother, and it is expected that this will be reflected in ACTCS revised policy.

Reliance on community carer and other detainees

- 5.3.27 The current Women and Children's Program at AMC requires women to nominate a community carer able to provide any external transportation required by the child, as well as being available to care for the child in emergencies. While it is appropriate to draw on natural supports for mother and child wherever available, this policy appears

to disadvantage children from sole parent families with limited supports in the local community.

- 5.3.28 One woman detainee who had a short sentence in the AMC alleged that this requirement meant that she did not apply to participate in the women and children program, and was separated from her infant (and reluctantly ceased breastfeeding) during her incarceration:

"[My lawyer] explored the whole programs of mums and bubs in jail option and found it was a lot of political rigmarole, because I have no family here in the ACT, the policy says you have to have someone to care for the baby 24/7, so I couldn't have [my child] here. It was just one big catch 22". [woman detained at AMC 2013]

- 5.3.29 The Policy does provide that:

[I]t is possible that a person from an outside organisation may be considered in the instance that a caregiver is unable to nominate appropriate support persons.²²

- 5.3.30 However, it is not clear who is responsible for arranging for (and funding) an outside organisation to provide this support. In the community setting, where a mother has no natural supports and requires emergency care for her child (for example if she is hospitalised) Care and Protection Services would normally provide respite care or other assistance. Accordingly, where no other community carer is available, but where it is in a child's best interests to reside with their mother at the AMC, it would be appropriate for Care and Protection Services to provide community care as required.
- 5.3.31 The Policy also requires the applicant to nominate another woman detainee as a co-resident temporary carer for the child when the applicant is participating in other activities. Other women detainees are likely to be an important source of support to a mother in custody at AMC, and may be positively involved in the care and nurturing of a child living in the communal cottage environment. In NSW and WA the availability of a co-resident carer is a mandatory requirement for a woman to participate in the program. This requirement is appropriate in a large program like Jacaranda Cottages, where there are many other mothers with children who can provide this support to each other. However, it does not readily translate to the environment at AMC, where there is a more transient population of women with a range of classifications and different risk profiles. Given the short periods in custody served by most women at AMC, it is likely to be difficult to determine in advance who will be available to serve this role if the application is accepted, apart from women serving lengthy sentences for very serious offences, who may not be appropriate co-resident carers.
- 5.3.32 In the Commissioner's view, the peer supports available for mother and child could be assessed if the application is supported. Where co-residents are not suitable or willing to take on this formal role, it may be possible to find community volunteers or to develop partnerships with non-government organisations such as SHINE for Kids to provide additional support for mothers and children in custody.

²² Ibid 13.

Criteria regarding drug use

- 5.3.33 Recent illicit drug use by an applicant is an important risk factor to consider in assessing their suitability to participate in the Women and Children Program. However it appears that a rigid application of the criteria regarding illicit drug use in the last six months is likely to exclude many women detainees at AMC, and may not always be in the best interests of their children. Occasional use of some illicit drugs such as cannabis is not uncommon in the ACT community and would not normally provide grounds for removal of a child in the absence of other risks.²³ The individual circumstances and history of each applicant would need to be carefully considered to determine whether acceptance into the program is in their child's best interests. We note that the Jacaranda cottages program excludes women who have had a positive urinalysis test in the three (rather than six) months before making the application, which may provide greater flexibility to consider individual circumstances.²⁴

Assessment Process

- 5.3.34 The experience in relation to the two applications that have gone through the full assessment by the PCC suggests that the process mandated by the Policy and the Procedure focuses largely on potential risks posed by other detainees, without sufficient consideration of the long term benefits of supporting the relationship between mother and child, and the emotional damage caused by enforced separation.
- 5.3.35 Although a prison is far from an ideal place for a child to reside, it is a relatively controlled and monitored environment, where children are protected from some risks they might face in the community, such as parental use of alcohol or other drugs, or exposure to violent and/or abusive male partners.
- 5.3.36 The installation of a fence between the two Women's cottages means that it is now possible for AMC to limit contact between the child and other detainees to those women accommodated in the same cottage with the child. ACTCS is likely to be best placed to determine the allocation of detainees to this cottage to minimise risk to mother and child, based on known association issues and behaviour in custody and criminal histories.
- 5.3.37 Accordingly, while any concerns held by Care and Protection Services regarding another detainee are relevant, it is not clear whether the lengthy process of collection and analysis of care and protection histories of all other women in custody is necessary or helpful. Many of the women in custody will have had involvement with Care and Protection Services throughout their lives, both as children and as parents. Unless they are likely to have direct contact with the child it is not clear that these histories are of overriding importance. The population of women detainees will change frequently and risks will need to be carefully assessed and managed by AMC management on an ongoing basis.

²³ In the most recent national survey, 9.2% of ACT respondents reported cannabis use in the last 12 months: Australian Institute of Health and Welfare, '2010 National Drug Strategy Household Survey Report' (2011), 108 [Table 6.6].

²⁴ Corrective Services NSW Emu Plains Correctional Centre, Mothers and Children's Program Jacaranda Cottages Policy and Procedure Manual, 2008, 6.

- 5.3.38 Instead it appears that the primary focus of the PCC assessment should be on whether it is in the child's best interests to support and maintain the primary attachment with the child's mother through residing with the mother in prison, and the capacity of the mother to care for her child in prison and in the long term. Now that it is possible to ensure separation of groups of women, it should be possible to limit detailed care and protection assessment to those women who will be sharing cottage accommodation with the mother and having direct contact with the child.

Delay in determining applications

- 5.3.39 Another significant limitation of the Women and Children Program is the time taken to process and determine applications. The Procedure suggests that where possible applications should be determined within three months, which is the same time period specified for the Jacaranda cottages program in NSW. In both of the applications considered by the PCC a decision was made just before the applicant's due date. Although both women were ultimately released into the community, the delay and uncertainty about whether they would be separated from their child was experienced as very stressful:

"Not knowing is the hardest, I would just rather know, yea or nay." [woman detained at AMC 2013]

- 5.3.40 While this delay is distressing for pregnant women, it could have even more serious consequences where women are the primary carers of young children when they arrive at the AMC. For children who have already been separated from their mothers, an assessment process that takes up to three months may do irreparable damage to their primary attachment, undermining the purpose of the Program.
- 5.3.41 Although it is necessary to assess all applications properly, greater consideration needs to be given to maintaining the existing relationship between mother and child before a final decision is made, whether through an interim placement of mother and child at AMC with close monitoring, or support for daily extended visits and expressing milk for breastfeeding where necessary.
- 5.3.42 The refocusing of the assessment process away from an extensive consideration of the child protection histories of all other women detainees, towards the child's best interests and the mother's parenting capacity, and any risks posed by those women who will have direct contact with the child, should assist to reduce the time taken for the assessment and PCC deliberations.
- 5.3.43 The Co-ordinator at Jacaranda Cottages provided information to the Commissioner that:

"When women with young children are received into custody there is an unavoidable period of separation from the point of custody to them being approved to participate in the program and being placed at Jacaranda Cottages... [however] the entire process from interview to restoration can take as little as two weeks if the woman is sentenced on a non-violent offence and is not known to FaCS as a person who presents a risk to children."

- 5.3.44 ACTCS note that the risk assessment process would be much easier with a purpose built facility, such as Jacaranda Cottages, but state that in extenuating circumstances it would be possible to process applications in a shorter time frame than three months.
- 5.3.45 More information about the AMC Women and Children Program could also be provided to legal representatives assisting women on bail who are facing serious charges to make an application in anticipation of entering custody.

Other options

- 5.3.46 While accommodating children with their mothers in prison avoids some of the emotional damage involved in separating a child from their primary carer, it remains an artificial and deprived environment for a child to be raised for extended periods of time. Where it is in the child's best interests to be cared for by their mother, release of the child's mother into the community with appropriate support will almost always be preferable to transferring the child to the AMC. This option of conditional release for women detainees with young children, or detention in an appropriate community program, would provide greater flexibility to meet the best interests of the child, and to facilitate rehabilitation of the mother in the community.
- 5.3.47 The *CM Act* provides very limited options for ACTCS to release a woman detainee to care for her child in the community. Section 205 of the *CM Act* allows the Director-General to give a full-time detainee a local leave permit to be absent from a correctional centre, but for a maximum of seven days per permit. This provision was able to be used to release a mother with her newborn child, but only in circumstances where she had just weeks of her sentence left to serve.
- 5.3.48 In contrast, in NSW, s26(2)(I) of the *Crimes (Administration of Sentences) Act 1999* allows NSWCS to authorise a detainee who is the mother of a young child or young children to serve her sentence in an appropriate and approved environment away from a correctional centre. The criteria are that the continued incarceration of the mother will be detrimental to the child's well-being and development, and that suitable sponsors for the mother are available.
- 5.3.49 There are a number of residential support and rehabilitation programs for mothers and children in the ACT community such as Karinya House, the Karralika Child and Family Program and the QE2 program that may provide a more appropriate environment for women to complete their sentence while being supported to care for their child. A legislative amendment to introduce an equivalent provision to s26(2)(I) of the NSW legislation may allow a better use of existing resources and programs in the ACT community, rather than investing significant additional resources into the Women and Children's Program to duplicate these facilities, given the inherent constraints of the AMC environment for a child.

Recommendation 27: That the ACT Government explore amendments to ACT sentencing legislation similar to s26(2)(l) of the *Crimes (Administration of Sentences) Act 1999* (NSW), to allow the conditional release in certain circumstances of a detainee who is the primary carer of a young child or young children, to serve her sentence in an appropriate and approved environment away from the AMC.**

Recommendation 28: That ACTCS revise the Women and Children's Program Policy to better meet the objectives of the Program of maintaining the bond between women detainees and their young children, where this is in the best interests of those children.

Recommendation 29: That ACTCS ensure that the Revised Policy should:

- a) ensure that the possibility of conditional release of a primary carer into the community to care for her child (if available) is considered as the first option, in preference to a child residing at the AMC.
- b) reduce the complexity of the assessment process, to focus primarily on whether it is in the child's best interests to reside with their primary carer in prison and the capacity of the primary carer to care for her child in prison and in the long term.
- c) seek to reduce the delay in assessing applications, particularly where a woman is already separated from her young child, and enable assessments to occur while a woman is on bail in the community.
- d) modify eligibility criteria relating to the availability of a community carer and a co-resident carer. Where these natural supports are not available, but it is in the best interests of the child to remain with their primary carer, Care and Protection Services should be resourced to provide additional support for the placement.
- e) adopt more nuanced eligibility criteria regarding drug use, for example, reducing the period within which a woman must have had clean urinalysis tests from six months to three months.
- f) formalise the agreement with NSW Corrective Services to allow transfers to the Jacaranda Program in NSW for women with young children, where it would be in the best interests of those children to remain with their primary carers in prison for an extended period. Where a woman consents and is transferred to the Jacaranda program, resources should be provided to support any older children to visit her regularly.

Part 6. Provision of Health Services

6.1 Introduction

Relevant Standards

HR Act

Section 10: *Protection from torture and cruel, inhuman or degrading treatment etc*

10(2): *No-one may be subjected to medical or scientific experimentation or treatment without his or her free consent.*

Section 19: *Humane treatment when deprived of liberty*

19(1): *Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.*

19(2): *An accused person must be segregated from convicted people except in exceptional circumstances.*

19(3): *An accused person must be treated in a way that is appropriate for a person who has not been convicted.*

SMR

Rule 22(1): *At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organised in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.*

Rule 22(2): *Sick prisoners who require specialist treatment shall be transferred to specialised institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.*

Rule 22(3): *The services of a qualified dental officer shall be available to every prisoner.*

Rule 24: *The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.*

Rule 25(1): *The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.*

Rule 25(2): *The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.*

Rule 62: The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may hamper a prisoner's rehabilitation. All necessary medical, surgical and psychiatric services shall be provided to that end.

Rule 82(2): Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialised institutions under medical management.

Rule 82(3): During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer.

Rule 82(4): The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

Basic Principles

Principle No. 9: Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.

Body of Principles

Principle 24: A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25: A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

Principle 26: The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law

Bangkok Rules

Rule 16: Developing and implementing strategies, in consultation with mental health care and social welfare services to prevent suicide and self-harm among women prisoners and providing appropriate, gender-specific and specialised support to those at risk shall be part of a comprehensive policy of mental health care in women's prisons.

Rule 41(d): The gender-sensitive risk assessment and classification of prisoners shall: Ensure that those with mental health-care needs are housed in accommodation which is not restrictive, and at the lowest possible security level, and receive appropriate treatment, rather than being placed in higher security level facilities solely due to their mental health problems.

- 6.1.1 Human rights obligations require that detainees be given access to at least equivalent health care as would be available to them in the community. These requirements are perhaps best summarised by Principle 9 of the *Basic Principles*, which states that detainees shall have access to the health services available in the country in which they are imprisoned without discrimination on the grounds of their legal situation. This is also protected in Principle 9 of the Guiding Principles for the Management of Prisoners under the *Standard Guidelines for Corrections in Australia* (the ‘Australian Standards’).¹ These Guidelines also require that detainees receive ‘evidence-based’ health services with standards comparable to that of the general community.²
- 6.1.2 Section 53 of the *CM Act* enshrines this equivalence requirement in ACT law, and also requires that conditions in detention promote the health and wellbeing of detainees, and that detainees are not exposed to risks of infection. Section 53(2) further provides that detainees must be given access to:
- a) Regular health checks;
 - b) Timely treatment where necessary, particularly in urgent circumstances;
 - c) Hospital care where necessary; and
 - d) As far as practicable—
 - (i) Specialist health services from health practitioners; and
 - (ii) Necessary health care programs, including rehabilitation programs.
- 6.1.3 Disciplinary sanctions must also not limit access to health care. The provision of health care at the AMC is also governed by the Corrections Management (Access to Health Care) Policy 2009,³ and Corrections Management (Management of Medication) Procedure 2011.⁴ The Commissioner understands that the provision of health services is still guided by the Adult Corrections Health Services Plan 2008-2012.
- 6.1.4 The right to health care is enshrined in the International Covenant on Economic, Social and Cultural Rights, to which the Australian Government is a signatory. It has been defined to include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference. The *HR Act* explicitly provides in s 10(2) the right to be free from non-consensual medical treatment or scientific experimentation.⁵ Further, s 19 requires that those deprived of liberty are

¹ *Standard Guidelines for Corrections in Australia* (Australian Institute of Criminology, rev 2012), Guiding Principle 9 requires that prisoners are ‘provided with access to health care, to the same standard as in the community, in response to need, with an appropriate range of preventative services, and promoting continuity with external health services upon release’

² *Ibid* Standard 2.31.

³ Notifiable instrument NI2009-118, made under *Corrections Management Act 2007* (ACT) s 14(1).

⁴ Notifiable instrument NI2011-670, made under *Corrections Management Act 2007* (ACT) s 14(1).

⁵ This definition is drawn from General Comment 14 of the UN ESCR Committee: See Economic, Social and Cultural Committee, *General Comment No 14: The Right to the Highest Attainable Standard of Health*, 22nd sess, UN Doc

entitled to humane treatment. Other relevant human rights include the right to equality (s 8), life (s 9), privacy (s 12) and freedom of religion (s 14). A joint research project between the Australian National University and the Department of Justice and Community Safety, funded by an Australian Research Council linkage grant, recommended the inclusion of specific economic, social and cultural rights, including education and health care, in the *HR Act*.⁶ However, at this time, only a limited right to education is included in the *HR Act* amongst these economic social and cultural rights, meaning there is no full right to health, at least under the *HR Act*.

- 6.1.5 The Australian Institute of Health and Welfare released a set of 63 health indicators for Australian Prisoners in 2009. There are an additional four indicators specifically for women detainees, which cover pregnancy and pap smear testing.⁷
- 6.1.6 Several recent Reports have considered the provision of health care at AMC. The Burnet Institute's 2011 Report on drug policies and services at AMC found that primary health care at AMC was of a high standard, however detainees reported experiencing significant delays in accessing care, which undermined the principle of equivalence.⁸ It also identified some issues with equivalence of health care and concerns about the provision of counselling, detoxification and blood borne virus testing.⁹
- 6.1.7 The 2011 Knowledge Consulting Review of AMC found that there was a need for better coordination of the management of health services between the individual government and non-government agencies operating at AMC, and recommended that there be better integration between services.¹⁰ Changes to the structure of Justice Health have occurred since 2011.
- 6.1.8 This Part of the Audit considers issues raised by detainees or stakeholders regarding health care at AMC. These 2011 Reports are now several years old, and the Government has considered and formally responded to them in detail. ACT Health reports that Justice Health has made significant progress in addressing the recommendations of the Knowledge Consulting and the Burnet Institute Reports. As a result, the findings of these Reports do not necessarily reflect the current state of service delivery, and so only those issues that re-emerged during this Audit are revisited.

6.2 Health Services in a Correctional Environment

- 6.2.1 The Australian Institute of Criminology has noted that:

E/C.12/2000/4 (11 August 2000). Further, the Constitution of the World Health Organisation declares that the enjoyment of the highest attainable standard of health is a fundamental right of every human being.

⁶ Hilary Charlesworth et al., 'Final Report of the Australian Capital Territory Economic, Social and Cultural Rights Research Project', (ANU Collect of Law Research Paper No.10-86, 2010).

⁷ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners* (Australian Government, 2010), Appendix 1: List of Indicators.

⁸ Mark Stoope and Amy Kirwan, External Component of the Evaluation of Drug Policies and Services and their Subsequent Effects on Prisoners and Staff within the Alexander Maconochie Centre (Burnett Institute, 2010), 9, 93.

⁹ Ibid 93, 103, 134.

¹⁰ Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre ACT Corrective Services* (2011) Chapter 14, Finding 1 and Recommendation 1.

*It is widely recognised that female prisoners tend to have more complex substance abuse, physical and mental health issues and needs than the male prison population and the general female population, and that women's drug use is more closely related to their offending than it is for men.*¹¹

- 6.2.2 That 2011 study also notes that mortality rates are higher among post-release women detainees than for both post-release male detainees and the general population. Adjusting for age, post-release women detainees have also been found to have three times greater rates of hospitalisation than the general population.¹²
- 6.2.3 The Australian Medical Association has noted that prison offers an opportunity to access disadvantaged groups who are normally hard to reach in the community. This access provides an opportunity to address health inequalities including drug, alcohol and tobacco use, primary health care access and mental health care treatment. The AMA also notes that the public also derives a benefit if detainees return to the community with their health problems and medical conditions diagnosed and/or addressed.¹³
- 6.2.4 The most recently published 2010 ACT Inmate Health Survey makes a similar point, and notes that the correctional environment 'provides a unique opportunity to improve the health status of a group who suffer poor health and may have minimal contact with health services in the community.'¹⁴ That Report states health service delivery in custodial settings is influenced by a range of factors, many of which are outside the control of the health service provider. Prison health care is provided in a complicated environment and detainees are a complex, high-needs population.¹⁵
- 6.2.5 Several sources to this Review raised concerns about the Commonwealth Government not providing access for detainees to Medicare and the Pharmaceutical Benefits Scheme (PBS) while in detention. Most of the current gap between Commonwealth-funded services in the community, and those not funded for detainees, is covered by the ACT Government (as is the case in other States and Territories). For example, primary health care services are provided directly to detainees by the ACT Government. A number of Australian medical bodies, including the Australian Medical Association and the Public Health Association have called for detainees to retain their entitlement to Medicare and the PBS while in prison.¹⁶ The Corrective Services Administrators Council has also raised this issue over a number of years with the Commonwealth Government.

¹¹ Lorana Bartels and Antonette Gaffney, 'Good practice in women's prisons: A literature review', (Australian Institute of Criminology Reports: Technical and Background Paper 41, 2011), 49.

¹² Ibid.

¹³ Australian Medical Association, Position Statement on Health and the Criminal Justice System (2012), 3.

¹⁴ ACT Health, '2010 ACT Inmate Health Survey: Summary Results', *Health Series No 55* (July, 2011), 13.

¹⁵ Ibid 12-13.

¹⁶ See Australian Medical Association, above n 13, 4; Public Health Association of Australia, *Prisoner Health Policy* (2010), [26]. This was also a recommendation of the Commissioner's 2007 Human Rights Audit.

6.3 Current provision of General health care

- 6.3.1 The model of health service delivery to inmates in the ACT splits responsibilities between two organisations: ACT Health as the deliverer of health care and ACTCS as the provider of custody, security and other services in the environment in which health services are provided. The ACT Health Directorate notes that ‘there is growing recognition nationally and internationally that this model provides the best outcomes for patient care’.¹⁷ ACT Justice Health, part of the ACT Health Directorate, is responsible for providing health care to adults and juveniles in the criminal justice system, excluding the ACT Watch House and Community Corrections. Consistent with the relevant human rights standards, the name of the health facility at the AMC is the ‘Hume Health Centre’, which deliberately avoids any reference to the AMC in its title to ensure that the Centre is regarded as equivalent to any other health centre in the community. The Centre uses the same Pharmacy and Pathology services as the Canberra Hospital.
- 6.3.2 Subsection 21(1) of the *Corrections Management Act 2007* provides that ‘[t]he Director General responsible for the administration of the *Public Health Act 1997* must appoint a doctor for each correctional centre.’
- 6.3.3 The Centre’s staffing includes nurses operating as primary care providers and general practitioners providing secondary level of care, with referrals to specialist doctors for tertiary level care. There are seven nurses, and one Clinical Nurse Consultant on duty Monday to Friday, plus one Chronic Diseases Nurse Monday to Sunday. There is always a doctor on call at any time of the day or night, and the doctor is also available to advise over the phone if needed. ACT Health reported that from 1 July to 31 December 2013 there was an average of 33 consultations per week.
- 6.3.4 The 2011 Knowledge Consulting Review found a good working relationship between ACT Corrections and ACT Health in relation to the provision of health care at AMC.¹⁸
- 6.3.5 The Commissioner recommended in her 2007 Corrections Audit that the Government undertake a survey of the epidemiological health needs of detainees during its first year of operation.¹⁹ The first ACT Inmate Health Survey was released in 2011. It noted that prison inmates are ‘characterised by disadvantage’, with complex family and social backgrounds, with multiple risk factors for poor health.²⁰ Gender breakdown information in the Survey was limited due to the small numbers of respondents. Eight per cent or 11 out of 135 respondents were female. In relation to women’s health, 64% of respondents had routine cervical smears in the last 2 years, all had previously had at least one pregnancy, and 45% had a cervical smear at the AMC. The average age of first pregnancy was 20 years, compared to the NSW detainee average of 19 years.

¹⁷ ACT Health, above n 14, 12.

¹⁸ Knowledge Consulting, above n 10, 193.

¹⁹ ACT Human Rights Commission, *Human Rights Audit on the Operation of ACT Correctional Facilities under Corrections Legislation* (2007), Recommendation 4.1.1.

²⁰ ACT Health, above n 14, 4.

The average across Australia for first time mothers is 28 years, and the average age of mothers in the ACT community is 30.9 years.²¹

- 6.3.6 ACT Health sources estimated that while women make up approximately 8% of the total AMC population, around 10% of medical consultations are with women. This suggests women are receiving an equivalent, or slightly higher, level of access to health services as male detainees.
- 6.3.7 Nursing staff visit the women's cottages twice a day to deliver medicine, and women can either talk to the nurse to make an appointment at the health centre, or can fill in a health request form and give it to the nurse. This form does not have to go through a Corrections officer for processing.
- 6.3.8 There is a women's health clinic held every Thursday morning with a female doctor, which provides a full women's health service including reproductive health, pap smears, and referrals for mammography if appropriate. Women can also see a female doctor on that day who specialises in geriatrics and pain management. Women detainees also have access to a male doctor at other times during the working week.

Overall Impressions

- 6.3.9 Generally, the current and former detainees interviewed for this Audit were positive about the health service they received at AMC. Comments from current and former detainees included that health staff were 'friendly' and relationships with staff was 'good'. Several detainees reported seeing a doctor or nurse quickly. Some also suggested they would see the doctor at AMC in circumstances where they might not outside the Centre. As one detainee remarked:

"Health service is better than ok, really good actually." (woman detained at AMC 2013)

- 6.3.10 Negative comments from current and former detainees tended to focus on particular experiences or delays in receiving a specific treatment, which are detailed further below. Similarly, the joint submission of the Women's Centre for Health Matters and Women and Prisons Group reported concerns about the ability of women at AMC to access health services:

Women detainees continue to report facing multiple barriers to having their health and mental health needs met while incarcerated at AMC.

- 6.3.11 While the Health Services Commissioner has the jurisdiction to consider complaints of this nature, the Commissioner has not received individual complaints, with the accompanying requisite detainees' consent, in relation to many of the issues raised in this Part. The Health Services Commissioner would welcome complaints from any detainee who wishes to pursue a matter of individual concern. The Commissioner nonetheless values the contribution of stakeholders and current and former detainees to this process, and accepts their experiences and perceptions are provided in good faith. Nonetheless, this Part generally only includes anecdotal evidence that has been reported by multiple participants, or has been raised by former reviews and was reported again during submissions to this Audit process.

²¹ Z Li et al, *Australia's Mothers and Babies 2010* (Australian Institute of Health and Welfare, 2012), 8.

- 6.3.12 One general barrier identified by a number of interview participants was that, because all detainees require an escort to attend the Health Centre, access to the facility can be hampered during periods of staff shortages. This issue has been confirmed by Justice Health.

6.4 Aboriginal and Torres Strait Islander Women

- 6.4.1 The Royal Commission into Aboriginal Deaths in Custody recommended that Aboriginal Health Services be involved in the provision of health and medical advice, assistance and care with respect to Aboriginal detainees.²² The Australian Institute of Criminology has noted that ‘incarcerated Indigenous females are over 11 times more likely’ to experience severe psychosocial distress than the general population.²³
- 6.4.2 The Winnunga Nimmityjah Aboriginal Health Service has produced two recent reports on the provisions of health services to Aboriginal and Torres Strait Islander detainees. These Reports have in particular noted the recommendations of the Royal Commission into Aboriginal Deaths in Custody, including that health services should:
- Be both accessible and appropriate to Aboriginal detainees;²⁴
 - Consider the involvement of Aboriginal Health Services in the provision of general and mental health care to Aboriginal detainees;²⁵
 - Pay particular attention to drug and alcohol treatment, rehabilitative and preventative education and counselling programs for Aboriginal detainees. Such programs should be provided, where possible, by Aboriginal people;²⁶
- 6.4.3 Winnunga’s 2007 Report, *‘You do the Crime, You do the Time’* noted the ‘lack of information about effective interventions to improve health outcomes, preventative health strategies, and managing the cycle of incarceration.’²⁷ Nonetheless, the Report noted ‘international and Australian literature research and interview data show that Aboriginal people have poor health when entering prison when compared to other prisoners’.²⁸ The Report also noted that the imprisonment rate of Aboriginal women is approximately 15 times that of non-Aboriginal women.²⁹ The Report developed the Winnunga Holistic Health Care Prison Model which encompasses Incarceration, Release from Prison and Managing the Cycle of Incarceration. The 2011 follow up study titled *‘We’re Struggling in Here’*, further recommended:

²² Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) Recommendation 127(C).

²³ Bartels and Gaffney, above n 11, 49.

²⁴ Royal Commission, above n 22, Recommendation 150.

²⁵ Ibid Recommendation 152.

²⁶ Ibid.

²⁷ Nerelle Poroch, *You Do the Crime, You Do the Time: Best Practice Model of Holistic Health Service Delivery for Aboriginal and Torres Strait Islander Inmates of the ACT Prison* (Winnunga Nimmityjah Aboriginal Health Service, 2007), xiii.

²⁸ Ibid xv.

²⁹ Ibid xvii.

*Aboriginal prisoner health needs include culturally sensitive health programs that target early detection of chronic diseases and health promotion activities in prison. This means specific programs for physical and social and emotional wellbeing; primary care for diabetes; heart disease and other circulatory system disease; respiratory system disease; women's health including sexual health; maternal and child health; mental health and alcohol and drug issues.*³⁰

- 6.4.4 Both Reports recommended increased resources for Winnunga to deliver further resources to detainees, as part of the holistic Winnunga model.³¹ This Audit is confined to the provision of health care while detainees are at AMC, however, the Winnunga model is consistent with the ACT Government's intention to develop the Throughcare principle further.
- 6.4.5 Since the 2007 and 2011 reports, Winnunga and other service providers have begun providing specific services for Aboriginal and Torres Strait Islander detainees. For example, the AMC currently holds an Aboriginal medical clinic on Tuesday afternoon, with a doctor formerly based at Winnunga. The Aboriginal Health Liaison Officer can also attend appointments to support Aboriginal and Torres Strait Islander clients, with the client's consent.

6.5 Women from Culturally and Linguistically Diverse Background

- 6.5.1 Sisters Inside's submission to the Audit raises concerns regarding the health care of women detainees from culturally and linguistically diverse backgrounds. Issues for this client group can include language barriers preventing women from explaining their symptoms to a health professional, and similarly understanding explanations from a health professional about their medical needs. Sisters Inside also raised concerns about women with particular religious or cultural norms meaning that it would be inappropriate for them to see a male health professional. Without female health professionals they note that some women detainees may not seek treatment at all. Sisters Inside note mental health treatment in particular is critical for this client group.
- 6.5.2 The Commissioner welcomes the commencement of a specific Women's counselling clinic in January 2014. The provision of mental health services are explored further below.

6.6 Induction

- 6.6.1 Principle 1.3 of the Australian Standard Guidelines for Prisoners requires that all detainees should be screened upon admission to enable management to make initial health and psychological assessment to identify and provide appropriate intervention for urgent medical and welfare concerns, including drug, alcohol or mental health concerns. The Standards also require that the management of women detainees should recognise their higher needs for health services. Standard 2.33 requires that every detainee be medically examined by a health professional within 24 hours after being received into prison. The Standards also require, under Standard 2.44, that

³⁰ Nerelle Poroch, *We're Struggling in Here!* (Winnunga Nimmityjah Aboriginal Health Service, 2011), 15.

³¹ Ibid Recommendation 1 and Implications discussion on xxiii; Poroch, above n 27, Recommendation 1.

where a detainee enters or is released from prison and is under medical or psychiatric treatment, where appropriate, the prison health service should make arrangements with an appropriate agency for the continuation of such treatment after release.

