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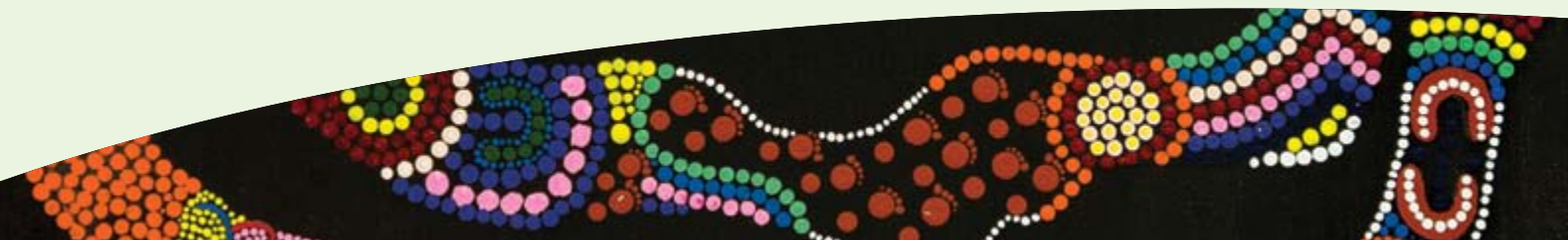
REPORT OF A REVIEW OF A CORRECTIONAL SERVICE

by the

**ACT INSPECTOR OF
CORRECTIONAL SERVICES**

*The care and management
of remandees at the
Alexander Maconochie
Centre 2018*

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

*'There are no bystanders –
the standard you walk past
is the standard you accept'*

– Lieutenant General David Morrison,
AO, Chief of Army (2014)

ABOUT THIS REPORT

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ACT Inspector of Correctional Services
GPO Box 158,
Canberra ACT 2601

T 1800 092 010

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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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Centre 2018*

Neil McAllister
ACT Inspector of Correctional Services
February 2019



ACT INSPECTOR OF CORRECTIONAL SERVICES

P 1800 932 010 | E ICS@act.gov.au | GPO Box 158, Canberra City ACT 2601

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 correctional service by the ACT Inspector of Correctional Services: The care and management of remandees at the Alexander Maconochie Centre 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)(b) 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

A handwritten signature in black ink, appearing to read 'Neil McAllister'.

Neil McAllister
ACT Inspector of Correctional Services
11 February 2019

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CONSOLIDATED FINDINGS

All findings in this report will be revisited as part of the Inspectorate's Healthy Prison Review of the AMC in 2019.

Finding 1: *That, contrary to ACT Corrections legislation and ACT and international human rights law, remandees are not separated from convicted detainees in the ACT.*

Finding 2: *That, contrary to the requirement in the Corrections Management Act 2007 (ACT), there is no policy or procedure pertaining specifically to remandees.*

Finding 3: *That the induction regime at the AMC is inappropriate and unacceptable on the basis that newly received detainees are treated in a manner broadly akin to the practices under the Corrections Management Act 2007 (ACT) of segregation for protective custody, investigative segregation, or separate confinement as punishment.*

Finding 4: *That the induction regime is inconsistent with the spirit of section 12(e) of the Corrections Management Act 2007 (ACT), in that newly received detainees reported very limited access to open air and exercise.*

Finding 5: *That the induction regime may increase the distress, and thus the risk of suicide or self-harm in newly received detainees, as it increases their social isolation at a stage of incarceration at which detainees are most vulnerable and fails to provide them with purposeful activity.*

Finding 6: *That the prolonged lock-in of new reception detainees may amount to an unreasonable limitation of section 19 of the Human Rights Act 2004 (ACT) (the right to humane treatment when deprived of liberty).*

Finding 7: *That current induction practices do not appear to be effective for a significant number of detainees in terms of imparting important information about AMC rules, procedures, and their rights and obligations as a detainee.*

Finding 8:	<i>That the average annual out-of-cell hours provided to detainees in the ACT have been wanting compared to other jurisdictions and this does not reflect well on the AMC as a prison in a human rights jurisdiction.</i>
Finding 9:	<i>That there are staffing issues resulting in unacceptable lock-ins of detainees during normal unlock hours.</i>
Finding 10:	<i>That the data management system lacks the capacity to ensure that lock-ins are spread as equitably as possible across and within all units.</i>
Finding 11:	<i>That it is not possible to verify if the minimum requirements in the Corrections Management Act 2007 (ACT) regarding access to open air and exercise are uniformly being met.</i>
Finding 12:	<i>That there are no ACTCS notified policies and procedures concerning the management of cohorts at the AMC.</i>
Finding 13:	<i>That the lock-ins of cohorts are not recorded on the AMC lock-ins data report.</i>
Finding 14:	<i>That the lunchtime lock-in of detainees is an unnecessary restriction on their time out-of-cells.</i>
Finding 15:	<i>That the existence of a plethora of "cohorts" at the AMC negatively impacts all detainees' (remand and convicted) freedom of movement within the AMC and overly complicates visits, programs and activities and the overall management of the centre.</i>
Finding 16:	<i>That there are insufficient telephones to meet the needs of the detainee population.</i>
Finding 17:	<i>That unit phones do not provide privacy or a quiet environment for detainees to speak to legal representatives or to discuss personal matters with family and friends.</i>

Finding 18:

That ACTCS was very progressive in allowing detainees access to email and limited internet in 2010, providing detainees in the AMC with another means of maintaining contact with family and friends that is unavailable in other jurisdictions.

Finding 19:

That reported delays in establishing email accounts, combined with reported delays in establishing detainee telephone accounts, impede detainees' ability to communicate with family, friends, and legal advisors.

Finding 20:

That there may be scope for re-modelling or making better use of the visits centre to provide more capacity for social visits.

Finding 21:

That the limited access of AMC remandees to social visits does not recognise the status of remandees as unconvicted persons, or of their need for increased access to visits during a highly stressful period for both the detainee and their family.

Finding 22:

That there is no policy that specifically recognises the importance of facilitating the access of remandees to the outside world, including through the opportunity to receive frequent visits from family and friends.

Finding 23:

That, given the "stress factor" reported by new receptions, there should be a more flexible approach at the AMC to providing a first visit as soon as possible (e.g. within 24 hours) after admission.

Finding 24:

That there is a need to re-evaluate the AMC's restrictive approach to visits to enable remandees, detainees with children that visit, and others to have greater access to visits.

Finding 25:

That there may be a place for video visits at the AMC to supplement live visits.

Finding 26:	<i>That while the AMC has many culturally appropriate design considerations, it lacks dedicated Aboriginal areas and spaces in which Aboriginal detainees can gather informally together, learn and share cultural experience.</i>
Finding 27:	<i>That while not conducted in a designated Aboriginal cultural space, the yarning circles at the AMC acknowledge Aboriginal remandees' need for connection and cultural sharing.</i>
Finding 28:	<i>That the 2017 decision to move the female detainees from the women's community centre to a high security male accommodation block was at odds with the design philosophy of the AMC and recognised best practice concerning the care and management of women in detention.</i>
Finding 29:	<p><i>That the high-security accommodation unit designed for men and located within the main male prison is unsuitable for female remandees as it:</i></p> <ul style="list-style-type: none"> <i>• Subjects female detainees to a higher level of security than necessary;</i> <i>• Restricts women's access to the outdoors due to the fencing around the area and supervision required whilst outside;</i> <i>• Exposes women with histories of domestic and family violence or sexual assault to the possibility of re-traumatisation due either to the location, or the necessity to walk past male accommodation areas when accessing the clinic, education and visits.</i>
Finding 30:	<i>That lack of access to the outdoors ("green space") and the unavailability of suitable exercise facilities within the unit may compromise the mental and physical wellbeing of female detainees.</i>
Finding 31:	<i>That female detainees are not provided with sufficient meaningful activity, including work, education and programs (including parenting programs) that meet their needs.</i>
Finding 32:	<i>That female remandees are being subjected to restrictive living conditions that do not reflect their legal status as unconvicted persons.</i>

Finding 33:

That the current conditions and treatment for women remandees, specifically:

- *accommodation in high security cellular accommodation designed for men, with limited access to green space;*
- *visual and aural proximity to male prisoners; and*
- *a limited regime of work, programs and activities;*

represents a significant limitation on women's rights to privacy, to humane treatment when deprived of liberty, and equality under the Human Rights Act 2004.

Finding 34:

That there are strong arguments for having dedicated ACT Corrective Services' "Bail Support Officers" working at the courts and at the AMC.

Finding 35:

That the Ngunnawal Bush Healing Farm offers the prospect of being able to accommodate Indigenous people on bail orders as an alternative to serving time on remand at AMC.

Finding 36:

That it is difficult to locate AMC policies and procedures unless one has specific knowledge of how to access them via the ACT Legislation Register.

Finding 37:

That in the interests of openness and accountability it is highly desirable that ACTCS publish Executive Director Instructions (EDIs) and General Manager Instructions (GMIs) that contain policy or key procedures on its website in a timely manner, subject to any necessary redactions of material of a security or privacy nature.

Finding 38:

That significant work must be done in a timely manner to bring policies and procedures to a standard the community should expect for a custodial environment.

Finding 39:

That a considerable body of work needs to be done to bring detainee hard files to an acceptable state.

