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ACT Inspector
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Services

REPORT OF A REVIEW OF A CRITICAL INCIDENT

by the

**ACT INSPECTOR OF
CORRECTIONAL SERVICES**

*Assault of a detainee at
the Alexander Maconochie
Centre on 25 October 2018*

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

ABOUT THIS REPORT

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We acknowledge the traditional custodians of the ACT, the Ngunnawal people. We acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region.

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*Assault of a detainee at
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Centre on 25 October 2018*

Neil McAllister
ACT Inspector of Correctional Services
18 January 2019

**ACT INSPECTOR OF CORRECTIONAL SERVICES**

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Letter of Transmittal

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

Dear Madam Speaker

I am pleased to provide you with a report entitled 'Report of a Review of a Critical Incident by the ACT Inspector of Correctional Services: Assault of a detainee at the Alexander Maconochie Centre on 25 October 2018' for tabling in the Legislative Assembly pursuant to Section 30 of the *Inspector of Correctional Services Act 2017* (ACT) (the Act).

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

As required under Section 29 of the Act a draft copy of the review has been provided to The Hon Shane Rattenbury MLA, Minister for Corrections and Ms Alison Playford, Director-General of the Justice and Community Safety Directorate. Comments were received and considered.

Yours sincerely


Neil McAllister
ACT Inspector of Correctional Services
18 January 2018

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1. EXECUTIVE SUMMARY

- 1.1 On 25 October 2018 a male detainee (Detainee Z) was assaulted in his cell by one or as many as three detainees (W, X and Y) at the Alexander Maconochie Centre (AMC). Detainee Z received significant, but not life-threatening, facial injuries that necessitated over-night treatment in hospital.
- 1.2 At the time the incident occurred (3pm) there were no staff on the floor in the unit. This was not unusual in that the unit is monitored visually from the officers' station and via CCTV, supplemented by routine patrols and cell checks. The assault occurred shortly after the afternoon muster.¹
- 1.3 CCTV footage suggests that the assault was planned rather than spontaneous and that detainees other than W, X and Y were involved as "look-outs".
- 1.4 There was no intelligence available to ACT Corrective Services (ACTCS) to suggest that there were "issues" between the victim and the other detainees prior to 25 October 2018. CCTV footage appears to show that Detainee Z went willingly into his cell with two of his alleged attackers, suggesting that he was unaware of what was about to happen.
- 1.5 All the "named" detainees involved in the incident were on remand in custody awaiting trial.
- 1.6 This review found that the "named" detainees were properly classified as Medium Security and that their placement in the same unit was reasonable.
- 1.7 Overall, the review team finds that the incident was not reasonably foreseeable by ACTCS.
- 1.8 As required under s 29 of the Act a draft copy of this report was provided to the Hon Shane Rattenbury MLA, Minister for Corrections and Ms Alison Playford, Director-General of the Justice and Community Safety Directorate. Comments were received from the Director-General on behalf of herself and the Minister. The review team gave consideration to their comments in the preparation of the final report.

¹ Accounting for detainees by sight.



2. FINDINGS & RECOMMENDATIONS

2.1 There are seven findings arising from this review:

Finding 1:

That AMC staff responded in a timely manner to the incident once it had been reported by the victim.

Finding 2:

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

Finding 3:

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

Finding 4:

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

Finding 5:

That notifications of the incident were made in accordance with relevant policies and procedures.

Finding 6:

That in terms of the detainees’ correctional histories and prison experience, it was reasonable that they be accommodated in the same unit.

Finding 7:

That there were no human rights issues identified in the review.

3. INTRODUCTION

3.1 Authority to conduct a review of a critical incident

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

This review was conducted at my own initiative.

3.2 What is a ‘critical incident’?

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

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

This review concerns an event relevant to s 17(2)(g).

In a previous report concerning an assault² there was some uncertainty as to whether the victim had been *admitted* to hospital (he was treated in accident and emergency). In this instance, the review team is satisfied that the victim was *admitted*.

3.3 What must the Inspector report on?

Section 27 of the Act requires that the Inspector must include certain things in a report of a review. In a previous report³ I noted the ambiguity in s 27:

... I am of the opinion that while the requirements of s 27 have relevance to the conduct of a review of a *correctional centre* or a *correctional service* some have little or no relevance to the review of a *critical incident*. In that regard this report has been structured to capture the intent and spirit of s 27 but without specific reference to some of the topics.