- 6.6.2 Section 67 and 68 of the *Corrections Management Act 2007* reflect these requirements and state that a detainee must be assessed by a nurse within 24 hours of admission to identify any immediate physical or mental health risks and needs. The Human Rights Commissioner's 2007 Audit recommended that the AMC's induction booklet contain information regarding health services and care, such as the availability of dental appointments.³² The AMC Prisoner Handbook provides some information about health services available, including dental services, and how to make an appointment.
- 6.6.3 Justice Health utilises a single assessment tool for admission assessments, which assesses physical health, drug and alcohol addiction, mental health, current medications, past medical history and dental issues. Detainees are offered blood borne virus tests on admission. ACT Health reports that all new arrivals into the AMC are seen by a nurse at the Hume Health Centre for an induction assessment within 24 hours.
- 6.6.4 Questions about mental health and self harm on admission may trigger a referral to mental health, up until 6 pm. If assessment occurs after this time, detainees are placed on regular observations and will stay in the CSU, Management Unit or other modified cell until they can be assessed the next day.
- 6.6.5 The 2010 ACT Inmate Health Survey found 59% of respondents recalled being given information on health services on reception and 90% had attended the health centre; of these, 76% found the service to be good or very good.³³ This data was not disaggregated on a gender basis.
- 6.6.6 The women interviewed for this Review generally reported seeing the Hume Health Centre nurse at induction. Comments included that *"on induction saw the nurse, went through all my needs and medication and stuff"*. However, several women reported a delay or inability to access medication they were using outside the prison, including issues previously identified by the Burnet Institute. One detainee stated that:

"I was on medication that they don't prescribe here, so had to put me on a benzo withdrawal pack, frustrating because it was the only thing that really worked for me, have taken half a tablet a day for the last two years, not sure why they can't let me stay on it, since meds are supervised, not sure why an issue. Hope it won't be an issue on weekend detention. ... I reckon half the jail would prefer to be on the bupe rather than methadone, I reduced down from methadone to bupe, it is a lot easier to get off and a lot more proactive and towards having a normal lifestyle and being abstinent, not relying on a daily dose of something. Unfortunately not offered at the jail, but don't need it now thank god." [woman detained at AMC 2013]

³² ACT Human Rights Commission, above n 19, 79, Recommendation 4.3.3.

³³ ACT Health, above n 14, 10 [3.7].

- 6.6.7 The 2011 Burnet Report suggested that the principle of equivalence was breached by the lack of a buprenorphine preparation as an alternative to methadone for those who had commenced on the drug prior to admission.³⁴
- 6.6.8 The Commissioner understands that the Hume Health Centre did attempt a trial of dispensing suboxone (combination of buprenorphine and naloxone), but this was found to be problematic due to it being diverted by detainees. ACT Health suggests that the principle of equivalence is one of equivalence of safety. The Directorate reports that there are a number of reasons medications prescribed in the community are not appropriate to be provided in a custodial environment including non-compliance with medication in the community, an inability to confirm prescribing of medication by community health professionals, and requests for non-conventional prescriptions.
- 6.6.9 ACT Health has identified Buprenorphine as a commodity in a custodial environment, and is conscious of the fine balance trying to respond to clinical need and the pressures that the variable illicit market plays. They report that some clients enter AMC on Buprenorphine, and are continued on that medication for a limited time. Where a slow-release medication formulation is available, that is the preferred option for provision in a custodial environment.
- 6.6.10 The Burnet Report also raised issues regarding individuals having to withdraw from mental health medications at admission, then being recommenced on the same medication later.³⁵ Detainees interviewed for this Audit similarly reported having pre-existing mental health medication identified on induction, but then experiencing a delay in the prescription process. As one detainee reported:
- “Got a health assessment in induction, was on seroquel, went a few days without it, was really bad, ended up getting some off another girl in high needs there who luckily had some. I had a prescription but it takes a while, nurse needs to talk to the prescriber, finally got it.” [woman detained at AMC 2013]*
- 6.6.11 A woman detained during 2009 similarly commented:
- “That’s the one thing, when you go in there on mental – on like, say antidepressants or mental health – you’ve got to wait like days just jump offing, and you’re not supposed to jump off pills like that. But out there I seen some people, even myself, have to wait.”*
- 6.6.12 A number of factors might reasonably prevent Justice Health immediately continuing a detainee on a prescription drug at admission, including:
- Determining whether the detainee was compliant with medications in the community;
 - Delay in community provider responding to Justice Health’s requests for information;
 - Assessing if detainee is taking other non-prescribed and/or illicit medications;

³⁴ Stoové and Kirwan, above n 8, 9.

³⁵ Ibid 99.

- Whether the person is clinically intoxicated at indication;
- If the detainee received any bridging-medications at the ACT Watch-house.

6.6.13 Nonetheless, this process should take place as quickly as possible to avoid effects of withdrawal from prescription medication, particularly anti-depressants.

Recommendation 30: That the Justice Health induction process include alerting a doctor as quickly as possible, and at least within 24 hours, if a detainee discloses that they have been prescribed medication which may need to be continued in custody**

6.6.14 A detainee's family also reported an issue at induction in 2012 regarding their daughter's allergies.

"Major problem I had was that [detainee] was allergic to bee stings, she had one of those rubber bands medical alerts. She was able to keep it when she was in the Watchhouse, but in prison they took it off her... . Instead, said they would put a note for each shift about her allergy so that if they found her they might think about whether she'd been stung by a bee. Lots of garden beds in flower at the prison attracting bees."

6.6.15 ACTCS advised that it is not a requirement for such alert bands to be removed, so it is unclear how this alleged misapplication of Policy may have occurred.

Recommendation 31: That ACTCS conducts training with all staff to reinforce the current policy which enables detainees to retain their medical alert bands.

6.7 Privacy and Health Records

6.7.1 Standard 2.47 of the Australian Standard Guidelines for Prisoners requires that the confidentiality of medical information shall be maintained to preserve each detainee's individual entitlement to privacy. However, medical information may be provided on a 'need to know' basis:

- With the consent of the prisoner; or
- In the interest of the prisoner's welfare; or
- Where to maintain confidentiality may jeopardise the safety of others or the good order and security of the prison.

6.7.2 The 2011 Knowledge Consulting Review found that the standard of medical records at the Hume Health Centre was not good, and recommended changes to the clinical records system.³⁶ The Government agreed to this recommendation and suggested it would work with the Health Services Commissioner to improve patient data collection and access. This has not yet occurred. However in response to a recent complaint, the Health Services Commissioner is currently reviewing processes and record keeping at the Hume Health Centre.

³⁶ Knowledge Consulting, above n 10, Chapter 14, Finding 5 and Recommendation 11

- 6.7.3 The Women's Centre for Health Matters (WCHM) and ACT Women and Prisons Group (WAP) submission alleged that the current system for requesting a health service undermined women's privacy.

WAP also continues to hear that despite the institution of an envelope system for submitting requests to visit the health centre, many women are still reluctant to use the 'bluey' forms (for any purpose) for fear that their personal details will be seen by staff or other inmates.

- 6.7.4 ACT Health reports that Justice Health Services and ACTCS have done significant work on patient data collection and access. Documentation Audits are occurring, new file storage has been provided and exchange of information Standard Operating Procedures have been developed and are now in practice. This includes the development of an information sharing protocol between ACT Health and ACTCS, developed in conjunction with the Health Services Commissioner. Justice Health has committed to continue working with the Health Services Commissioner in reviewing processes and record keeping at the Hume Health Centre.
- 6.7.5 Notwithstanding the issues raised by stakeholders, the Commissioner found no definitive indication of detainees' privacy being compromised through the current system for requesting appointments.

6.8 Allied Health

- 6.8.1 Guideline 2.32 of the Australian Standard Guidelines for Prisoners requires that every detainee is to have access to the services of specialist medical practitioners and services relevant to their needs. Referral to such services should take account of community standards of health care. The Commission's 2007 Human Rights Audit further recommended that detainees should have better access to allied health services such as physiotherapy, dentistry and counselling.³⁷ In relation to dental services, the 2011 Winnunga 'We're Struggling in Here' Report noted delays in dental treatment suffered by both male and female detainees.³⁸
- 6.8.2 A dentist currently attends the AMC three days per week, with plans to increase this to four days per week in 2014. Detainees interviewed reported mixed views about the service. A detainee said in March 2013:
- "Saw dentist within a week got my fillings fixed." [woman detained at AMC 2013]*
- 6.8.3 Another detainee also reported being 'very grateful' for being prioritised quickly to have a tooth removed because she was pregnant. However, other detainees reported significant delays in seeing the dentist. The Women Centre for Health Matters and Women and Prisons Group, reported some women waiting four months to see the dentist. ACTCOSS in its submission similarly raised concerns about delays in seeing the dentist. It was unclear if this was because of the specific treatment they required, or these were historic issues. Comments from detainees included:

³⁷ ACT Human Rights Commission, above n 19, Recommendation 4.3.2.

³⁸ Poroch, above n 30, 39.

"Takes forever to see the dentist. My plate broke, sent away, took ages, still need fillings, have to keep harassing them to get something done. I don't like the dentist."
[woman detained at AMC 2013]

"I also broke my tooth on some food here, it was so sore and I couldn't sleep. I made a form asking to see the dentist but not given access for weeks. Kept putting in forms, until they told me to stop asking because there are 300 prisoners here. Has been four months. But there are only a few women, and other women seem to get treated straight away." [woman detained at AMC 2013]

- 6.8.4 The move to increase hours of the dentist with an additional day is a positive development which should have some impact on reducing delay. The Dental Health program has indicated that there is not a four month wait for dental treatment at AMC, and there is not a waiting list. Access to dental treatment is based on the needs identified at each clinical presentation. In terms of equivalence, ACT Health note that as of 31 January 2014, the wait time in the community was on average 3.69 months. Clients triaged as an emergency are seen within the timeframe of 24 hours to 21 days depending on the clinical priority.
- 6.8.5 It was reported that some other allied health services are more challenging to access at AMC. Some participants identified physiotherapy as a required service, however ACT Health sources suggested it is difficult to access externally on a regular basis. The Commissioner understands that as a result, there are plans to set up a physiotherapy clinic in the health centre.

6.9 Escorts and Transfers

- 6.9.1 Standard 2.48 of the Australian Standard Guidelines for Prisoners requires that upon a detainee's removal to an institution for the treatment of mental illness, as soon as practicable, the manager should ensure that their next of kin or contact person is notified. Rule 17 of the Standard Minimum Rules of Treatment of Prisoners also suggests that inconspicuous clothing should be used when detainees are transferred. ACTCS report that inconspicuous clothing is not used for transfers, as this can create a heightened security risk, and that some detainees may not have appropriate clothing to wear. Nonetheless, the Commissioner suggests that ACTCS ensure detainees are not stigmatised by the nature of their clothing during transfers.
- 6.9.2 Rule 45 requires that when the detainees are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
- 6.9.3 Submissions received by the Commissioner suggested that the transfer of women detainees to external facilities and related security measures was an issue of concern. The Human Rights Commissioner's 2007 Corrections Audit considered this issue, and noted that women remanded in custody who accessed outside health services 'often felt embarrassed by the procedure, which involved them being hand-cuffed and wearing their corrections-issued green clothes'.³⁹ Remandees at the time also reported being handcuffed to furniture during hospital visits. The Human Rights Commissioner

³⁹ ACT Human Rights Commission, above n 19, 79 [4.3.4].

at that time noted that the European Committee on the Prevention of Torture recommended against this practice.

*If recourse is had to a civil hospital, the question of security arrangements will arise. In this respect, the CPT wishes to stress that prisoners sent to hospital to receive treatment should not be physically attached to their hospital beds or other items of furniture for custodial reasons. Other means of meeting security needs satisfactorily can and should be found; the creation of a custodial unit in such hospitals is one possible solution.*⁴⁰

- 6.9.4 ACT Health reports that since that 2007 Report all use of restraints of consumers using inpatient services of Mental Health, Justice Health and Alcohol and Drug Services are reported through the Riskman reporting system. Such reporting is welcome, as it provides a level of documentary evidence for the Commission and other oversight bodies to access when assessing individual complaints or conducting systemic reviews.
- 6.9.5 The Commissioner sought information from both ACT Health and ACTCS on specific examples of the transfer of women detainees from AMC to external health facilities. The information provided on such examples suggested that detainees transported to the AMHU had be escorted at all times by two corrections officers, and had their hands restrained before and after appointments, but restraints were removed during the consultation. The number of escorting staff is relevant to the assessment of whether the level of physical restraints is reasonable, and limits on human rights are proportionate.
- 6.9.6 As already noted in this Audit, ACT Government agencies such as ACTCS and ACT Health, have obligations to act consistently with human rights and to take human rights into account in decision making. Failure to do so is unlawful under s 40B of the *Human Rights Act*. A defence is available if a public authority is required by law to act inconsistently with human rights.
- 6.9.7 Any restraint of a detainee, and the presence of guards through a medical procedure, engages a range of rights include the right to liberty, humane treatment while in detention, and the right to be free from torture and cruel, inhuman and degrading treatment.
- 6.9.8 The *CM Act* and *Mental Health Act* do allow public authorities to limit the right to liberty of a detainee, while respecting the right to humane treatment while in detention, and the right to be free from torture and cruel, inhuman and degrading treatment.
- 6.9.9 In any case of restraint, a key issue will be whether there were any less restrictive means reasonably available to achieve the purpose of ensuring the security of the detainees and protecting public safety. The Commissioner accepts that there will be situations where the risk profile of a particular detainee will mean that mechanical restraints and ongoing presence of officers are the only means reasonably available to ensure safety and security at a particular time. The Commissioner acknowledges that

⁴⁰ Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 'The CPT standards: "Substantive" sections of the CPT's General Reports', Doc No. CPT/Inf/E (2002) 1 – Rev. 2006, 31 [36].

these are difficult decisions to make, and that ACTCS and ACT Health have very serious responsibilities to ensure safety and to prevent a detainee from escaping. The *Human Rights Act* enables public authorities to exercise professional judgement to discharge that responsibility within the scope of the law and policy.

- 6.9.10 However, such steps should not be taken routinely or without a proper case-by-case risk assessment. During this Review the Commissioner found no definitive indication that ACTCS or ACT Health acted unreasonably in restraining women detainees during such appointments. Nonetheless, the Commissioner is concerned about the severe impact on detainees' human rights, particularly their right not to be subjected to degrading treatment, that any prolonged restraint, especially to furniture, during an external medical appointment can have.
- 6.9.11 In terms of clothing, the standard minimum rules recognise that detainees, and particularly remandees, may be insulted or humiliated if required to wear prison clothing in a public place. The Commissioner accepts that there are security considerations that must be considered as well, including ensuring detainees remain identifiable. However, such considerations are contingent on the risk of escape. If a detainee is restrained during a transfer, then the need for identifiable clothing is arguably less. As such, decisions about the clothing worn by detainees on escorts to health facilities should be assessed on a case by cases basis.

6.10 Sexual health, Pregnancy and IVF

- 6.10.1 The Australian Standards require that pre-natal and post-natal treatment and accommodation should be made available to women detainees, where practicable. Further, arrangements should be made for detainees to give birth in a hospital outside the prison. If a child is born in prison, this fact should not be recorded on the birth certificate.⁴¹
- 6.10.2 The human rights principle of equivalent health care in prison, in relation to IVF treatment, was considered by the Victorian Supreme Court in the case of *Castles v Secretary to the Department of Justice*.⁴² The case concerned the application of s 47(1)(f) of the Victorian *Corrections Act 1986* which, like ACT law, requires that all detainees have a right to 'have access to reasonable medical care and treatment'. A female detainee applied to continue her in vitro fertilisation ('IVF') treatment while in prison. She argued that she would be unable to re-commence treatment on release, particularly because of her age. The Court, in interpreting the legislation consistently with the Victorian *Charter of Rights and Responsibilities Act 2006* upheld her application. The Court in particular applied s 22 of the Charter, which requires humane treatment when deprived of liberty.
- 6.10.3 Section 28 of the ACT *HR Act* similarly requires courts to interpret legislation consistently with human rights, and s 22 of the same Act similarly requires those in detention be treated humanely.

⁴¹ *Standard Guidelines for Corrections in Australia*, above n 1, Standard 2.44 and 2.45

⁴² [2010] 28 VR 141.

6.10.4 In its submission, ACTCOSS reported concerns about women not being provided access to reproductive health care or to gender-specific health education in relation to issues such as menopause. ACT Health reported that Justice Health Services provides access to reproductive health care services when clinically indicated, and gender specific health education when required or requested.

6.10.5 WCHM, WAP and ACTCOSS reported that some women were waiting over two weeks to see a doctor, thus making it harder to undertake screening and preventive measures.

These long waits also mean that preventative healthcare (such as screening, check-ups, and so on) is not something that women detainees are actively being encouraged to pursue, although it is available on request for women who are in the target age group. It is hoped that the money set aside in the ACT 2013-14 Budget for increased staffing at AMC will be used to better resource the health centre.

6.10.6 However, several detainees interviewed for this Review reported positive experiences of access to doctors for screening procedures, such as pap smears.

"Health is good, have pap smear, and operation while I am here." [woman detained at AMC 2013]

"Just your normal pap smears and all that? Yeah I got all of that done." [woman detained at AMC 2013]

"Like I've done pap smears in there and Hep B and I got my Gardasil shots in there so that was pretty good." [woman detained at AMC 2010]

6.10.7 Interview participants pregnant during their time in AMC, also reported regular visits to the doctor.

"....when I was pregnant I'd see a doctor once a week. They were right on me." [woman detained at AMC 2010]

6.10.8 The Women and Prisons Group in their Submission to this Audit were similarly generally positive about the health care for pregnant women

The treatment of pregnant detainees at AMC appears to have improved in recent months; pregnant women detainees seem to be provided with adequate access to screening and check-ups, as well as nutritional supplements.

6.10.9 A detainee reported that she was able to continue on hormone therapy that she commenced prior to entering AMC. The ability for her to continue this treatment is consistent with the Victorian decision in *Castles*,⁴³ and is a positive practice.

6.10.10 However, in its submission to this Review, ACTCOSS acknowledge that while the dietary needs of pregnant detainees were met, the lack of pre or postnatal care and classes, such as lactation, was concerning. The Justice Health Standard Operating Procedure "Management of the pregnant client within the Alexander Maconochie Centre and Bimberi Youth Justice Centre" outlines the pathway for referral to

⁴³ *Castles v Secretary to the Department of Justice* [2010] 28 VR 141

Midwifery and Antenatal units. This includes a schedule of visits by community midwife at 14-16 weeks, 20 weeks, 26 weeks, 30 weeks, 33 weeks, 36 weeks, 38 weeks, 40 weeks, and by negotiation after 40 weeks. The Commissioner understands that such visits occur in practice, and include information on pre and postnatal care.

6.11 Mental Health Care

Background

- 6.11.1 The Standard Guidelines on Corrections in Australia require that detainees who are diagnosed with a severe psychiatric illness should be managed by an appropriate tertiary or specialist health care facility. Detainees who are diagnosed with mental illness or an intellectual disability should be provided with appropriate management and support services.⁴⁴ Multiple submissions to this Review cited international, national and local research that women detainees are likely to disproportionately suffer from mental illness and distress.
- 6.11.2 The Castan Centre for Human Rights Law noted in its submission that the nature of imprisonment is likely to worsen people's mental health if they have problems upon entry, or cause mental health problems in some people who are well upon entry. This is due to factors such as the disciplinary regime, lack of choice about activities and the people that they spend time with, and limited communication with family (especially children) and friends. The result is often high levels of violence, aggression, self-harm and suicide.⁴⁵
- 6.11.3 The Castan Centre estimates mental health issues range from 30% of the prison population being diagnosed with a mental illness to 80% having a psychiatric illness over a 12 month period.⁴⁶ The Centre also cited a study of women detainees in South Australian prisons, which had an 81% participation rate, and found that all respondents had a psychiatric disorder. The Centre further submits that it is:
- ...generally agreed that Indigenous people in prisons display particularly complex mental health needs. The largest study to date found that 6.6% of male indigenous imprisoned people and 20.3% of females screened positive to psychosis. A further 13.1% of males and 43.1% of females had mood disorders and 34.4% of males and 58.6% of females had anxiety disorders (the most common of which was post-traumatic stress disorder). Finally, the study found that '[n]early 50% of males and over 85% of Indigenous females reported medium or higher levels of psychological distress.*
- 6.11.4 Sisters Inside's submission cited a range of research to suggest that it is 'generally accepted that half to three-quarters of women in prison have mental health issues, albeit vaguely defined'. That submission also noted a range of Queensland data

⁴⁴ *Standard Guidelines for Corrections in Australia*, above n 1, Standard 2.41 and 2.42.

⁴⁵ Citing Lars Møller et al, *Health in Prisons: A WHO Guide to the Essentials in Prison Health* (World Health Organisation, 2007), 134.

⁴⁶ Citing Victoria Herrington and Katrina Clifford, 'Policing Mental Illness: Examining the Police Role in Addressing Mental Ill-Health' in Isabelle Bartkowiak-Théron and Nicole Asquith (eds), *Policing Vulnerability* (Federation Press, 2012), 117-131; and Tony Butler et al, 'Mental Disorders in Australian Prisoners: A Comparison with a Community Sample' (2006) 40 *Australian and New Zealand Journal of Psychiatry* 272.

indicating that women detainees have a higher incidence of childhood trauma and a history of abuse.

- 6.11.5 The Australian Institute of Health and Welfare found that 43% of women in prison report a history of mental health problem upon entry, and 51% report a high level of psychological distress. These rates are significantly higher than the rate among the general female population of 13%.⁴⁷ The 2012 AIHW Health of Prisoners Report similarly found that the rates of self-harm are particularly high amongst women in prison, with 28% of females entering prison reporting a history of self-harm, compared to 15% of males.⁴⁸ The AIC notes that non-Indigenous detainees are 8 times more likely to experience severe psychosocial distress than the general population (with Indigenous females over 11 times more likely) and that “female prisoners generally report a higher incidence of mental problems than males”.⁴⁹
- 6.11.6 The 2010 AMC Inmate Health Survey reported that 70% of total respondents had formal psychiatric assessment at some time.⁵⁰ This data was not disaggregated on a gender basis.
- 6.11.7 A significant issue of concern in the Human Rights Commissioner’s 2007 Corrections Audit was the state of mental health services at the former Belconnen Remand Centre. The Audit noted that ‘there should be a comprehensive health service that offers treatment for detainees at AMC who have a mental illness or related problem such as a personality disorder’.⁵¹ The Commissioner recommended that the AMC have experienced, trained counsellors available to talk with detainees who are having psychological problems.
- 6.11.8 The Burnet Institute Report similarly recommended enhanced mental health counselling options.⁵² It found ‘there was significant consensus among stakeholder groups that regular one-on-one counselling with a qualified practitioner was the best intervention for the prison context and the challenges experienced by the prison population.’⁵³ It recommended that generalist counselling be made available to all detainees, including through drop-in services and regular appointments.⁵⁴ Improved access to mental health care services, with a focus on reducing delays and resourcing services for those suffering sub-acute mental health conditions was also recommended.⁵⁵

⁴⁷ Australian Institute of Health and Welfare, ‘Mental health of prison entrants’ (2013) <<http://www.aihw.gov.au/prisoner-health/mental-health/>>.

⁴⁸ Australian Institute of Health and Welfare, *The Health of Australia’s Prisoners 2012* (Australian Government, 2013), 47.

⁴⁹ Bartels and Gaffney, above n 11, 49.

⁵⁰ ACT Health, above n 14, 11 [3.10].

⁵¹ ACT Human Rights Commission, above n 19, 74.

⁵² Stoope and Kirwan, above n 8, 8-9.

⁵³ Ibid 74.

⁵⁴ Ibid 181, Recommendation 12.

⁵⁵ Ibid 182, Recommendation 16.

Current Service

- 6.11.9 The Justice Health mental health service consists of eight full-time equivalent staff, encompassing a multidisciplinary team of psychologists, social workers, occupational therapists, mental health nurses, and medical staff. The mental health nurses dispense depot injectable medications, while other mental health medication is distributed by justice health nurses on daily rounds. That team also has two consultant psychiatrists. This approach appears consistent with the Australian Medical Association's recommendations, cited by Sisters Inside's submission to this Review, that psychiatric services be provided independent of correctional authorities to prevent any actual or perceived practice of using mental health services as a behavior management technique. Information provided by Government sources for this Review suggested that over 50% of detainees have active mental health plans.
- 6.11.10 The Commissioner understands that the Justice Health nurse will screen for mental health issues on admission. Detainees who present with issues of concern or have a history of involvement with mental health services will be referred to the Justice Health mental health service. Referrals can also be made informally by the court liaison officer or ACTCS staff and the service will also see any detainee marked by the courts as 'at risk'.
- 6.11.11 Consistent with the relevant legislation and standards, the service is intended to provide an equivalent service to that provided in the community. Mental health staff estimated that at any one time, three or four women would be seen by their service, out of a total of 55-60 clients.
- 6.11.12 In relation to this Audit, the clinical management of detainees with mental health problems was changed in the AMC during this period, and the Commissioner is mindful that some of the barriers identified below may now be historic. This new service, provided by Corrections, includes a Corrections Psychological and Support Service to provide support across the prison to those experiencing mental health concerns below the level at which forensic mental health services would provide support. The intention is for this service to also provide a 'step up/step down' transition to and from the CSU in a multidisciplinary forum including Justice Health, Correctional Officers and Psychological and Support Service staff. At one point during the Audit, there were five women detainees supported by this service, with no women residing in the CSU at all.

Counselling

- 6.11.13 Detainees interviewed for the Audit suggested they would welcome the opportunity for counselling, but this wasn't offered during their detention.

"There would have been some times during my pregnancy when I was at the point where, you know, unsure about whether I could have my baby with me, when I probably did need it, in hindsight looking back now, but I wasn't offered it... You know what I mean, trauma counselling. Actually now come to think about it, when they told me I wasn't able to have my baby in there and how I was feeling mentally, I was never offered mental health support then." [woman detained at AMC 2010]

- 6.11.14 Similarly, the Women's Legal Centre cited a case where a female detainee was not provided timely access to trauma counselling:

... the woman had disclosed that she had been a victim of sexual assault. There had been no follow up and it was only when the WLC worker became aware of this that she made arrangements for Canberra Rape Crisis to visit this woman detainee.

- 6.11.15 The 2011 Knowledge Consulting Report found a lack of counselling services at the AMC, which may impact on the caseload of the CSU.⁵⁶ That Unit is intended to be a low stimulus, secure environment where detainees at risk can be managed in a way that prevents self-harm.
- 6.11.16 Many of the counselling issues raised by former detainees during this Review concerned periods of detention more than three years ago. Since the Knowledge Consulting Report, a number of new counselling services have commenced, including general services provided by Relationships Australia for the past two years.
- 6.11.17 Justice Health report that from 7 January 2014 the ACT Women's Health Service began offering counselling services specifically for women. As this service only began late in our Audit period, we did not have the opportunity to evaluate feedback from detainees and stakeholders on its effectiveness. The Commissioner assumes that ACT Health will formally evaluate the effectiveness of the new WHS counselling service.
- 6.11.18 It was also reported during this Review that a new Prisoner at Risk policy is being finalised, but it had not yet been gazetted at the time of this Audit. Relationships Australia now provides counselling to detainees by female Aboriginal counsellors. Additionally, ACTCS report that a range of non-government providers offer various counselling options covering family, relationships, gambling, financial, drug and alcohol and sexual assault counselling. A Chaplaincy Service is also provided to assist with many faiths.

Barriers to Treatment

- 6.11.19 As detailed at Part 3.4, the Crisis Support Unit (CSU) is a ten bed facility adjacent to the health centre within the AMC. It is intended be used to accommodate detainees who have engaged in suicide or self-harming behaviour or who have been assessed as being at risk of harm to others as the result of a mental illness.⁵⁷
- 6.11.20 Detainees who are mentally ill may be treated at the AMC, including through admission to the Crisis Support Unit. However the *CM Act* also provides authority for transfers to health facilities, such as the Adult Mental Health Unit at the Canberra Hospital, if a detainee requires specialised care. Stakeholders consistently acknowledge that the CSU is not a therapeutic environment and is not appropriate for long-term accommodation and care of detainees, particularly women detainees who may face isolation as the only woman in this Unit. The Health Services Commissioner has raised this concern in many discussions with Corrections and ACT Health. A number of reviews and audits of the ACT corrections system, including the Human Rights Commissioner's 2007 Human Rights Audit, have recommended that the ACT Government establish a secure mental health unit.

⁵⁶ Knowledge Consulting, above n 10, Chapter 14, Finding 9.

⁵⁷ Corrections Management (Management of Prisoners in the Crisis Support Unit) Policy 2009 Notifiable instrument NI2009-135, made under Corrections Management Act 2007 (ACT) s 14(1).

6.11.21 The Commissioner notes that the ACT Government has committed to constructing a secure mental health unit. The Commission has separately provided feedback on the draft Standard of Care for the new facility, but has expressed some concern about the mixing of men and women in the proposed new centre.

6.11.22 The Submission from the Women's Centre for Health Matters and Women and Prisons Group reported concerns about the lack of female mental health professionals available for women detainees:

Women detainees at AMC are currently able to see a male mental health professional upon request (and usually after a wait). We know that many incarcerated women have backgrounds characterised by sexual violence and trauma—as such, WAP and WCHM strongly believe that detainees should have the option of visiting a female psychologist.

6.11.23 In a submission to this Review, Sisters Inside also raised concerns about women with particular religious or cultural norms meaning it would be inappropriate for them to see a male health professional, which may impact on their willingness to seek care. Sisters Inside note that CALD women are often at high risk of mental health issues, including because of language barriers in communicating with other detainees.

6.11.24 These issues appear historic and recent detainees did not directly report these issues during this Review. The Commissioner notes that 4.8 of the 8.0 full-time equivalent staff working in the CSU are female, and that the Justice Health Primary Health team has 84% female staff, and 38% of the medical staff are also female. Additionally, the Rape Crisis Centre is available as a referral point for survivors of sexual assault.

6.12 Alcohol and other drugs

6.12.1 The ACT *Alcohol, Tobacco and other Drug Strategy 2010-2014* informs the strategic direction of alcohol and other drug services at the AMC.

6.12.2 The Australian Institution of Criminology has noted that female prisons report a higher rate of continued intravenous drug use while in prison compared to males. This Report cites NSW research that indicates two-thirds of women report their offences are drug related, and that nearly half of women report suffering drug withdrawal syndrome on admission.⁵⁸

6.12.3 The ACT 2010 Inmate Health Survey reported that 85% of total respondents were current smokers, 91% had previously used illicit drugs, with 67% injecting drugs.⁵⁹ The 2010 AIHW Report on the Health of Australian Prisoners similarly reported that 92% of ACT detainees had used illicit drugs in the previous 12 months.⁶⁰ Similarly, the Burnet Institute Report found that 91% of surveyed detainees reported a lifetime use of illicit drugs, with 65% having a heroin addiction.⁶¹ Three quarters reported that their current

⁵⁸ See Bartels and Gaffney, above n 11, 49.

⁵⁹ ACT Health, above n 14, 14.

⁶⁰ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2010* (Australian Government, 2011), 60.

⁶¹ Stooze and Kirwan, above n 8, 56 [8.3]

prison sentence was related to drugs and 79% reported they were affected by drugs when they committed the relevant offence.⁶²

- 6.12.4 This data was not disaggregated on a gender basis. The Women's Centre for Health Matters (WCHM) and Women and Prisons Group (WAP) suggested 'on any given day, a number of women detainees—if not the majority—have been incarcerated for crimes involving drugs.' ACTCOSS submitted that women's drug use is often more closely related to their offending than for men.
- 6.12.5 The 2011 Burnet Institute Report evaluated drug policies and services at AMC, and raised concerns that there was inequitable access to drug and alcohol services for women, including the Solaris Therapeutic Community, which is run from a dedicated cottage environment inside the men's area of the prison.⁶³ The Government response to that recommendation suggested it would consider such measures within the current resource base, but noted the ability to expand the program was affected by the length of detainee sentences and classifications.⁶⁴ This issue is discussed further at Part 7.4.22 in relation to programming and rehabilitation.
- 6.12.6 In their submission, the WCHM and WAP groups were also critical that there was not a scheduled, intensive, ongoing drug and alcohol program available to women detainees. ACTCOSS' submission similarly reported concerns with inconsistent access of women detainees to alcohol or other drug services. Women detainees do have access to the SMART Recovery, Harm Minimisation and First Steps programs, depending on attendee numbers.⁶⁵ The Burnet Report also questioned if supports such as counselling could have assisted those suffering detoxification issues. It recommended that further counselling and medication support be provided for detainees detoxing from prescription medication. It also suggested that non-medication support such as counselling be provided for those moving from clinical to non-clinical therapeutic interventions.⁶⁶
- 6.12.7 AMC does has a counsellor available through the Alcohol and Drug Services of ACT Health two day a week, and provides the services three days a week for care of newly released detainees, as part of a model of throughcare, or continuity of care for detainees pre and post release.
- 6.12.8 The issue of access to programs for women is explored more fully at Part 7.4.14.