EXECUTIVE SUMMARY

1. The Alexander Maconochie Centre (AMC) commenced operations in 2009. It was commissioned as Australia's first "human rights prison" and the principles underlying this description were reflected in the *Corrections Management Act 2007* (ACT) (CM Act), drawn from the *Human Rights Act 2004* (ACT) (HR Act).
2. From the outset, the principal operating philosophy of the AMC was to have a strong focus on the rehabilitation of detainees rather than just providing a place of incarceration. There would be an emphasis on education, rehabilitative programs and throughcare to help detainees reintegrate back into the community and live productive, law-abiding lives. The prison is considered to be *the* punishment, not a place to send people *for* punishment. Restrictions on rights of those incarcerated should be reasonable, proscribed by law and proportionate in the circumstances.
3. The AMC was always going to be a "complicated" prison, in that it had to accommodate males and females, convicted and unconvicted people of both genders and protection prisoners (male, female, convicted and unconvicted) of different security risk classifications. Add into that complex mix detainees with mental illnesses, cognitive dysfunctions, drug and alcohol addictions, histories of sexual and physical abuse, gang affiliations, those with poor literacy and numeracy skills, and generally dysfunctional family histories; and one can easily identify the challenges faced by AMC management. In other jurisdictions many of these groups and sub-groups are often managed in separate prisons or specialised units within one or more prisons.
4. Adding to the challenges facing the AMC, the centre has a current "design capacity" of 424 general-use beds,¹ which is the number of detainees it is meant to accommodate in either one-person cells/rooms or two-person cells/rooms within the secure perimeter. The AMC, like almost all prisons in Australia, routinely exceeds 100% of its design capacity. To manage these numbers, prisons frequently resort to "double-ups", that is, accommodating two prisoners in a space designed for one person. This may provide a short term solution but creates other problems, such as increased demands on infrastructure (e.g. visits areas, medical centres, education centres) that was intended to only service the design capacity, and increased tensions arising from restrictive, cramped living conditions which have an impact on both detainees and staff.
5. Furthermore, no comfort should be taken from a prison operating at or slightly below 100% capacity, given that a buffer is needed to allow for reception surges and the capacity to move prisoners between units for management purposes (see paragraph 4.6.5).
6. The AMC was designed to provide separate living accommodation for remandees (115 beds). However, the number of people being received on remand has far exceeded the remand design capacity, resulting in remandees and convicted detainees now living in the same units, and in some cases, sharing cells.
7. In effect, there is no longer any distinction made between convicted and unconvicted detainees at the AMC in accommodation units or generally.

¹ This excludes 43 "special-purpose" beds, which includes the 15 beds in the Transitional Release Centre – refer to Table 3.3, Chapter 3 for a detailed breakup of the current design capacity.

8. Within this complex environment, two groups at significant risk of being marginalised are remandees, due to their special needs and circumstances as unconvicted persons, and female detainees due to their relatively small number compared to the male population. It is axiomatic that female remandees are at heightened risk of marginalization.
9. This review did not set out to advocate for or against a separate remand prison or a separate women's prison. These issues are properly matters for government to consider in the context of its social policy agenda for the ACT. Rather, our purpose was to review how remandees are being managed in the current circumstances at the AMC and whether there is a need to do things differently to cater for the special needs of remandees as unconvicted persons.
10. As noted earlier, given that there is little distinction between remandees and convicted detainees at the AMC, much of our commentary applies to both groups. We have made a number of *findings* and no *recommendations* on the basis that ACT Corrective Services (ACTCS) is more than capable of addressing the findings that necessitate action without being instructed by the Inspectorate as to the best remedies. We will, however, revisit the findings as part of the "Heathy Prison Review"² of the AMC in 2019 to see what action was taken, or is being taken, to address the various issues that are reflected in the findings.
11. Some key issues arising from the review are:
 - (a) There are no ACTCS policies or procedures that specifically address the circumstances of remandees, despite this being a requirement of Section 44 of the CM Act;
 - (b) For all intents and purposes, there are very few differences in the treatment of remandees at the AMC compared to convicted detainees, notwithstanding that some, if not many, will not be sentenced to a term of imprisonment when their charges are finalised in court;
 - (c) Detainees are subject to planned and unplanned lock-ins which has resulted in the ACT being one of the worst performing jurisdictions with regards to time out-of-cells;
 - (d) New reception detainees are often held on highly restricted regimes while undergoing assessment, resulting in as little as one hour out-of-cells per day due to them being accommodated in a unit with "mainstream" detainees;
 - (e) Detainees complain of boredom due to a lack of meaningful work opportunities. Those who are "employed" are largely engaged in menial jobs, such as cleaning, that do not impart skills relevant to future employment outside prison;
 - (f) Remandees complain of lack of access to activities such as personal development programs (e.g. computer skills, managing money, parenting for women) and creative past-times (e.g. art, music, craft work);
 - (g) Female detainees, many of whom are remandees, are currently accommodated in a former male high security unit, having been relocated from the women's cottages in 2017 due to crowding concerns. This new accommodation is unsuitable for women. It contradicts the AMC's design philosophy and in the review team's view is a significant limitation of the women's human rights, including the right to humane treatment when deprived of liberty;

² A whole-of-prison review methodology first adopted by the World Health Organization that considers four "pillars": safety, respect, purposeful activity, and rehabilitation and resettlement.

- (h) The family and friends visits program is limited to one hour visit “slots” twice a week based on the unit in which a detainee is accommodated, across a span of five days per week. This means that visitors are restricted as to when they can visit (e.g. visit slots during school hours might preclude children visiting a parent);
 - (i) New reception detainees (remandees and those sentenced to imprisonment at court) can wait up to four days to receive a family visit after admission due to the visit schedule;
 - (j) Detainees, many of whom have limited funds at their disposal, complain of the high cost of making phone calls to family and friends who only have mobile phones;
 - (k) Detainees spoke about long delays (weeks in some cases) in establishing telephone and email accounts, which impacts particularly on remandees who may have had little notice of their imprisonment (for example if they are denied bail at court);
 - (l) The original “campus style” design of the AMC has been subverted by the installation of numerous internal fences and locked gates that has resulted in a visually repressive environment and effectively made the “town square” inaccessible to detainees;
 - (m) Staff spend an excessive amount of time escorting detainees around the centre, including detainees with low security classifications, due to “concerns” about cohorts;
 - (n) Male and female Indigenous detainees lack culturally appropriate outdoor spaces where they can meet and “yarn”;
 - (o) The physical state of some cells in the older (original) units (e.g. Sentenced Unit 1 and Sentenced Unit 2) is unacceptable and reflects poorly on AMC management (e.g. grubby and damaged walls, etc.). It is also of concern that double bunks fitted in cells appear to be of poor quality and unsafe;
 - (p) Finally, when we asked remandees in the detainee survey: *Do you agree or disagree with the statement “I am treated as a human being and a person of value at the AMC”?* only 37% (n=60) agreed with the statement.
12. Although this report paints a somewhat bleak picture of the AMC, particularly with regard to remandees and female detainees, much of this is attributed to the overcrowding at the AMC that places an enormous strain on services, staff and detainees. Detainee crowding is not the making of ACTCS, which has no control over how many people are remanded in custody or sentenced to imprisonment. Prisons don’t have “No Vacancy” signs.
 13. There are many, many dedicated and competent officers within ACTCS who are currently doing an excellent job, but there is a limit as to how many bodies can be crammed into the AMC before conditions became intolerable and/or dangerous to detainees and staff, and the basic human rights of both are put at risk.
 14. Being a one prison jurisdiction, the ACT has the opportunity to focus all its attention on the AMC and create a “centre of excellence” as a national benchmark for correctional services. However, unless the “justice conveyor belt” can be slowed down in the ACT, the AMC will struggle to achieve excellence or live up to its human rights mantle.

CHAPTER 1: INTRODUCTION

1.1 Authority for this review

1.1.1 Section 18(1)(b) of the *Inspector of Correctional Services Act 2017* (ACT) (ICS Act) provides that the Inspector 'must examine and review correctional services at least once every 2 years.' In my understanding, the provision was intended to ensure that the Inspector can conduct *proactive* reviews of services rather than be limited to *reactive* reviews in response to complaints or serious incidents.

1.1.2 Section 8 of the ICS Act defines 'correctional service' broadly and I take the view that it encompasses any administrative or operational activities of ACTCS, undertaken or not undertaken, that affect detainees.

1.2 What is the review about?

1.2.1 The AMC was not designed as a remand-only prison, rather it was designed to house convicted and remanded detainees in separate accommodation areas. Apart from the desirability of not subjecting remandees to the arguably additional pressures of the mainstream prison population, and the associated risks of such exposure (assaults, stand-overs, etc.), separation would have allowed the AMC to better focus on the particular needs of remandees including:

- the needs of those who may not have been in prison before and who may be experiencing uncertainty about their legal proceedings;
- the acute stress and anxiety caused by their sudden change in circumstance, for example caring, accommodation, and work responsibilities they are suddenly unable to fulfil;

- drug and alcohol abuse problems;
- mental illness;
- psychological conditions; and
- poor literacy and numeracy skills.

1.2.2 Remandees, but predominantly female remandees, may also be primary carers of children and have to deal with the experience (and often trauma) of separation from their children. Occasionally, women may be remanded whilst pregnant and give birth in custody. Although sentenced detainees also have to deal with many of these issues, unlike remandees they have a greater degree of certainty around their period of incarceration.

1.2.3 As it stands at the AMC, remandees are spread across various accommodation units, and in some cases, share cells with convicted detainees.

1.2.4 In this context, the review examined whether, and to what extent, ACTCS is meeting the needs of remandees in the context of Section 10(1) of the CM Act:

- (a) the remandee must be presumed innocent of any offence for which the remandee is remanded; and
- (b) the detention is not imposed as punishment of the remandee.

1.2.5 In addition to noting that remandees are 'presumed innocent', it is necessary to dispel the notion that remandees are just "prisoners-in-waiting" and that because any time they spend on remand eventually counts as time served when they are sentenced, they are no worse off than convicted prisoners. A Corrective Services

NSW research report published in 2016³ found that from a sample of 976 inmates admitted to prison on remand in 2011:

- 42.2 % received a custodial sentence whilst on remand in prison (Although the report is silent on the matter, it is assumed that this cohort includes inmates sentenced to time served on remand)
- 10.8% received a custodial sentence after being released to bail (for non-compliance with conditions and/or further offending)
- 10.2% were either acquitted or had charges dismissed
- The remaining 36.8% had non-custodial outcomes such as community-based orders, fines etc.