It is intended that the matter concerning s 27 will be addressed in amendments to the Act.

3.4 Public interest considerations relating to this report

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

- (a) there are public interest considerations against disclosure; and*
- (b) those considerations outweigh the public interest in favour of disclosure.’*

In accordance with s 28(2)(d), certain information that might reveal the identities of detainees and staff involved in the incident has been withheld in the body of this report. Further, I have decided not to make public Appendix 1 to this report that touches on an ongoing police investigation. However, the appendix will be provided to the Minister for Corrections and the Director-General of the Justice and Community Safety Directorate..

3.5 The Review Team

The review team comprised:

- Neil McAllister, Inspector of Correctional Services; and
- Rebecca Minty, Deputy Inspector of Correctional Services

² ACT Inspector of Correctional Services. (2018), *Report of a review of an assault of a detainee at the Alexander Maconochie Centre on 23 May 2018*, Canberra.

³ Ibid.

4. FORM OF THE REVIEW

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

5. THE REVIEW

5.1 How, when and where the incident occurred

- 5.1.1 The incident occurred at approximately 3pm in a two-story male unit at the Alexander Maconochie Centre (AMC). Staff did not witness the assault, only becoming aware of it about 3:30pm when Detainee Z contacted them using his cell intercom.
- 5.1.2 Detainee Z was found with facial injuries consistent with being assaulted but he declined to say who had assaulted him. However, post the assault he asked to be moved from the unit.
- 5.1.3 Detainee Z was assessed by AMC medical staff before being taken to Canberra Hospital at 5:20pm. He was discharged from hospital and returned to AMC on 26 October 2018.

5.1.4 CCTV footage of the incident revealed the following sequence of events:

2:57pm

Four detainees meet in a cell on the upper landing – one is Detainee X (his cell)

2:58pm

Detainee Y comes downstairs and speaks briefly to Detainee Z who is playing cards in the common area with two other detainees

Detainees Y and Z walk a short distance and enter Detainee Z's cell. A few moments later, Detainee W also enters the cell – the cell door is closed

Detainee X approaches the cell on a few occasions and appears to be speaking to those inside through the cell door observation window

3:00pm

Detainee W exits the cell and Detainee X enters at the same time. Detainees X exits after about 30 seconds, leaving Detainees Z and Y still inside

3:01pm

Detainee W returns to the cell and appears to speak to someone inside

Detainee Y leaves the cell and moves to the upper landing where his cell is located

3:25pm

Detainee Z alerts staff via the intercom in his cell that he has been assaulted. Staff respond immediately

- 5.1.5 Throughout this brief period, two or three other detainees can be seen apparently keeping watch on staff in the officers' station. This may have been arranged by Detainee X at the 2:57pm meeting on the upper landing.
- 5.1.6 As the CCTV does not record sound it is unknown as to whether there was any audible argument or noise emanating from the cell before or during the assault on Detainee Z.
- 5.1.7 In fairness to staff who were on duty when the incident occurred, the review team notes that the CCTV recording does not show any detainee activity that a reasonable person might have considered to be suspicious at the time. We also note that the view of Detainee Z's cell door from the officers' station is somewhat obscured by a staircase.
- 5.1.8 Following the incident Detainee Z made some remarks to staff about why he was assaulted but those comments cannot be aired in the public version of this report (s 28 of the *Inspector of Correctional Services Act 2017* applies).

5.2 The timeliness and effectiveness of centre staff and centre management in responding to the incident

- 5.2.1 As noted above (5.1.1) staff did not become aware of the incident until contacted by Detainee Z at about 3:25pm. He was then secured in his cell and the unit was locked down before Detainee Z was taken to the AMC health centre.

Finding 1:

That AMC staff responded in a timely manner to the incident once it had been reported by the victim.

5.3 Whether there were policies, procedures and practices in place for the proper assessment and classification of the detainees

- 5.3.1 The AMC detainee classification policy⁴ sets out the factors that must be considered in determining a detainee's security classification and the effects of security classification on things such as accommodation placements.
- 5.3.2 All the "named" detainees mentioned in this report were remandees with a default security classification of Medium security:
(Medium) security mandates a physical environment similar to that of maximum security; that is a secure cell within a secure accommodation building and confinement within a secure perimeter. However, a medium security detainee will not usually require an individual special management plan, as is the case for a maximum security detainee. Medium security will be the normal classification determined for new receptions to custody, in the absence of especially high levels of risk being identified, and will also be available as progression for maximum security detainees demonstrating a reduced level of risk.⁵

⁴ Corrections Management (AMC Detainee Classification) Policy, 2012, Notifiable Instrument NI2012-299.