Tobacco

- 6.12.9 The 2011 Burnet Report noted that the 2010 ACT Inmate Health Survey found 'slightly higher relative tobacco sales' for women detainees, although this did tend to fluctuate due to small numbers. The Report also noted that women reported lower rates of high frequency smoking, again potentially impacted by the low number of respondents.⁶⁷

⁶² Ibid.

⁶³ Ibid 12 and 90.

⁶⁴ ACT Government, Final ACT Government Response to Recommendations in Burnet Report, 2011, 26 [46].

⁶⁵ See Part 7.4.

⁶⁶ Stooove and Kirwan, above n 8, 103, 182, Recommendation 22.

⁶⁷ Ibid 128 – 129.

The Report recommended that therapeutic AMC programs be introduced which address tobacco and alcohol use.⁶⁸ The 2011 Winnunga Report made similar recommendations.⁶⁹

- 6.12.10 The AIC cites positive developments in Western Australia regarding a program to assist detainees and staff quit smoking. Nicotine patches and 'quit packs' are made available for free, and the prison health centre runs information sessions on the impact of smoking, and how to deal with potential side effects of quitting, such as weight gain.⁷⁰
- 6.12.11 ACT Health reported that Justice Health Services have a weekly pharmacist-led medication clinic. Nicotine replacement therapy can be initiated by the pharmacist, and other avenues are available, including prescriptions through a Medical Officer.

Provision of Methadone

- 6.12.12 The Burnet Report suggested that 'some prisoners, ex-prisoners, community service providers and Corrective Services staff were concerned that detainees experienced undue influence from health staff to commence methadone.'⁷¹ In its response, the ACT Government noted that a clinical assessment informs whether a person is offered the opportunity to be inducted onto a methadone program.⁷²
- 6.12.13 Detainees reported mixed views on the availability of methadone. Some felt it was appropriate, while others reported that they felt it was too easy to be placed on methadone.

"I'd been there for 6 months, clean, whatever, decided 'I'm getting out soon, I might like to get on the methadone for 3 months and get stoned.' I hadn't used for 6 months and I hadn't been on methadone the whole time I was there – went to the doctor and got on the methadone. I didn't have no habit, nothing, it just seemed like a really good idea at the time. And I just think that was really wrong, you know. And I just said to the doctor 'I feel like using' and bang, methadone." [woman detained at AMC 2010]

- 6.12.14 As noted above, the Health Services Commissioner did not receive complaints about every individual issue included in this Audit. The prescription of methadone in particular is a matter that is best investigated on a case by case basis, as any question of the appropriate prescription of such medication is dependent on the individual circumstances of the detainee concerned. As such, any detainees who raised such issues during the Audit were encouraged to lodge a complaint about the matter with the Health Services Commissioner.

Testing of BBVs

- 6.12.15 The Australian Standards provide important protective provisions for detainees' Health Services. In particular, Standards 2.34 and 2.35 require:

⁶⁸ Ibid 184, Recommendation 41.

⁶⁹ Poroach, above n 30, 63.

⁷⁰ Bartles and Gaffney, above n 11, 54.

⁷¹ Stooove and Kirwan, above n 8, 107.

⁷² ACT Government, above n 64, 18 [26].

Where a detainee is found to have an infectious disease, the detainee should be managed by health services in order to minimise the possibility of contamination of the prison environment and, where clinically appropriate, before the detainee is permitted to mix with others and reenter the normal prison routine.

Detainees who are isolated for health reasons should also be afforded all rights and privileges that are accorded to other detainees, where practicable and so long as such rights and privileges do not jeopardise the health of others.

- 6.12.16 The AIC suggest that the 'estimated prevalence of Hepatitis C infection among female inmates in Australia is higher than for male prisons and much higher than the general population.'⁷³
- 6.12.17 The 2010 Inmate Health Survey reported that almost all respondents (93%) reported being aware of free testing for blood borne virus and sexually transmitted infections. Seventy per cent of participants reported they had been immunised against Hepatitis B, with 65% of these identifying prison as the place of immunisation. Of those tested for Hepatitis C, 48% tested positive. Sixteen participants were Hepatitis C PCR positive, however not all Hepatitis C antibody positive individuals were tested.⁷⁴ This data was not disaggregated on a gender basis.
- 6.12.18 The 2011 Burnet Institute Report criticised the nature of blood borne virus testing at the AMC, including that testing was largely only occurring at reception.⁷⁵ In a submission to this Audit, the Hepatitis Resource Centre repeated these concerns. The Centre congratulated Justice Health for the high rate of 80% testing at admission. However, the Centre noted that very few detainees are currently re-tested at regular intervals and immediately prior to release. The Centre suggested this is necessary because:
- A second test three months after admission can ensure that a false-negative was not recorded at admission;
 - A blood test prior to release establishes whether an individual is leaving the prison with a blood borne virus infection; and
 - This testing regime overall will clarify at what point a person has become infected, particularly if this is during detention. It suggests that the small numbers of in-prison Hepatitis transmissions identified by Justice Health may not reflect the true transmission rate.
- 6.12.19 ACT Health reports that no other health service, prison or community-based service in Australia has capacity to provide BBV re-testing and that such re-testing is currently beyond the capacity of the Justice Health Service, due to medical and nursing staff availability, in conjunction with the operational requirements of the Centre. Limitations include the need for escorts and that only two detainee waiting areas exist.

⁷³ Bartles and Gaffney, above n 11, 49.

⁷⁴ ACT Health, above n 14, 10 [3.8].

⁷⁵ Stooove and Kirwan, above n 8, 134.

- 6.12.20 The 2011 Burnet Report was also critical about the lack of accompanying counselling after blood testing. Problems in detainees accessing bleach were also noted in the Report.⁷⁶ The Hepatitis Resource Centre reported that detainees continue to have trouble accessing bleach and are not provided with sufficient relevant information on blood borne virus prevention. Reported barriers to the use of bleach included that dispensers are not being refilled, and confusion about the required level of concentration of the bleach being provided. ACTCS reported that it endeavors to ensure that bleach is available to detainees, and the Commissioner notes that there are logistical barriers to ensuring bleach dispensers remain full at all times.
- 6.12.21 The Hepatitis Resource Centre partners with the AIDS Action Council to provide Hepatitis awareness and prevention training, facilitated by ACTCS, but notes that many detainees choose not to participate in this program. The Centre suggests that blood borne virus prevention awareness and prevention education be contained in the mandatory OHS training provided to detainees on admission.

Prevention of BBV/STIs

- 6.12.22 The 2007 Human Rights Audit also recommended that detainees at the AMC be regularly provided with information about the availability of condoms and other safeguards, as well as safe sex practices, in order to prevent blood borne viruses and sexually transmitted infections.⁷⁷ The 2011 Knowledge Consulting Report suggested that dental dams were available for women detainees from the Health Centre.⁷⁸
- 6.12.23 However, that Review noted that some detainees reported confusion about the purpose of induction blood tests, perhaps due to low literacy levels. The Report recommended that processes were improved to ensure detainees did understand the purpose of such tests.⁷⁹
- 6.12.24 Such issues were not reported directly during this Audit.

Treatment of BBV/STI

- 6.12.25 The joint submission by the Coming Home Program organisations (Beryl Women Inc, Toora Women Inc and the Canberra Rape Crisis Centre) raised concerns that a female detainee on Hepatitis C treatment missed 3 days because the specific nurse who administers the treatment was away on sick leave (according to the detainee).
- 6.12.26 ACT Health report that in the event of personal leave of the Chronic Diseases Nurse (CDN), a nurse from the Primary team provides treatment to those clients. During planned leave for the CDN, clients are notified in the diary, and other nursing staff administer treatments. An additional 0.6 full-time equivalent staff member has been recruited to the chronic disease position, which will be in full effect in mid February 2014 when the nurse returns from leave, which will assist in backfilling for planned leave.

⁷⁶ Ibid 143

⁷⁷ ACT Human Rights Commission, above n 19, 77, Recommendation 4.2.2.

⁷⁸ Knowledge Consulting, above n 10, 217

⁷⁹ Ibid Chapter 4, Recommendation 10.

- 6.12.27 Several detainees interviewed for this Audit suggested they had tested positive for a blood borne virus, or knew a detainee who had. Generally, detainees gave constructive feedback about the treatment options available and the attitude of other detainees and health staff to those who had tested positive.

"I'm Hep C positive and I share that with everyone I live with so I can make sure they don't share my razor or things, I'm open and honest about it because I have teenagers at home. Other girls are open about it because they have a liver nurse here and they offer treatment. Didn't contract it in jail, got it from a partner who was using when I wasn't." [woman detained at AMC 2013]

"I was offered treatment for Hep C when I was in last year, will follow it up when I get out." [woman detained at AMC 2013]

"Most women are fairly open if they have Hep C, different girls on the interferon at the moment, symptoms, flu like symptoms. In the long run it might be worth it. It is a serious program." [woman detained at AMC 2013]

Needle and Syringe Exchange

- 6.12.28 The Human Rights Commissioner's 2007 Audit recommended a pilot program for a needle and syringe exchange with provision for safe disposal of needles be developed for the AMC.⁸⁰ The Commissioner remains of the view that the principle of equivalence in health care requires that detainees have access to the same health services, including needle exchanges, as are available in the community. Both Winnunga's 2007 and 2011 Reports into health care at AMC have also supported the introduction of such a scheme.⁸¹ Three of the five National Blood Borne Viruses and Sexually Transmitted Infection Strategies (HIV, Hepatitis C and Aboriginal and Torres Strait Islanders) state that:

In view of the well documented return on investment and the effectiveness of Australian community-based NSPs, it is appropriate ... for state and territory governments to identify opportunities for trialling this approach in Australian custodial settings. This is also supported by the international evidence demonstrating the effectiveness of prison NSPs.⁸²

- 6.12.29 The Hepatitis Resource Centre reported that 'unregulated and harmful circulation of needles and syringes continues in the Alexander Machonchie Centre', and recommended an NSP be implemented without delay.
- 6.12.30 There were mixed reactions amongst detainees interviewed about the proposed introduction of a NSP, although overall detainees were supportive.

⁸⁰ ACT Human Rights Commission, above n 19, 77, Recommendation 4.2.1.

⁸¹ Poroch, above n 27,xxiii; Poroch, above n 30, viii

⁸² Australian Government, *Sixth National HIV Strategy 2010-2013* (Department of Health and Ageing, 2010), 26; Australian Government, *Third National Hepatitis C Strategy 2010-2013* (Department of Health and Ageing, 2010), 18; Australian Government, *Third National Aboriginal & Torres Strait Islander Blood Borne Viruses and Sexually Transmissible Infections Strategy 2010-2013* (Department of Health and Ageing, 2010), 34.

“Lot of people who didn’t need to get Hep C have caught it, here they are that down and depressed, if there is a drug at hand you might just take it, you don’t care, would rather have it than think about the consequences. I’ve seen girls in other jails share needles and get sick.” [woman detained at AMC 2013]

“Needle syringe program – I wouldn’t be happy with it and I’m an ex druggie myself, if you encourage that you are encouraging and accepting of the use. What happens next - do you put it on your buy ups? Not a lot of drug use in the women’s yard now, but my theory is that the best drugs are found in jail because no one is going to bring shit in to anyone in jail. If you look hard enough you can find it, I have got stuff in before, when I was in last time... It would have a useful application for stopping infection, but hard to find a way that it could be practically applied, need a delegate who delivers it, and collects them all again, but difficult.” [woman detained at AMC 2013]

“NSP – I believe it should be but can see a yay and a nay, important for the diseases and things to put a stop to that, cause obviously it can’t be controlled, but then the catch 22 situation, the inmate going into, depending how they do it, if they go to health to use it, the needle shouldn’t come back into the main area. I wouldn’t want to be an officer and have a needle around to use as a weapon, even though lots of things can be a weapon, they could threaten an officer if they have a disease. Gives the inmate more chance of harming an officer. If it is kept at health, then the officers can charge you for contraband, if you are going to the room you are highlighting yourself, like at Kings Cross, the inmate going there is highlighting themselves.” [woman detained at AMC 2013]

“I reckon the fit exchange should be in there because in one cottage there was like 5 girls sharing the same fit and I don’t have Hep c and I got offered to use a needle in there, I didn’t because I wanted to stay without Hep C, but some girls don’t have the strength to say no and they could be infected.’ [woman detained at AMC 2012]

“That’s the thing, if they put a needle exchange in AMC and you go up and you get a fit pack, then they’re gonna know that you’ve got drugs you know what I mean?” [woman detained at AMC 2013]

- 6.12.31 The ACT Government is working with prison officers, health staff, unions, detainees and other key stakeholders to progress an NSP at the AMC.

<p>Recommendation 32: That the ACT Government continues to advance the introduction of a Needle and Syringe exchange program at the AMC.**</p>

Tattooing

- 6.12.32 Winnunga’s 2007 ‘*You do the Crime, You Serve the Time*’ report recommended detainees be trained to provide safe tattoos, and that there be a trial air brushing tattoo program.⁸³ The 2011 Burnet Institute Report noted that ‘in-prison tattooing is common’ among detainees at AMC. Such practices, combined with the high prevalence of blood borne viruses in prison settings, suggest that in-prison tattooing presents a potential risk for blood-borne virus transmission at the AMC’. The Report also noted concerns with body piercing, and suggested any consideration of a tattooing trial also

⁸³ Poroch, above n 27, 199.

consider body piercing.⁸⁴ It recommended professional tattooing and piercing programs be explored at AMC.⁸⁵

- 6.12.33 The Hepatitis Resource Centre and Coming Home program recommended to this Review that clean tattooing equipment be made available. Similarly, one detainee interviewed for this Audit suggested the introduction of tattooing at AMC might provide an education opportunity and address this specific risk of infection.

“Tattoos, not a lot here. They should have it as an industry here, if they could make it a lot of women would like it, and a lot of the boys are good at it. A lot of qualified people, at least it would keep everything Hep C free and transmission free.” [woman detained at AMC 2013]

- 6.12.34 However, other detainees were not supportive of a tattooing service, raising concerns that it may encourage detainees to have tattoos that they may later regret, or which may make rehabilitation more difficult. Overall tattooing did not appear to be an issue of particular concern to women detainees at the AMC.

⁸⁴ Stoove and Kirwan, above n 8, 139.

⁸⁵ Ibid 187, Recommendation 64.

Part 7. Rehabilitation Services

7.1 Introduction

Relevant Standards

CM Act

Section 7(d): *The main objects of this Act are to promote public safety and the maintenance of a just society, particularly by— promoting the rehabilitation of offenders and their reintegration into society.*

Section 52: *Rehabilitation and reintegration into society is a relevant consideration when considering the type of education or vocational training to be included in a detainee’s case management plan.*

Corrections Management (Reception and Management of Female Prisoners) Policy 2010
Notifiable instrument NI2010-448

Policy: *‘All female prisoners will have access to the same level of programs, education, recreation, medical, and mental health services as male prisoners’.*

7.1.1 The ACT Government and ACTCS have expressed a consistent commitment to rehabilitation of detainees at the AMC. This focus on rehabilitation is enshrined in the CM Act, and the AMC Operating Philosophy, which states that:

Whilst they are in prison, offenders are encouraged to make use of their sentence to improve their prospects of living law abiding and useful lives on release, contributing further to community safety.¹

7.1.2 The ACTCS website notes the intention that:

every aspect of the AMC will focus on facilitating offenders making decisions to change their chosen way of living. This will be achieved by implementing a suite of programs based on a cognitive change approach aimed at positive change in the offender’s habits, beliefs, attitudes and expectations.²

7.1.3 This Operating Philosophy incorporates the concept of a ‘Healthy Prison’ including that “everyone is encouraged to improve himself or herself and is given the opportunity to do so through the provision of purposeful activity.”³

7.1.4 ACTCS has also adopted a throughcare case management model of service, recognising the importance of seamless case management in custody and the community on release.

¹ ACT Corrective Services, *Operating Philosophy* (10 August 2010) ACT Government Justice and Community Safety <<http://www.cs.act.gov.au/page/view/867/title/operating-philosophy>>.

² Ibid.

³ Ibid

7.1.5 Nevertheless, the issue of equality of access of women detainees at AMC to rehabilitation programs, education, work and other activities has been a consistent concern raised by stakeholders. These concerns were a key catalyst for this Human Rights Audit, which was commenced to allow the Commissioner to assess first-hand whether women were being systemically disadvantaged in their access to education, programs and services to assist their rehabilitation, compared to male detainees.

7.1.6 As noted by the Castan Centre submission:

Women in the AMC are entitled to engage in work, education and vocational training activities that foster their rehabilitation and constitute purposeful activity. A lack of resources is not a valid argument for failure to provide such opportunities. If such activities are provided to men in the AMC and not women, not only is this arguably a breach of the CMA, it is also discriminatory and may breach sections 8 and 27A(2) of the HRA as well as the provisions of the Discrimination Act 1991.

7.1.7 The Castan Centre focused on providing research and analysis, but did not comment on whether or not such discrimination had in fact occurred at the AMC.

7.1.8 Through submissions, interviews and forums with many current and former detainees, service providers, staff, management and other stakeholders, the Commissioner had the benefit of hearing a range of different perspectives on this issue. In this Part, we examine the provision of case management, co-ordination of external rehabilitation services, provision of programs, education and employment, and issues of detainee culture and motivation of the women at the AMC.

7.2 Case Management

SMR

Rule 65: *The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.*

Rule 66(1): *To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.*

Rule 66(2): *For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.*

Rule 66(3): *The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.*

Rule 41: *The gender-sensitive risk assessment and classification of prisoners shall:*

(a): *Take into account the generally lower risk posed by women prisoners to others, as well as the particularly harmful effects that high-security measures and increased levels of isolation can have on women prisoners;*

(b): *Enable essential information about women's backgrounds, such as violence they may have experienced, history of mental disability and substance abuse, as well as parental and other caretaking responsibilities, to be taken into account in the allocation and sentence planning process;*

(c): *Ensure that women's sentence plans include rehabilitative programmes and services that match their gender-specific needs.*

7.2.1 Human rights standards require that interventions and services aimed at rehabilitation be tailored to meet the individual needs of detainees, reflecting factors such as their gender, personal histories, capacities and aptitudes. Case management is the key mechanism for this individualised response.

7.2.2 The role of a Case Manager has a number of aspects, including assessing criminogenic risks and needs of detainees, and working with them to develop, implement, monitor and evaluate rehabilitation plans. Case management requires co-ordination of a range of services to assist a detainee's rehabilitation, and to manage the transition back into the community, as part of a throughcare approach. Effective case management relationships may also improve and support detainees' engagement in the rehabilitation process. As noted by the Department of Corrective Services, Tasmania:

[C]orrectional case managers play a pivotal role in offender rehabilitation. Not only are they responsible for co-ordinating the implementation of an offender's sentence or individual management plan, they are uniquely placed to influence an offender's motivation to engage in rehabilitative programs and services and assist them to internalise knowledge and skills acquired through their participation.⁴

7.2.3 A 'therapeutic jurisprudence' approach to case management suggests that it is important for Case Managers to go beyond seeking to address a detainee's criminogenic risks and needs, but also to work with the individual to understand their values, strengths and positive objectives for their lives and to ensure that case planning is also directed to achieving a life that they want (rather than focusing only on desistance).⁵ This is also consistent with the 'person centred' model which is at the heart of throughcare.

7.2.4 To be responsive to the particular needs of women, it has been suggested that:

It is important that a case management model for women offenders facilitates treatment that addresses drug-related offending, drug and gambling addiction, mental

⁴ Tasmania, Department of Justice, Corrective Services, 'Breaking the Cycle – Tasmanian Corrections Plan (2010-2020)' (Background Paper No 4, Best Practice in Offender Rehabilitation), 4.

⁵ See for e.g. Astrid Birgden, 'Offender Rehabilitation: A Normative Framework for Forensic Psychologists' (2008) 15 *Psychiatry, Psychology and Law* 450-468.

*health, coping with trauma and victimisation, improving socio-economic status and enhancing healthy relationships with family, children, significant others and the community.*⁶

Case management practice for women at AMC

- 7.2.5 Section 73 of the *CM Act* provides that “The director-general must arrange for a case management plan to be prepared for a detainee as soon as practicable after the detainee’s admission to a correctional centre.”
- 7.2.6 There is currently no specific policy or procedure on case management or throughcare at the AMC that further defines the content of a case management plan or the expectations of a throughcare approach, although there is a reference to the involvement of the Sentence Planning Group in relation to case planning in the Corrections Management (AMC Detainee Classification) Policy 2012.⁷ We have been informed that Throughcare protocols are being developed, and that case management is being reviewed, including through expert advice by Dr Astrid Birgden.
- 7.2.7 Case Managers at AMC are generally Probation and Parole officers recruited from Community Corrections. The Women’s Case Manager is located in the women’s precinct and worked with the Women’s Services Co-ordinator (however, this temporary position has now finished). Aboriginal and Torres Strait Islander women are managed by the Women’s Case Manager in conjunction with the Indigenous Liaison Officer.
- 7.2.8 The Women’s Case Manager interviews women detainees within a few days of induction, once they have been stabilised in their accommodation. For sentenced women, the Case Manager conducts an assessment using the Level of Service Inventory-Revised (LSI-R) risk/needs assessment tool. The LSI-R is a quantitative survey, conducted as a structured interview, which takes approximately 30-45 minutes, and assesses the attributes of offenders and their situations relevant to level of supervision and treatment decisions. Based on the results of the LSI-R, the Case Manager and the detainee identify programs to address criminogenic risks and needs and develop a case management plan.
- 7.2.9 Case management plans reviewed by the Commissioner were generally fairly brief documents, noting key criminogenic needs and the corresponding programs or services that women had been referred to. Formal case management plans are not developed for women on remand until they have been in custody for six months, although the Case Manager meets with and provides assistance to these women, and they are eligible to participate in education, work and programs, including Throughcare.
- 7.2.10 After the initial assessment and planning process, much case management at AMC involves responding to requests from women, which may be a private session, or an informal discussion in the women’s area, as required. From the case files we reviewed, these sessions are generally initiated by women seeking assistance to deal with issues

⁶ Shelley Turner and Chris Trotter, ‘Case management with women offenders: Literature review’ (Monash University Criminal Justice Research Consortium, April 2010), 42.

⁷ Notifiable instrument NI2012–299, made under *Corrections Management Act 2007* (ACT) s 14(1).

such as relationships with ACT Housing and Care and Protection Services, or liaising with probation and parole officers regarding pre-sentence reports. However, the Women's Case Manager will also visit women to check in with them if she has not seen them for some time, and she is in contact with most women at least once each week. Case notes also include general reports from program providers on how women are progressing with programs and updates on other events in their lives. Three months prior to release, the Case Manager liaises with the Throughcare Manager, and completes a transition checklist including domains such as accommodation, employment, Centrelink assistance and health.

- 7.2.11 Many detainees we interviewed reported having a positive relationship with the Women's Case Manager, and appreciated having a dedicated Case Manager position based in the women's precinct. The Case Manager was seen as helpful in facilitating access to services, programs and employment and responding to women's requests.
- 7.2.12 Maintaining a dedicated female Case Manager for women detainees, based in the women's precinct, is a positive practice, as it allows the Case Manager to be accessible to women, and to develop a strong understanding of the services and programs available to women at the AMC and in the community. The combination of a Women's Services Co-ordinator and Women's Case Manager in 2013 has worked well to improve co-ordination of visits from services, and the programs and activities offered to women.

Limitations of Current Case Management Model

Focus on rehabilitation and motivational interviewing

- 7.2.13 Although there are many positive aspects of case management for women at AMC, it appears that the case management model could be strengthened to play a greater role in assisting rehabilitation and to encourage women's engagement in programs and activities.
- 7.2.14 There was no indication, from the sample files that we reviewed, of more structured reviews of case plans, or discussions with women about their life goals or progress in rehabilitation. We understand that Case Managers generally receive 'on the job' training in offender case management as Probation and Parole officers but do not receive specific training on effective case management or motivational techniques, or any training on the gender based needs of women offenders.
- 7.2.15 We were informed, in January 2013, that ACTCS had commissioned forensic psychologist Dr Astrid Birgden to review case management practices at AMC. We have not been provided with a copy of Dr Birgden's report, but understand that a policy is being developed for case management at the AMC utilising the 'good lives' model, which includes a focus on the strengths and values of detainees and the lives they wish to lead, as well as addressing their criminogenic risks and needs.
- 7.2.16 One aspect of improved case management could include enhanced use of motivational interviewing to encourage participation in rehabilitation plans. Dr Birgden has written that:

Where treatment readiness is low, motivational interviewing, contingency management, and other strategies can be used to encourage the individual to progress from “not ready” to “ready” to change.⁸

7.2.17 As noted by a Tasmanian review of best practice:

Motivational interviewing strategies (a client centred yet directive approach that aims to explore and resolve ambivalence about change) and pro-social modelling are proposed as mechanisms through which correctional case managers can exert a positive influence on offender attitudes and behaviour. In the first instance, correctional case managers’ can enhance an offender’s willingness to engage in rehabilitation programs by assisting them to make informed decisions about their participation. This involves ensuring that offenders: (1) understand their criminogenic risks and needs (offence related), and what this means in terms of their likelihood of re-offending should they choose not to participate in rehabilitation programs and services, (2) weigh up the pro’s and con’s of change, and (3) evaluate their rehabilitation options. Autonomous decision making and motivational interviewing form the “will” and the “way” to engage offenders in their own rehabilitation.⁹

7.2.18 Given the concerns raised by ACTCS and other stakeholders about challenges in motivating women detainees to participate consistently in rehabilitation programs and activities, strengthening this focus in case management could play an important role.

7.2.19 The Commissioner has not made a specific recommendation in relation to improving case management practices or training for Case Managers, as we understand that these issues will be considered as part of the current review of case management.

Co-ordination with education provision

7.2.20 At present there is no structured liaison or information sharing between Case Managers and the education provider Auswide Projects. Auswide conduct their own induction and core skills assessment process and develop an individual learning plan for each detainee. Auswide operate a separate database from Case Managers. The information from education assessments is directly relevant to decisions regarding women’s ability to benefit from programs and activities which require literacy and language skills, and any supports which may be needed by women to fully participate in those programs. Decisions regarding enrolment in vocational and other courses are also relevant to the detainee’s overall plan for rehabilitation and throughcare, as education may provide opportunities for future employment, and options for continuing studies should be incorporated into post release planning. It would be helpful if these decisions were co-ordinated consistently through the case management process.

⁸ Birgden, above n 5, 463-4.

⁹ Tasmania, Department of Justice, Corrective Services, above n 4, 4-5 (citations omitted).

Recommendation 33: That ACTCS establish regular meetings and information sharing mechanisms between the Education provider Auswide and AMC Case Managers.

Co-ordination of external service involvement

- 7.2.21 A number of services that visit women in the AMC raised concerns about a lack of central co-ordination of their involvement with individual women. Interview participants raised examples of women approaching multiple services for help with the same issues, and agencies working at cross purposes or duplicating efforts.
- 7.2.22 Although some women may choose not to share information with their Case Manager about their independent contact with services, where women do consent to information sharing, it would be helpful for the Women's Case Manager to be the central co-ordinator of service involvement to ensure that agencies are able to work together effectively.
- 7.2.23 Some services raised concerns that Case Managers rely on other agencies to provide aspects of case management rather than responding to issues directly. The Women's Legal Centre (WLC) report in their submission that:

Women have been seeking assistance from the WLC for issues that, in our opinion, should have been dealt with by a case manager or other appropriate staff member within the AMC. In most cases, the women had first approached someone within the system but were frustrated with the lack of response and approached the WLC for assistance.

- 7.2.24 The Women's Legal Centre note that they had been assisting women with association problems in their cottage accommodation at the AMC, and with issues such as changing their legal aid lawyer, which they felt could have been addressed more directly by the Case Manager.
- 7.2.25 It appears that the case load of the Women's Case Manager can present challenges in meeting the high expectations of this role. Case Managers also have limited power in relation to the review of decisions on operational issues, whereas external advocacy may sometimes be more effective in resolving these concerns.

Demands of 'welfare' requests and case loads

- 7.2.26 Much of the Women's Case Manager's time and energy appears to be devoted to meeting women's requests for assistance to follow up services and other government agencies about a range of immediate issues. In some prisons these issues are dealt with by dedicated welfare officers rather than Case Managers.
- 7.2.27 For women at the AMC, the role of the Case Manager in providing this day to day assistance is valued by women detainees, and allows the Case Manager to have a better understanding of the issues faced by individual women. It is particularly important for the Case Manager to facilitate communication where other services and agencies are not easily contacted directly by women (as women cannot receive incoming calls). It is likely to be counterproductive to separate these aspects of the current case management role from the broader focus on rehabilitation and case planning.

7.2.28 Nevertheless, it is important to recognise the demands on Case Manager's time associated with welfare requests, in addition to aspects of the role relating to facilitating rehabilitation. The employment of a Women's Services Co-ordinator created additional capacity in this small area to improve co-ordination of services, as well as meeting women's individual needs and requests.

7.3 Education and Training

HR Act

Section 27A *Right to education*

27(2): *Everyone has the right to have access to further education and vocational and continuing training.*

27(3): *These rights are limited to the following immediately realisable aspects: (a) Everyone is entitled to enjoy these rights without discrimination;*

SMR

Rule 77 (1): *Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration.*

Rule 77(2): *So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.*

7.3.1 Although there is limited data on the educational attainment and employment history of women detainees in Australia, studies available consistently suggest that incarcerated women are often under-educated and poorly prepared to participate in the work force.¹⁰ Research in Queensland and Victoria found low levels of completion of secondary education amongst women detainees, and that the great majority of women detainees had been unemployed before incarceration.¹¹

7.3.2 Education and vocational training offers the opportunity for women to use their time in prison to improve their skills and increase the likelihood of finding employment to support themselves and their children once released. Education also has value as an end in itself, in allowing women to more fully realise their potential and meet their need for self-development.

7.3.3 As noted by the Special Rapporteur on education, in considering education in prison, *Human dignity, core to human rights, implies respect for the individual, in his actuality and also in his potential. As education is uniquely and pre-eminently concerned with*

¹⁰ See e.g. Margaret Cameron, 'Women Prisoners and Correctional Programs' (2001) 194 *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice* 1-6.

¹¹ Ibid 3; See also Ann Farrell et al, 'Women inmate's accounts of education in Queensland corrections' (2001) 6 *Australia & New Zealand Journal of Law and Education* 47, 48.