1.2.6 If that outcome was applied to the remandee population at the AMC on any one day, about half will not receive a sentence of imprisonment whilst on remand, yet they will still experience the realities of being a prisoner. For some this will include loss of employment, family financial hardship, family breakdown, trauma, stress, anxiety, depression and exposure to physical violence.

1.2.7 In summary, the purpose of the review was to ascertain whether remandees are being afforded their legal and human rights at the AMC in accordance with their status as unconvicted persons, and as enunciated in the CM Act and HR Act, and that detention of remandees does not amount to punishment.

1.3 Background

1.3.1 The Preamble to the CM Act states:

- 1 *The inherent dignity of all human beings, whatever their personal or social status, is one of the fundamental values of a just and democratic society.*
- 2 *The criminal justice system should respect and protect all human rights in accordance with the Human Rights Act 2004 and international law.*
- 3 *Sentences are imposed on offenders as punishment, not for punishment.*
- 4 *The management of imprisoned offenders, and people remanded or otherwise detained in lawful custody, should contribute to the maintenance of a safe, just and democratic society, particularly as follows:*
 - (a) *by ensuring justice, security and good order at correctional centres;*
 - (b) *by ensuring that harm suffered by victims of offenders, and their need for protection, are considered appropriately in making decisions about the management of offenders;*
 - (c) *by promoting the rehabilitation of imprisoned offenders and their reintegration into society;*
 - (d) *by ensuring that imprisoned offenders and people remanded or otherwise detained in lawful custody are treated in a decent, humane and just way.*

3 Galouzis, J. and Corben, S., (2016) 'Judicial Outcomes of Remand Inmates in NSW', *Corrective Services New South Wales, Bulletin No.34*, Figure 5.

1.4 Who is a 'remandee'?

- 1.4.1 An alleged offender is remanded in custody by a court if they are charged with an offence and have not been granted bail.
- 1.4.2 In the ACT, a presumption in favour of bail exists in relation to all minor offences that attract less than 6 months imprisonment.⁴ However, charges for some more serious offences do not have a presumption in favour of bail, and charges for murder and serious drug offences have a presumption against bail.⁵
- 1.4.3 For the purposes of this report, a remandee does not include a person who is remanded on a subsequent matter(s) whilst currently serving a sentence of imprisonment, or a person who has been convicted but not yet sentenced.⁶
- 1.4.4 It should be noted that, in this report, we use the descriptors 'remandees' and 'detainees' somewhat interchangeably for the simple reason that, for the most part, there is no difference in their care and management at the AMC, for example, time spent out of cells, access to visits, accommodation placement and so on.

1.5 Accommodation of remandees

- 1.5.1 As a general practice, ACTCS does not accommodate remandees separately from convicted detainees due to a lack of suitable accommodation resulting from crowding at the AMC.
- 1.5.2 This practice is inconsistent with s 44(2) of the CM Act which states that:

The director-general must also ensure that convicted detainees are accommodated separately from non-convicted detainees.

- 1.5.3 We note that s 44(4) of the CM Act provides:

However, the director-general may give directions for different accommodation of a non-convicted detainee if the director-general suspects, on reasonable grounds that is necessary to ensure the safety of the detainee or anyone else.

Example

Remandee J has served various sentences for violence offences, has an aggressive personality and enjoys bullying other people. The director-general suspects that other remandees detained with J are highly vulnerable in comparison with J. The director-general decides that J should be accommodated with convicted offenders.

- 1.5.4 The practice is also likely to be inconsistent with s 19(2) of the HR Act which states:

An accused person must be segregated from convicted people, except in exceptional circumstances.

- 1.5.5 The review team notes that 'exceptional circumstances' is not defined in the HR Act, nor is there specific guidance in international law that would indicate what would amount to 'exceptional circumstances' to allow departure from this rule.⁷ However, in the view of the review team, the phrase 'exceptional circumstances' in the CM Act is reflective of special cases based on an individualised assessment, and is not meant to refer to an entire class of people (e.g. all remandees).

⁴ Bail Act 1992 (ACT) s 8.

⁵ Bail Act 1992 (ACT) ss 9B, 9C.

⁶ There are references in literature to remandees as either unsentenced or unconvicted persons. These terms are different as a person may be convicted but not sentenced (i.e. awaiting a sentence to be handed down). Remandees in this report means only unconvicted persons.

⁷ Section 19(2) of the HR Act is based on Article 10(2)(a) of the International Covenant on Civil and Political Rights, which uses the term 'exceptional circumstances'. However, there is little guidance on what would amount to 'exceptional circumstances' that would justify departure from this rule. See Rodley, N. and Pollard M. (2009) *The Treatment of Prisoners Under International Law*, Oxford University Press, 3rd Ed, 422.

1.6 Treatment and care of remandees

1.6.1 Separation of remandees from convicted detainees is an important requirement under ACT and international human rights law, but obligations on the ACT government extend further than just separating the cohorts. Remandees must be afforded a particular specialised regime that takes into consideration their status as innocent in law. In particular, attention needs to be paid to certain aspects of a remandee's treatment, notably:

- maximum opportunity to contact their lawyer or the facilities and opportunity to prepare their legal defence;
- maximum opportunity to maintain contact with the outside world including family;
- the opportunity, but not compulsion, to participate in work and programs in prison; and
- measures to reduce or alleviate anxiety and stress including maximum possible time out-of-cells, and participation in (non-criminogenic) programs and activities.

1.6.2 The need for a specialised regime or approach to the treatment and care of remandees is recognised in the CM Act, which states at section 44(1):

... the director-general must make a corrections policy or operating procedure providing for different treatment of convicted detainees and non-convicted detainees.

Example

a corrections policy or operating procedure, in accordance with the following rules of the United Nations Standard Minimum Rules for the Treatment of Prisoners, for non-convicted detainees to be able to—

- *procure food at own expense (r 87)*
- *be offered work but not be obliged to work (r 89)*
- *procure reading and writing material at own expense (r 90)*
- *visit and be treated by own doctor at own expense (r 91)*

1.6.3 Contrary to the requirements of the CM Act, there is not, nor has there ever been, an ACTCS policy or operating procedure relating specifically to remandees.

1.6.4 Noting this absence, this review seeks to examine the treatment and care of remandees against good practice in other jurisdictions and informed by human rights. The methodology adopted for the review is set out in **Appendix 1** to this report.

CHAPTER 2: HUMAN RIGHTS AND LEGAL FRAMEWORK APPLICABLE TO REMANDEES

2.1 ACT and international legal framework regarding treatment of remandees

2.1.1 The key principle underpinning this review is that remandees must be presumed innocent of the offence for which they are remanded in custody. The presumption of innocence is a fundamental right in human rights law,⁸ is recognised as the ‘golden thread’ running through the common law,⁹ and is reflected in ACT law.¹⁰

2.1.2 The presumption of innocence relates to how criminal trials must be run but also to how persons are treated whilst on remand.

2.1.3 When a person is charged with a criminal offence but has not yet been proved guilty, there are a number of considerations flowing from their right to be presumed innocent, specifically:

- pretrial detention must be used as a last resort, for the shortest time possible, and only for the most serious offences;¹¹

- when remanded in custody, remandees should be detained separately from persons already convicted of an offence, save for in exceptional circumstances;¹²
- when remanded in custody, remandees should be treated in a manner consistent with their status as innocent persons.¹³

These requirements are considered in detail below.

2.1.4 Section 19 of the HR Act requires that anyone deprived of their liberty must be treated with humanity and with respect for their dignity. This right applies equally to remanded and sentenced detainees and pervades all aspects of this review.

2.2 Pre-trial detention as a last resort

2.2.1 International standards require that pretrial detention be used as a last resort, for the shortest time possible and only for the most serious offences.¹⁴ Access to bail engages the right to recognition and equality before the law under section 8 of the HR Act. However,

8 *International Covenant on Civil and Political Rights* (ICCPR), 16 December 1966, United Nations Treaty Series vol. 999:171, Art 14(2).

9 *Woolmington v DPP* [1935] UKHL 1 (23 May 1935).

10 See eg *Criminal Code 2002* (ACT) Part 2.6; *Human Rights Act 2004* (ACT) s 22(1); *Corrections Management Act 2007* (ACT) s 10(1)(a).

11 *Human Rights Act 2004* (ACT) s 18(5); Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (SPT), *Eighth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 26 March 2015, CAT/C.54/2, para 76.

12 *Corrections Management Act 2007* (ACT) s 44(2); *Human Rights Act 2004* (ACT) s 19(2); *International Covenant on Civil and Political Rights* (ICCPR), 16 December 1966, United Nations Treaty Series vol. 999:171, Art 10(2)(a) – however, when ratifying the ICCPR, Australia lodged a reservation to Article 10(2), essentially accepting segregation as an objective but agreeing to achieve this progressively; *Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), 17 December 2015, UN-Doc A/Res/70/175, Rule 85.

13 *Corrections Management Act 2007* (ACT) s 46(2); *Human Rights Act 2004* (ACT) s 19(3); *International Covenant on Civil and Political Rights* (ICCPR), 16 December 1966, United Nations Treaty Series vol. 999:171, Art 10(2)(a); *Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), 17 December 2015, UN-Doc A/Res/70/175, Rule 84.