⁵ Ibid.



- 5.3.3 Having reviewed the criminal histories and related materials the review team is satisfied that the "named" detainees were appropriately classified as Medium Security.

Finding 2:

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

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

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

| | |
|---------------------|--------------------------------------|
| Detainee Z (victim) | No relevant notes/flags ⁶ |
| Detainee W | No relevant notes/flags |
| Detainee X | No relevant notes/flags |
| Detainee Y | No relevant notes/flags |

- 5.4.2 There were no notes that "linked" the detainees directly or indirectly through others. There were also no reports of detainees W, X and Y having any "issues" with Detainee Z prior to the incident on 25 October 2018, notwithstanding that detainees W, X and Y had been involved in assaults on other detainees in the past. Unsubstantiated information came to light after the incident that suggests that detainees W, X and Y may have been acting on behalf of another person(s), the details of which cannot be aired in the public version of this report (s 28 of the *Inspector of Correctional Services Act 2017* applies).

Finding 3:

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

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

- 5.5.1 The unit was/is not subject to constant staff presence. Corrections Officers monitor the unit by "line-of-sight" from the central officers' station and via CCTV. In addition they enter the unit to conduct musters regularly during un-lock hours, to conduct cell and general inspections, undertake searches when required and conduct random patrols. Officers told us that they are aware that detainees "watch the watchers" from time-to-time and suggested that this could be remedied by replacing the current glass on the officers' station with mirror (one-way) glass. The review team makes no recommendation about this suggestion but it is something that ACTCS might consider.

- 5.5.2 CCTV footage shows the officers had conducted a muster and inspection of the unit a few minutes before the assault on Detainee Z. Those planning the assault probably counted on officers not re-entering the unit for a while.

⁶ An intelligence flag is an alert indicating that a person may be involved in some illegal activity.

Finding 4:

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

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

- 5.6.1 The ACT Corrective Services policies and procedures relevant to the incident are the Incident Reporting, Notifications and Debriefs Policy⁷ and the Incident Reporting Operating Procedure⁸.
- 5.6.2 Section 4.1 of the Incident Reporting Operating Procedure requires that ACT Policing be notified of incidents that may require their attendance (e.g. alleged assault). ACT Policing was advised of the assault on Detainee Z by email at 5:07pm on 25 October 2018. The notification was acknowledged by police at 5:24pm with a question as to whether Detainee Z wished to make a complaint. At 7:23pm ACM advised police by email that Detainee Z did not want AFP involvement. Notwithstanding Detainee Z's refusal to make a complaint ACT Policing "opened a job" on the incident on or about 26 October 2018.⁹
- 5.6.3 Section 5.1 of the Incident Reporting Operating Procedure requires that ACT Corrective Services is to notify the next-of-kin in the event that a detainee is 'seriously injured'. Detainee Z advised that he did not want his next-of-kin notified.¹⁰

5.6.4 Section 9 of the Incident Reporting, Notifications and Debriefs Policy deals with notification of critical incidents¹¹ to the Inspector of Correctional Services. More detailed arrangements concerning critical incidents are set out in a Memorandum of Understanding (MOU) between the Inspector and ACT Corrective Services (dated August 2018).¹² With regard to this incident, oral and written notifications were provided to the Inspector in accordance with the MOU.

Finding 5:

That notifications of the incident were made in accordance with relevant policies and procedures.

5.7 The history of the institutional conduct of the detainees

- 5.7.1 Detainee W had been involved in two assaults on other detainees in 2018. He had also verbally accosted a female detainee. Detainee X had not been cited in any incidents prior to the assault on Detainee Z. Detainee Y had been involved in one assault on other detainees in 2018 and two assaults on other detainees during previous stays at AMC. Detainee Z (the victim) had one custodial incident (a discipline for failing to provide a urine sample on admission to AMC).

5.8 Particulars of the detention status of the detainees at the time of the incident

- 5.8.1 All the "named" detainees involved in the incident were remanded in custody, pending trial.