*learning, fulfilling potential and development, it should be a fundamental concern of education in detention... [Education] should be aimed at the full development of the whole person requiring, among other things, prisoner access to formal and informal education, literacy programmes, basic education, vocational training, creative, religious and cultural activities, physical education and sport, social education, higher education and library facilities.*¹²

- 7.3.4 The introduction of the right to education into the *HR Act*, effective from 1 January 2013, further affirms the importance of non-discrimination in the provision of access to education and vocational and continuing training to women in prison.

Current provision of Education at AMC

- 7.3.5 Education for all detainees at the AMC is provided by contractor Auswide Projects, which operates from the Education Building within the prison, but also provides courses within the women's precinct. The education program includes basic literacy, language and numeracy education, and a range of introductory vocational education courses, most of which are accredited to certificate I or II level, and provide credit towards higher qualifications in the community post release. In 2012-13, 90% of women detainees were reported to have participated in vocational educational training or general education programs.¹³
- 7.3.6 ACTCS website states that the education program aims:
- To integrate [vocational education and training] with employment opportunities at the prison and assist prisoners to develop practical marketable skills to improve their chances of attaining and maintaining employment in the community post release.*¹⁴
- 7.3.7 While we understand that some jurisdictions offer education and vocational training only to sentenced detainees, in the AMC the education program is available to remanded and sentenced women on the same basis, which is a positive practice.
- 7.3.8 Women who arrive at the AMC are seen as soon as practicable by Auswide staff to discuss education options. Detainees interviewed confirmed that this induction generally took place within days of arrival. Most women agree to undertake an Australian Core Skills Framework (ACSF) assessment which identifies their language literacy and numeracy levels. They also complete an individual learning plan (ILP) which takes into account their work experience, educational history and interests to identify the courses they wish to enrol in.
- 7.3.9 All women who complete an ILP are enrolled in the introduction to Certificate of General Education for Adults course (as completion of the ILP counts towards this qualification), and women who are assessed as being at ACSF level 1 or below are enrolled in basic language, literacy and numeracy education, while for those above this level, literacy and numeracy education is built into vocational training.

¹² Vernor Muñoz, *Report of the Special Rapporteur on the right to education*, UN Doc A/HRC/11/8 (2 April 2009), 7 [18] (citations omitted).

¹³ ACT Department of Justice and Community Safety, *Annual Report 2012-2013* (ACT Government, 2013), 112.

¹⁴ ACT Corrective Services, *Offender Management* (3 November 2010) ACT Government Justice and Community Safety <<http://www.cs.act.gov.au/page/view/866/title/offender-management>>.

- 7.3.10 The use of the classrooms and computer facilities in the Education Building is timetabled to provide access at different times to different groups of detainees within the AMC. Women currently have access to the Education Building on Wednesday morning (9.30-11.30am) and afternoon (1.15-3.15pm), though afternoon sessions are not generally so well attended.
- 7.3.11 Other vocational courses are scheduled in the women's precinct in the Community Centre for two hour blocks on Monday (Life Skills/Hospitality), Tuesday (Hairdressing/First Aid) and Thursday (Visual Arts/Craft).
- 7.3.12 The Chaplaincy service provides an additional language and literacy program for women from culturally and linguistically diverse backgrounds. Volunteer tutors currently attend each Thursday morning.
- 7.3.13 Many detainees spoke positively about the education courses they attended, for example:

"The education contractors are pretty good, they tailor it to what you want to do. I did my first aid course, white card and got half way through a certificate in IT." [woman detained at AMC 2013]

"The barista program is good, you get a certificate, it's practical, you learn from a DVD, then practice on the machine. It gives you a skill that's useful when you get out." [woman detained at AMC 2013]

"They were really helpful, like I did a couple of certificates...art, education, I did horticulture." [woman detained at AMC 2012]

"My experience was pretty good, it was alright. There was a number of courses you could do in there, like for example you've got your hairdressing courses, and cooking courses, and you know if you wanted you could get your white card and what not, so yeah, it was pretty good." [woman detained at AMC 2013]

- 7.3.14 Concerns raised by detainees tended to relate to perception of access to the Education Building, rather than the quality of education offered.

Limitations on education

Equality of access

- 7.3.15 A number of concerns were raised by stakeholders in submissions and interviews regarding the extent of the vocational and other education and training offered to women at the AMC compared to male detainees.
- 7.3.16 Most current and former detainees felt that their access to education courses was less than that offered to male detainees. Detainees consistently reported that they only had access to education one morning per week:

"There's absolutely nothing to do here all day, women get to go to education once a week, the men get education every other day of the week." [woman detained at AMC 2013]

“But the only thing I didn’t like is you get to go to the library, to edgo [education] once a week, so you’ve got one and a half hours to get help on what you need...the boys get it twice a week.” [woman detained at AMC 2012]

- 7.3.17 Similarly, ACTCOSS’ submission states that “Women in the AMC have access to educational/vocational programs 2 hours per week.”
- 7.3.18 However, these reports do not account for the full range of vocational courses offered in the women’s precinct when the Audit was conducted in 2013.
- 7.3.19 It is the case that women have less access to classes held in the Education Building than most cohorts of male detainees, for example ‘mains’ male detainees currently have access to the Education Building four mornings per week. However, women also have access to specific vocational courses provided in the Women’s Community Centre, which are currently Hairdressing (which has at times been substituted with a first aid course), Hospitality/Life Skills, and Art and Craft. The total hours of education/vocational training available to women detainees who choose to enrol in each of these courses are thus equivalent to or greater than most cohorts of male detainees.
- 7.3.20 Nevertheless, as discussed below, the limited time spent in the Education Building does impact on women’s ability to work on computer-based courses, which could be addressed by the provision of compatible computers in the women’s precinct.

Courses Available to Women

- 7.3.21 A number of stakeholders raised concerns about the limited course options available to women detainees. The Women’s Legal Centre noted that “when the WLC staff have talked to the women about what activities they have been doing it generally centres around, cooking, hairdressing and general craft activities.”
- 7.3.22 As set out in the table below, there are in fact a range of other courses available to women, such as retail operations, business studies, IT and horticulture. The courses offered in the women’s precinct do appear to be the most popular amongst women (for example, in April 2013, all 15 women were enrolled in Hospitality/Life Skills and Art and Craft, 13 were enrolled in Hairdressing, but only 3 enrolled in business studies, and one in retail operations.)
- 7.3.23 Courses available to men and women at AMC through Auswide in 2012-13 are as follows:

TABLE 1: EDUCATION COURSES OFFERED TO DETAINEES AT THE AMC THROUGH AUSWIDE IN 2012:2013

Education courses offered to men	Education courses offered to women
Certificate of General Education for Adults, Certificate I and II (including literacy, language and numeracy)	Certificate of General Education for Adults, Certificate I and II (including literacy, language and numeracy)
Life Skills (non-accredited) Food Hygiene	Life Skills (non-accredited) Food Hygiene
Construction Certificate II White Card	Construction Certificate II White Card
Senior First Aid	Senior First Aid
Blood and Body Spills WHS	Blood and Body Spills WHS
Information Technology Certificate I and II	Information Technology Certificate I and II
Asset Maintenance Certificate II	Asset Maintenance Certificate II
Automotive Certificate II (SOA pre vocational)	
Horticulture Certificate II	Horticulture Certificate II
Conservation and Land Management Certificate II/ Indigenous Art	Conservation and Land Management Certificate II/ Indigenous Art
Hospitality - Espresso Machine Operation Skill Set	Hospitality - Espresso Machine Operation Skill Set
Hospitality Certificate II	Hospitality Certificate II
Business Services Certificate I and II	Business Services Certificate I and II
Community Services Certificate II	Community Services Certificate II
Hairdressing Certificate II Skill Set	Hairdressing Certificate II Skill Set
Retail Certificate II Skill Set	Retail Certificate II Skill Set
Visual Art (as part of CGEA)	Visual Art (as part of CGEA)
Music Development (as part of CGEA and other course bundle. eg.- IT)	Music Development (as part of CGEA and other course bundle. eg.- IT)
Road Ready (partnering with FreeBott)	Road Ready (partnering with FreeBott)
Waste Management Certificate II Skill Set	Waste Management Certificate II Skill Set

7.3.24 Auswide report that an effort is made to refresh course offerings regularly, based on detainee feedback. The Conservation/Indigenous Art course has been added recently to better cater for Aboriginal and Torres Strait Islander detainees. It is reported that a further course of Certificate I in Tourism (Australian Indigenous Culture) is being developed.¹⁵

7.3.25 Women have the same course choices as male detainees, apart from the Automotive Certificate II course. Auswide state that this course is not available to women for

¹⁵ ACT Department of Justice and Community Safety, above n 13, 112.

operational and resource allocation reasons. While there are a range of courses available to women, we consider that the exclusion of women from the Automotive Certificate II does limit equality of access to education. It does not appear that this restriction reflects gender responsiveness needs, as there is no alternative course offered for women, and there is no reason to suggest that women may not also be interested in developing automotive skills. This restriction should be reviewed by ACTCS and Auswide to ensure that women have equal access to vocational training opportunities.

Recommendation 34: That ACTCS and Auswide review the current restriction on access by women detainees to the Automotive Certificate II course to ensure that women are afforded equal access to educational opportunities.

Access to Computers

- 7.3.26 Although (with the exception of the automotive course), women are able to enrol in the same range of educational courses as men, they are more restricted in their access to time on computers in the Educational Building to complete computer-based courses.
- 7.3.27 While a number of practical courses are provided in the women's precinct, there is currently no facility to provide computer-based courses in this area. Auswide report that the 'prison PCs' that are located in the Women's Community Centre and in the women's cottages are not able to be used for these purposes as they are not sufficiently reliable and are not fully compatible with the software used by Auswide. We understand that the prison PCs initially provided in the Education Building were replaced by new computers for this reason.
- 7.3.28 The lack of appropriate computers in the Women's Community Centre limits access to education for women who wish to focus on computer-based courses and to continue courses of their choice other than the specific vocational courses (Hairdressing, Life skills/Hospitality, or Art and Craft) offered on that day. Provision of compatible computers in the women's area could significantly improve women's access to education and ability to complete computer based studies outside the time allocated for women's access to the main Education Building.

Recommendation 35: That ACTCS liaise with the education provider Auswide Projects to ensure that computers are made available in the women's precinct that are reliable and compatible with the education courses delivered by the provider, to improve women's access to computer-based studies outside the hours allocated in the Education Building.

Disruption due to Staffing Issues and Conflict

- 7.3.29 Women and education staff report that classes are sometimes disrupted or cancelled as the result of operational issues requiring women to be 'locked down' in their cottages. Incidents such as assaults, requirements for hospital or other external escorts and staff absences, do sometimes interfere with education sessions. At times staffing issues may be particularly challenging, for example during early 2013 a detainee remained in hospital for 14 weeks requiring round the clock escort officers, thus depleting correctional staff at the AMC. Education staff acknowledge the difficulties that lockdowns present for all detainees, but do not consider that women are affected disproportionately. In some cases classes may be relocated to the women's precinct.

- 7.3.30 For a period of approximately 8 months during 2012 women's access to education was significantly reduced due to serious conflict between two groups of women [discussed further at Part 4.3.25 above]. To ensure their psychological and physical safety these groups of women were not permitted to attend education sessions together, and classes were thus reduced in length or held for groups on alternate weeks. It is unfortunate that this conflict continued for a lengthy period, but it is appropriate for ACTCS to prioritise safety and security of women in this situation. Ultimately ACTCS arranged for a mediation conducted by Relationships Australia, to seek to resolve this conflict between the women, which allowed classes to be resumed.

Opportunities for Further Training and Education

- 7.3.31 Currently, a range of accredited vocational courses are offered by Auswide at a Certificate I or II level, and provide a pathway for further study in the community. These modules appear appropriate for the majority of women detainees, who are on remand or serving short sentences. However they do not cater for the minority of women who are serving longer sentences, and who wish to complete studies in one area to a higher level (for example Certificate III or IV) while in custody, rather than a range of introductory studies in different areas.
- 7.3.32 Although detainees can apply to undertake university degree courses through distance education, in practice these opportunities are quite restricted, as detainees are not currently able to undertake studies at the AMC that are internet based (which is increasingly the preferred method of distance education delivery). University courses also have strict entrance criteria (completion of Year 12 or a demanding Special Tertiary Admissions Test) which exclude many detainees. Since the AMC opened, six male detainees have been enrolled in university studies through Murdoch and Flinders Universities, but education staff report that some students have found it difficult to study without internet access. No women detainees have yet been enrolled in university study, although ACTCS notes that enrolment is available on an equal basis for men and women detainees.
- 7.3.33 The University of Southern Queensland (USQ) has trialed a more flexible and interactive distance education options for the tertiary preparation program for incarcerated students using technology, such as e-reader devices, which appear not to pose a security risk in prisons.¹⁶ In late 2013 Auswide entered into an arrangement with USQ to allow detainees to undertake this program by distance education. Auswide report that four women and three men have applied to enroll in this program.
- 7.3.34 This is a positive development. However it appears that there is still a significant gap between the introductory certificate I and II courses offered at the AMC, and the option of university bachelor degree studies. Some women serving longer sentences may not be eligible, or wish to enroll in university courses, but might benefit from certificate III or IV vocational qualifications, yet they are not currently able to complete these at the AMC. One male detainee was assisted to complete an engineering course through CIT while at the AMC, but generally CIT courses are not able to be completed by distance education at the AMC.

¹⁶ See for .g.Helen Farley, Angela Murphy and Tasman Bedford, 'Bridgeing the digital divide: Bringing e-literacy skills to incarcerated students' (Paper presented at the Future Challenges Sustainable Futures ascilite2012 Conference, Wellington, 25-28 November 2012).

- 7.3.35 By contrast at Emu Plains women's prison in NSW, accredited courses such as Business Administration are offered to Certificate IV level and many women at that minimum security prison attend other TAFE courses externally on day release.
- 7.3.36 It would be desirable for the AMC to offer at least one popular vocational course, for example Business Administration, to a higher level directly at the AMC or through distance education if possible, to provide greater opportunities for detainees serving longer sentences to develop skills that will assist their employment prospects in the community on release. It would be useful to consult further with detainees regarding possible courses.

Recommendation 36: That ACTCS consider the feasibility of offering selected vocational training courses to a Certificate III or IV level to improve detainees' employment prospects on release, particularly for detainees serving longer sentences.

Liaison with case management and throughcare

- 7.3.37 Induction and planning for education happens separately from case management for women at AMC. Auswide liaise informally with Case Managers where time permits, but operate a separate database, and do not have formal mechanisms or regular meetings for sharing information or integrating education into case management planning.
- 7.3.38 It appears that it would be beneficial to more closely co-ordinate education and case management to better meet the needs of detainees. This can be particularly important where women are at risk of harming themselves or others, or need additional support (for example where they are being monitored by the High Risk Assessment Team (HRAT)). Appropriate information sharing regarding risk and management of women may assist their learning. Assessment of literacy and language skills conducted for education would also be relevant in considering the ability of individual women to participate in and benefit from rehabilitation programs which rely on literacy, and whether additional support or adaptations may be required.
- 7.3.39 It is also important that education is co-ordinated with the throughcare process, to ensure that women leaving prison have copies of all certificates and documentation relevant to their education. The Coming Home Program report in their submission that sometimes women leave prison without these certificates:

Women have often complained to me that they got their ticket in 'one thing or another' but do not have the physical evidence of it. Sometimes I have been able to track down the certificates but not always.

- 7.3.40 Women may also require support and assistance to identify and enrol in further educational courses in the community that recognise the qualifications they have attained at the AMC. It would thus be useful for the education provider to be involved in transition planning for detainees, and to liaise more closely with the Women's Case Manager, to ensure that relevant information about educational opportunities is included in the Throughcare documentation.
- 7.3.41 A recommendation is made in relation to this issue in the section on case management at Part 7.2.20.

7.4 Rehabilitation Programs/Services

SMR

Rule 58: *The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.*

Rule 59: *To this end, the institution should utilize all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.*

Rule 61: *The treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it. Community agencies should, therefore, be enlisted wherever possible to assist the staff of the institution in the task of social rehabilitation of the prisoners.*

Access to Rehabilitation Services

7.4.1 The AMC facilitates access to a range of rehabilitation services for male and female detainees. Program staff we spoke to emphasised the importance of connecting detainees to rehabilitation services available in the community, and encouraging these services to attend the AMC to establish relationships with detainees and to provide continuity post release, as part of the throughcare approach. This is seen as particularly important for the majority of women detainees serving short sentences or periods of remand. As one interview participant noted:

"A lot of these people have very tragic life stories. A six week course isn't going to fix that all at once. It is really about introducing them to community supports that will be there for the long term. People come from the community and will return to the community, that is where much rehabilitation really takes place."

7.4.2 A number of community agencies visit women detainees, either at a regular time or by appointment. Several services attend a monthly Women's Advisory Group (WAG) 'expo' afternoon within the women's area to take referrals or provide general information. These services include Toora Women Inc; Coming Home Program; Woman and Prisons Group; Hepatitis Resource Centre; Winnunga; Directions ACT; Women's Legal Centre; and Canberra Rape Crisis Centre.

7.4.3 The approach is consistent with human rights standards and best practice, recognising that women remain a part of the community even while in custody, and should be entitled to establish and maintain relationships with relevant services. Most service providers we spoke with appreciated the open and collaborative approach adopted by ACTCS in welcoming their involvement and allowing them access to the prison.

7.4.4 However, there have been some difficulties in co-ordinating access for these services, which has been a source of frustration for some agencies, as staff have at times arrived at AMC, but have been unable to see their clients as intended due to clashes with other activities or operational issues:

“There’s other issues like lockdowns that no one’s been told, we get there and then find out all these things – what a waste of going out.”

- 7.4.5 Some services stated that this situation improved in 2013 with the temporary appointment of a Women’s Service Co-ordinator for a three month period. The Co-ordinator served as a point of contact to arrange access and developed a timetable to better co-ordinate services and programs offered to women. A number of service providers remarked on the difference this position had made, as they had a consistent person to liaise with and to ensure things ran smoothly. This position also provided additional capacity in the small team to allow the Women’s Case Manager to focus on individual case management and welfare needs. Unfortunately the short term co-ordinator position finished in October 2013. Given the particular needs of women at the AMC, and the importance of involvement of external services in their rehabilitation, the Commissioner considers that there is a strong argument for ACTCS to be funded to provide a Women’s Service Co-ordinator position on a continuing basis.
- 7.4.6 A number of agencies in submissions also noted the usefulness of the WAG Managers meetings in assisting communication and co-ordination between ACTCS staff and women’s services. These meetings initially occurred regularly, but were discontinued in mid-2012. In late 2013 ACTCS re-commenced these meetings between program managers and community agencies on a monthly basis.
- 7.4.7 While it is important and consistent with the throughcare model to utilise existing services in the community, this can place burdens on services that are not funded to provide outreach to the AMC. Many women’s services we spoke with had recently had cuts to their funding which affect their ability to provide their services to women in prison. Where ACTCS relies on external services and agencies to provide critical aspects of rehabilitation services at the AMC, it would assist planning and continuity if these agencies could be specifically funded to provide outreach to the AMC.
- 7.4.8 The Throughcare program and transition are discussed further at Part 9.

Recommendation 37: That ACTCS be funded to establish the Women’s Services Co-ordinator role as a permanent position to co-ordinate the provision of rehabilitation programs and services for women, to meet the high level of needs of women detainees.

Recommendation 38: That the ACT Government consider providing specific funding to key non-government services to facilitate outreach to the AMC to provide rehabilitation services.

Specific Rehabilitation Programs

- 7.4.9 ACTCS also offer specific rehabilitation programs designed to meet the criminogenic needs of male and female detainees in custody.
- 7.4.10 As at October 2013, programs being offered to women at the AMC were the SMART Recovery, and the Positive Lifestyles program. SMART Recovery is a twelve session alcohol and other drug program based on cognitive behavior therapy, co-facilitated with Karralika Programs Inc. Positive Lifestyles is a seven session program co-facilitated with the Salvation Army. It is described as a holistic program looking at anger, depression, stress, loneliness, grief and loss, assertiveness, self-esteem and goal setting.

7.4.11 Over 2012-13 other programs run for women have included Women's Self-Care, which was a short program specifically designed for women and mothers, co-facilitated with Marymead; and the First Steps and Harm Minimisation programs, which are both alcohol and other drug programs.

7.4.12 A number of women detainees we interviewed found the rehabilitation programs offered at AMC to be helpful, for example, one stated that:

"I did rehab and that, it helped. methadone helped too, breaking the habit, getting it in your head and thought patterns and the fight in your head gets less and less, that voice that says 'let's go use it will be better' instead of lasting an hour it only lasts minutes and then not at all." [woman detained at AMC 2013]

7.4.13 One advantage of the small numbers of women is that generally all women who wish to participate in a rehabilitation program offered in the women's area are able to do so. Some rehabilitation programs are also offered to remandees (who have not been found guilty of a specific offence, but may have a history of offending and criminogenic needs such as alcohol and other drug issues) as well as sentenced women.

Equality of Access

7.4.14 Concerns were raised in submissions and by interview participants about restrictions on women's access to rehabilitation programs compared to male detainees, for example, the Women's Legal Centre in its submission state that:

The men seem to receive the majority of the programs. Because the men and women are not able to participate in programs together the women often miss out. It seems to WLC that most programs are geared to the largest population in the AMC, being men.

7.4.15 In assessing equality of access, human rights standards do not necessarily require that male and female detainees be offered exactly the same programs, as gender specific rehabilitation programs may be required to meet differing needs, and programming may be influenced by factors such as generally shorter sentence lengths for women detainees. As noted by Heseltine, Day and Sarre in their review of Australian rehabilitation programs:

There is increasing recognition that female offenders have distinctive areas of criminogenic need that influence their rehabilitative needs.... Gender-responsive risk factors that have been proposed include dysfunctional relationships, family conflict, parental stress, child abuse and adult victimisation, and mental health issues.¹⁷

7.4.16 They report that effective rehabilitation for women offenders is thought to be particularly associated with interventions that target interpersonal needs, victimisation and self-esteem, as well as substance abuse and mental health issues.

7.4.17 The women's self care program co-facilitated with Marymead ran over four sessions and focused on women's roles as mothers and the importance of meeting their own needs. However, other programs offered to women are not gender specific.

¹⁷ Karen Heseltine, Andrew Day and Rick Sarre, 'Prison-based correctional offender rehabilitation programs: The 2009 national picture in Australia' (Australian Institute of Criminology Reports: Research and Public Policy Series 112, 2011),30 (citations omitted).

- 7.4.18 As set out in the table below, during 2012-13 male detainees were offered the same core programs as women detainees, but were also offered a cognitive self-change program and further specific programs relating to violence and sex offending.

TABLE 2: SPECIFIC REHABILITATIVE PROGRAMS OFFERED TO DETAINEES AT THE AMC 2012-13.

Programs offered to men 2012-13	Programs offered to women 2012-13
• SMART Recovery	• SMART Recovery
• First Steps	• First Steps
• Positive Lifestyles	• Positive Lifestyles
• Anger Management	• Women's self care
• Dads and Strong Emotions	• Meditation
• Cognitive Self Change	• Harm Minimisation
• Family Violence Cognitive Self Change	
• Adult Sexual Offending Program	

- 7.4.19 Although a greater number of programs are offered to males overall, some interview participants indicate that the much larger population of male detainees and the need to separate different classifications of men can restrict access, so that not all male detainees are able to access each program offered.
- 7.4.20 ACTCS do facilitate access to some individual counselling services, including the Winnunga Health and Well Being Program (for Aboriginal and Torres Strait Islander men and women); and individual counseling through Relationships Australia, with a choice of Indigenous and non-Indigenous counsellors.
- 7.4.21 Nevertheless, to improve equality of access to programs for women detainees, consideration could be given to developing further ongoing group or one-on-one rehabilitation programs responding to particular criminogenic needs of women. Women would also benefit from programs addressing parenting, and particular issues that arise for mothers and children in re-establishing the parental role after separation due to incarceration.

Recommendation 39: That ACTCS review the gender responsivity of rehabilitation programs provided to women detainees and consider the provision of additional programs to meet their particular needs such as parenting, victimisation and trauma.

Solaris Therapeutic Community

- 7.4.22 One significant additional rehabilitation program that is available to eligible male detainees is the Solaris Therapeutic Community, co-managed by ACTCS and Karralika Programs Inc and funded by the Commonwealth Government. The Therapeutic Community is an intensive four month residential program operating within a separate cottage at the AMC for up to 24 men. The focus of the program is on addressing alcohol and other drug addiction, but includes elements of anger management, life skills, family and relationship skills and parenting. The program is entered in the last 6-12 months of sentence and participants may then be eligible to move to the Transitional Release Cottage, where they continue to receive support from the Solaris program.

7.4.23 Women are not currently eligible to participate in the Solaris Therapeutic Community due to concerns about mixing males and females in the Solaris Cottage. It was initially envisaged that the women's area would be underpinned by Therapeutic Community principles with a view to implementing the full Therapeutic Community model over time, subject to numbers of sentenced women detainees.¹⁸

7.4.24 One former woman detainee described her experience when the AMC was initially established that:

"[They] came and told us that there'd be a TC [Therapeutic Community] for women, and that we'll be able to do this work, and we'd be able to do this course, and if we want we can do this and there'd be this opportunity and that opportunity. And I think I stayed there for another 6 months still waiting for all these opportunities, as all the men seem to have got the TC and got all this stuff. And we were told that there would be a Therapeutic Community within three days for the women, which was just fantastic for me because I had such a long history of addiction. And there'd be all these courses and that. Like I said I remained there for another 6 months and nothing seemed to happen." [woman detained at AMC 2010]

7.4.25 To provide greater opportunities for women, in late 2011 and the first half of 2012, Karralika offered the Women in Prison program, a group program for women based on the Therapeutic Community program, which included some elements such as 'feelings diaries' and group discussions. The program was offered to women in the morning on most weekdays. However while attendance was initially strong, with most women participating in January 2012, it had dropped to one or two per session by July 2012 and was discontinued in favour of one-on-one sessions with interested women.

7.4.26 While an important initiative, it appears that there were a range of challenges in adapting the Therapeutic Community model to a group program in the women's area. Male detainees who apply to attend the Solaris Therapeutic Community are generally motivated to participate, and program staff have significant control over the environment, providing a highly structured day with programs, work and activities to build a sense of community responsibility. In the women's area Karralika had no control over the cottage environment, or incentives for participation, and were only able to provide an optional group therapy program, rather than the full benefits of a residential Therapeutic Community.

7.4.27 An option for providing a more structured environment for women at AMC would be to establish a full Therapeutic Community in the women's area. This would require additional resourcing, and would need to operate more flexibly than the Solaris Cottage, given the small and fluid population of women at AMC. However this intensive program is likely to offer significant benefits in improving rehabilitation outcomes for women detainees.

7.4.28 ACTCS have noted its view that Solaris operates on the 'Community as Method' model which requires a stable and consistent population, and that there are insufficient eligible women detainees with the length of sentence required to facilitate this type of program. Nevertheless, we consider that these issues could be further discussed with Karralika Programs Inc, to determine whether it may be possible to develop and

¹⁸ ACT Department of Justice and Community Safety, *Annual Report 2008-2009* (ACT Government, 2013), Vol 1, 44.

implement a modified version of the Therapeutic Community program for women at the AMC.

Recommendation 40: That ACTCS give further consideration to the feasibility of a modified residential Therapeutic Community program for women at AMC, and consult with Karralika Programs regarding this issue.

Limitations of programs

- 7.4.29 One significant difficulty with group rehabilitation programs for women at the AMC is the need for a minimum number of participants for a program to continue. Interview participants suggested that four was a minimum for the dynamics of group therapy to work effectively. Program attendance records indicate that women detainees are often highly motivated to enrol in programs, but that attendance often declines, and some groups have been discontinued for this reason. One detainee stated that:

"Well you needed like seven girls to get a program, and then there'd only ever be me and [another detainee] who finished so they'd be like 'well we're not going to come back 'cause there's only two'. But then us two that wanted to do it can't do it because we're affected by other people. So it's not fair." [woman detained at AMC 2012]

- 7.4.30 Another noted that:

"The thing with the women is that they would need the numbers to run an activity so they'd come around and go 'who would be interested in doing this?' And if I was the only person who would be interested, they wouldn't run it... And then they would choose the most ridiculous times...8 o'clock in the morning or 9 o'clock you know. Most people haven't been dosed at that time in the morning you know, so nobody's going to want to do a program without their methadone." [woman detained at AMC 2010]

- 7.4.31 ACTCS have noted that programs usually start at 9am, not at 8am.

- 7.4.32 While many interview participants raised concerns about low levels of motivation and a problematic culture in the women's area, detainees suggest that participation is affected by a range of factors:

"Women get bored with the courses sometimes and don't finish them but there are other reasons why they might miss them, like court or doctor's appointments." [woman detained at AMC 2013]

- 7.4.33 Others reported that sometimes programs stopped and started without much explanation, which affected their motivation:

"I started the SMART Recovery program, just for something to do, but we did one session on Monday three weeks ago and then not again. I hope we will get to finish it, I think 'why do we start things if we don't ever finish them, we might as well not start'." [woman detained at AMC 2013]

- 7.4.34 Some women and service providers suggested that it can be difficult for women to participate fully and share personal stories in group programs as there can be conflict and mistrust between women, and concern about exposing vulnerabilities. This is

consistent with the reports from many detainees of bullying and harassment between women at AMC.

- 7.4.35 Rehabilitation programs at AMC are designed to meet the needs of the majority of women, who on average serve short sentences of three months or less. However, some women detainees who had been at the AMC for longer periods, or had been incarcerated previously, reported that they had already completed all the programs available, and were then limited in the progress of their rehabilitation.

" Not much rehab here, I've done all the programs available. I'm not going to do any more until I get near parole otherwise I'll just keep doing the same ones over and over...I've done every course or program offered. They are ok I guess, some are internal, some are external, they are much of a muchness." [woman detained at AMC 2013]

- 7.4.36 While group programs are an important aspect of rehabilitation, there would be value in further developing capacity for structured one-on-one program delivery to better meet the needs of women serving longer sentences, or those who are motivated to progress further with rehabilitation. One-on-one programs could be delivered by the Clinical Support Services team, which would be appropriate for issues such as victimisation and trauma, where women may be more reluctant to share personal experiences in a group environment.

Recommendation 41: That ACTCS develop programs to meet the needs of women serving longer sentences, and develop capacity to provide one-on-one rehabilitation programs to meet individual needs.

7.5 Employment

SMR

Rule 71(1): Prison labour must not be of an afflictive nature.

Rule 71(2): All prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.

Rule 71(3): Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.

Rule 71(4): So far as possible the work provided shall be such as will maintain or increase the prisoners, ability to earn an honest living after release.

Rule 71(5): Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

Rule 71(6): Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.