14 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2017), ‘Remand Detention’, *Extract from the 26th General Report of the CPT*, CPT/Inf(2017)5-part, para 53.

in reality in the ACT and elsewhere, certain groups such as persons from a low socioeconomic background, persons with a disability, and Aboriginal or Torres Strait Islanders are remanded in custody at disproportionate rates compared with the general population. Recent (NSW) data noted that Aboriginal people appearing in NSW courts are more likely to be refused bail than non-Aboriginal people (14.5% compared with 6.3% for non-Aboriginal defendants), and yet, over the same period 32.9% of Aboriginal people remanded in custody after their bail was refused did not receive custodial sentences.¹⁵

- 2.2.2 A person with a cognitive impairment for example, may not fully understand their bail conditions which may contribute to a breach of bail and remand in custody. Those without the financial means to post bail are also disadvantaged: those who can afford to post bail can avoid custody all together or emerge from custody within hours or days, whilst those without financial resources may face an uncertain period of incarceration which may result in loss of employment, housing, and even custody of children. As noted later in this review, the review team's survey of remandees at the AMC indicated that some people were being remanded in custody in the ACT because of an inability to meet bail conditions, including lack of suitable accommodation.

- 2.2.3 A welcome initiative in the ACT is the bail support program, currently being trialed, that assists those charged with offences to meet bail conditions.¹⁶ Furthermore, a number of ACT community organisations provide support to clients to understand and meet bail conditions. Further emphasis is needed on programs that identify those eligible for bail and support them to avoid remand or meet bail conditions soon after remand. In addition to the significant impact avoiding jail has on a person's life, there is the additional positive consequence of downward pressure on detainee numbers at the AMC and cost savings.

- 2.2.4 The decision to remand a person in custody pending hearing or trial is a decision of the courts, not ACTCS. However, the principle of pre-trial detention as a last resort places a positive obligation on the ACT government to take steps to identify, wherever possible, those who may be eligible for bail but unable to meet certain conditions.

- 2.2.5 Importantly, once an accused is remanded in custody, the AMC has an important role to play (alongside remandees' legal practitioners) in identifying potential bailees and supporting or facilitating processes to enable them to meet bail conditions. As argued later in this report, identifying and supporting the bail needs of remandees needs to be a specific and prioritised role rather than one of many functions of, for example, a case worker who may face a significant workload with many other demands.

15 Judicial Commission of New South Wales (2018) 'Equality before the Law Bench Book', online at www.judcom.nsw.gov.au (citing unpublished data supplied by the NSW Bureau of Crime Statistics and Research, June 2018, based on NSW Local Court data. Note that no data was included on the overall rate of non-custodial sentences as a comparator).

16 Shane Rattenbury MLA, Minister for Justice (2017) 'Bail support program provides more support to Aboriginal and Torres Strait Islander detainees', *Press Release*, 7 December.

2.3 Separation of remandees from convicted persons

Basic principle

2.3.1 Remandees must be presumed innocent of the charge(s) for which they are detained. This basic principle requires remandees be held separately from detainees serving a current sentence for a criminal offence, barring exceptional circumstances. This principle is reflected in section 44 of the CM Act and section 19(2) of the HR Act. In addition to separation as a matter of principle, the European Committee for the Prevention of Torture (CPT) notes a further rationale: '[s]uch separation also protects remand prisoners who enter the prison environment for the first time and who may be innocent, from the potential criminal influence of sentenced prisoners'.¹⁷ The CPT further notes the importance of a risk and needs assessment for all persons entering prison 'as it may not be appropriate to mix first-time remand prisoners with the large numbers of persons re-entering prison for a second time or more'.¹⁸

2.3.2 A strict interpretation of international law requires holding remandees in a separate facility from convicted detainees, or separate parts of a facility to ensure absolute separation.¹⁹ Remandees should ideally sleep 'singly in separate rooms',²⁰ 'except where it is preferable for them to share sleeping accommodation'.²¹ The Royal Commission into Aboriginal Deaths in Custody recommendations, for example, noted the general desirability

for Indigenous detainees to share cells with other Indigenous detainees,²² which would fit the 'exceptional circumstances' exception noted above. However, where remandees are to share a cell, international guidance indicates that as a rule it should be with another person on remand.

2.3.3 International standards state that remandees and sentenced detainees should not mix in group areas such as visits, programs and health facilities, and in transit. An exception to this principle, identified in the European Prison Rules, is limited mixing of remand and sentenced prisoners so that remandees may participate in a wider range of programs and activities, where it is reasonable and safe.²³ This is highly relevant to the ACT given that female remandees (and males to a lesser extent) make up a small number of the total prison population and allowing limited mixing may benefit remandees by expanding the possible range of programs and activities they have access to. Mixing under these circumstances, with the appropriate safeguards in place, is unlikely to amount to a breach of remandees' human rights, as it may constitute an 'exceptional circumstance' or alternatively, amount to a proportionate limitation on the right under section 28 of the HR Act.

17 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2017), 'Remand Detention', *Extract from the 26th General Report of the CPT*, CPT/Inf(2017)5-part, para 55.

18 Ibid.

19 *Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), 17 December 2015, UN-Doc A/Res/70/175, Rule 11(b).

20 Ibid, Rule 86.

21 Council of Europe (2006) *European Prison Rules*, Strasbourg, Rules 18.5 and 96.

22 Recommendation 144 (in relation to police cells but broadly applicable to corrections cells): "That in all cases, unless there are substantial grounds for believing that the well-being of the detainee or other persons detained would be prejudiced, an Aboriginal detainee should not be placed alone in a police cell. Wherever possible an Aboriginal detainee should be accommodated with another Aboriginal person. The views of the Aboriginal detainee and such other detainee as may be affected should be sought. Where placement in a cell alone is the only alternative the detainee should thereafter be treated as a person who requires careful surveillance. (3:248)"

23 See e.g., Council of Europe (2006) *European Prison Rules*, Strasbourg, Rules 18.9 and 101.

Is accommodating remandees together with sentenced detainees (including sharing cells) a breach of human rights?

- 2.3.4 In the ACT remandees and convicted detainees are accommodated together as a general rule rather than an exceptional circumstance, despite the AMC's original design including separate accommodation for remanded and convicted detainees. The *Independent Inquiry into the Treatment in Custody of Steven Freeman* conducted by Philip Moss AM (the Moss Review) considered the non-separation of remandees from convicted detainees at the AMC due to 'exceptional circumstances that arose because of the pressure of accommodation', concluding:

...[I]t is inappropriate for the AMC to have to rely on 'exceptional circumstances' to breach the human right of a remanded detainee to be segregated ... AMC management needs to be able to achieve both obligations of detainee safety and human rights. ... [U]ntil such time as male and female detainees are in separate facilities, and remanded detainees are segregated from sentenced detainees, the AMC cannot be said to be a human rights compliant correctional facility.²⁴

- 2.3.5 This review concurs with the Moss review's conclusions. Overcrowding and the complex mix of cohorts at the AMC cannot be considered 'exceptional circumstances' that justify mixing remanded and convicted detainees. Furthermore, whilst there is a need for ACTCS to address the issue of overcrowding at the AMC, in the review team's opinion the response of full mixing of remand and convicted detainees is inconsistent with human rights principles.

Arrangements that were less restrictive on remandee rights, for example allowing remandees to mix during the day but ensuring separate accommodation, may fare better in terms of human rights consistency.

Finding 1:

That, contrary to ACT Corrections legislation and ACT and international human rights law, remandees are not separated from convicted detainees in the ACT.

2.4 Treating remandees in a manner consistent with their status

2.4.1 There are a range of considerations under international law relating to the treatment and care of remandees, noted in detail below.

2.4.2 The requirement to treat remandees in a manner commensurate with their status is recognised in the CM Act, which provides at section 44(1) that 'the director-general must make a corrections policy or operating procedure providing for different treatment of convicted detainees and non-convicted detainees'. However, there has never been an ACTCS policy pertaining to remandees.

Finding 2:

That, contrary to the requirement in the Corrections Management Act 2007 (ACT), there is no policy or procedure pertaining specifically to remandees.

2.4.3 The table below summarises key obligations regarding the treatment and care of remandees in human rights law and practice.

24 Moss, P., (2016) 'So Much Sadness in our Lives', *Independent Inquiry into the Treatment in Custody of Steven Freeman*, ACT Justice and Community Safety Directorate, 68-69.

Table 2.1: Remandees and human rights

Consideration	Content of the obligation	Situation in the ACT
Due process – access to a lawyer and legal resources	Remandees, like everyone else charged with criminal offences in the ACT, have rights in criminal proceedings. The HR Act notes that remandees must be afforded adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her. ²⁵ The Mandela Rules provide further detail noting ‘prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law.’ ²⁶ The Standard Guidelines for Corrections in Australia similarly provide that all prisoners with legal matters pending should be able to meet and have telephone conversations with their lawyers and have access to legal library resources, including, where practicable, supervised access to electronic media for the purpose of viewing electronic legal documentation. ²⁷	The CM Act recognises that ‘reasonable opportunities to communicate with lawyers’ is an entitlement essential in upholding human rights, as is confidential communication with lawyers. ²⁸ Further comment on access to lawyers and legal resources is made in Chapter 4 of this report.
Access to visitors	In recognition of the principle that remandees should be held in conditions that are the least restrictive in the circumstances, remandees should be afforded the maximum available time to visit with family, particularly when children are involved. Technology, including free-of-charge Voice over Internet Protocol (VoIP) services, should be utilised to the maximum extent possible to enable further contact with family. ²⁹ Corrections Victoria notes this principle, stating that additional visits for remandees may be achieved via ‘additional visit days, longer duration of visits, access to personal visits via video conferencing, or increased numbers of visitors on their Valid Visitor List (up to 15).’ ³⁰	Remandees have the same access to visits as sentenced detainees. The AMC does not utilise VoIP services for family visits.