⁷ Corrections Management (Incident Reporting, Notifications and Debriefs) Policy 2018 (No 2) NI 2018-458.

⁸ Corrections Management (Incident Reporting) Operating Procedure 2018 (No 2) NI 2018-457.

⁹ ACTCS internal email from intelligence unit, 2:25pm, 26/10/18.

¹⁰ ACTCS Incident Summary Form, 26/10/18.

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

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

- 5.8.2 Noting the constraints on information disclosure pursuant to s 28 of the *Inspector of Correctional Services Act 2017*, the charges facing the "named" detainees are as follows:

| | |
|---------------------|-------------------------|
| Detainee Z (victim) | Serious violent offence |
| Detainee W | Assault |
| Detainee X | Burglary/theft offences |
| Detainee Y | Traffic offences |

5.9 Whether, on balance, it was reasonable to allow the detainees involved in the incident to associate with each other prior to the incident

- 5.9.1 The "named" detainees are not recorded as identifying as Indigenous men. At the date of the incident detainees W, X, Y and Z were aged 21, 48, 30 and 46 respectively.
- 5.9.2 Some comment on the detainee's respective criminal histories is necessary in the context as to whether there may have been a "mismatch" in accommodating them in the same unit e.g. a vulnerable, inexperienced prisoner with a predatory, experienced prisoner.
- 5.9.3 Detainee Z (the victim)'s criminal history was predominantly associated with theft and related offences, and numerous offences involving drugs. He had received prison sentences and suspended sentences on a number of occasions.
- 5.9.4 Detainee W had a relatively minor criminal history involving robbery and assault offences. He had one prior imprisonment episode.

5.9.5 Detainee X's extensive criminal history, commencing as a child, was characterised by numerous theft and assault related offences. He had served several terms of imprisonment in the ACT and another jurisdiction for these offences.

5.9.6 Detainee Y's criminal history, commencing as child, included numerous driving and related offences and some assault convictions. He had received prison sentences in the ACT and another jurisdiction.

5.9.7 On balance, the detainees were not a "mismatch" in terms of their prison experience.

Finding 6:

That in terms of the detainees' correctional histories and prison experience, it was reasonable that they be accommodated in the same unit.

5.10 The action taken by the centre/agency to respond to issues identified in any internal review/debrief

5.10.1 An incident debrief was conducted on 7 November 2018.¹³ No matters of concern were raised in the debrief. The review team concurs with this outcome.

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

5.11.1 The review team notes that this incident involving detainee on detainee violence potentially engages a number of rights in the *Human Rights Act 2004* (ACT) (HR Act).

5.11.2 Of most relevance is the right to protection from cruel, inhuman or degrading treatment in s 10(1)(b), and the right to humane treatment when deprived of liberty in s 19.

¹³ ACTCS Formal Debrief Report, 7/11/18.

5.11.3 These scope of these obligations are such that ACTCS is required to take positive steps to protect detainees from violence and ill-treatment by other detainees,¹⁴ including by implementing measures such as conducting screening assessments of detainees, confiscation of weapons, segregating detainees where appropriate, regular supervision of detainees, and ensuring acceptable space for each detainee, with priority for preventive measures over repressive ones.¹⁵

5.11.4 On the basis of materials reviewed, the review team is satisfied that ACTCS had in place appropriate protective measures through their policies and procedures which were appropriately adhered to, and intelligence gathering.

Finding 7:

That there were no human rights issues identified in the review.

6. OTHER MATTERS ARISING FROM THE REVIEW

6.1 There were no other matters arising from the review.

¹⁴ See, for example, the United Nations Human Rights Committee concluding that Article 10(1) of the International Covenant on Civil and Political Rights had been breached where Jamaica had neglected to take measures to protect the complainant from being assaulted regularly by other inmates. *Daley v Jamaica Human Rights Committee*, View of 31 July 1997 Comm. 750/1997, para 7.6.

¹⁵ See van Kempen, P 'Positive Obligations to Ensure the Human Rights of Prisoners' in Tak, P and Jendly, M (eds) 2008, *Prison policy and prisoners' rights – the protection of prisoners' fundamental rights in international and domestic law*, Nijmegen: Wolf Legal Publishers.



APPENDIX 1

COMMENTARY ON THE INCIDENT

[This appendix has been fully redacted in the tabled version of this report pursuant to s 28 of the *Inspector of Correctional Services Act 2017*]



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