Rule 72(1): The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

Rule 72(2): *The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.*

Rule 89: *An untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.*

7.5.1 Human rights standards recognise the importance of employment in rehabilitation through constructively occupying the time of detainees, and providing vocational skills and work experience to prepare detainees for employment in the community. The ACT Supreme Court has acknowledged that section 19 of the *HR Act* arguably requires that a prisoner be given the opportunity of useful work, and that rehabilitative measures be put in place.¹⁹

7.5.2 As Coyle states:

*Finding a way of earning a living is one of the most important elements of a prisoner's ability to reintegrate into society on release from prison. For many prisoners their time in prison may be the first opportunity that they have had to develop vocational skills and to do regular work.*²⁰

7.5.3 Employment also provides detainees with the ability to earn a small wage, above the unemployment wage available to all detainees, that can be spent on buy ups, including tobacco, discretionary food items and recreational materials. For detainees who are not provided with financial support from family or others outside prison, an employment wage can make a significant difference to their quality of life at the AMC.

7.5.4 The AMC does not currently have a dedicated prison industry to provide employment for detainees. Instead, employment opportunities for detainees are based around operations within the prison, such as the kitchen, laundry, visits and staff cafés, grounds maintenance and cleaning and other operational and administrative tasks. Some male detainees are also employed on a not for profit project manufacturing Myna bird traps. As discussed below, women's opportunities for employment are more limited as they are generally not able to work, or interact, with male detainees.

Employment opportunities for women

7.5.5 Women at AMC are able to participate in some employment, with most women who actively seek work eventually being given a job of some kind and remunerated for this. Sentenced women receive priority over remanded women for employment, but remandees who remain at the AMC for longer periods are able to be employed. Employment is valued by women detainees as a source of income and as a way to fill their day. However, the scope of employment available within the women's area is very limited. One woman detainee noted that:

¹⁹ See e.g. Transcript of Proceedings, *David Harold Eastman v The Chief Executive Officer of the Department of Justice and Community Safety* (Supreme Court of the Australian Capital Territory, SC No 1034 of 2009, Refshauge J, 12 January 2010), 461-462.

²⁰ Andrew Coyle, *A Human Rights Approach to Prison Management: Handbook for Prison Staff* (International Centre for Prison Studies, 2nd ed, 2009), 89.

"A couple of the longer [sentenced] girls are working grounds maintenance and barista but there aren't really enough jobs, are no other jobs available, probably if I was going to stay here longer I'd have to make my own job or convince them to pay me to do something. They [the women] do a pretty good job on those jobs, but there isn't that much to do, can't give the whole grounds maintenance to one woman so they have to divide it up." [woman detained at AMC 2013]

7.5.6 Most positions available to women, such as cleaning, bins and grounds maintenance are self-directed, without set working hours or supervision, and do not provide the discipline of structured work equivalent to employment outside the prison. While women detainees can apply to the Work Release Program (under the Corrections Management (Work Release) Policy 2012),²¹ this is subject to strict eligibility criteria and is only available in the final part of a woman's sentence.

7.5.7 One important exception is the barista program, where women undertake accredited vocational barista training (espresso coffee making) through Auswide, and may then be eligible for employment as baristas in the café in the visits area. We understand that two positions are currently available for women baristas working short shifts at the beginning of visiting sessions. Although visits are held for male and female detainees in the same session, only visitors are allowed to approach the café, so this employment does not require women detainees to have direct contact with male detainees.

7.5.8 Women who have been trained and/or employed as baristas at the AMC speak very highly of this program and the importance of this practical vocational skill and work experience, which may assist them to find employment in the community when released.

"Barista program is good, I work on Wed afternoon when some others go to education. It's really good." [woman detained at AMC 2013]

"Barista is not a very long course, do a bit of written work watch a DVD and do some prac work. I'm counting on it to get work when I get out." [woman detained at AMC 2013]

"I did enjoy barista-ing." [woman detained at AMC 2010]

7.5.9 The barista program is a positive model for detainee employment, combining accredited vocational training with structured work that is equivalent to barista positions in the community.

7.5.10 Limitations of this program are that it is not available to all women at AMC, and offers only part time hours to those who are employed in the program. There are currently more women who have completed the course than are able to be employed as baristas in the visits area, with some shifts being rostered for male detainees. As this position involves direct contact with visitors, it is not available to detainees who are assessed as unsuitable for security reasons, or who have tested positive to illicit drugs while in custody.

²¹ Notifiable instrument NI2012-279, made under *Corrections Management Act 2007* (ACT) s 14(1).

Equality of Employment Opportunities

- 7.5.11 Although not all employment opportunities are available to all male detainees, depending on their location and classification, the range of jobs available to male detainees overall is more extensive than those available to women detainees.

TABLE 3: EQUALITY OF EMPLOYMENT OPPORTUNITIES AT THE AMC

Employment available to men	Employment available to women
Barista	Barista
Grounds maintenance	Grounds maintenance
General cleaning/asset maintenance	General cleaning/asset maintenance
Kitchen hands	Bins
Laundry operations	
Textile repairer	
Hairdresser	
Stores assistant	
Clerical assistant	
Library assistant	
Myna bird cages	
Nursery Operations	
Literacy tutor	

- 7.5.12 Women are disadvantaged in relation to the scope of employment available to them, as they are not able to hold positions working with male detainees. There are insufficient women available to fully staff shifts in areas such as the kitchen or laundry, and thus they are not able to access this employment.

- 7.5.13 The Corrections Management (Reception and Management of Female Prisoners) Policy 2010 states that “Employment opportunities will be provided within the women’s area and will be allocated to female prisoners”.²²

- 7.5.14 An earlier version of the Policy provided that:

*Employment opportunities that exist within the correctional centre where a female prisoner is housed but in an area where there is access of both male and female prisoners should be shared between the male and female prisoners at that facility.*²³

²² Notifiable instrument NI2010–448, 2, made under *Corrections Management Act 2007* (ACT) s 14(1).

- 7.5.15 However in 2010 this provision (apparently contemplating mixing of women and men in some circumstances) was removed, reducing this formal requirement for equal access to employment.
- 7.5.16 A number of positions open to male detainees provide structured employment, with set hours of work equivalent to full time employment, such as kitchen hand and laundry operations. These positions are combined with vocational qualifications. By contrast only the barista positions (which are also available to men) provide structured employment for women, and these positions provide only a few hours of work each week.
- 7.5.17 At present, although most women detainees enrol in initial vocational training for hairdressing, they are not able to be employed as hairdressers at AMC, whereas male detainees are employed in this role. Training for women includes washing and styling, but does not extend to cutting hair, due to concerns about the risks associated with use of scissors. Male detainees are able to use hair clippers which appear to present less risk to safety.
- 7.5.18 One area where it may be possible to increase employment opportunities for women detainees in the short term is in the textile repair area. ACTCS state that women are currently not able to be employed in this area because of the need to ensure separation of men and women, but that sewing machines could be relocated to an area accessible to women:

The textile repair area is currently located in the Education Building in the same room as the Myna Bird Cage manufacturing. If sufficient women were interested it may be possible to relocate those machines to Women's Community Centre.

- 7.5.19 This would be a positive development and a recommendation is made regarding this issue below.

Employment opportunities for pregnant women

- 7.5.20 We spoke to several women (current and former detainees) who stated that it was difficult for pregnant women to obtain work at the AMC.

"At the moment I can't have a job for light duties. You can't have a job if you're pregnant. So I can't work. \$15 a week is the unemployment allowance. It's hard to get by on that, but I don't want to ask my family for money." [woman detained at AMC 2013]

- 7.5.21 There is no evidence that ACTCS intentionally discriminate against pregnant detainees in employment, and ACTCS state that there are no policies or practices that exclude pregnant women from work or activities. However, there does appear to be a lack of employment opportunities for women, apart from the barista program, that do not require a level of physical labour which may make them unsuitable for women in later stages of pregnancy.

²³ Corrections Management (Reception and Management of Female Prisoners) Policy 2007, Notifiable instrument NI2007-468, 2 [4.2], made under *Corrections Management Act 2007* (ACT) s 14(1).

Industry

7.5.22 Although it is clear that ACTCS staff are committed to providing appropriate employment opportunities for detainees, the lack of a prison industry at the AMC makes it very difficult to provide sufficient employment for women detainees to keep them constructively occupied. The need for an industry at the AMC to provide greater employment for male and female detainees was a consistent theme raised by almost every stakeholder interviewed for this Audit.

7.5.23 The decision made during the design and development of the AMC not to include a dedicated prison industry was not one taken lightly, but reflected concerns about industry being prioritised over more useful vocational education and rehabilitation programs.

7.5.24 The Knowledge Consulting Report sets out the advice of Corrective Services in 2011, that:

In the process of planning for a correctional centre in the ACT, the Government undertook extensive consultation regarding the design, operation and philosophy of the correctional centre. As a result of the consultation process, the decision was taken that the AMC would not operate any commercial industries as there was concern that to honour contracts within the correctional centre would come at the expense of meaningful Vocational Education and Training. Such a contract may unfairly disadvantage the commercial sector, due to cheap correctional centre labour, or would have no real educational value. The operating philosophy of the AMC places a strong emphasis on rehabilitation through Vocational Education and Training and rehabilitative programs along with the development of living skills and community integration.²⁴

7.5.25 While it is important to be aware of challenges and risks associated with prison industry, after a number of years of operation of the AMC, it is apparent that it is not feasible within existing resources to provide a sufficiently structured day for detainees through education courses and programs alone.²⁵ Although a range of employment is available to detainees at the AMC, very few of these jobs provide sufficient hours or equivalence to outside employment to provide routine to the day. A structured day where detainees who wish to be employed are expected to rise, dress and leave their accommodation at a designated time to participate in meaningful work, as well as undertaking programs and education, would provide greater opportunities for rehabilitation.

7.5.26 Women who had previously been incarcerated in NSW noted the importance of prison industry there:

"At Berrima we used to go to work at 8 o'clock, come back for lunch then back at work until 5, and the days just flew through, and you were focusing and bettering yourself and learning skills and applying yourself and not sitting here stagnant. That's why I just said to education give me everything you can because my brain is going to stop

²⁴ Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre, ACT Corrective Services* (2011), 256-7.

²⁵ See e.g. Transcript of Proceedings, above n 19.

working if I don't do something. You feel much better at the end of the day when you've achieved something rather than just walking in circles and getting told off for going too close to the fence, or the tree." [woman detained at AMC 2013]

"I was in the Jacaranda Program, it was a nice atmosphere there, heaps of jobs there, girls do the headsets [packaging headsets for airlines], and work in the dairy, make milk, custards and yoghurts for the gaols in the NSW region, and the girls also tend to the cows and the calves. It's a good experience for the ones who haven't been in the country. I worked in the coolroom, loading the crates to go to different gaols. I also got to work on the conveyor belt, you had to get good at going really fast putting the lids on!" [woman detained at AMC 2013]

"That's why I prefer NSW better, in that each gaol I was at had their own industry, I don't understand why being close to the airport we can't do headsets, we did those in NSW, also worked in the print shop, graphic design section, it was good, the days went really quick and we got paid really well." [woman detained at AMC 2013]

- 7.5.27 ACTCS facilitated a visit to Emu Plains and Dillwynia women's prisons in NSW where the Commissioner and Principal Researcher met women detainees working in the dairy in Emu Plains in a range of positions including administrative work, animal care and traineeships in milk production technology. At Dillwynia many women work in a fully functional call centre where they check and update customer databases, while others work in the store room preparing buy-up packages for prisons across NSW. They may also work as baristas in a Gloria Jean's café in the visits area. In each case women are able to work up to 40 hour weeks, but are also able to participate in education and programs as required.
- 7.5.28 These industries rely on a larger pool of labour (both Emu Plains and Dillwynia prison had approximately 180 women detainees each at the time of our visit). The dairy and storeroom industries are also part of a wider program of self-sufficiency being instituted across the NSW Corrective Services, which provides a range of opportunities for industry. We acknowledge the significant constraints faced by ACTCS with a single prison and very small numbers of women detainees of different classifications and status, which would make it difficult to run industries for women on this scale.
- 7.5.29 We understand that ACTCS have been undertaking feasibility enquiries regarding industry options for the AMC that would be resource neutral. It is important that the needs of women detainees for equal employment opportunities are properly considered in any proposal for industry, so that they are not further marginalised. While there may be some potential for small scale industries solely for women at the AMC, it may also be possible to develop a larger scale prison industry for both men and women which has a discrete area of employment for women.

Recommendation 42: That ACTCS further investigate options for establishing a prison industry at the AMC to provide greater structured employment opportunities for detainees. Any proposal for industry should ensure that women are not disadvantaged in opportunities to access employment.

Recommendation 43: That ACTCS consult with women detainees regarding the re-location of the textile repair industry to the Women's Community Centre, and to implement this re-location, if feasible, to provide a broader range of employment opportunities for women detainees.

7.6 Exercise and Recreation

SMR

Rule 21(1): *Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.*

Rule 21(2): *Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.*

Rule 78: *Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.*

7.7 Exercise

7.7.1 Women at AMC are generally given substantial time out of cells during the day, although this was restricted in 2012 due to conflict between groups of women which led to them being locked down for alternate hours. Women now generally have access to outdoor areas during the day, apart from a lockdown period over lunchtime from 12-1pm. When not locked down, women are able to walk around the women's precinct, play tennis on the paved area, or use the small women's gym in the Community Centre.

7.7.2 The women's gym is equipped with a nautilus weights machine, stationary exercise bike, fitness ball and mats. However, it appears to be under-utilised and is not popular with many women detainees, who preferred having access to the larger male gym which had a greater range of equipment.

"Previously we could go up to the main gym once a week, not anymore, not many people are motivated to use the women's gym, there's not much up there, up in the men's gym they have everything, rowing machines, all the equipment, it was really fun, we looked forward to going there." [woman detained at AMC 2013]

"The women's gym has just a few things, an exercise bike and a big chunky thing in the corner with no instructions on how to use it. I thought about it and thought 'I really need to' but I haven't been motivated." [woman detained at AMC 2013]

"We used to be able to go up to the big gym once a week, now we can't even go to that." [woman detained at AMC 2012]

7.7.3 While it appears that male detainees have access to a better equipped gym, and to the exercise oval, their access is timetabled and shared by different cohorts, whereas

women may access the smaller gym and outdoor areas whenever they are not locked down.

- 7.7.4 There is currently no fitness instruction provided at AMC for male or female detainees. A Tai Chi course has been held for women, but has not always been well attended. A number of women complained about weight gain while in prison, and suggested that a fitness instructor would assist their motivation to exercise and improve their physical and mental health:

"Exercise should be structured. No one is sure how to use the gym. Women just walk around. It would be great to have someone instructing in aerobics or personal training. We need motivation and structure, the gym is intimidating." [woman detained at AMC 2013]

"They could pay for an instructor to get us all motivated to do exercise. You know we put this to them...I reckon if we had that instructor [we would] put aside everything, everyone would do it. Because everyone wants to get fit, no-one wants to be fat. You put your differences aside and do the class." [woman detained at AMC 2012]

- 7.7.5 It may be possible to establish a program relying on volunteer fitness instructors, for example through placements of students studying physiology or fitness programs at universities or CIT. Another alternative would be to install a DVD player and screen in the women's gym and provide women with fitness DVDs that could be played on demand.

Recommendation 44: That ACTCS consider providing regular fitness instruction to women detainees to improve their physical and mental health. The option of using student volunteers could be considered.

7.8 Recreational activities

- 7.8.1 Women are provided with art and craft instruction one morning each week as part of the education program. This was generally valued by the women, but they expressed a desire for more craft and recreational activities and materials.

"We need practical things to do, like beading or leatherwork." [woman detained at AMC 2013]

"We have an art class, but even then it is still limited, like sometimes half the stuff isn't available or is used up. We look forward to it, you know? Beads were bought a year or two ago, but each different officer has a different idea about whether we can have them or not." [woman detained at AMC 2013]

"Last week a lady from the Hep C Resource Centre came to do craft, with heaps of good supplies for a morning, which was good, other than that there is nothing." [woman detained at AMC 2013]

- 7.8.2 Although women are not necessarily systemically disadvantaged in their access to recreational opportunities, it appears that further recreational activities would assist to constructively occupy women at the AMC, given their more restricted access to employment and other opportunities.

- 7.8.3 At Emu Plains and Dillwynia prisons in NSW, women who are not employed may participate in knitting and sewing items for charities that are sold to raise funds or donated, for example quilts and pillow cases donated to babies and children in hospital. These programs are supervised by volunteers and use materials provided by charities. Women detainees we spoke to who were engaged in these programs appreciated the opportunity to contribute to their community in this way. It appears that there would be scope for engaging community organisations and charities in similar programs for women at the AMC.
- 7.8.4 ACTCS report that it is currently applying to Volunteering ACT for membership, which would provide access a greater range of skilled volunteers. This is a positive development.

Recommendation 45: That ACTCS consider opportunities to enlist community volunteers to facilitate constructive activities for women, including activities that allow women detainees to contribute positively to the community.

7.9 Motivation and Structure

- 7.9.1 One issue which has been raised by ACTCS and a number of stakeholders as an obstacle to providing a structured day is the apparent lack of motivation of many women detainees to participate consistently in education, programs, employment or activities arranged for them, or to take initiative to use facilities (such as the gym and tennis area) provided.
- 7.9.2 This is consistent with the information provided by ACTCS to the Knowledge Consulting Review, which stated that:
- [D]ue to the transient nature (the majority of female detainees are remandees) and small number of female detainees, the women are generally less inclined to avail themselves of opportunities. Similarly, while employment is offered in grounds maintenance, general cleaning duties and manning the Visitors coffee shop as barista's, the low number of women and common lack of interest has resulted in these positions being taken up by men when the female population cannot or is not interested in participating.*²⁶
- 7.9.3 The Knowledge Consulting Report made a formal finding: "That there is a challenge in achieving motivation by female detainees to participate in programs and employment."²⁷ No recommendations were made in relation to this issue.
- 7.9.4 Many women report that they spend much of their time in the cottages watching television, and that they are not required to dress for 'muster' (where detainees are counted), so will often go back to bed after the distribution of medication.
- 7.9.5 One woman detainee explained that:

²⁶ Ibid 144-145.

²⁷ Ibid 145.

"Lots of women stay in cabins until late, no motivation to get up, we just visit each other and watch TV...Most of the time we are just in the cottages by ourselves, the officers only visit when they need to, for escorts." [woman detained at AMC 2013]

7.9.6 Another said:

"Nothing to do here that's why people are always fighting. They have to have something to do, get a job, get work. People complain that there's no jobs, but when they get a job, they don't do them. I think they are lazy." [woman detained at AMC 2013]

7.9.7 One interview participant stated that:

"There are no consequences for failing to engage. There is so much freedom. But then the women whinge about this!"

7.9.8 While in other women's prisons such as those in NSW there is a proportion of detainees who choose not to engage in activities or work, the structure of incentives at these prisons means that most women prefer to participate in employment, education or other activities.

7.9.9 A number of factors have been suggested that influence the particular culture and motivational issues in the women's area at the AMC.

Human Rights as an Obstacle to Structured Day

7.9.10 Some corrections staff and service providers suggested that human rights requirements meant that no real routine could be established for women, as it would breach their human rights to impose rules regarding getting out of bed or getting dressed at a set time, or to place any limits on television viewing. Women detainees also appear to have the same understanding of their human rights. One interview participant noted that:

"It is not uncommon for women to say 'you can't be made to get out of bed, out of our pj's because that's a breach of our human rights'. Accordingly, lots of the officers hate the whole language of human rights. They have human rights thrown at them constantly by the women."

7.9.11 This is an unfortunate misunderstanding of human rights principles, which require that detainees be treated humanely and that remandees not be forced to work, but respect the need for prisons to have structure, rules and routine for the benefit of detainees.

7.9.12 As Coyle notes:

Prisoners should not have to spend their days in idleness or boredom. This is important for their own personal wellbeing and also for the smooth management of the prison: prisoners who are not kept occupied are more likely to become depressed and disruptive.... However, there is also a much more positive reason for providing prisoners with meaningful work. Some people become involved in criminal activities because they have no legitimate form of income, often because they cannot find employment. This

*may be because they have never experienced regular work, so have never learnt the discipline which is necessary to follow a regular regime each day.*²⁸

- 7.9.13 ACTCS acknowledge that human rights are not the primary obstacle to providing a more structured day, but there are concerns that correctional staff would face hostility and resistance from women if they were to try to impose such requirements. ACTCS note that while there are a range of education courses and programs offered, it would not currently be possible to fill the long hours out of cells with constructive activities, and thus it would not be helpful to require women to dress and leave their cabins each morning. They suggest that this situation may be improved by the provision of some form of industry for women, as discussed above.
- 7.9.14 While it would be counterproductive and unnecessary to physically force women to follow a routine, it appears that participation could be improved through appropriate use of incentives and consequences in the women's area. As one service provider noted "we don't want a militaristic regime, but a compassionate structured day."

Encouraging Participation

- 7.9.15 At present it appears that the current regime in the women's area does not contain sufficient incentives to encourage women to participate in programs, work and activities. While women ultimately need to take responsibility for their own rehabilitation, significant encouragement may be needed to change patterns of behaviour, and self concepts that have developed over many years.
- 7.9.16 One constraint faced by ACTCS is that most women are accommodated in cottages from their induction, and do not have the incentive to work towards lower security classification so that they can move to this desirable accommodation. For male detainees, there has been greater incentive to move to cottage accommodation, although this has been affected by shortages of beds within the male precinct which has made such movements more difficult.
- 7.9.17 Nevertheless, one area where incentives could be used more effectively is the payment of wages for participation in education and programs. The Corrections Management (Prisoner Remuneration) Policy 2009²⁹ provides that:

*Attendance at approved programs will be monitored and recorded through the confirmation function in Prisoner Electronic Diary entries. Prisoner payments will then be made on the number of confirmed hours the prisoner has spent in approved activities at the identified level of remuneration.*³⁰

- 7.9.18 However, program staff inform us that in practice women are paid a wage for participation if they enrol in courses, but that this wage is not reduced if women fail to attend without reasonable excuse, as it is likely to be administratively costly to check attendance and make wage adjustments. Although we appreciate that it may impose an additional administrative cost, it appears that this accountability could provide significant benefits in maximising attendance at programs or courses.

²⁸ Coyle, above n 20, 91.

²⁹ Notifiable instrument NI2009-153, made under *Corrections Management Act 2007* (ACT) s 14(1).

³⁰ Ibid 3.

- 7.9.19 In addition, consideration could be given to establishing a system of incentives and privileges that are not available to all women but are earned through participation in programs, work and education and adherence to a desired routine. This could be access to a list of additional items on a buy ups list, or access to desirable craft activities or materials (mentioned by many women). Women should be consulted about any scheme of incentives to ensure that it is effective.
- 7.9.20 As discussed at Part 7.2 above, improvements to case management through motivational interviewing and working with women to regularly review the plan for their rehabilitation and throughcare may assist to encourage motivation.
- 7.9.21 Another more resource intensive option would be to establish a full Therapeutic Community within one or more of the women's cottages. These residential communities combine intensive rehabilitation programs with activities and a strict routine to develop a cohesive community. Program facilitators create a structured and disciplined environment with corrections officers playing a supporting role.

Recommendation 46: That ACTCS review current practice and accountability regarding payment of wages for participation in programs, work and education, to ensure that the payments work effectively as incentives.

Part 8. Individual Needs

8.1 Introduction

- 8.1.1 A range of legislation in the ACT, including the *HR Act* and *Discrimination Act*, and related Commonwealth laws,¹ oblige ACT Government agencies to respect and protect the right to equality by providing services without discrimination, and in a manner that takes into account individual needs. Section 8 of the *HR Act* provides that all people should be treated equally before the law, and everyone should be able to enjoy his or her rights without distinction or discrimination of any kind. This right to equality is entrenched in ACT law by the *Discrimination Act* which requires that no one be treated unfavourably in specified areas of public life because of a protected attribute, including disability (such as mental health), race, sex, gender identity or sexuality.
- 8.1.2 Section 27 of the *HR Act* provides special protection for minority groups. The UN Human Rights Committee has identified the equivalent of this right in the ICCPR as being distinct from, and in addition to, other human rights.² It also highlights the need for substantive equality, as opposed to mere formal legal equality. Section 27 is designed to ensure the long-term survival of cultural minorities and recognises the diversity of humanity. These rights of minorities cover enjoying culture, declaring and practising religion, and to speak or use their language.
- 8.1.3 The UN Convention on the Rights of Persons with Disabilities further provides that, in order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided for people with disabilities.³ Reasonable accommodation is the provision of adjustments that remove barriers to full participation and equal opportunity. The Convention also recognises that women with disabilities are subject to multiple forms of discrimination. The Standard Guidelines for Corrections in Australia note the need for detainees to be appropriately managed according to their individual needs in regard to: health, any intellectual disability or any cultural or linguistic issues.⁴
- 8.1.4 In this Part the particular needs of women detainees with disabilities, older women, women from Culturally And Linguistically Diverse backgrounds and from the gender and sexually diverse community will be considered.

¹ For e.g., *Disability Discrimination Act 1992* (Cth); *Sex Discrimination Act 1984* (Cth); *Racial Discrimination Act 1975* (Cth); *Age Discrimination Act 2004* (Cth).

² Human Rights Committee, *General Comment No 23: The Rights of Minorities*, 50th sess, UN Doc CCPR/C/21/Rev.1/Add.5 (4 August 1994) [1].

³ *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) art 5.

⁴ *Standard Guidelines for Corrections in Australia* (Australian Institute of Criminology, rev 2012) [1.42].

8.2 Aboriginal and Torres Strait Islander Women

Relevant standards

HR Act

Section 8 Recognition and equality before the law

8(1): Everyone has the right to recognition as a person before the law.

8(2): Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.

8(3): Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

Section 27 Rights of Minorities

Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.

Bangkok Rules

Rule 54: Prison authorities shall recognise that women prisoners from different religious and cultural backgrounds have distinctive needs and may face multiple forms of discrimination in their access to gender- and culture-relevant programs and services. Accordingly, prison authorities shall provide comprehensive programs and services that address these needs, in consultation with women prisoners themselves and the relevant groups.

Rule 55: Pre-and post-release services shall be reviewed to ensure that they are appropriate and accessible to indigenous women prisoners and to women prisoners from ethnic and racial groups, in consultation with the relevant groups.

8.2.1 Aboriginal and Torres Strait Islander detainees, including women, are significantly overrepresented in custody across Australia. In 2012-13 the Aboriginal and Torres Strait Islander detainees made up 17.5 % of the daily average population at the AMC – a rise of 2.1% from the previous year.⁵ The most recent census reported that Aboriginal and Torres Strait Islander people make up only 1.5% of the ACT population.⁶ However, in 2012-13 women identifying as Aboriginal and Torres Strait Islander represented approximately 14% of the average daily population of women detainees at the AMC.⁷ Although elsewhere in Australia the rate of incarceration of Aboriginal and Torres Strait Islander women has further increased over recent years, the ACT has

⁵ Data supplied by ACTCS

⁶ Australian Bureau of Statistics, 2011 Census Fact Sheet, Australian Capital Territory – People <http://www.censusdata.abs.gov.au/census_services/getproduct/census/2011/quickstat/8acte>.

⁷ Based on daily incarceration rates for women (sentenced and un-sentenced); See ACT Department of Justice and Community Safety, *Annual Report 2012-2013* (ACT Government, 2013), 106-107, Tables 22 and 23.

not followed this trend, with the rate of Aboriginal and Torres Strait Islander women at AMC decreasing from 2011-12.⁸

8.2.2 In considering Aboriginal over-representation in custody, the Royal Commission into Aboriginal and Torres Strait Islander Deaths in Custody (RCIADIC) acknowledged the central role of the history of “deliberate and systematic disempowerment of Aboriginal people starting with dispossession from their land and proceeding to almost every aspect of their life.”⁹ This overrepresentation reflects the multilayered social and economic disadvantages faced by Aboriginal and Torres Strait Islander people.

8.2.3 As noted by the Aboriginal and Torres Strait Islander Social Justice Commissioner in the Social Justice Report 2013:

*The rate of Aboriginal and Torres Strait Islander women in custody has grown more quickly than any other demographic group during the past 20 years. Between 2000 and 2010 alone there has been a 59% increase in Aboriginal and Torres Strait Islander female imprisonment, compared to a 35% increase for Aboriginal and Torres Strait Islander males. Aboriginal and Torres Strait Islander women are 21.5 times more likely to be imprisoned than their non-Indigenous counterparts...This group of women faces a very high level of homelessness, mental health treatment needs and consequent requirement for holistic post-release support services.*¹⁰

8.2.4 Aboriginal and Torres Strait Islander women are further disadvantaged by high levels of family violence, abuse and associated trauma.¹¹ In her report on Aboriginal and Torres Strait Islander victims of family violence, the ACT Victims of Crime Coordinator outlined that in 2004 “one in five Indigenous respondents in the ACT had experienced abuse or violent crime, or had a member of their family in jail. Twenty nine percent had experienced trouble with the police, 17% had witnessed violence and 32% had experience of alcohol or drug problems.”¹² In a recent survey of Aboriginal and Torres Strait Islander women in prison in Victoria, “nearly three-quarters of the women reported that they had been victims of child abuse, mostly sexual abuse, and 78% reported being victims of violence as an adult”.¹³ Similar disadvantage was found in a 2002 NSW survey.¹⁴ Many of the women in the NSW study reported using drugs as a response to child and adult abuse and unresolved trauma.¹⁵ Although there is no equivalent data for the ACT, it is likely that Aboriginal and Torres Strait Islander women in ACT prisons have also been subject to unacceptably high levels of victimisation.

⁸ The JACS Annual Report shows an average daily female Indigenous population of 1.93 women at the AMC in 2012-13 down from an average of 2.37 women in 2011-12; See Ibid.

⁹ Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 1, 1.46].

¹⁰ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice and Native Title Report 2013* (Australian Human Rights Commission, 2013), 54 (citations omitted).

¹¹ See e.g. ACT Victims of Crime Coordinator: *We Don't Shoot Our Wounded...* (ACT Government, 2009).

¹² Ibid 18.

¹³ James Ogloff et al, *Koori Prisoner Mental Health and Cognitive Function Study: Final Report* (Centre for Forensic Behavioural Science, 2013), 35.

¹⁴ See Rowena Lawrie, *Speak out, speak strong: Researching the needs of Aboriginal women in custody* (Aboriginal Justice Advisory Council, 2002).

¹⁵ Ibid 49-50; See further ACT Victims of Crime Coordinator, above n 11, 43.

- 8.2.5 Imprisonment risks further disadvantaging Aboriginal and Torres Strait Islander women, by disconnecting them from their children, families, culture and community supports; damaging future employment prospects and creating a risk of institutionalisation.
- 8.2.6 In the long term, an approach that focuses on justice reinvestment and early intervention to redress disadvantage and support self-determination in Aboriginal and Torres Strait Islander communities is likely to be the most effective way to address the systemic causes of their overrepresentation in the ACT justice system.¹⁶
- 8.2.7 At the same time, where Aboriginal and Torres Strait Islander women are incarcerated, it is critical that they are given the best chance of rehabilitation. The higher rates of recidivism and re-incarceration for Aboriginal and Torres Strait Islander women than non-Indigenous women across Australia, indicates that more targeted interventions may be required to meet the needs of these women.¹⁷
- 8.2.8 The 2002 Social Justice Report recognises that:
- [T]here has been a growing awareness in recent years of the specific cultural needs of Indigenous women in corrections. It is beginning to be accepted that while much offending behaviour is linked to social marginalisation and economic disadvantage, the impact of non-economic deprivation, such as damage to identity and culture, as well as trauma and grief, have a significant relationship to offending behaviour. Effective crime prevention and pre- and post-release programs are beginning to recognise the need for Indigenous self-determination and participation, with a focus on cultural restoration and healing.*¹⁸
- 8.2.9 The right to equality requires that custodial and post release programs and services meet the specific criminogenic needs of Aboriginal and Torres Strait Islander women, and that they are appropriately adapted to be responsive to their cultural requirements.
- 8.2.10 However, although disproportionately represented in custody, the actual numbers of Aboriginal and Torres Strait Islander women in custody at the AMC at any one time are low (a daily average of less than two Aboriginal and Torres Strait Islander women),¹⁹ and they represent a small subset of the already marginal population of women within the prison. These small numbers create a particular challenge for the AMC in meeting their distinct needs. In contrast in 2012-13 the daily average number of Aboriginal and Torres Strait Islander men in the AMC (both sentenced and un-sentenced detainees) was approximately 45,²⁰ allowing greater opportunity to provide culturally appropriate programming and activities.