²⁵ *Human Rights Act 2004* (ACT) s 22(2)(b).

²⁶ *Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), 17 December 2015, UN-Doc A/Res/70/175, Rule 61(1).

²⁷ Corrective Services Administrators Council (2012) *Standard Guidelines for Corrections in Australia*, Standard 1.17 (1)(ii). The 2018 revision, the *Guiding Principles for Corrections in Australia* adopts most of these elements.

²⁸ *Corrections Management Act 2007* (ACT) s 12(1)(h) (reasonable opportunities to communicate with lawyers), ss 51(a) and 104 (confidentiality of communication with lawyers).

²⁹ See, for e.g., European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2017), ‘Remand Detention’, Extract from the 26th General Report of the CPT, CPT/Inf(2017)5-part, para 60.

³⁰ Corrections Victoria Commissioner (2018) Commissioner’s Requirement 2.3.8 – Remand Prisoners, online at <http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/commissioners+requirements+part+2> (accessed 10 December 2018), 2.

Consideration	Content of the obligation	Situation in the ACT
Access to work opportunities	The Mandela Rules and the Standard Guidelines for Corrections in Australia stipulate that an untried prisoner shall always be offered the opportunity to work, but shall not be required to work. If a detainee chooses to work, he or she shall be paid for it.	In the ACT, there is no differentiation between work opportunities made available to remandees and convicted detainees, and detainees are not prioritised for opportunities based on their legal status. Further comment on access to work opportunities is made in Chapter 5.
Access to programs and activities	Detainees may be on remand for a significant period of months or even years. It is important that remandees have access to a suitable range of activities. As the CPT notes: "[w]hilst acknowledging that the provision of organised activities in remand prisons, where there is likely to be a high turnover of inmates, poses particular challenges, it is not acceptable to lock up remand prisoners in their cells for up to 23 hours per day and to leave them to their own devices for months or even years on end ... The aim should be to ensure that remand prisoners (as well as sentenced prisoners) are able to spend a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activity of a varied nature (work, preferably with vocational value, education, sport, recreation/association). The longer the period of remand detention, the more varied the regime should be." ³¹	A good practice to note, remandees at the AMC have access to all the programs of sentenced detainees except for the criminogenic ones (consistent with the principle that they are presumed innocent until proved guilty).
Ability to wear their own clothes	<p>The Mandela Rules stipulate that someone on remand shall be allowed to wear his or her own clothing if it is clean and suitable, and that if he or she wears prison dress, it should be different from that supplied to convicted prisoners.³² This has symbolic value, as a physical demonstration of their status as presumed innocent, to reduce any conscious or unconscious bias when they appear in court,³³ and is a practical manifestation of the requirement of as minimal restrictions on remandees as are possible in the circumstances.</p> <p>The Victorian Commissioner's Requirement – Remand Prisoners provides for allowing remand prisoners to wear their own clothing <i>where they do not mix with sentenced prisoners</i> and where it does not impact on the safety and security of the prison' (emphasis added).³⁴</p>	<p>The AMC does not allow remandees to wear their own clothes. The AMC issued clothing is grey for sentenced men, blue for men on remand and all women wear maroon.</p> <p>Prior to the opening of the AMC, the <i>Remand Centres Act 1976</i> (ACT) provided that remandees were entitled to wear their own clothes.</p> <p>It is important to note that there may be negative outcomes for detainees associated with wearing their own clothes – for example, stand over tactics when detainees seek to acquire desirable clothing or footwear from other detainees.</p>

31 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2017), 'Remand Detention', *Extract from the 26th General Report of the CPT*, CPT/Inf(2017)5-part, para 58.

32 *Standard Minimum Rules for the Treatment of Prisoners* (the Nelson Mandela Rules), 17 December 2015, UN-Doc A/Res/70/175, Rule 115.

33 This is consistent with the right to a fair trial in s 21(1) of the *Human Rights Act 2004* (ACT).

34 Corrections Victoria Commissioner (2018) *Commissioner's Requirement 2.3.8 – Remand Prisoners*, online at <http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/commissioners+requirements+part+2> (accessed 10 December 2018).

Consideration	Content of the obligation	Situation in the ACT
Access to voting	Detainees on remand retain the right to vote.	Persons on remand in the ACT can register as a general postal voter to have ballot papers sent to them, or can vote via a mobile polling team which visits the AMC.
Maximum possible time out of cell	In accordance with the requirement that remandees must be held in the least restrictive environment, remandees should be afforded as much time out of their cell as possible, and potentially more than sentenced prisoners. In Victoria, the Commissioner's Requirements state that Corrections Victoria must consider allowing remand prisoners' additional time out of cells where the prison's routine operating day allows for this to occur. ³⁵	ACT does not allow remandees' additional time out of cells compared to sentenced detainees.

2.4.4 Victoria, currently the only other Australian human rights jurisdiction, has a comprehensive Commissioner's Requirement (similar to a policy/procedure) relating to remandees,³⁸ and provides a useful reference point in relation to treatment of remandees.

Further information about how other Australian jurisdictions deal with remandees is provided at **Appendix 2** to this report.

³⁵ Ibid 3.

³⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2017), 'Remand Detention', *Extract from the 26th General Report of the CPT*, CPT/Inf(2017)5-part, para 71.

³⁷ Subcommittee on Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (SPT) (26 March 2015), *Eighth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, CAT/C.54/2, para 93; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2017), 'Remand Detention', *Extract from the 26th General Report of the CPT*, CPT/Inf(2017)5-part, para 73.

³⁸ Corrections Victoria Commissioner (2018) *Commissioner's Requirement 2.3.8 – Remand Prisoners*, online at <http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/commissioners+requirements+part+2>.

CHAPTER 3: CHARACTERISTICS OF THE AMC REMANDEE POPULATION

3.1 The burgeoning problem of remandee numbers in Australia

3.1.1 Over the last 20 years the number of remandees in the Australian prison population has grown at an alarming rate. In 2006 (prior to the opening of the AMC) the Australian Institute of Criminology noted:

The total number of prisoners in Australia has increased by around 20 percent since 1995, but remandee numbers have jumped almost 150 percent over the same period, from 1999 remand prisoners at 30 June 1995 to 4934 remand prisoners at 30 June 2004. Remandee numbers have increased in the states and territories by between 50 and 270 percent.³⁹

3.1.2 From 2007 to 2017, the Australian Bureau of Statistics (ABS) reported that the overall sentenced prison population in Australia grew by 34%. Over the same period the remand prison population grew by 116%. Between 2016 and 2017 the total Australian prison population grew by 6% but the number of remand prisoners increased by 7%.⁴⁰

3.1.3 The ABS also reported on the proportion of remandees in the ACT prison population from 2007 to 2017. Other than in 2014 and 2015, the ACT exceeded the national figures:

Table 3.1: Australian remand data 2007–2017⁴¹

Year (as at 30 June)	Remandees as a per cent of total prison population	
	ACT	Australia
2007	22.7	22.4
2008	32.8	23.0
2009	25.4	21.8
2010	27.2	21.4
2011	40.0	23.1
2012	28.3	23.4
2013	25.9	24.0
2014	22.5	24.3
2015	27.0	27.4
2016	31.5	31.2
2017	38.8	31.3

39 Sarre, R., King, S & Bamford, D (2006), 'Remand in custody: critical factors and key issues' *Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice*, No. 310.

40 Australian Bureau of Statistics (8 December 2017), 'Prisoners in Australia: Issue 4517.0', *Media Release*.

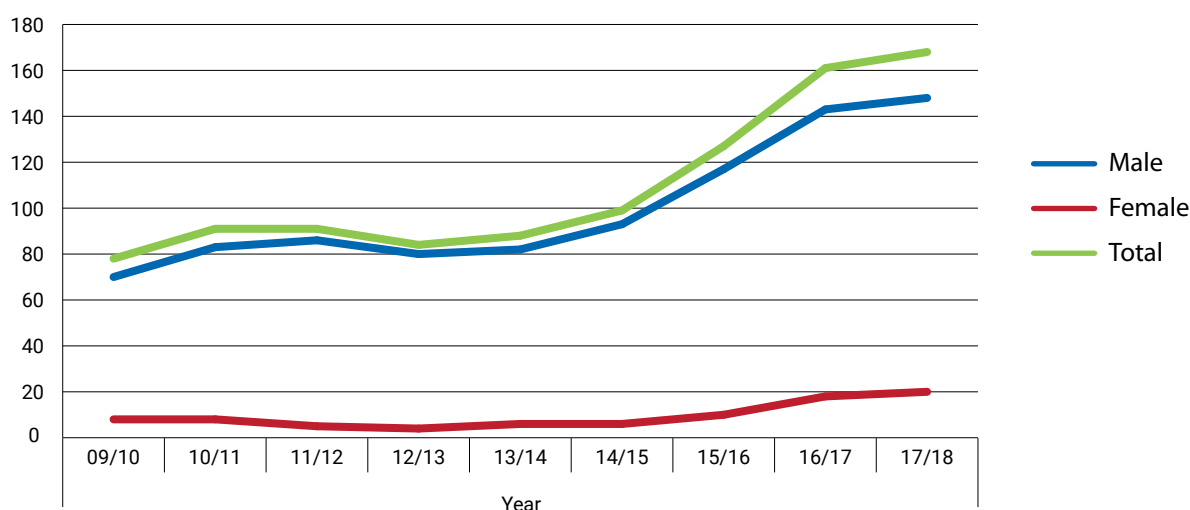
41 Ibid, Table 15.

3.1.4 The reasons for increases in remand populations across Australia and in the ACT are complex and multifaceted. A growth in remand population can come about through an increase in the number of receptions, an increase in the length of stay, or both.⁴² Factors contributing to a rise in remand can include changing approaches to criminal justice (for example, removing presumptions of bail for certain offences), improved policing techniques leading to increased apprehensions and charges, high judicial case-loads leading to delays in hearings and hence longer time spent on remand,

or a reduction in applications for or granting of bail due to reasons such as an inability to provide acceptable accommodation.

AMC remand numbers have increased rapidly since 2013/14. In the period 2009/10 to 2013/14 the average daily remand population increased by 13% but in the period 2013/14 to 2017/18 it increased by 47.6%. This is a concerning trend which, if it continues, will have significant consequences for the AMC with regard to the overcrowding that already exists.

Graph 3.1: AMC remand detainees by gender 2009/10 – 2017/18



Data: ACT Justice & Community Safety Directorate annual reports

⁴² Weatherburn, D et al. (January 2016), 'Why is the NSW prison population still growing? Another look at prison trends between 2011 and 2015', *NSW Bureau of Crime Statistics and Research Bureau Brief*, Issue Paper No. 113.

3.2 Remandees and the original design of the AMC

3.2.1 The original (2005) Functional Brief for the AMC noted:

The AMC will comprise the following:

Inside the 'Secure Perimeter':

- 175 beds for sentenced prisoners;
- 139 beds for remandees in separate remand facilities; and

In separate facilities outside the 'Secure Perimeter':

- Up to 60 low-security prisoners in a Transitional Release Centre.⁴³

3.2.2 The original 374 bed design was subsequently reduced (date unknown) to 300 beds but it is unclear as to whether the remand beds were affected by this downsizing.⁴⁴ However, the bed numbers in Table 3.3 (below) suggest that remand beds were reduced from 139 to 115.

3.2.3 The Functional Brief detailed the 139 bed remand accommodation that was to be provided:

Table 3.2: Original AMC remand bed specification (374 total bed design)

Type	Males	Females	Other	Total
Single cell	10			10
Double cell	39 (78 beds)			78
Cottage	24	15		39
Medical/Crisis Support Unit			12	12
Total	112	15	12	139

3.2.4 As to how the AMC bed capacity was derived, the Functional Brief states:

The capacity of 374 provided will meet the projected requirements of the ACT for the next 40 years, based on ACT prisoner projections by the Department of Treasury.

The AMC passed the 374 mark in about 2015/16, some 30 years ahead of the ACT Treasury projection, and is currently accommodating about 470 detainees.

3.2.5 Following the opening of new accommodation units in 2015/16 the AMC achieved a design capacity of 467 beds.⁴⁵ Although the "remand beds" in the table below are not actually reserved for remandees it is useful to see an overall picture of the current AMC design capacity. It should be noted that of the 467 total beds, in practice only 424 are available for general accommodation. The remainder are "special purpose" beds.

43 ACT Department of Justice and Community Safety (March 2005), *ACT Correctional Centre Alexander Maconochie Centre: Functional Brief*.

44 Standing Committee on Justice and Community Safety (2009), *Inquiry into the delay in the commencement of operations at the Alexander Maconochie Centre*, 44.

45 AMC Monthly occupancy report as provided to the ACT Office of the Inspector of Correctional Services.

Table 3.3: AMC design capacity (beds)

Main units	Male	Female	Total
Sentenced	299	10	309
Remand (NB not used exclusively for remandees)	100	15	115
Total	399	25	424
Special Units			
Transitional Release Centre*	15	n/a**	15
Crisis Support Unit	Either		10
Management Unit	Either		14
Health Centre	Either		4
Total all	414	25	467

* TRC is located outside the AMC secure perimeter and accommodates men only.

** Although female detainees are not explicitly excluded from being accommodated in the Transitional Release Centre by AMC policy, in practice women are not able to access this facility.

3.2.6 Regardless of the planned accommodation of remandees at the AMC, the reality is that remandees have been accommodated with convicted detainees at least since remandee numbers exceeded remandee design capacity.⁴⁶ In any case, this review is concerned with how remandees are managed and cared for at the AMC rather than focusing purely on the decision to mix them, which is well known within and outside the ACT Government.

3.2.7 However, it is worth noting that the original Functional Brief specification of 139 beds in dedicated remand units (probably reduced to 115) was well short of the current remandee population and in that regard, the aspiration of separating remand and convicted detainees ceased to be realistically achievable at the AMC without significant modifications to infrastructure.

3.3 The remandee population at the AMC

3.3.1 On 11 June 2018 remandees accounted for 38% of all detainees at the AMC. On a gender basis, remandees made up 36% of the male population and 59% of the female population.

Table 3.4: All detainees in custody by conviction status at 11 June 2018

Value	Males	Females	Total
Remand	167	24	191
Convicted	296	17	313
Total	463	41	504

Table 3.5: All remandees in custody – 3 month snapshot

Value as at:	Males	Females	Total
04/04/18	150	16	166
01/05/18	160	22	182
11/06/18	167	24	191

⁴⁶ ACTCS was unable to advise on the date at which non-separation commenced. Email from ACTCS 9 November 2018.

3.3.2 Indigenous people make up about 1.6% of the ACT population⁴⁷ but form a significantly higher proportion of the ACT prison population.

Table 3.6: All detainees in custody by Indigenous status as at 11 June 2018

	Male	Female	Total
Indigenous	97	16	113
Non-Indigenous	366	25	391
Total	463	41	504
% Indigenous	20.9	39.0	22.4

3.3.3 Indigenous detainees were also over-represented in the remand population with Indigenous females accounting for nearly half of all female remandees.

47 Australian Bureau of Statistics (2016), *Census of Population and Housing – Counts of Aboriginal and Torres Strait Islander Australians, 2016*.

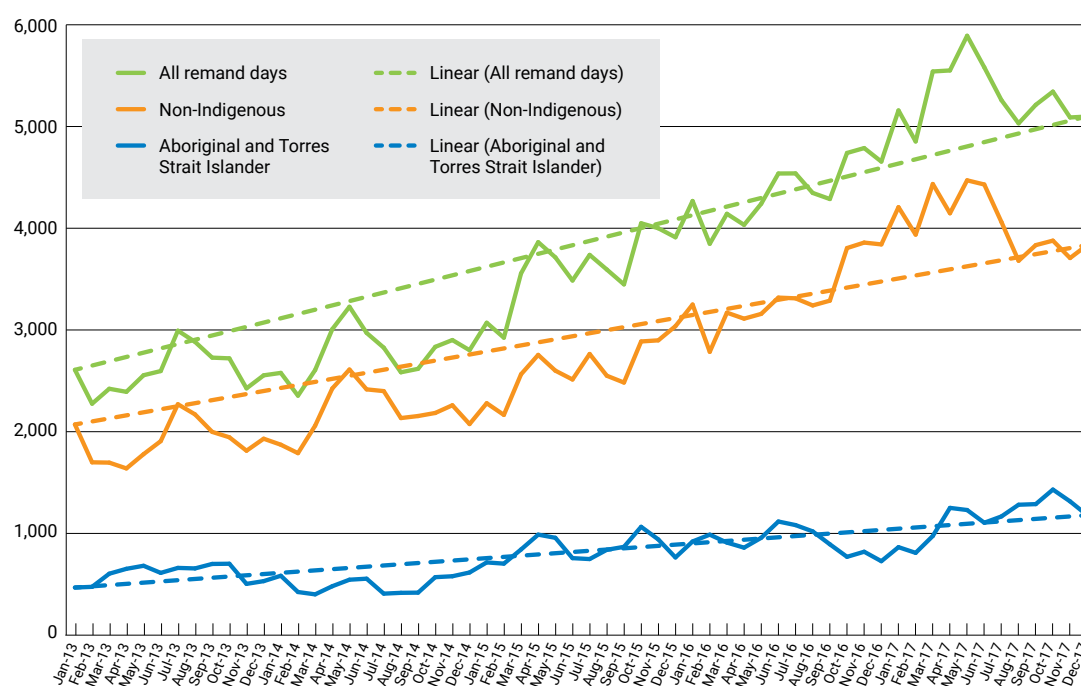
Table 3.7: Remandees by Indigenous status as at 11 June 2018

	Male	Female	Total
Indigenous	35	11	46
Non-Indigenous	132	13	145
Total	167	24	191
% Indigenous	21.0	45.8	24.1

3.4 Length of stay of remandees at the AMC

3.4.1 It was not possible in the context of this review to conduct a retrospective analysis of the time (days) spent on remand at the AMC i.e. to track a cohort of remandees from admission to either sentencing or discharge without a prison sentence (which may occur if they are given a non-custodial sentence, found not guilty, or their charge has been dismissed/withdrawn). The ACT Criminal Justice Statistical Profile below illustrates a five year trend of increasing number of remand days over a five year period:

Graph 3.2: Days of remand per month 2013– 2017



Source: ACT Criminal Justice Statistical Profile (2018), ACT Justice and Community Safety Directorate

3.4.2 Given that remandees are unconvicted persons, and thus presumed innocent, it was thought necessary to provide a “snapshot” of days-in-custody of the AMC remandee population.

3.4.3 The review team’s analysis of the ACTCS data revealed that Indigenous males had spent more days in custody (a mean of 126.5 days) than non-Indigenous males (a mean of 103.8 days). Overall, males spent more days in custody (a mean of 104 days) compared to females (a mean of 60.9 days).

Table 3.8: Male remandees – days in custody as at 11 June 2018

Value	Total (n=166)	Indigenous (n=35)	Non-Indigenous (n=131)
Mean	104.0	126.5	103.8
Range	<1 – 530*	15 – 447	<1 – 530*

* Outlier score of 774 ignored

3.4.4 The data did not reveal any significant difference between Indigenous and non-Indigenous female remandees, probably because Indigenous women made up nearly half of the female remandee population compared to Indigenous men who comprised 21% of the male remandee population.