¹⁶ See further the Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013).

¹⁷ Lorana Bartels, 'Indigenous women's offending patterns: A literature review', (Australian Institute of Criminology Reports: Research and Public Policy Series 107, 2010), 26-27.

¹⁸ Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report: 2002* (Human Rights and Equal Opportunity Commission, 2002), 136.

¹⁹ See ACT Department of Justice and Community Safety, above n 7, 106-107.

²⁰ Ibid.

Current provision for Aboriginal Women and Torres Strait Islander Women at AMC

- 8.2.11 ACTCS demonstrates a commitment to meeting the human rights of Aboriginal and Torres Strait Islander detainees through a number of avenues including: having Indigenous identified positions; recognising cultural days; and through targeted education courses. ACTCS has also developed a number of partnerships with identified Aboriginal and Torres Strait Islander organisations to provide support for Aboriginal and Torres Strait Islander women in the AMC.
- 8.2.12 Under the ACT Aboriginal and Torres Strait Islander Justice Agreement 2010-13, ACTCS committed to improving programs and services for all Aboriginal and Torres Strait Islander detainees at the AMC and convened an Aboriginal and Torres Strait Islander Working Group to review these issues and identify gaps in service provision.²¹ The review report prepared by this group has not been made available to the public or the Commissioner.²² However, ACTCS report that this work has informed service delivery to Aboriginal and Torres Strait Islander clients since that time.
- 8.2.13 The Corrections Management (Aboriginal and Torres Strait Islander Detainees) Policy 2011 (No. 2)²³ recognises that Aboriginal and Torres Strait Islander detainees have particular cultural needs that differ from the wider prisoner population, and affirms ACTCS' commitment to the implementation of the recommendations of the RCIADIC Report regarding the safe care of Aboriginal and Torres Strait Islander people in correctional centres.²⁴ The Policy makes particular provision for cultural programs, sentence management and the recognition of culturally significant events including the National Aboriginal and Islander Day of Observance Committee (NAIDOC) week. It also provides that all correctional officers will receive Indigenous cultural awareness training and refresher courses. The Commissioner understands that this training is undertaken on a regular basis.

Case management

- 8.2.14 Aboriginal and Torres Strait Islander women have access to an Indigenous Liaison Officer (ILO) at the AMC, who meets with them on induction, and is a member of the Sentence Planning Group, or Remand Review Group for these detainees. The current ILO is an Aboriginal woman. Case management files reviewed by the Commissioner show the ongoing involvement of the ILO with Aboriginal and Torres Strait Islander women detainees, meeting regularly with them, and having input into their management.

²¹ ACT Department of Justice and Community Safety, Aboriginal and Torres Strait Islander Justice Agreement between the ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body on behalf of the Aboriginal and Torres Strait Islander community in the ACT 2010-2013 (ACT Government, 2010), Appendix A: Action Plan, 36 [Action items 32 and 33].

²² We understand that the Working Group prepared a report entitled 'Working Together' referred to in Nerelle Porocho, *We're Struggling in Here!* (Winnunga Nimmityjah Aboriginal Health Service, 2011) 33-34. ACTCS state that this is an internal document not available for public comment.

²³ Notifiable instrument NI2011-723, made under *Corrections Management Act 2007* (ACT) s 14(1).

²⁴ *Ibid* 1.

- 8.2.15 The ILO is also notified when Aboriginal or Torres Strait Islander women are subject to segregation, or when they are placed in the High Needs Cottage or Crisis Support Unit, so that additional support may be provided to these women.
- 8.2.16 In addition to the ILO, the Aboriginal Official Visitor (also currently an Aboriginal woman) visits Aboriginal and Torres Strait Islander women at the AMC, and seeks to resolve their complaints and concerns with AMC management. As set out further in Part 4.5.11, Official Visitors play an important role in the oversight of the prison, and provide direct reports to the Minister for Corrections.
- 8.2.17 There are two Indigenous Probation and Parole officers who work with both Community Corrections clients and detainees, and ACTCS report that they are trialing a new position titled Aboriginal Client Support Officer in order to build better links between ACTCS and the community.
- 8.2.18 The involvement of the ILO and the Aboriginal Official Visitor in the case management and oversight of conditions of detention of Aboriginal and Torres Strait Islander women at AMC are positive practices, which better recognise the importance of particular needs of Indigenous women.

Programs

- 8.2.19 The ACT Aboriginal and Torres Strait Islander Justice Agreement provides that ACTCS will ensure that programs cater to the needs of Aboriginal and Torres Strait Islander clients, and that they will promote Aboriginal and Torres Strait Islander trainers to co-facilitate programs where feasible.²⁵
- 8.2.20 The currently in force Corrections Management (Aboriginal and Torres Strait Islander Detainees) Policy provides that:
- Recreational programs and activities that are culturally appropriate are provided within the activities centre, designated compound areas, and the Women's Community Centre. Representatives of community-based organisations may be granted access to the AMC to conduct programs and/or education for Aboriginal and Torres Strait Islander detainees.*²⁶
- 8.2.21 Winnunga Nimmityjah Aboriginal Health Service provides a Social and Emotional Wellbeing Program at the AMC, which offers individual case management and advocacy for Aboriginal and Torres Strait Islander men and women at the AMC as part of its holistic health service model.
- 8.2.22 Relationships Australia have facilitated a 'yarning circle' cultural program for Aboriginal and Torres Strait Islander men at the AMC over eight week cycles since 2011. The yarning circle focused on rebuilding connections with partners and families. This program was not able to be provided in this format for Aboriginal and Torres Strait Islander women because of their small numbers at AMC. However, Aboriginal and Torres Strait Islander women at AMC have access to individual counselling with Indigenous counsellors through Relationships Australia. These sessions are offered

²⁵ ACT Department of Justice and Community Safety, above n 21, Appendix A: Action Plan, 36 [Action item 32].

²⁶ Notifiable instrument NI2011-723, 2.

fortnightly for women over a six week period, although there is the ability to continue with further sessions if requested and counsellors are available.

8.2.23 A new initiative which commenced in December 2013 is an Elders and Community Leaders Visitation Program, which is intended to engage Aboriginal elders and other community leaders with the female and male detainees in the prison in order to provide connection to culture and community, and provide guidance and incentive to detainees to address their offending behaviour.

8.2.24 The current stated aims of this program are to:

- Provide cultural advice to detainees and ACTCS staff;
- Assist detainees with establishing cultural connections for when they are released from the AMC;
- Provide detainees with news and information on cultural issues;
- Advise and assist detainees in relationship building with their community;
- Assist, where possible, with personal and family matters, including family history research, when requested by a detainee;
- Provide spiritual support and guidance;
- Provide suggestions and advice to the General Manager and the Executive Director for ACTCS on provision of services to Aboriginal and Torres Strait Islander detainees.²⁷

8.2.25 The establishment of the Elders and Community Leaders Visitation Program is a positive practice which is likely to reduce cultural isolation for Aboriginal and Torres Strait Islander women at the AMC and to assist their transition back into the community. It provides a means of addressing the spiritual needs of Aboriginal and Torres Strait Islander women, which may not be well met through the current mainstream chaplaincy program. Importantly, the program will also provide a valuable source of cultural expertise and advice to ACTCS regarding issues affecting Aboriginal and Torres Strait Islander detainees at the AMC.

Limitations on programming

8.2.26 Aboriginal and Torres Strait Islander women at the AMC have access to some specific individual services to maintain connection to culture, through the Relationships Australia Indigenous counseling and the Winnunga Social and Emotional Wellbeing program. This access will be further improved with the addition of the new Elders and Community Leaders Visitation program.

8.2.27 However, other criminogenic needs of Aboriginal and Torres Strait Islander women are addressed through mainstream group rehabilitation programs. It is not clear that these

²⁷ ACTCS: Elders and Community Leaders Visitation Program, December 2013, provided to the Audit in draft, 5.

rehabilitation programs offered to women at the AMC have been evaluated to determine whether they meet the specific needs of Indigenous women.

- 8.2.28 The small and fluid population of Aboriginal and Torres Strait Islander women at the AMC makes it very difficult to run Indigenous specific rehabilitation programs, such as the Marumali healing program offered to Koori women in Victoria.²⁸ However, it is important that the programs that are provided meet the criminogenic needs of Aboriginal and Torres Strait Islander women and are culturally safe and accessible.
- 8.2.29 Robin Jones suggests that Aboriginal and Torres Strait Islander detainees have particular criminogenic needs including acculturation/deculturation (not feeling part of either 'white' culture or Aboriginal culture); experience of discrimination; distrust of authority and the need to reconnect with spirituality and Aboriginal heritage.²⁹ She also notes the differing program methodology (including experiential elements such as art, song, dance and storytelling) that is likely to be more culturally appropriate for Indigenous detainees, and confirms the importance of programs being designed and facilitated in partnership with Indigenous experts.³⁰
- 8.2.30 Jones further observes that programs offered to mixed cultural groups can be surprisingly successful in meeting the criminogenic needs of Indigenous detainees, and in fostering reconciliation and cross-cultural understanding, provided that the needs of Indigenous detainees are prioritised:

*[O]ne key ingredient is clear if the needs of Indigenous offenders are to be met: the focus, perspective and values espoused by the program, and the program's setting and activities must be Indigenous first, regardless of the actual proportion of Indigenous offenders participating in the program'*³¹

- 8.2.31 Accordingly, it may be possible to adapt programs to be offered to all women detainees at the AMC that would address particular cultural needs of Aboriginal and Torres Strait Islander women, and improve understandings and relationships between Indigenous and non-Indigenous detainees. It would be appropriate to seek Aboriginal and Torres Strait Islander expert input regarding the mainstream rehabilitation programs that are currently offered to women at the AMC, to consider whether elements of these programs could be adapted to make them more culturally appropriate and responsive to Aboriginal and Torres Strait Islander women. The new Elders and Community Leaders Visitation program is intended to provide advice of this kind to ACTCS and the leaders recruited through this program would be a valuable source of cultural expertise in this area. ACTCS may also benefit from discussions with the ACT Indigenous Elected Body about these programs.

²⁸ Victorian Equal Opportunity and Human Rights Commission, *Unfinished business: Koori women and the justice system* (Victorian Equal Opportunity and Human Rights Commission, 2013), 72.

²⁹ Robin Jones, 'Indigenous Programming in Correctional Settings: A national and international literature review' (Paper presented at the Best Practice Interventions in Corrections for Indigenous People Conference, Sydney, 8-9 October 2001), 7.

³⁰ Ibid 10.

³¹ Ibid 9.

Recommendation 47: That ACTCS seek the ongoing advice of the Elders and community leaders, including those appointed under the Elders and Community Leaders Visitation Program about rehabilitation and other programs offered to women at AMC, and whether these could be adapted to better meet the needs of Aboriginal and Torres Strait islander women detainees.

Education

- 8.2.32 The AMC through its education provider Auswide provides a specific accredited education program that has been developed to meet the needs of Aboriginal and Torres Strait Islander women and men leading to a certificate II in Conservation and Land Management and Indigenous Art. Several Aboriginal and Torres Strait Islander women have enrolled in this course. An Aboriginal woman detainee was approved to have access to paint and canvas to prepare artworks for this course and has widely exhibited and sold her artworks. We understand that this program is being expanded to include a Certificate I in Tourism (Australian Indigenous Culture) training.
- 8.2.33 These accredited education modules for Aboriginal and Torres Strait Islander women, which focus on Indigenous art and culture are a positive practice providing relevant education options for Indigenous detainees, in addition to the general education courses.

Cultural Events and connection to Community

- 8.2.34 Events are regularly held at the AMC to recognise dates of cultural significance for Aboriginal and Torres Strait Islander people. These include the National Aborigines and Islanders Day Observance Committee (NAIDOC) Week in July; National Sorry Day in May; and National Reconciliation Week in June. Community elders are invited to attend these events at the AMC, and Aboriginal and Torres Strait Islander men and women detainees have been allowed to attend these celebrations together to ensure that Aboriginal and Torres Strait Islander women are not excluded from these important events. An Aboriginal woman detainee was employed to assist in the preparation for the NAIDOC celebration, and provided a valuable contribution in this role.
- 8.2.35 The recognition and celebration of these culturally significant events for all Aboriginal and Torres Strait islander detainees is a positive practice.

Conclusion

- 8.2.36 Although Aboriginal and Torres Strait Islander women are significantly overrepresented in custody in the ACT, they represent a very small percentage of the total detainee population at the AMC, which presents particular challenges in meeting their specific needs.
- 8.2.37 ACTCS demonstrates a commitment to meeting the human rights of Aboriginal and Torres Strait Islander detainees in many ways through its Aboriginal and Torres Strait Islander Policy. These include Indigenous identified positions in case management and liaison; recognition of cultural days; and targeted education courses. ACTCS has also developed partnerships with agencies such as Winnunga Nimmityjah Aboriginal Health Service and Relationships Australia, to provide support for Aboriginal and Torres Strait Islander women at the AMC. The development by ACTCS of an Elders and Community Leaders Visitation Program is a positive practice, which should offer further

opportunities for Aboriginal and Torres Strait Islander women to develop or maintain their connection to culture, and to access spiritual guidance and support in custody.

- 8.2.38 This program also offers a valuable source of cultural expertise for ACTCS which should be drawn upon to review the general rehabilitation programs offered to women at the AMC, in order to consider whether they could be improved to better meet the responsiveness needs of Aboriginal and Torres Strait Islander women at the AMC.

8.3 Women with Disabilities

Relevant standards

HR Act

Section 8 *Recognition and equality before the law*

8(1): *Everyone has the right to recognition as a person before the law.*

8(2): *Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.*

8(3): *Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.*

United Nations Convention on the Rights of Persons with Disabilities

Article 3 *General principles*

The principles of the present Convention shall be:

(b) *Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;*

(c) *Non-discrimination;*

(d) *Full and effective participation and inclusion in society;*

Article 5.3: *In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.*

Article 6.1: *States Parties recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms.*

Article 13.2: *In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.*

Article 14.2: *States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the present Convention, including by provision of reasonable accommodation.*

Article 15.2: *States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.*

Background

- 8.3.1 Because of potential vulnerabilities, the imprisonment of people with disabilities can comprise a disproportionately harsh punishment compared to other detainees. The UN Office on Drugs and Crime (UNODC) notes that detainees with disabilities may be particularly vulnerable in prisons and need additional care and protection.³² As outlined in Article 14.2 of the *Convention on the Rights of Persons with Disabilities*, reasonable accommodation should be provided for people with disabilities to ensure they are afforded guarantees in accordance with international human rights law. This is further reinforced by section 8 of the *HR Act*, and the *ACT Discrimination Act*.³³ According to the *Standard Guidelines for Corrections in Australia*, detainees with disabilities “should have access to prison services and programs, and the opportunity to participate equally in prison life as far as possible”.³⁴ They should also be “accommodated in a safe, secure environment which provides them with assistance to adjust to the prison environment, and with programs which address their individual needs and their offending behaviours where possible”.³⁵ The human rights raised in relation to access to family as outlined in Part 5.2 is particularly pertinent for women detainees and incorporates the right of visitors with disability when visiting detainees.
- 8.3.2 In its recent report on people with disability and access to the criminal justice system, the Australian Human Rights Commission (AHRC) outlined that, “while it is known that the level of disability is high in Australian prison populations, many people with disabilities are not identified as having a disability on entry into, or while in, prison”. It stated further that “assessment for disability in prison is patchy and not consistently measured”.³⁶ In its Australia wide consultations with people with disabilities and practitioners from the justice system, it was informed that there was often limited access to communication, support and appropriate adjustments for people with disabilities in correctional facilities, and that detainees with disabilities were often unable to participate in prison and pre-release programs, resulting in delays and difficulties for them to obtain parole.³⁷

Mental Health

- 8.3.3 The mental health of women detainees in the AMC is discussed in this report at Part 6.11. As previously outlined, on Australian Institute of Health and Welfare indicators, women detainees had higher incidences of mental health problems than men. Women

³² United Nations Office on Drugs and Crime (UNODC), *Handbook on Prisoners with Special Needs* (United Nations, 2009) 4.

³³ See *Nester v ACT Fire Brigade* [2004] ACTDT 2 (10 March 2004).

³⁴ *Standard Guidelines for Corrections in Australia* (Australian Institute of Criminology, rev 2012), Guiding Principles for the Management of Prisoners [2.64].

³⁵ *Ibid* [2.65].

³⁶ Australian Human Rights Commission, *Equal before the Law: Towards disability justice strategies* (February 2014) 28.

³⁷ *Ibid* 29.

detainees, for example, were more likely to report high (19% compared to 15%), and very high (25% and 14%) psychological distress levels, and a lower proportion reported low levels of distress (36% compared to 50%).³⁸ Twenty-eight percent of women detainees, as compared to 20% of male detainees, reported currently taking medication for a mental health disorder,³⁹ and almost twice the proportion of women than men reported a history of self harm (28% compared with 15%), and recent thoughts of self harm (19% and 10%).⁴⁰ While these issues are not confined to the ACT, these statistics reveal the specific challenges of providing suitable services for women detainees.

Physical disabilities

- 8.3.4 Detainees with physical disabilities can be particularly vulnerable within prison environments, being easy targets for abuse and violence.⁴¹ This group of women often need specific health services from allied services, such as occupational therapy or physiotherapy, which can sometimes be difficult to access in prisons. Detainees with hearing or visual disabilities may also need special assistance to access some facilities or education programs. Detainees with visual disabilities, for example, may not be able to use the library unless recorded materials or books in Braille are available. Detainees with hearing disabilities may need access to interpreters or a hearing loop to participate in prison activities, including counselling and education programs, or to access legal advice.

Cognitive disability

- 8.3.5 Cognitive disabilities include intellectual disability, acquired brain injury and autism disorders, or any impairment that affects a person's understanding, reasoning, judgement, learning or memory, including dementia. According to the UNODC detainees with cognitive disability remain the most invisible and neglected of all detainees, and there often is inadequate provision for their needs in prison.⁴² Keeping detainees with cognitive disabilities safe can often be very difficult, as generally prisons are settings where there is a high risk of victimisation, with these detainees being particularly vulnerable to physical violence and abuse from other offenders.
- 8.3.6 Induction programs are particularly important for detainees with disabilities as they often are used to determine the level and type of support that a detainee requires, and they provide information to detainees about how to negotiate prison life. Detainees with cognitive disabilities can experience problems accessing and understanding prison information such as basic information, prison policies, and how to make a complaint.⁴³ This may lead to them being brought up on disciplinary charges as a result of not understanding the rules, and may have a negative impact on their opportunity for parole. It is therefore important that induction programs are accessible

³⁸ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2012* (Australian Government, 2013) 39.

³⁹ Ibid 43.

⁴⁰ Ibid 47.

⁴¹ UNODC, above n 32, 45.

⁴² Ibid 11.

⁴³ See for e.g. Nancy Loucks and Jenny Talbot, *No One Knows: Identifying and supporting prisoners with learning difficulties and learning disabilities: The views of prison staff* (Prison Reform Trust, 2006).

for detainees with disabilities, including being available in formats that are understandable to them.

- 8.3.7 Prison is also more likely to lead to a cycle of criminal and antisocial behaviour post-release for detainees with cognitive disabilities, as they are more susceptible to the influence of negative role models in the correctional environment.⁴⁴ Community support services therefore are particularly important for people with cognitive disabilities leaving prison. Without such services, they will be particularly vulnerable and at high risk of re-offending and further incarceration.⁴⁵

Rehabilitation Programs

- 8.3.8 Human rights standards require that reasonable adjustments are provided to detainees with disabilities, including enabling them to access rehabilitation and education services. As the opportunity to be given parole can rely on whether certain rehabilitation courses have been undertaken, it is particularly important that detainees with disabilities have the same opportunity to take part in these programs as other detainees. This may entail providing interpreters or hearing loops for people with hearing impairments, modifying documents to assist people with vision impairments, or providing extra support to assist detainees with cognitive disabilities to complete a program.
- 8.3.9 In a recent discrimination case the English High Court of Justice found that a detainee had been discriminated against by the Justice Department due to his intellectual disability.⁴⁶ The detainee's disability prevented him from being able to complete the available offending behaviour programs without adjustments and he had not been assisted to complete them. As a result of not being able to undergo such programs, the detainee was refused parole on a number of occasions over a period of five years. The Court found that the Department had not adequately explored how to make adjustments to existing behaviour programs for this detainee, and that steps should have been taken to provide the detainee with an opportunity to undertake some type of offending behaviour program to give him the opportunity to demonstrate his safety for release.

Current provision for women with disabilities at AMC

Induction

- 8.3.10 According to the 2011 Knowledge Consulting report, the AMC's induction process is comprehensive and AMC "makes good use of technology to communicate information to prisoners", including that a DVD is available to detainees with information on health, case management, programs, employment, discipline, grievance, and release processes.⁴⁷ The Commissioner was informed that this DVD is now out of date and has not been used for some time. New detainees undertake a number of inductions and

⁴⁴ Philip French, *Disabled Justice: The barriers to justice for persons with disability in Queensland* (Queensland Advocacy Incorporated, 2007) 101.

⁴⁵ Ibid 36.

⁴⁶ *R (on behalf of Dennis Gill) v Secretary of State for Justice* [2010] EWHC 364 (Admin).

⁴⁷ Knowledge Consulting, *Independent Review of Operations at the Alexander Maconochie Centre ACT Corrective Services* (2011) 26.

assessments when entering the AMC including a physical and mental health assessment, a Case Manager induction within seven days of reception, and an education literacy and numeracy assessment within 14 days of reception. ACTCS is piloting the use of an ability screening tool that identifies the level of individual functioning which the Commissioner welcomes and is discussed below. ACTCS does not currently screen for disability on reception, and no information is recorded on the induction form on whether a person has a disability.

Staff Training

- 8.3.11 Training for correctional officers is vital to ensure the protection of the human rights of detainees with disabilities and to reduce discrimination in prison. The Commission provides a comprehensive half day training on a broad range of disabilities for all new correctional staff at the AMC. New recruits also receive training on mental health first aid, which includes information about mental health problems, as well as how to provide help and first aid in a crisis situation. While this training is comprehensive it includes a lot of content and information about many different disabilities, and may be difficult for new recruits to fully digest, particularly if they have not had any previous contact with people with disabilities. It is also provided at a time when new recruits are required to digest a lot of new information. Consideration should be given to providing extra periodic sessions on disability to correctional staff, including specialist sessions on particular impairments when the AMC receives a detainee with that disability. This would reinforce AMC's commitment to an ongoing policy of the protection of the human rights of detainees with disabilities.

Mental Health

- 8.3.12 As outlined in Part 6.11, a new process for supporting detainees with mental health issues has been implemented in the AMC, which the Commissioner welcomes. Women detainees may be placed in the Crisis Support Unit (CSU) at times of crisis where they are at risk of harming themselves or others. However, as noted in Part 3.4 this is less than ideal as male detainees are also accommodated there and it can be very isolating, particularly if the women are there for long periods. It is important that the AMC continues to make reasonable adjustments for women accessing the CSU, including allowing women to use the staff showers, and providing a structured program of activities and a therapeutic support program on an individual basis to women. These issues should also be considered in the design of the Government's new Secure Mental Health Unit.

Physical disabilities

- 8.3.13 The design and construction of the AMC involved substantial consideration of its physical accessibility.⁴⁸ The use of colour, texture, and tactile surfaces, as well as access to natural light within the AMC assists accessibility for both older detainees and detainees with sight impairments. Many facilities and services are accessible at wheelchair height including telephones, power points and at reception in the visits processing area. The path to the visiting area within the prison has a ramp, and the area itself is on one level and is spacious enough to allow wheelchairs. The women's

⁴⁸ John Paget, *Human Rights and Prison Architecture: The Alexander Maconochie Centre from Conception to Construction* (PhD Thesis, Charles Sturt University, 2008) 269-271.

accommodation comprises only cottages, one being wheelchair accessible, including having an accessible shower and handrails in the bathroom. The living areas within the cottages are spacious and in the accessible cottage, benches are lowered in the kitchen to accommodate a wheelchair. The absence of overt security fences and razor wire around the AMC, allows views of the natural countryside for detainees, which assists with their mental wellbeing and having a non institutional atmosphere rather than an intimidating one.

- 8.3.14 The Commissioner was pleased to see that detainees have access to talking books in the library and particular books can be ordered on request. Talking books assist both detainees with low literacy levels and cognitive disabilities, as well as detainees with vision impairments. The Commissioner understands that ACTCS uses interpreters on a regular basis. This is essential for detainees with hearing disabilities to ensure they have access to legal advice and to attend rehabilitation programs, and to ensure that the AMC is human rights compliant.

Cognitive disability

- 8.3.15 The AMC has not generally screened detainees entering the AMC for cognitive disability. The 2010 AMC Inmate Health Survey found that 62% (of 80 survey participants) reported a head injury where they became unconscious, but the data was not disaggregated on a gender basis.⁴⁹ The 2012 AIHW study similarly found that 43% of respondents reported that they had received an injury or blow to the head, leading to a loss of consciousness, which is an indicator of a possible traumatic brain injury – the gender ratios was that 40% of females and 44% of males reported this factor.⁵⁰
- 8.3.16 The AMC is piloting the screening of all new detainees for intellectual disability using the Hayes Ability Screening Index (HASI). The HASI is a screening tool that was developed to provide a short and effective instrument to indicate the possible presence of intellectual disability amongst persons in contact with the criminal justice system, and to determine those who need to be referred for further full-scale diagnostic assessment.⁵¹
- 8.3.17 The Commissioner welcomes the introduction of the HASI screening for new detainees, and considers that all current detainees could also benefit from a HASI assessment. This may assist Case Managers to better ascertain the level of each detainee's capacity and to provide them with more individualised programs. Given the benefits that could come from this screening, the Commissioner considers that it would be reasonable to screen all detainees at the AMC, where appropriate over time. This would need to be undertaken in consultation with the detainees on a case by case basis. ACTCS may wish to phase this screening in over time and the women's area would be a good place to begin.
- 8.3.18 While programs and courses have a reasonable adjustment requirement to accommodate different individual learning needs and styles, the AMC does not have

⁴⁹ ACT Health, '2010 ACT Inmate Health Survey: Summary Results', *Health Series No 55* (July, 2011), 11 [3.10]

⁵⁰ Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2012* (Australian Government, 2013), 97

⁵¹ Susan Hayes, *Hayes Ability Screening Index (HASI) Manual* (University of Sydney: Department of Behavioural Sciences in Medicine, 2000) 1.

specialist programs or services for detainees with cognitive disabilities. The AMC's induction program is tailored to individual participants' knowledge, skills and capacities, as assessed by the detainees' Case Managers. However, AMC Case Managers do not have specialist knowledge in disability and there has traditionally been no formal tool to assess a detainee's cognitive capacity. This may result in programs not being suitably tailored to detainees with particular disabilities. Consideration should be given to screening detainees on reception for cognitive disabilities other than intellectual disability, including acquired brain injury, autism or dementia.

- 8.3.19 A detainee's cognitive disability may result in them being ineligible for some education programs. It is important however that these women are not disadvantaged when participating in rehabilitation programs, particularly if the completion of offending behaviour programs is considered when assessing the suitability of a detainee for parole. In undertaking this Audit the Commissioner became aware through a file note, of one woman detainee who had previously been unable to access a rehabilitation program due to her cognitive disability. It is not clear whether consideration was given to making adjustments to programs for this detainee, as no notation was made of this in the file.
- 8.3.20 ACTCS is aware that reasonable adjustments must be made for detainees with disabilities, and this is its current practice. Despite this, the Commissioner is concerned that the AMC does not have any specific policies relating to detainees with disability. Specific policies on detainees with disability including on the reception and management of detainees with disabilities, and on the provision of reasonable adjustments for detainees with disabilities would help ensure that accommodation for disability is uniformly undertaken. Consideration should also be given to implementing a Disability Action Plan for the AMC to further embed this philosophy, and which would help to remove barriers to full participation and equal opportunity of detainees with disabilities.
- 8.3.21 The availability of community support services to support women when leaving prison is particularly important for women with cognitive disabilities. Women with dual disabilities of mental health and cognitive disability are particularly vulnerable to re-incarceration if adequate support is not available in the community. The launch of the National Disability Insurance Scheme may mean that funding for support services will be available to some women with disabilities leaving the AMC. At this stage it is unclear how many women who have been incarcerated are likely to meet the relatively high threshold for funding under the NDIS. It will require that eligible women will have a permanent disability whose impairment means that they will have substantial support requirements, and that they are likely to require support under the NDIS and not another service system (such as the health system) for their lifetime. ACT Health provides a discharge summary for those detainees who need specialist supports in the community to facilitate continuity of care planning. The Throughcare Program will be of particular benefit for women with both cognitive and dual disabilities who may not meet these criteria to assist them to adapt to living in the community after release from the AMC. ACTCS reports that all the women who have exited the AMC since 1 June 2013 have engaged with Throughcare, a total of 27 women.

Current provision for visitors with disabilities

- 8.3.22 As outlined above the physical layout of the AMC, including the reception area and visitors' area inside the AMC, are physically accessible. One of the ways that ACTCS verifies visitors' identity is to subject them to an iris scan before entering the AMC. The screen used for the iris scan is positioned at eye height for a standing person. While it can be manoeuvred up and down to adjust for height, it is not able to be adjusted for a person in a wheelchair. A person with a sight impairment may also be unable to undergo an iris scan which may raise issues of accessibility. The Commissioner is aware that the AMC has a process where people can enter the AMC without having an iris scan, and understands that this process is facilitated for a person unable to have an iris scan because of their disability. However, ACTCS may wish to consider providing an iris scan screen that is accessible to people using wheelchairs.

Recommendation 48: That ACTCS develops and implements policies relating to detainees and visitors with disabilities including: on the reception and management of detainees with disabilities, on making reasonable accommodations for people with disabilities with regard to education programs in particular, and ensuring that visitors with disabilities are able to access the AMC.

Recommendation 49: That ACTCS correctional staff receive periodic disability awareness training, including on specific disabilities, to complement existing general awareness training for new recruits.

Recommendation 50: That ACTCS reintroduces an induction DVD at AMC with up to date information.

Recommendation 51: That ACTCS screens new and current women detainees where suitable, at the AMC using the HASI assessment tool.