Table 3.9: Female remandees – days in custody as at 11 June 2018

Value	Total (n=24)	Indigenous (n=11)	Non-Indigenous (n=13)
Mean	60.9	61.4	60.5
Range	3 – 290	3 – 198	5 – 290

3.5 Remandee charge profile

- 3.5.1 Remandees could be facing multiple charges but for statistical purposes the ACT uses an Australian Bureau of Statistics system for assigning a Most Serious Offence (MSO) for convicted people or a Most Serious Charge (MSC) for remandees.

Table 3.10: Remandees in custody as at 11 June 2008 by Most Serious Charge

ASOC Classification*	M	F	Total
01: Homicide & related offences	5	2	6
02: Acts intended to cause injury	54	3	57
03: Sexual assault & related offences	10	0	10
04: Dangerous or negligent acts endangering persons	9	2	11
05: Abduction & related offences	7	3	10
06: Robbery, extortion and related offences	8	3	11
07: Unlawful entry with intent/burglary, break & enter	19	1	20
08: Theft & related offences	17	5	22
09: Deception & related offences	1	3	4
10: Illicit drug offences	10	0	10
11: Weapons & explosives offences	6	0	6
12: Property damage & environmental pollution	1	0	1
13: Public order offences	2	0	2
14: Road, traffic & motor vehicle regulatory offences	6	1	7
15: Offences against justice procedures (etc.)	11	1	12
16: Miscellaneous offences	0	0	0
Unknown/not recorded	1	0	1
Total	167	24	191

* Australian Standard Offence Classification devised 1997, Australian Bureau of Statistics (1234.0)

- 3.5.2 Broadly speaking, MSC classifications 01–05 represent ‘offences against the person’ (violent offences). The data shows that 51% of male remandees were charged with a violent offence compared to 42% of the female remandees. This disparity may explain, at least in part, why males recorded a much higher mean time in custody than females, given that these types of offences tend to be more complex and time consuming for the courts.
- 3.5.3 When looking at the MSCs care needs to be taken not to jump to false conclusions. For example, the fact that no females had a MSC of ‘Illicit drug offences’ does not mean that no woman was charged with a drug offence – they may have, but it was not the Most Serious Charge.

3.6 Other demographic information

- 3.6.1 The remandee survey included some demographic questions. As respondents were anonymous, answers provided cannot be verified against official records, and as such, should be treated with caution. It is also noted that not all respondents answered all questions. Nonetheless some key data was of interest to the review team:

Male respondents

Indigenous males had a mean age of 35, somewhat higher than the non-Indigenous males (who had a mean age of 27)

17 respondents out of 46 (37%) reported that this was their first imprisonment episode while 9 (20%) reported that they had been in prison 5 times or more

21 of 47 respondents (51%) reported having been detained in a youth detention centre as a child. Of the 21, 4 were Indigenous men (19%)

Female respondents

Indigenous females had a mean age of 25, much lower than the non-Indigenous females (who had a mean age of 37)

11 respondents of 18 (61%) reported that this was their first imprisonment episode while 4 (22%) reported that they had been in prison 5 times or more

9 of 19 respondents (47%) reported having been detained in a youth detention centre as a child. Of the 9, 6 were Indigenous women (67%)

CHAPTER 4: SPECIFIC ISSUES

In the course of the review, the review team identified a number of specific issues in relation to remand that are highlighted below.

4.1 Lock-ins

Introduction

4.1.1 The AMC, like other correctional centres in Australia, locks detainees in their cells or in their low security cottages at various times during a 24 hour period. This is referred to as a “lock-in”. The longest routine lock-in occurs at night when centres go onto a nightshift roster, which provides a minimal staffing presence for security (to prevent escapes, etc.) and safety (for the health and well-being of detainees).

4.1.2 The time that detainees are not locked-in their cells is referred to as out-of-cell hours, during which time detainees can move around within their unit, and do various things such as attend to laundry needs, make phone calls, eat meals, exercise, follow up on matters with staff such as requests and issues relating to case management, and participate in scheduled activities such as visits, sport, work, education and programs.

New reception detainees

4.1.3 At the time the remand review commenced the *Corrections Management (Time out of cell hours) Policy 2014* was in place (now repealed). This Policy stated that ACTCS will endeavour to maximise detainee time out of cells, and provides the standard out-of-cell hours for each area of the prison.⁴⁸ For most detainees this means, subject to unscheduled lock-ins, they receive about nine hours out of cells per day.

4.1.4 By comparison, the review team received credible reports from detainees, staff, visitors and lawyers that detainees undergoing an induction assessment may be secured in their cells for up to 23 hours per day and that this extends beyond the 5 day assessment period designated by an AMC General Manager’s Instruction⁴⁹. A regime of 23 hours in-cell may not of itself be inconsistent with the CM Act (compliance with the HR Act is dealt with further below) given that the CM Act provides that:

45 Access to open air and exercise

- (1) *The director-general must ensure, as far as practicable, that detainees—*
 - (a) *have access to the open air for at least 1 hour each day; and*
 - (b) *can exercise for at least 1 hour each day*
- (2) *The standards under subsection (1) may both be satisfied during the same hour each day.*

However, the review team is of the opinion that section 45 can only be satisfied in a one hour period if detainees have access to open air exercise yards i.e. simply letting a detainee out their cell for an hour within a unit does not meet the requirement.

4.1.5 Although new reception detainees often have a cell-mate on the same regime, the lock-in time limits association to just that one person. Of concern to the review team is that simply put, new reception detainees are effectively on a regime akin to a segregation or separate confinement regime, yet without any system for precisely tracking lock-in hours, nor any safeguards such as review and oversight.

⁴⁸ *Corrections Management (Time out of cell hours) Policy 2014* (ACT), NI2014-317 (Restricted).

⁴⁹ *General Manager’s Instruction 136 AMC 132016 ‘Accommodation Placement, Employment and Remuneration Payments to New Reception Detainees’*, 8 November 2016.

"I'm stuck in a cell for 23 hours a day. My brain turns on itself and becomes the source my worst pain and torture"

— male remandee

- 4.1.6 In contrast, the CM Act makes specific provision for restrictive management regimes (e.g. time in cells) for detainees subject to segregation orders.
- 4.1.7 Part 9.2 of the Act makes provision for the segregation of detainees for specified purposes:
- s 90 Segregation – safety and security;
 - s 91 Segregation – protective custody; and
 - s 92 Segregation – health
- 4.1.8 Section 88 of the Act provides the meaning of segregation:
- segregation, of a detainee—**
- (a) *means the restriction or denial of the detainee's opportunity—*
 - (i) *to go into, or be in, a particular part of a correctional centre; or*
 - (ii) *to associate with other detainees; and*
 - (b) *includes separate confinement.*
- 4.1.9 Section 89 states that segregation must not be used for punishment or disciplinary purposes.
- 4.1.10 Chapter 10 provides for detainees to be placed on investigative segregation (section 160), or placed on 3, 7 or 28 days' of separate confinement as a penalty for a breach of discipline (section 184).

4.1.11 The CM Act makes specific provisions for the separate confinement of detainees in prescribed circumstances and in accordance with prescribed processes and safeguards (e.g. a detainee's right to a review of a segregation order – section 96 & section 164). None of these legislated processes and safeguards⁵⁰ are applied to new reception detainees who are subjected to excessive time in cells while under "assessment". In the review team's opinion, the practice of extremely limited time out of cells for new reception detainees for a prolonged period may amount to an unreasonable limitation on their rights to humane treatment when deprived of liberty⁵¹

4.1.12 A further concern about the induction regime is its potential impact on newly received detainees. Detainees are often at their most distressed on admission to prison – adjusting to being remanded in custody, or to an unexpected sentence, struggling with the sudden separation from their family, or facing their first time in custody. The impact of arrest and incarceration may exceed the coping skills of even the most resilient person, yet prisoners have been described as 'vulnerable groups that are traditionally among the highest risk for suicide.'⁵² Furthermore, studies in Australia and overseas have identified higher rates of suicide among unconvicted than convicted detainees, with prison suicide risk generally at its highest early in the period of detention.⁵³

50 For example, the right to apply for a review, and requirement for review by a medical practitioner.

51 *Human Rights Act 2004 (ACT)* s 19. For an analysis of the human rights jurisprudence, see Debeljak, J (2015) 'The Rights of Prisoners under the Victorian Charter: A Critical Analysis of the Jurisprudence on the Treatment of Prisoners and Conditions of Detention', 38(4) *UNSW Law Journal* 1332.

52 World Health Organisation (2007), 'Preventing Suicide in Jails and Prisons'.

53 Willis, M., Baker, A., Cussen, T., and Patterson, E., (August 2016) 'Self-inflicted deaths in Australian prisons', *Australian Institute of Criminology Trends and Issues in Crime and Criminal Justice*, No 513.

- 4.1.13 In recognition of the psychological impact on newly received prisoners, the Prisons and Probation Ombudsman for England and Wales stated in a 2014 report;

*However constituted, the intention of first night and induction processes is to provide space and additional support to help new prisoners adjust and begin to absorb the information needed to navigate prison life.*⁵⁴

- 4.1.14 The AMC's practice of separating newly-received detainees and subjecting them to significant lock-in periods for days and up to weeks after arrival without clear legal prescription or protective safeguards achieves the opposite, and may increase the risk of suicide or self-harm in newly received detainees.
- 4.1.15 Few published studies from Australia exist, however, in a study of 361 suicides in prison over a period of 6 years, the United Kingdom Probation and Parole Ombudsman found that 10% of suicides were in the first three days after admission.⁵⁵ Remand prisoners were also disproportionately represented among the prisoners who died by suicide, and 80% of those who did so were thought to pose no or low risk of suicide. In a 2006 study of 464 suicides in United States prisons, 23% occurred within the first 24 hours of detention, 27% between 2 and 14 days, and 20% between 1 and 4 months. Thirty-eight percent of the victims were held in isolation at the time of death.⁵⁶

- 4.1.16 Barker et al cite overcrowded conditions, and being held on remand as institutional risk factors for suicidal behaviour in prisons.⁵⁷ Marzano et al reported that risk of suicide is heightened early in periods of custody, and that social isolation and lack of purposeful activity 'may increase risk in an already high-risk population by virtue of their elevated levels of psychiatric morbidity, substance abuse, trauma, and social isolation'.⁵⁸

- 4.1.17 The AMC detainees whom the review team surveyed and talked to expressed the view that the period of separation immediately after reception was unfair.