Recommendation 52: That ACTCS consider asking an optional General Question on induction whether a person has a disability that may affect their stay at the AMC.

Recommendation 53: That ACTCS ensures that all women with disabilities can access rehabilitation programs and that adjustments are made to allow women detainees with disabilities to complete courses particularly if completion of a course could impact on the likelihood of being granted parole.

Recommendation 54: That ACTCS develops a Disability Action Plan to ensure it is providing the best possible service to detainees and visitors with disability.

8.4 Older Women

- 8.4.1 As life expectancy of the population increases the number of older detainees will increase and services for older people will become an increasingly important issue. This is relevant to the AMC, particularly where detainees are sentenced to life imprisonment. This may present challenges, for example, older detainees may be physically more vulnerable to abuse and victimisation.

- 8.4.2 There are a range of issues which should be considered in providing services for older detainees. While there may be some issues specific to older women detainees, it is not possible to ignore the broader issues relating to the older prison population as a whole. As there are fewer women in prison than men, and accordingly, even fewer older women detainees, the needs of these women may be overlooked. Older detainees are more likely to present with health issues associated with ageing, chronic

disease and terminal illness, including co-morbidity, with diseases such as dementia, diabetes, arthritis, heart disease, and respiratory illness together with the degeneration of hearing and vision. Research in this area has identified a number of issues including the high costs associated with provision of health services, care needs and medical expenses.⁵²

- 8.4.3 Other issues include that women tend to have a longer lifespan than men, and there is a greater potential for ageing women detainees to be diagnosed with dementia and therefore potentially have care needs relating to cognitive decline. Older detainees will also have different needs to younger detainees in relation to programs and education. Consideration of the possibility of early onset dementia for example will result in requiring different types of care and treatment plans.⁵³

Current provision for older women at AMC

- 8.4.4 While the Commissioner is aware of an older woman currently at the AMC, we are not aware whether any extra assistance is required or would be of assistance to any current women detainees. As noted above at Part 8.3, the use of colour, texture and the access to natural light within the AMC assists older detainees who may have less visual ability, or may have some symptoms of dementia. One of the women's cottages at the AMC is accessible, including having an accessible shower and handrails in the toilet. As the numbers are very small, any issues that arise for older women detainees will need to be addressed through individual case management. As such a detainee's age should be considered when planning rehabilitation and education programs.
- 8.4.5 While no specific issues regarding older detainees were raised through the Audit, it is likely that the AMC will need to consider these issues in the future including the appropriate provision of personal care to older detainees, any specific age related requirements and culturally appropriate end of life needs. The recent initiative of the Elders and Community Leaders visitation program at the AMC for both men and women detainees as outlined in Part 8.2 is a positive step and will assist in reducing cultural isolation for older Aboriginal and Torres Strait Islander detainees.

8.5 Detainees with Diverse Sexual orientation, Sex, or Gender Identity

Relevant standards

Human Rights Act 2004

Section 8 *Recognition and equality before the law*

8(1): *Everyone has the right to recognition as a person before the law.*

8(2): *Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.*

⁵² See for e.g. Susan Baidawi et al, 'Older prisoners – A challenge for Australian corrections' (2011) 426 *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice* 1-8.

⁵³ For a discussion of these issues see Alzheimers Australia NSW, *Dementia in Prison* (Discussion Paper No 9, March 2014).

8(3): Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

Section 19 Humane treatment when deprived of liberty

19(1): Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.

19(2): An accused person must be segregated from convicted people, except in exceptional circumstances.

19(3): An accused person must be treated in a way that is appropriate for a person who has not been convicted.

Yogyakarta Principles,

Principle 9 The right to treatment with humanity while in detention

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

States shall

- (a)** Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;
- (b)** Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;
- (c)** Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;
- (d)** Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;
- (e)** Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner;
- (f)** Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity;
- (g)** Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and nondiscrimination, including in relation to sexual orientation and gender identity.

- 8.5.1 The Commissioner recognises that the spectrum of detainees who may identify as having diverse sexual orientation, sex or gender identity is broad, including same sex attracted detainees, transgender women and men, intersex detainees and those with diverse sex and gender identities that do not fit within a 'binary' gender framework.⁵⁴ We acknowledge that these detainees' experiences and interests cannot be assumed to be the same, however, all may be at increased risk of violence, prejudice and discrimination within the prison environment.
- 8.5.2 Several international human rights instruments have considered human rights in relation to detainees with diverse sexual orientation, sex and gender identity.
- 8.5.3 In 2008, the United National General Assembly, including Australia, adopted a Statement on Human Rights, Sexual Orientation and Gender Identity.⁵⁵ The Statement called upon all governments to commit to promoting and protecting human rights of all persons, regardless of sexual orientation and gender identity.⁵⁶ In 2011, the UN Human Rights Council issued a joint statement of sexual orientation and gender identity that was supported by eighty five countries.⁵⁷ The statement noted concerns about the susceptibility of transgender prisoners to physical and sexual abuse.⁵⁸
- 8.5.4 The 2006 Yogyakarta principles were developed by international human rights experts to provide detailed guidance on protecting human rights of people with diverse sexual orientation and gender identity.⁵⁹ While these are 'soft law' principles, not yet adopted in a treaty, they affirm and are persuasive in shaping our understanding of international legal standards and how they apply to people with diverse sexual orientation and gender identity. The Principles identify that all people, regardless of sexual orientation and gender identity, are entitled to equality and free and universal enjoyment of human rights. Principle 3 recognises that each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. The Principles note the obligation on governments to take all necessary legislative, administrative and other measures to fully respect and legally recognise each person's self-defined gender identity. Principle 9, set out in full above, provides standards for treatment of detainees with diverse sexual orientation and gender identity.
- 8.5.5 These principles are consistent with rights protected in the *HR Act*, particularly the right to equality (s 8) and humane treatment while deprived of liberty (s 19). In

⁵⁴ ACT Law Reform Advisory Council, *Beyond the Binary: Legal recognition of sex and gender diversity in the ACT* (Report 2, March 2012).

⁵⁵ Letter dated 18 December 2008 from the Permanent Representatives of Argentina, Brazil, Croatia, France, Gabon, Japan, the Netherlands and Norway to the United Nations addressed to the President of the General Assembly, GA Res 63/635, UN GAOR, 63rd sess, Agenda item 64(b), UN Doc A/63/635 (22 December 2008) annex ('Statement on human rights and sexual orientation and gender identity').

⁵⁶ Ibid Principle 10.

⁵⁷ Human Rights Council, *Human rights, sexual orientation and gender identity*, UN HRC, 17th sess, Agenda item 8, UN Doc A/HRC/17/L.9/Rev.1 (15 June 2011).

⁵⁸ Ibid Preamble para 4.

⁵⁹ International Commission of Jurists, *Principles on the application of international human rights law in relation to sexual orientation and gender identity* ('The Yogyakarta Principles') (adopted during meeting in Yogyakarta, 6-9 November 2006) available at: <<http://www.yogyakartaprinciples.org/>>.

addition, the ACT *Discrimination Act 1991* makes it unlawful to discriminate against a person because of their sexuality or gender identity.

- 8.5.6 The Commissioner has previously provided advice to the Attorney-General regarding the incompatibility with human rights of laws that require sex and gender diverse people to undergo re-assignment surgery to have their gender identity formally recognised.⁶⁰ In late 2013, the Attorney-General introduced a Bill which will allow people to change their sex, or to be recognised as intersex or an unspecified sex category, in official documentation, without requiring them to submit to unwanted surgery. On 27 March 2014 this Bill was passed by the Legislative Assembly.⁶¹

Transgender, Intersex and Gender Diverse Detainees

- 8.5.7 Prisons generally enforce a strict segregation of detainees based on biological sex, and managers face particular challenges in responding to the needs of detainees who identify as a sex other than their birth sex, detainees who are intersex, and detainees who do not identify exclusively as either male or female.
- 8.5.8 Sex and gender diverse people continue to face discrimination and prejudice within the community,⁶² but are even more vulnerable to abuse, violence, isolation and self-harm within the prison environment.⁶³ The issue of accommodation of sex and gender diverse detainees raises critical human rights concerns, as inappropriate placements which fail to recognise these detainees' gender identity and individual risk factors may expose them to a high risk of sexual assault and abuse.⁶⁴ Attempts to protect transgender, intersex and gender diverse detainees through segregation may further subject them to isolation and discrimination in access to programs, education, employment and facilities.
- 8.5.9 Human rights concerns for sex and gender diverse detainees may also arise in relation to their access to appropriate medical treatment and counselling. They may also be relevant to personal searches (ie body and strip searches), detainees being recognised and referred to in accordance with their identified gender, and access to appropriate clothing and gender specific items within the prison.

Recognition of Transgender, Intersex and Gender Diverse Detainees at AMC

- 8.5.10 The *CM Act* is progressive in recognising detainees' self-identified gender as the key criterion in determining their sex while at the AMC, rather than imposing any requirement based on biological sex, surgery or medical treatment.

⁶⁰ Letter from Dr Helen Watchirs to Simon Corbell, 16 March 2010
<<http://www.hrc.act.gov.au/res/Advice%20on%20births%20deaths%20and%20marriages%20provisions%20Public%20Copy.pdf>>.

⁶¹ *Births, Deaths and Marriages Registration Amendment Act 2014* (effective 26 April 2014). The Attorney-General noted that changes to sex categories will be introduced in regulations.

⁶² See for e.g. Australian Human Rights Commission, *Sex Files: The legal recognition of sex in documents and government records* (2009); See also A Gender Agenda, *Gender diversity in the ACT: A survey of Trans Experiences* (May 2011).

⁶³ Jake Blight, 'Transgender inmates' Services' (2000) 168 *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice* 1, 4.

⁶⁴ Richard Edney, 'To keep me safe from harm? Transgender prisoners and the experience of imprisonment' (2004) 9 *Deakin Law Review* 327, 339.

8.5.11 Section 79 of the Act states that the sex of a detainee is to be determined either by:

- The detainee, via notification of their self-identified gender on admission; or
- If the detainee fails to make such an identification, by the Director General following a report from a doctor. Such a report may also be sought if a detainee seeks to change gender after admission.

8.5.12 Section 109 of the *CM Act* further requires that any search of a transgender or intersex detainee is based on their sex as determined in accordance with s 79 of the *CM Act*, so that detainees self-identifying as female may be strip-searched only by female staff.

8.5.13 The Corrections Management (Reception and Management of Transgender and Intersex Prisoners) Policy 2009⁶⁵ sets out further detail regarding the recognition and placement of transgender and intersex detainees. The policy defines a ‘transgender’ person as a person who “lives or wishes to live as a member of the opposite gender to his or her birth gender”. An ‘intersex person’ is defined as a person who, “because of a genetic condition, was born with reproductive organs or sex chromosomes that are not exclusively male or female.”⁶⁶

8.5.14 While it is appropriate and consistent with human rights to recognise detainees’ sex based on self-identification, one potential concern with these provisions is that detainees may not be aware of the ramifications of self-identification of sex when they arrive at prison. As discussed below, this may be of particular concern to transgender men, who usually retain some sexual characteristics of women and may be particularly vulnerable if placed with male detainees. Transgender men may also prefer not to be strip searched by male correctional officers.

8.5.15 Although the Policy recognises the need for consideration of intersex detainees, it does not specifically consider issues arising for detainees who are biologically one sex, but have a fluid gender identity, or who do not identify as exclusively male or female.⁶⁷ These gender diverse detainees may also be particularly vulnerable in the prison environment, and require careful consideration in their placement and treatment. It would be appropriate for the Policy to be amended to further recognise the existence and needs of gender diverse people who may be detained at the AMC.

Placement of Transgender, Intersex and Gender Diverse detainees

8.5.16 Historically, accommodation of transgender and sex and gender diverse detainees has been potentially inhumane where placement has been determined strictly in accordance with a detainee’s birth sex or anatomical features, rather than taking into account a detainee’s self-identification, placement preferences and individual risks and vulnerabilities.

⁶⁵ Notifiable instrument NI2009-159, made under *Corrections Management Act 2007* (ACT) s 14(1).

⁶⁶ *Ibid* 1.

⁶⁷ The High Court recently affirmed that a person may be other than exclusively male or female and that NSW legislation permitted the registration of a person as being of “non specific” sex. *NSW Registrar of Births, Deaths and Marriages v Norrie* [2014] HCA 11 (2 April 2014).

8.5.17 Transgender women are particularly vulnerable to sexual assault and abuse if placed according to biological sex with male detainees, even in protection environments. In 1997, a transgender woman was sexually assaulted and subsequently committed suicide while being held in protection with male detainees in a New South Wales prison. The Coroner found that the sexual assault played a causal role in her suicide, and recommended that corrective services should “house transgender prisoners in institutions appropriate to their gender identification”.⁶⁸

8.5.18 However, it appears that in many cases transgender men may be safer placed with women detainees, despite their gender identification as men, as they may also be at high risk of sexual assault and abuse if placed in men’s prisons.⁶⁹

8.5.19 Samiec, in a review of Queensland correctional policy, outlines a case where a transgender man suffered severe threats and abuse in a male prison:

*In one instance in Queensland, a transgender male prisoner held in a Queensland men's prison (the prisoner had undergone some sexual reassignment surgery but still had a vagina) pleaded with authorities, unsuccessfully, to transfer him to a female prison for his own safety. The prisoner reported being threatened with sexual assault by other prisoners, and ended up attempting suicide as a result of his predicament.*⁷⁰

8.5.20 The issue of placement therefore cannot be strictly determined by either biological sex or self-identification, but should be a nuanced decision-making process, where the wishes of the detainee are given significant weight, and where issues of the detainee’s safety (both physical and psychological) are carefully considered.

8.5.21 Another complexity in the placement process is ensuring the safety and wellbeing of other detainees who may be affected by the decision. While concerns are often raised about the risk of placing a transgender woman detainee who has not had re-assignment surgery together with other women, in the Commissioner’s view the issue is one of individual risk assessment (for example of any history of violent or predatory behaviour) rather than a simple question of anatomy. Accordingly, these issues may be dealt with in the same way that other detainees’ risk profiles are considered in their classification, placement and management.

8.5.22 Issues of privacy have also been raised in the United States regarding the mixing of gender diverse detainees with others, but this involved situations where detainees were sharing cells or bathrooms.⁷¹ Samiec suggests that these issues could be dealt with by ensuring that sex and gender diverse detainees are allocated a single cell.⁷²

⁶⁸ Catherine Renshaw, ‘The Death of Catherine Moore: The Predicament of Transgender Prisoners’ (1999) 3 *Australian Lawyers for Human Rights Newsletter* 1.

⁶⁹ Jenny Samiec, ‘Transgender prisoners: A critical analysis of Queensland Corrective Services’ new procedure’ (2009) 2 *Queensland Law Student Review* 33, 39.

⁷⁰ *Ibid* 39.

⁷¹ See for e.g. *Farmer v Brennan* (1994) 511 US 825 (holding that a biological placement policy is not a violation of the Eight Amendment prohibiting cruel and unusual punishment, but finding that where such a placement policy results in transgender prisoners being placed at an unacceptable risk of harm a violation may be made out).

⁷² Samiec, above n 69, 38.

- 8.5.23 The use of protection, or segregation for sex and gender diverse detainees is also a common practice in prisons, where physical safety of a detainee is prioritised, but they are subjected to significant hardship in being isolated from other detainees. Extended isolation places detainees at risk of psychological harm, and is linked to depression and self-harming behaviour. Segregation may also result in detainees having reduced access to rehabilitation programs, education and recreational opportunities.

Placement Policy and Practice at AMC

- 8.5.24 The Transgender and Intersex Policy⁷³ provides detailed guidance on the issue of placement of transgender and intersex detainees at AMC which recognises the complexity of the decision making process, and the need to consider the safety and human rights of these detainees and others. It provides that:

Decisions on placement of transgender and intersex prisoners will be assessed on an individual basis by the Superintendent. The determination will be based on an assessment of information provided by the Deputy Superintendent, Corrections Health staff, mental health staff and the prisoner. Their ongoing management and placement will be determined by the Sentence Planning Group or the Remand Review Team (as appropriate).

The placement of transgender and intersex prisoners will be based on:

- *The gender the prisoner identifies with;*
- *The nature of their offence and criminal history (for example, crimes of violence, including sexual violence against women or children);*
- *Correctional history (for example, where there are any previous management problems that impacted on the safety of other persons or the security of a correctional centre); and*
- *Risks to the continuing safety of the prisoner or others.*

Where practicable, transgender and intersex prisoner will be placed in a single cell or room, or with other prisoners who self-identify as transgender or intersex.

Unless there are overriding concerns for the safety or security of any person (including the prisoner) within the centre, a transgender or intersex prisoner should be accommodated in an area appropriate to their identified gender. However, when considering the placement, the Superintendent may make a determination to alter the placement of the prisoner if he/she considers it necessary for the good order and security of the correctional centre or safety of any prisoner.⁷⁴

- 8.5.25 This Policy emphasises the importance of self-identification of sex, but also allows flexibility in placement of a detainee in an area which is not consistent with that self-identification where there are overriding safety concerns. This may allow for the placement of transgender men or intersex people who identify as male in the women's

⁷³ Notifiable instrument NI2009-159, made under *Corrections Management Act 2007* (ACT) s 14(1).

⁷⁴ Ibid 2.

area of AMC, where this is their preference, and they would face unacceptable risks if placed in the male area of the prison.

8.5.26 While the Policy provides a useful framework for decision making, in practice, it appears that there have been few transgender or intersex people detained at the AMC, and decisions regarding placement have been a complex and protracted process. In the course of the Audit we interviewed a former detainee who identified as a transgender woman while at the AMC for two periods.

8.5.27 This former detainee spoke of being treated kindly and respectfully by correctional officers at the AMC, and noted that this differed significantly from the treatment she had experienced in another prison.

8.5.28 However, the former detainee raised concerns that she was isolated in the Crisis Support Unit (CSU) of the AMC for a period of several weeks while a determination was made regarding her placement. The former detainee stated of this experience:

"It's a mental battle. Always out by myself, totally isolated from men and women. They didn't know how to help me or house me or treat me. I told them I'm just a human being like everyone else here. I understand that they have rules and policies, but they should have been prepared for this. I just stayed in CSU, no programs, education."[woman detained at AMC 2012]

8.5.29 This situation was complicated by a number of risk factors, including episodes of violence while in the CSU. It is not clear whether the isolation and frustration of the delay in determining a placement contributed to these episodes.

8.5.30 This former detainee acknowledged these issues, stating that:

"I should be assessed as an individual. I understood why they might have a concern. They have to look after not just the welfare of me but also of the other inmates as well. But if they are that worried, they should have a separate section for transgender people, a little section that is still eligible to do things like programs. Where they go back and sleep and cook and stuff." [woman detained at AMC 2012]

8.5.31 Ultimately this former detainee was transferred to the High Needs Cottage in the women's area, and was able to participate in programs with other women. She reported this being a successful transition: "The women took me in as another sister, yeah." However, it appears that there remained difficulties in associating with other women in the High Needs Cottage and she was required to be locked in at times when other women in that cottage were out of their cells.

8.5.32 On a subsequent admission to detention, this former detainee reported that although she still identified as female, she chose to be placed in the male area of the prison, to avoid a potential further period of isolation:

"Second time was easier, I changed my mind and said I would go down to the boys section, the process was heaps faster. I was never in danger from men....First they put me in segro area, sent me down to remands slowly mixing me in, once they know I was right and comfortable, and then they moved me down there permanently. Much faster than the process with females, it happened quickly, it was good." [woman detained at AMC 2012]

8.5.33 Although each placement will be different, and we acknowledge that in this case certain risk factors meant that the decision was not straightforward, the experience of this former detainee suggests that there is a need to ensure that placement decisions are made in a timely way, and that transgender or intersex detainees are not placed in isolation for extended periods. If placed in the High Needs Cottage, detainees should not be subjected to greater restrictions than other detainees based on their transgender or intersex status.

8.5.34 We acknowledge that the Policy provides that transgender and intersex detainees will be given access to the same programs and activities as other detainees. This is a positive recognition of the right to equality of these detainees. It is critical that in practice this right to equality is not limited by placement of transgender, intersex or gender diverse detainees in areas such as the CSU where they have more restricted access to programs and activities, unless they meet the general criteria for placement in the CSU.

Access to Health Services

8.5.35 As is discussed further in the Health section at Part 6.10, another issue of particular relevance to transgender detainees is access to hormone therapy and other gender affirmation treatment and procedures while in prison.

8.5.36 The Transgender and Intersex Policy provides that:

Medical Provisions:

Should the prisoner wish to continue or commence medical procedures to alter their gender of birth, the Superintendent and the Doctor determine the appropriate course of action. Where doubts exist regarding any risk to the security and good management of the AMC, the Superintendent will have the discretion, following consultation, to recommend that such treatment be ceased/refused.⁷⁵

8.5.37 We note that the Superintendent in determining access to medical treatment and procedures would need to avoid subjecting transgender and intersex detainees to limitations on their access to health care that are not imposed in the community, and which could amount to unlawful discrimination. As a public authority this discretion must be exercised consistently with human rights obligations.

8.5.38 As discussed in the health section, detainees have a right to at least an equivalent standard of health care as they would have in the community. The Victorian Supreme Court decision of *Castles v Secretary to the Department of Justice* affirmed that access to health care is a fundamental aspect of the right to dignity and humane treatment in detention.⁷⁶ The Court in this case found that a detainee had the right to continue IVF treatment during her detention. It is likely that access to gender affirmation treatment would similarly considered to be a requirement of humane treatment of detainees.

8.5.39 In practice, it appears that transgender detainees are readily able to access hormone therapy and other treatment while at AMC. A former detainee interviewed reported to

⁷⁵ Ibid 2-3.

⁷⁶ [2010] 28 VR 141.

the Commissioner that she was able to continue on hormone therapy that she had commenced prior to entering AMC. The Commissioner welcomes this positive approach.

Strip Searching

- 8.5.40 As discussed in more detail in Part 4.2, strip searching is a significant limitation on detainees' right to privacy, and potentially may limit the right to humane treatment in detention. One safeguard provided in s 114 of the *CM Act* is that correctional officers performing strip searches must be of the same sex as the detainee. Section 109 confirms that for transgender or intersex detainees, their self-identified sex is the relevant criteria for this purpose.
- 8.5.41 While this is an important protection, it would be preferable for transgender, intersex or gender diverse detainees to be able to elect whether they would prefer to be searched by male or female correctional officers. This is likely to be of particular concern to transgender men who retain female sexual characteristics and may be particularly uncomfortable being strip searched by male correctional officers. This would require an amendment to the *CM Act*. ACTCS have emphasised the importance of consulting with staff before implementing any change to this provision.

Awareness training and advice

- 8.5.42 The experience of the former detainee interviewed indicated that officers and other detainees treated sex and gender diverse detainees in an appropriate and respectful manner, which is commendable. However, given the complex issues involved in placement decisions and management of sex and gender diverse detainees, it may be helpful for management and policy staff to receive advice from experts in this area, including community based groups such as A Gender Agenda, and Organisation Intersex International Australia. It may also be appropriate to engage such experts to provide awareness training for staff and other detainees, to assist them to understand and support a transgender or intersex person detained at the AMC.
- 8.5.43 ACTCS has indicated that they would support the idea of working with relevant external agencies regarding the delivery of targeted awareness training once a sex or gender diverse detainee comes into custody, and could consider options of working with these agencies to develop awareness training in readiness for sex and gender diverse detainees coming into custody.

Recommendation 55: That ACTCS amend the Corrections Management (Reception and Management of Transgender and Intersex Prisoners) Policy to further recognise the needs of gender diverse detainees who do not identify as exclusively male or female.

Recommendation 56: That ACTCS amend the Corrections Management (Reception and Management of Transgender and Intersex Prisoners) Policy to include a reasonable time frame for making a determination regarding the placement of detainees under the Policy.

Recommendation 57: That the ACT Government amend s 109 and s 114 of the *CM Act* to provide that transgender and intersex detainees may elect to be strip searched by either male or female correctional officers. ACTCS staff should be consulted before any change is made.**

Recommendation 58: That ACTCS engage with experts and support groups to consider options for providing advice to management on placement issues, and awareness training for staff and detainees regarding issues faced by sex and gender diverse detainees.

Lesbian and Bisexual detainees

8.5.44 Many academic studies have explored sexuality amongst prison populations.⁷⁷ These studies have noted that in addition to detainees who identify as lesbian or bisexual, some detainees may engage in same-sex activities while incarcerated, but do not necessarily identify as lesbian or bisexual.⁷⁸ The right to equality under the *HR Act*, and the protections under the *Discrimination Act 1991* require that lesbian, bisexual and same-sex attracted detainees be treated equally and not subject to unfavourable treatment on the basis of sexual orientation or status.

8.5.45 In larger women's prisons, such as Bandyup in Western Australia, a culture of same-sex relationships has been reported to be more overt.⁷⁹ Bennett reports that this culture may lead to challenges such as predatory behaviour, jealousy and tension among women where relationships break down. She also notes that same sex couples in the prison environment can face discrimination and harsh treatment from some correctional officers.⁸⁰

8.5.46 It is possible that some of these issues also arise within the AMC, however it is not an obvious aspect of the culture of the women's area, perhaps because of the small numbers of detainees, and the relatively short periods of time spent at AMC by most women detainees. Of the detainees interviewed for the Audit, no women identified as being lesbian or bisexual, and the issue of sexuality was not one raised by staff or management, or in submissions received by the Audit. Accordingly, there is no evidence to determine whether women of diverse sexual orientation face discrimination or unfavourable treatment at the AMC. This may be an area for future exploration.

⁷⁷ A useful summary of this research is included in Ashley Blackburn et al, 'Too close for comfort: Exploring gender differences in inmate attitudes towards homosexuality in prison' (2011) 36 *American Journal of Criminal Justice* 58-72.

⁷⁸ See for e.g. Katherine Van Wormer, 'Becoming homosexual in prison: A socialization process' (1984) 9 *Criminal Justice Review* 22-27.

⁷⁹ Lyn Bennett, 'Managing sexual relationships in a female prison' (Paper presented at the Women in Corrections: Staff and Clients Conference, Adelaide, 31 October –1 November 2000) 1-9.

⁸⁰ Ibid 7.

8.6 Women from Culturally and Linguistically Diverse Backgrounds

Relevant standards

HR Act

Section 8 Recognition and equality before the law

8(1): Everyone has the right to recognition as a person before the law.

8(2): Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind.

8(3): Everyone is equal before the law and is entitled to the equal protection of the law without discrimination. In particular, everyone has the right to equal and effective protection against discrimination on any ground.

Section 27 Rights of minorities

Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.

SMR

Rule 30(3): Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

Rule 41(1): If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved.

Rule 41(3): Access to a qualified representative of any religion shall not be refused to any prisoner.

Rule 42: So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

United Nations Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities

8.6.1 The UN Committee on the Elimination of Racial Discrimination in General recommendation XXXI commented on the strategies to be developed by state parties to prevent racial discrimination in the criminal justice system.⁸¹ These include making “necessary changes to the prison regime”.⁸² Particular rights noted by the Committee included:

⁸¹ Committee on the Elimination of Racial Discrimination, *General Recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, 1724th mtg; UN GAOR 60th sess, Supplement No 18, UN Doc A/60/18.

⁸² Ibid 5(f).

- Respect for religious and cultural practices;
- Respect for food customs;
- Assistance of an interpreter;
- Where appropriate, consulate assistance
- Rights to medical, psychological and social services which take into account cultural background.

- 8.6.2 The United Nations Office on Drugs and Crime (UNODC) notes that generally states must take “remedial action” whenever there is an “unjustifiable disparate impact” of criminal justice practice upon a “group distinguished by race colour, descent or ethnic origin”.⁸³ UNODC suggests states’ obligations to equitable treatment in prisons includes “eliminating all forms of discrimination, as well as taking affirmative action to ensure that the special needs of ethnic and racial minority” prisoners are met.⁸⁴ According to UNODC, human rights issues for such detainees include: linguistic barriers; physical and verbal abuse; over-classification; poorer accommodation and unofficial segregation; disproportionate disciplinary punishments; and poorer access to education, health care, programs and work opportunities.⁸⁵ UNODC has particularly identified the importance of the right to family life for this detainee population, and the need to maintain family and community ties.⁸⁶ The Standard Guidelines for Corrections in Australia similarly note the need to maintain community connections and supports for culturally and linguistically diverse (CALD) detainees.⁸⁷ This can be a particular issue for foreign national detainees, who may suffer isolation when imprisoned.⁸⁸ They can also have limited access to community supports on release. United Nations instruments provide that such Nationals should be given access to consulate supports.⁸⁹
- 8.6.3 Detainees from a CALD background may also have particular religious and spiritual needs. They may also have particular health care needs, related either to cultural background or a socio-economic status in the community.⁹⁰ This group may also require specific assistance in release and post-release programs.⁹¹
- 8.6.4 Consideration should also be given to recruiting staff from ethnic and racial minorities where such groups are overrepresented in prison populations, to assist with

⁸³ UNODC, above n 32, 57.

⁸⁴ Ibid.

⁸⁵ Ibid 60.

⁸⁶ Ibid 61.

⁸⁷ *Standard Guidelines for Corrections in Australia* (Australian Institute of Criminology, rev 2012), Guiding Principles for the Management of Prisoners [2.25]

⁸⁸ UNODC, above n 32, 82.

⁸⁹ See *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1955), and approved by the Economic and Social Council in resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 r 38; *Vienna Convention on Consular Relations*, opened for signature 24 April 1963, 596 UNTS 261 (entered into force 19 March 1967) art 36.

⁹⁰ UNODC, above n 32, 62.

⁹¹ Ibid 63.

understanding. Staff training should also include training on cross cultural issues and understanding of minority groups and in relation to discrimination generally, and prison policies should support this training to send a message that discrimination will not be tolerated. Prison authorities should also consider providing legal information in different languages.⁹² The *Standard Guidelines for Corrections in Australia* include a requirement that Information regarding the classification and placement system should be communicated to detainees in a way they can understand, ensuring that CALD detainees and detainees for whom English is not their first language are appropriately informed.⁹³

8.6.5 UNODC suggests that accommodating detainees from a CALD background should encompass consideration of all areas of prison life:

- Allocation and accommodation – this should include protecting members of minority groups from racial abuse and violence, but should not necessarily include formal or informal segregation. This may also include placing such detainees where they can commune with others of same nationality, religion or culture. Consideration should be given to the nature of the accommodation, for example whether some cultural beliefs may make single or shared cells inappropriate [although at the AMC women are accommodated in cottages].
- Connection with the outside world – for foreign nationals this may including providing more flexible telephone rights. This might also include encouraging NGOs to develop programs to support CALD and foreign national detainees;
- Linguistic needs - providing prison rules and regulations in a number of languages; and ensuring prison libraries hold publications in different foreign languages. This should include providing opportunities for detainees to learn the language of the country of imprisonment, and providing interpreters. Detainees should also be able to use their own language during visits and in communication with the outside community;
- Consideration of different religious and cultural needs. Ensuring CALD and foreign nations can take part in education and programs, and work opportunities, including introducing special programs for such detainees.
- Support for release and post-release – including determining as early as possible in sentence if a foreign national will be deported; and providing consulate assistance.
- Complaints of racial and ethnic discrimination should be carefully investigated and referred to an independent authority where appropriate.
- Prison authorities should also consider regularly data on CALD detainees to determine any significant racial or ethnic imbalances and/or indirect discrimination.

⁹² Ibid 69.

⁹³ *Standard Guidelines for Corrections in Australia* (Australian Institute of Criminology, rev 2012), Guiding Principles for the Management of Prisoners [1.47].

- 8.6.6 The UNODC has suggested that women detainees from CALD backgrounds are “doubly disadvantaged” since programs suitable for their specific needs, taking into account both gender and cultural traditions are rarely offered. This may leave women detainees with the choice of mainstream programs for women, or male programs aimed at certain CALD groups, “neither of which is likely to be entirely suitable to their needs.”⁹⁴
- 8.6.7 The latest ABS statistics demonstrate that people born overseas make up 29% of the population in the ACT, and 18% of Canberrans speak a language other than English at home.⁹⁵ General research indicates that migrants have the lowest rates of criminality in Australia, followed by first generation Australians, with the remaining Australian-born population having the highest rates of criminality.⁹⁶
- 8.6.8 The Commissioner does not have access to detailed data on the number of women from CALD backgrounds in the ACT justice system, or the number of staff from these backgrounds working at AMC. However, during the course of this Audit the Commissioner interviewed a small number of current or former women detainees in this category.
- 8.6.9 Given the small numbers of CALD women in the wider justice system, and detained at AMC, it is likely that the diverse cultural needs of these detainees will need to be addressed through individual case management, and through linking people with programs and services in the community, for example Companion House, which provides specific support for refugees who have experienced torture or trauma overseas.
- 8.6.10 The Human Rights and Discrimination Team from the Commission was pleased to find that reasonable adjustments and support were generally provided to such detainees. Specific English teaching was provided through a tutor, and interpreters were available if required. The Commissioner also found that such women were able to participate in some standard programs and education, despite limited English. It is important that this area remain a particular focus, as UNODC has noted that the lack of equal access to programs for CALD detainees can lead to further disadvantages.⁹⁷
- 8.6.11 The Commissioner provides training to ACTCS recruits on human rights and discrimination law, including race discrimination issues. There are a number of policies under the *Corrections Management Act 2007* which contemplate the requirements of the above human rights obligations. They include:
- Corrections Management (Reception and Management of Non-English Speaking Prisoners) Policies and Procedures 2007.⁹⁸ This Policy is aimed to ensure detainees from non-English speaking backgrounds are not disadvantaged. It includes

⁹⁴ UNODC, above n 32, 62.

⁹⁵ Australian Bureau of Statistics, ‘National Regional Profile: Australian Capital Territory (2013)’ available at: <http://www.abs.gov.au/AUSSTATS/abs@nrrp.nsf/DetailsPage/LGA82007-2011?OpenDocument&tabname=Details&prodno=LGA8&issue=2007-2011&num=&view=&>.

⁹⁶ Jenelle Baur, ‘Future migration and policing: Examining assumptions’ (2006) 5 *Australasian Centre for Policing Research Issues Series* 1, 3.

⁹⁷ UNODC, above n 32, 62.

⁹⁸ Notifiable instrument NI2007-470, made under *Corrections Management Act 2007* (ACT) s 14(1).

principles such as the translation of information into different languages, the prevention of discrimination, provision of translators and interpreters and contemplates communication between foreign nationals and relevant embassies/consulates.

- Corrections Management (Provision of Meals) Policy 2011.⁹⁹ This Policy considers the religious needs of certain detainees.
- Corrections Management (Human Rights) Policy 2010.¹⁰⁰ This Policy considers the right to equality under the *HR Act*.

8.6.12 In addition, the Commissioner understands that as part of the Justice and Community Safety Directorate, ACTCS staff are subject to general legislative obligations of public servants, and also the ACT Government's Respect, Equity and Diversity Framework.

8.6.13 The Commissioner welcomes these policies. The Commissioner did not receive allegations about racial discrimination or vilification amongst the women detainees, or formal or informal segregation of such detainees. The Commissioner is also aware that groups of male foreign nationals have been accommodated together in the past, consistent with the United Nations guidance. The Commissioner also understands that reasonable accommodations have been made in the past for detainees of Muslim faith, including during Ramadan and for indicators to Mecca. The librarian will also attempt to source books in languages other than English on request. The Commissioner is aware that books in other languages, for example, Mandarin, have been obtained for detainees.

8.6.14 However, some potential barriers were identified, although the small numbers of women in this identifiable category made detailed investigation of these issues difficult. It appeared that obtaining an interpreter could be time-consuming, although this may have been out of the control of ACTCS. The Commissioner is also aware that due to the small numbers of certain language-speakers in the ACT, some clients can be concerned about their privacy. This could potentially be addressed by preferring externally sourced telephone interpreters to local face to face interpretation.

8.6.15 The UNODC has noted that foreign nationals may require more general telephone rights.¹⁰¹ A detainee did raise concerns with the Commissioner regarding the cost of calls to family members overseas, and passing these costs on to the detainee in their entirety was an issue.

<p>Recommendation 59: That ACTCS make special arrangements to lessen the costs for foreign nationals and other detainees where applicable to contact immediate family living overseas.</p>

⁹⁹ Notifiable instrument NI2011-140, made under *Corrections Management Act 2007* (ACT) s 14(1).

¹⁰⁰ Notifiable instrument NI2010-281, made under *Corrections Management Act 2007* (ACT) s 14(1).

¹⁰¹ UNODC, above n 32, 93.

Part 9. Transition and Throughcare

9.1 Introduction

Relevant Standards

SMR

Rule 80: *From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation.*

Rule 81(1): *Services and agencies, governmental or otherwise, which assist released prisoners to re-establish themselves in society shall ensure, so far as is possible and necessary, that released prisoners be provided with appropriate documents and identification papers, have suitable homes and work to go to, are suitably and adequately clothed having regard to the climate and season, and have sufficient means to reach their destination and maintain themselves in the period immediately following their release.*

Rule 81(2): *The approved representatives of such agencies shall have all necessary access to the institution and to prisoners and shall be taken into consultation as to the future of a prisoner from the beginning of his sentence.*

Rule 81(3): *It is desirable that the activities of such agencies shall be centralized or co-ordinated as far as possible in order to secure the best use of their efforts.*

9.1.1 The CM Act refers to the importance of 'promoting the rehabilitation of imprisoned offenders and their reintegration into society' in the Preamble in s 4(c), objects in s 7(d), treatment in s 9(f) and educational services in s 52(2)(b).

9.1.2 As Borzycki and Baldry note:

Without sufficient material and social support upon release, the cycle of release and rearrest can become increasingly difficult to break. This is especially true for prisoners serving short sentences who may not be imprisoned long enough to receive any in-prison assistance and who are probably not subject to any formal post-release supervision.¹

9.1.3 Managing this transition and ensuring appropriate support post-release is thus critical to successful rehabilitation. Best practice in supporting detainees through this transition recognises the need for continuity in case management and service provision while a detainee is in prison and addressing their individual needs through the post release period. This approach is known as 'Throughcare,' which has been defined as:

¹ Maria Borzycki and Eileen Baldry, 'Promoting Integration: The Provision of Prisoner Post-release Services' (2003) 262 *Australian Institute of Criminology: Trends & Issues in Crime and Criminal Justice* 1, 2.

*The continuous, co-ordinated and integrated management of offenders from the offender's first point of contact with correctional services to their successful reintegration into the community, and completion of their legal order.*²

- 9.1.4 The involvement of a range of government and non government agencies is important to the success of Throughcare, in developing a shared commitment to rehabilitation of former detainees:

*Possibly the most important benefit of a partnership approach is the shared responsibility it engenders. The task of ex-prisoner integration is probably too great for a single agency but it is far more attainable via a whole-of-government response.*³

- 9.1.5 For many women, successfully re-integrating into the community after a period of imprisonment is an enormous challenge. The concept of 'reintegration' itself overlooks the marginalised lives led by many detainees before their incarceration. As Hogan and Culleton note "the profile of those who are sent to prison is reflective of a population who have never been fully integrated into society."⁴
- 9.1.6 As discussed in throughout this Report, a high proportion of women detainees have ongoing complex needs, which may include alcohol or other drug use, victimisation, mental health issues, disability, lack of education and a history of unemployment. Without intervention they will return to the same situations of disadvantage and the negative influences that contributed to their offending behaviour. This disadvantage can be further exacerbated by a period of imprisonment, which may lead to disconnection from supports in the community, to a loss of housing and to diminished employment prospects. While the average sentence for women at AMC is relatively short, for those women serving longer sentences, adjustment to the prison routine may also undermine self-reliance as women become accustomed to the structure and external control of prison life, and then struggle with the day to day demands of life outside the institution. For women detainees in particular, imprisonment may fracture relationships with partners and children, and the loss of personal relationships and difficulties in re-establishing their parental role can be overwhelming, and may contribute to behaviour patterns that lead to re-incarceration.
- 9.1.7 While the principles of Throughcare are clear, the practice is challenging, as it can be resource intensive to provide ongoing support and co-ordinate individualised and client-centred services to meet former detainees' significant and complex needs. Reintegration may require overcoming entrenched patterns of behaviour and coping mechanisms that have been developed over a lifetime of disadvantage. For detainees with multiple complex needs and few positive links to the community, complete desistance and immediate lifestyle change may be unrealistic, but incremental changes and increasing periods out of custody may build a foundation for long term change.

² Eileen Baldry: 'Throughcare: Making the policy a reality' (Paper presented at the Reintegration Puzzle Conference, Sydney, 7-8 May 2007), 4 (citation omitted).

³ Borzycki and Baldry, above n 1, 3-4.

⁴ Fergus Hogan and Jonathan Culleton, 'Prison experiences of self forgiveness' (Paper presented at the Experiencing Prison Global Conference, Prague, 9 May, 2012), 3.

9.2 Throughcare at AMC and Post-Release

- 9.2.1 From the commencement of operations at the AMC, ACTCS has espoused a ‘throughcare’ model of service delivery, recognising the importance of a seamless approach and continuous case management. The prison’s Operating Philosophy provides that:

*In the AMC, ACT Corrective Services operates a Throughcare Case Management model, which encompasses training, education, rehabilitation and work experience opportunities provided within custodial and community environments. Throughcare planning aims to establish post release community support networks prior to the cessation of involvement by ACTCS.*⁵

- 9.2.2 Nevertheless, in the early years of the AMC it became apparent that services to meet the high and complex needs of detainees were not always being effectively co-ordinated in the critical first months after release, and that this was negatively impacting on detainees’ reintegration. Early recidivism statistics for the ACT indicate that of those detainees released from the AMC in 2009/10, 40.8% returned to prison for a parole breach or new offence within a two year period, while the recidivism rate increased for those released in 2010/11 to 46.6%.⁶ This compares with an Australian average of 40.3% for detainees leaving prison in 2010/11.⁷ While these statistics are not reported by gender, overall recidivism rates for women detainees tend to be lower than that of male detainees across many jurisdictions.⁸
- 9.2.3 In 2009, ACT community agencies formed the Community Integration Governance Group (CIGG), and offered to work collaboratively with the ACT Government to develop a best-practice system of Throughcare. A Working Group that included CIGG members and senior officials from the Chief Minister’s and Treasury Directorate and ACTCS was formed in 2011 to work on policy principles, potential service models, and outcome measures, leading to the ‘Seeing it Through’ paper, providing options for improving offender outcomes in the community.⁹
- 9.2.4 In the 2012-13 Budget, funding of \$1.2 million over two years was allocated to pilot the extended Throughcare framework. The Chief Minister’s and Treasury Directorate reports that:

⁵ ACT Corrective Services, *Operating Philosophy* (10 August 2010) ACT Government Justice and Community Safety <<http://www.cs.act.gov.au/page/view/867/title/operating-philosophy>>.

⁶ ACT Department of Justice and Community Safety, *Annual Report 2012-2013* (ACT Government, 2013), 115.

⁷ Steering Committee for the Review of Government Service Provision, *Report on Government Services 2014*, vol C: *Justice* (Productivity Commission, 2014), Table C4, C22.

⁸ Stuart Ross and Kay Forster, ‘Female Prisoners: Using imprisonment statistics to understand the place of women in the criminal justice system’ (Paper presented at the Women in Corrections: Staff and Clients Conference, Adelaide, 31 October – 1 November 2000), 2.

⁹ ACT Government, *Seeing it Through: Options for improving offender outcomes in the community* (ACT Government, 19 December 2011).

This funding covers the cost for establishing a Throughcare Unit within Corrective Services with responsibility for implementing the framework, coordinating service delivery between agencies and concurrently evaluating the program.¹⁰

- 9.2.5 The innovative partnership between community sector and government is reflected in the representation of the CIGG in the Throughcare Governance Group which oversees implementation of the framework, and in the Throughcare Advisory Group, which provides input from service providers into the co-ordination and service provision for detainees identified as having particularly high or complex support needs.

Throughcare Unit

- 9.2.6 In late 2012, a small Throughcare Unit with two staff positions was established within ACTCS, and commenced supporting detainees leaving prison on 1 June 2013. The throughcare model in the ACT covers the period from release from custody through to 12 months post-release. Importantly, the Throughcare Unit offers support to *all* women, remanded or sentenced, exiting the AMC, although it is only available to sentenced male detainees. The Throughcare staff offer a single point of service co-ordination upon a detainee's release, and the Unit has some limited funds for service brokerage to meet individual needs.
- 9.2.7 The Throughcare Unit engages with detainees up to three months prior to release, but relies upon AMC Case Managers to address detainees' identified needs during the period of imprisonment, such as maintaining detainees' existing accommodation or arranging new accommodation placements, strengthening connections to family and other supports, linking detainees to health services including drug and alcohol treatment and methadone maintenance, and addressing financial support and employment issues. Case managers complete a pre-release checklist covering these domains and liaise with the Throughcare team prior to release. Nevertheless, it appears that in practice, the Throughcare team is often required to make arrangements at the last minute where referrals have not been finalised or contingencies arise which had not been anticipated during the case management process. In some cases the backdating of sentences to cover a period of remand, or successful appeals can affect the time available to manage transition effectively.
- 9.2.8 The Throughcare Unit ensure that detainees leaving prison have transportation to their accommodation, arrange necessary identification documentation and Centrelink payments, and provide a My-Way bus card and a release package for all detainees, which includes essentials such as towels, crockery, cutlery, clothing and basic food staples. St Vincent de Paul also provides weekly food parcels for former detainees for the first six weeks after release.
- 9.2.9 The Unit then maintains regular contact with clients, on a voluntary basis, and acts as a central point of contact for services working with them, managing and responding to client needs as these arise.
- 9.2.10 In the first months of operation, Throughcare staff report that all women exiting prison have chosen to engage with the Throughcare Program, which is very positive.

¹⁰ ACT Government, *Extending Throughcare for Offenders* (17 May 2013) ACT Chief Minister and Treasury Directorate <<http://www.cmd.act.gov.au/policystrategic/throughcare>>.

Throughcare staff note that women enrolled in the Throughcare Program have tended to have higher support needs than men, including mental health support, drug and alcohol treatment and assistance in seeking to re-establish relationships with their children. Co-ordination meetings have been established with women's services to examine the needs of each client to seek to meet these higher needs.

Coming Home Program

- 9.2.11 The Coming Home Program is a program specifically funded to provide accommodation, case management and advocacy for women leaving the AMC, and is a key Throughcare service provider for women in the ACT. The Coming Home Program is a partnership between three women's agencies, Toora Women Inc, Canberra Rape Crisis Centre and Beryl Women Inc. Collectively these agencies have expertise in a range of areas relevant to women detainees, including sexual assault and trauma, alcohol and other drug treatment, and working with Aboriginal and Torres Strait Islander women, and women from culturally and linguistically diverse backgrounds.
- 9.2.12 The program can provide long term accommodation for up to five women in ACT Housing properties, and offers transitional accommodation for three women in a shared property, Viv's place. While these properties are initially sublet to women, full tenancy is transferred once women are able to take on this responsibility and level of independence. The Coming Home program visits the AMC weekly to provide outreach support to women while in prison, and to establish rapport with women who enrol in the program before they leave prison. On exit from prison, the program includes case management with a support worker visiting each woman regularly. The program provides support for transport to appointments, and advocacy in dealing with other agencies. The program also has capacity to provide outreach support to fifteen women in external accommodation. Currently, accommodation in the Coming Home Program is limited to sentenced women leaving prison, and is not available to women exiting prison after a period of remand.

Other accommodation services

- 9.2.13 Women exiting prison may also apply directly to ACT Housing and may be eligible to be considered for priority public housing, or may seek to access general women's homelessness services and refuges in the community, which are allocated through the FirstPoint accommodation referral services. Women exiting prison who require assistance in relation to alcohol or other drug use may also seek placements in residential treatment programs such as Karralika Therapeutic Community or Lesley's Place.
- 9.2.14 However, as noted by a number of agencies in submissions, the ACT homelessness sector has recently suffered substantial funding cuts, as the result of reduction in federal funding to the sector, which impacts on the ability of these services to meet the needs of women exiting prison. The impact of these changes is being monitored by the Throughcare Unit and the Throughcare Governance Group.

Impact of the Throughcare Program

- 9.2.15 The implementation of the Throughcare Pilot Program in the ACT, in partnership with the community sector, is a significant and positive development in meeting the human rights and needs of detainees exiting prison. The program was the result of strong

advocacy from the community sector and represents an innovative partnership where community agencies have input into the governance of the program as well as service provision. This partnership model, and the co-ordination of services for a twelve month period post release, appears to be unique in Australian corrective services.

- 9.2.16 It is also a positive feature of the Throughcare Program that it is available to support all women exiting prison, including women who were remanded in custody, as remanded women face similar risks of transition into homelessness, and often have the same high and complex needs as sentenced women. It is encouraging that all women exiting the AMC over the initial period of the Throughcare Program have chosen to enrol in the program.
- 9.2.17 As the Throughcare program has only been fully operational since June 2013, it is not yet possible to determine its full impact, and formal data on recidivism rates of this cohort will not be available until 2015. However, early reports indicate that the program is having a positive impact on clients' reintegration into the community. In November 2013, of the 68 (male and female) detainees released since June, only 6 had returned to custody for parole breaches, and none had committed further offences. It appears that this represents a significant improvement from previous return rates over the short term.
- 9.2.18 The Coming Home Program is also yet to be formally evaluated, but represents a positive model of integrated service provision for women detainees who are eligible for the program, drawing on the strengths and expertise of several agencies, and offering women the prospect of long term secure tenure
- 9.2.19 As discussed below, while there are many positive features of transition planning and Throughcare in the ACT, there remain gaps in service provision, and uncertainty regarding the ongoing funding of these initiatives.

Limitations of throughcare/transition

- 9.2.20 The Throughcare Pilot Program was funded for only a two year period, which included the establishment and recruitment of Throughcare staff, and the concurrent evaluation of the project. This funding will cease in 2014. The Minister for Corrections has been publicly supportive of the continuation of the throughcare model; however it is not clear what funding will be provided for the program on an ongoing basis.¹¹
- 9.2.21 One issue raised by a number of service providers is that the throughcare model works to co-ordinate existing services, but does not fund the intensive case management required by individual clients. Although the Unit has some funding to meet particular needs of Throughcare clients, these brokerage funds are capped at \$1500 per detainee. Over the first few months of operation, it appears that Throughcare staff have taken on a significant burden of day-to-day case management for many detainees exiting prison, and that this has become more challenging as the number of clients in the program continues to increase. While the Coming Home Program is specifically funded to provide women with a wrap-around case management service, not all

¹¹ Australian Capital Territory, *Parliamentary Debates*, Legislative Assembly, 17 September 2013, 3223-4 (Shane Rattenbury, Minister for Corrections).

women exiting prison choose to engage with this program, and the program is not available for women exiting prison after a period on remand.

- 9.2.22 Interview participants have also noted that for some women with high or complex needs, the transition from the strictly controlled prison regime to independent living in shared accommodation can be challenging, even with regular support visits. As discussed in Part 3.3 for male detainees, the Transitional Cottage outside the secure perimeter of the AMC provides a pathway between prison and independence. In this environment, detainees are closely supervised and supported, so that there is less opportunity for relapse into substance use and offending behaviour while adjusting to greater freedoms during periods of day leave. Although the average period in custody for women detainees at AMC is relatively short, there are women serving longer sentences. The lack of a transitional cottage for women detainees limits the options available to these women transitioning from the AMC into the community. A recommendation has been made regarding this issue in Part 3.3
- 9.2.23 The evaluation of the Throughcare Program will be an important opportunity to identify and explore gaps in the service system, and areas where case management could be more effectively devolved to community agencies, with appropriate support, funding and training for staff.
- 9.2.24 A separate concern raised by the Coming Home Program submission, and by other stakeholders, is the privacy of clients of the Throughcare Program, and whether clients are able to provide informed consent to sharing of their personal information amongst the Throughcare Advisory Group. The Commissioner understands that ACT Policing attends the Advisory Group, and while that Group's role may be changing, it appears that any discussion of individual detainees' throughcare needs with the police could potentially deter detainees from accepting throughcare support.
- 9.2.25 It is important that women leaving prison properly understand the consequences of their involvement in the Throughcare Program, and the nature of personal information that may be shared about them. This issue engages the right to privacy and reputation under s 12 of the *HR Act 2004*. We acknowledge that the Throughcare Program is intended to benefit the community by reducing re-offending, and ACT Policing can play a valuable role in supporting the Throughcare Program with advice and expertise. However, it is unclear whether there is a need for the direct involvement of police in discussing individual cases, and for sharing of sensitive client information with police. In particular, there may be concerns that this involvement could subject Throughcare clients to higher levels of policing and scrutiny, and may present a barrier to accessing support through the program.
- 9.2.26 The Commissioner understands that the terms of reference of the Throughcare Advisory Group are being reviewed, to move away from a focus on individual high needs clients towards identifying opportunities to overcome service system barriers. This shift in approach may alleviate concerns about sharing of individual client information. This issue should be considered further in the evaluation of the Throughcare Program.
- 9.2.27 Overall, however, recent developments in throughcare and transition for women detainees exiting the AMC are significant and positive and are likely to play an important role in breaking the cycles of re-offending and re-incarceration over the long

term. The evaluation of the Throughcare Program presents an opportunity to build on those aspects of the program that are working well, and to identify areas where partnerships and services could be improved and developed to better meet the individual needs. With the increasing number of detainees stretching the prison's capacity, and the economic and human cost of high levels of recidivism, funding of effective throughcare services represents a positive investment for the Territory.

Recommendation 60: That the ACT Government provide ongoing funding for the Throughcare program, and enhance the funding if necessary to ensure a sustainable model of case management.**

Recommendation 61: That the ACT Government evaluation of the Throughcare pilot program examine relevant gaps in service provision and case management for detainees exiting the AMC, and consider issues regarding sharing of clients' personal information within the Throughcare Advisory Group.**

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Part 11. Glossary

ACSF	Australian Core Skills Framework
ACT Health	ACT Health
ACT	Australian Capital Territory
ACTCS	ACT Corrective Services
AFP	Australian Federal Police
AHRC	Australian Human Rights Commission
AIHW	Australian Institute of Health & Welfare
AMC	Alexander Maconochie Centre
Australian Standards	Standard Guidelines for Corrections in Australia
Bangkok Rules	United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
BOP/Body of Principles	United Nations Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment
BP/Basic Principles	United Nations Basic Principles for the Treatment of Prisoners
CALD	Culturally and Linguistically Diverse
CDN	Chronic Diseases Nurse
CIGG	Community Integration Governance Group
CM Act	<i>Corrections Management Act 2007 (ACT)</i>
Coming Home Program	A partnership between Beryl Women Inc, Toora Women Inc and the Canberra Rape Crisis Centre
Commissioner	ACT Human Rights and Discrimination Commissioner
CPS IMS	Care and Protection Services Integrated Management System
CSD	Community Services Directorate
CSU	Crisis Support Unit
Discrimination Act	<i>Discrimination Act 1991 (ACT)</i>
DPP	ACT Director of Public Prosecutions
ESCR	International Covenant on Economic Social and Cultural Rights
HASI	Hayes Ability Screening Index

HR Act	<i>Human Rights Act 2004 (ACT)</i>
HRAT	High Risk Assessment Team
HRC/Commission	ACT Human Rights Commissioner
ICCPR	International Covenant on Civil and Political Rights
ILP	Detainee's Individual Learning Plan
IVF	In vitro fertilisation
OCYFS	ACT Office for Children Youth and Family Support within the Community Services Directorate
OPCAT	United Nations Optional Protocol to the Convention Against Torture
PCC	ACTCS Parenting and Children's Committee
PBS	Pharmaceutical Benefits Scheme
SMR	United Nations Standard Minimum Rules for the Treatment of Prisoners
UNODC	UN Office on Drugs and Crime
WAG	Women's Advisory Group
WAP	ACT Women and Prisons Group
WCHM	Women's Centre for Health Matters
WLC	Women's Legal Centre

Appendix 1: Interview Questions

TIME DAY DATE

Length of interview

Name

Consent given?

I'm going to ask you a few details about your background that could help identify important issues – you don't have to answer questions if they are too sensitive.

Basic Profile

Remand or sentenced?

Period in prison AMC/Other

ATSI/NESB

Parent (how many children, ages, who cares for them)

Sexuality?

Disability?

First time in prison? Y/N

A. Overall views of treatment in detention

How would you describe your experience of detention at AMC overall?

What are the main issues you think we should look at when considering treatment of women at AMC?

If you have been in a NSW jail, did you prefer AMC or the NSW prison? Why?

B. Induction procedures

When you arrived at the AMC were you given any information about your rights and obligations at the AMC and did you understand the information? (eg NESB background or hearing/sight impaired?) Did you need/have the assistance of an interpreter?

When you arrived, were you assessed as needing protection in the AMC?

Was a mental health assessment carried out? What about a general medical check? How long had you been at the AMC when this happened?

Did you have access to a telephone on your first night? Y/N, If yes, who did you call?

C. Accommodation/Safety

Which cottage are/were you in?

What is that like? Is your cell warm during cold weather and cool during hot weather? Does it have enough light, including some sunlight?

Do you share a cell with another detainee or detainees? Is this generally an acceptable arrangement?

Are you or have you ever been in a cell with a camera? What do you think about this?

What are the shower and toilet facilities like? Do you think you have enough privacy when you use the shower and toilet?

Is there any bullying or harassment or violence between the women?

All the time Often Sometimes Rarely Never

Have you experienced this personally? Did you report it? Would you, if it happened in the future?

Why/not? How do you think staff would handle the situation?

D. General Treatment of Detainees by Staff

How would you describe your relations with staff at AMC?

Friendly Neutral Unfriendly Hostile

Have you ever complained to a staff member about your treatment by either a detainee or staff or in relation to the way the centre is run? What happened?

E. Discipline

Have you ever been disciplined at AMC? What happened to you? Was the process fair?

Have you ever been segregated (eg sent to a cell away from other prisoners) as a form of discipline/for breaking centre rules? Can you tell me what this was like?
Have you ever been physically restrained by a staff member? Why? What happened to you?
Have you ever been forcibly removed from your cell?

F. Drug Testing

Have you been tested for drugs? Why? How often?
What do you think about the way urine testing is done?

G. Searches

How often are you strip-searched? Are the searches “half/half” searches? Has it been male or female officer(s) who carried out the search? What was the reason for the search?
Has your cell been searched? How often? What was the reason for the search? How was the search carried out

H. Lock-downs

When do lock-downs happen? What is it like being locked in? What do you do?

K. Clothing

What were the clothes like at AMC? Did you have different clothes for visits? Would you wear your own clothes if you had the choice?

L. Food

Can you tell me how meals work for women detainees – do you prepare all your own meals?
How do you order the food you want – what do you think of the variety of food available?
Do you have any special dietary needs – eg allergies, religious reasons? How are these met at the AMC?

M. Sport, Recreation and other Activities (including education)

What sort of exercise do you get in the AMC? How often do you do this?
How often do you get access to fresh air outside?
What activities like recreation, or rehabilitation programs are available during the day?
What programs have you participated in? How often did they run?
What does a typical day or week look like? How much of the day are you occupied doing activities?
Do you participate in education? How does this work?

N. Work

Do you have a job in the AMC? Why/not?
Is there enough work for women? Would you like to work outside the AMC if it was possible?

O. Health

Is your health looked after in the AMC? Have you got any special health requirements that need attention? How are these met? How soon did you get any prescription medication that you need?
Have you asked for any tests to be done?
How would you describe your relations with health service staff at the centre?
Friendly Neutral Unfriendly Hostile
Do you think there is enough support for mental health while at AMC? Have you had access to any mental health treatment, or counseling? Do you think you need this help?
Do you participate in a drug treatment program (methadone)? How do you get your methadone in the AMC? Does this treatment work well for you at the AMC?
Have you ever used the needle and syringe exchange in the community? Which drugs were you injecting? Would you use a needle and syringe exchange if it was available in the AMC?
Do many women detainees use drugs while in the AMC? What is the drug most of them like to use? Do they inject drugs? What do they use to clean their needles?
Have you attended any drug and alcohol rehabilitation? Was it helpful?

Are there other special services that you need/receive eg mental health, maternal and childcare? What about the dentist?

What health or disability services have you used in the outside community? Have these been continued in detention?

Have you ever been out of the AMC to receive health services? Can you tell me how this worked?

Do any detainees get tattoos while in the AMC? How do they do this?

P. Communication with the outside world - family

When are your family able to visit you and how many of them can come?

If you have children do you feel you are able to maintain a relationship with them?

Do you think women should be able to have young children stay with them at AMC? Would this work in practice?

Did you have your first visit within the first 2 days of detention? Why/not?

Do you ever experience difficulties with visits? (eg Privacy, kids going to toilet, breastfeeding mothers)

Are you able to phone your family and/or your friends? When? How many times a week? During what hours? For how long?

Do you ever experience difficulties with the phone in your yard? (e.g. faults, eg competition for the phone.)

6. Can you receive phone messages from your family? In what situations?

Q. Communication with Outside World – legal etc

Did you defend yourself in court or did you have a lawyer?

Do you now have a lawyer? Have you been visited by your lawyer? When and how often is your lawyer able to visit you?

When can you call your lawyer? How often and for how long? Is it easy to get a call or a message through to your lawyer?

Do you get phone messages from your lawyer? Is it easy to speak with your lawyer once you have received their message?

Do you know about the free calls to organisations such as the Ombudsman? Have you ever made a call and complained? Which organisation? What was the result? Were you happy with the outcome?

R. Access to information about the outside world

Is it easy to keep in touch with what is happening outside prison – eg news? Can you read the newspaper or watch news on tv?

S. Leave

Have you ever been granted leave of absence from the AMC? e.g., for a funeral.

T Transition

Do you have a plan in place for where you will live and what work you might do when you are released from AMC?

Who works with you to make the plan, and what services will assist you once you leave AMC?

U. Voting Rights

Has there been an election during the time you have been detained?

Did you vote in the election?

What was the procedure for voting at AMC?

V. General Comments

What is the worst thing about living at the AMC?

If you were able to improve one area of the AMC, what would it be?

Ask detainee to agree or disagree:

“I am treated as a human being and a person of value at the AMC.”

Is there anything else you would like to tell us about your experience at the AMC or are there any suggestions you have as to how the AMC can be improved?

Reaffirm Consent