Finding 3:

That the induction regime at the AMC is inappropriate and unacceptable on the basis that newly received detainees are treated in a manner broadly akin to the practices under the Corrections Management Act 2007 (ACT) of segregation for protective custody, investigative segregation, or separate confinement as punishment.

Finding 4:

That the induction regime is inconsistent with the spirit of section 12(e) of the Corrections Management Act 2007 (ACT), in that newly received detainees reported very limited access to open air and exercise.

54 Prisons and Probation Ombudsman for England and Wales (2014) 'Learning from PPO Investigations: Risk factors in self-inflicted deaths in prisons', online at: www.ppo.gov.uk.

55 Ibid, 20-21.

56 Hayes, L. (2010) 'National Study of Jail Suicide: 20 Years Later', National Institute of Corrections, Department of Justice, Washington, D.C, xi.

57 Barker, E., Kolves, K., and Diego D. (2014) 'Management of Suicidal and Self-Harming Behaviours in Prisons: Systematic Literature Review of Evidence-Based Activities', *Archives of Suicide Research*, 18:3, 227-240.

58 Marzano, L. et al. (2016) 'Prevention of Suicidal Behaviour in Prisons: An Overview of Initiatives Based on a Systematic Review of Research on Near-Lethal Suicide Attempts', *Crisis*, 37:5, 323-334.

Finding 5:

That the induction regime may increase the distress, and thus the risk of suicide or self-harm in newly received detainees, as it increases their social isolation at a stage of incarceration at which detainees are most vulnerable and fails to provide them with purposeful activity.

Finding 6:

That the prolonged lock-in of new reception detainees may amount to an unreasonable limitation of section 19 of the Human Rights Act 2004 (ACT) (the right to humane treatment when deprived of liberty).

4.1.18 Detainees provided consistent feedback that they did not find the induction process helpful in understanding what life at the AMC would be like (that is, the rules, regime, rights, obligations, opportunities etc.). Comments noted on the remand survey included:

'Was told very little'

'didn't get told how it goes or that I was locked in 23 hours a day'

'other than a 4 page booklet I didn't get anything' [information]

'wasn't told nothing'

4.1.19 A detainee handbook is to be provided to all detainees on induction, and the review team's random file review of remandee files revealed most files had a paper signed by the detainee on induction certifying they had received a copy of the detainee handbook. Given that the induction period can be highly stressful and/or disorientating, and a significant proportion of detainees may be withdrawing from alcohol or other drugs, a multifaceted approach to imparting key information is important. Using other detainees with lived experience of coping with initial days in detention to provide mentoring or producing a video that detainees can watch in their cells are but a few of a range of ways to reduce anxiety in the initial period.

Finding 7:

That current induction practices do not appear to be effective for a significant number of detainees in terms of imparting important information about AMC rules, procedures, and their rights and obligations as a detainee.

4.1.20 The Inspectorate understands that ACTCS is in the process of developing a policy to improve the requirements for a structured induction process for detainees, expected to be completed in February 2019. We will continue to monitor time out of cells for new receptions, including as part of the 2019 Healthy Prison Review.

Time out-of-cells data

4.1.21 The following discussion about out-of-cell hours at the AMC applies to both remanded and convicted detainees. However, due to the AMC's approach to assessing and processing receptions,⁵⁹ it is arguable that – with respect to the initial days and weeks of incarceration – remandees fare worse than convicted detainees with regard to time out-of-cells.

4.1.22 All jurisdictions report average daily out-of-cell hours for the annual Report on Government Services (ROGS).⁶⁰ Data is provided for secure custody, open custody and all prisoners.

4.1.23 Given the structure of correctional services in the ACT (one high security facility accommodating all security classifications of detainees) it is more reasonable to compare the data on secure custody.⁶¹

Table 4.1: Out-of-cell hours (secure custody prisoners) 2016/17

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
2016/17	6.8	10.9	9.8	11.7	8.9	8.6	8.7	9.9	9.5

4.1.24 The ACT has not performed well against the national average and most other jurisdictions. Furthermore, in regards to average out-of-cell hours for all detainees, the ACT has gone backwards

since 2009/10, which may be related to a steady increase in the Average Daily State (ADS)⁶² of detainees and the need to accommodate them in the existing secure custody facility.

Table 4.2: Out-of-cell hours (all prisoners) 2009/10 – 2016/17

	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17
Aust	11.4	11.4	11.1	10.0	10.1	10.1	9.9	10.1
ACT	14.1	13.3	10.5	8.6	8.9	8.9	9.0	8.9
Average Daily State, ACT	189	228	259	266	331	342	402	445

⁵⁹ A person newly arrived at the AMC, usually from court.

⁶⁰ Productivity Commission (2018), 'Justice, Chapter 8: Corrective Services', *Report on Government Services*, Table 8A.12.

⁶¹ In general terms, 'secure custody' refers to facilities that are designed to, among other things, prevent/deter escapes by means of physical and dynamic security measures.

⁶² Average Daily State is the sum of the daily count of detainees per year divided by 365.

Finding 8:

That the average annual out-of-cell hours provided to detainees in the ACT have been wanting compared to other jurisdictions and this does not reflect well on the AMC as a prison in a human rights jurisdiction.

Out-of-cell hours at the AMC

4.1.25 At the time of the review, the AMC's policy was to provide 9.6 out-of-cell hours per day for most detainees.⁶³ The exception is on Tuesday when, since approximately 2016, a centre-wide whole of staff training afternoon was introduced, that involves lock-in from approximately 1pm to 4:30pm.⁶⁴

Non-scheduled lock-ins

4.1.26 Non-scheduled lock-ins occur at all correctional centres for a number of reasons such as:

- Conduct of searches
- Management of security incidents
- To provide staff for external escorts (to hospital etc.)
- Special training

4.1.27 However, the most common reason at the AMC is staff shortages⁶⁵, i.e. insufficient staff on hand to provide full coverage of the roster. In the period March/April 2018 there were 236 lock-in events (one lock-in may have covered a number of units) of which 68 (29%) were attributed to 'staff shortages' and 99 (42%) were attributed to 'staff training'. Other

reasons for lock-ins were 'escorts' (11 – 5%), 'facilities issues' (3 – 1%), 'searching' (24 – 10%), 'security' (8 – 3%), 'incident response' (19 – 8%) and 'other staff/staff meetings' (4 – 2%).⁶⁶

The impact of lock-ins on out-of-cell hours

4.1.28 The lock-in report for March/April 2018 (covering a period of 61 days) shows a total of 539.8 lock-in hours (scheduled and unscheduled), an average of 8.8 hours per day.

4.1.29 Individual unit unscheduled lock-in times varied from 0.25 hours to 9.07 hours. Unscheduled lock-ins of between three and four hours occurred on 65 occasions (27.5%) and lock-ins of more than four hours occurred on 25 occasions (10.5%). In other words, some detainees experienced significant periods locked in cells during the day while others may have experienced few, if any.

Finding 9:

That there are staffing issues resulting in unacceptable lock-ins of detainees during normal unlock hours.

4.1.30 It is positive to note the laudable objective in the Regime Planning Policy 2018 of equitably managing unscheduled lockdowns:

*Where unscheduled lock-ins are necessary, the General Manager will ensure a schedule is in place to reduce the impact across each area by rotating the accommodation areas and units being locked in.*⁶⁷

⁶³ Corrections Management (Time out of cell hours) Policy 2014 NI 2014-317 (repealed on 1 November 2018, and replaced with the Corrections Management (Regime Planning) Policy 2018 (ACT), NI2018-600. The new policy provides for a minimum of 9.5 hours out-of-cell. It provides for the General Manager to reduce this for staff training).

⁶⁴ ACTCS could not confirm exactly when Tuesday training commenced at the AMC.

⁶⁵ This was a catch-all term that was not defined/explained by AMC in the data collection.

⁶⁶ AMC lock-ins spreadsheet, March/April 2018.

⁶⁷ Corrections Management (Regime Planning) Policy 2018 (ACT), NI2018-600.

4.1.31 The review team notes the limitation of ACTCS's information management tool for lock-ins: an Excel spreadsheet that cannot be easily interrogated to provide timely information on unscheduled lock-in patterns. This limits ACTCS's ability to meet the objective in the Regime Planning Policy.

Finding 10:

That the data management system lacks the capacity to ensure that lock-ins are spread as equitably as possible across and within all units.

4.1.32 The review team notes that ACTCS is in the process of introducing a new information management system, an essential feature of which should include the tools to effectively record and analyse lock-in data and distribute unscheduled lock-ins in an equitable manner.

Cohort lock-ins

4.1.33 Some of the various cohorts⁶⁸ at the AMC are accommodated in the same units but are kept separate. Part of this separation involves locking "Cohort A" in cells while "Cohort B" is unlocked. The review team witnessed one such event when a group of 4-5 detainees in the common room of a unit were secured in the external exercise yard while another group returned to the unit from somewhere. The returning group were secured in cells because the other group "had 15 minutes to go" out of cells (according to the corrections officer).

4.1.34 It is understood that this juggling of cohort unlocks occurs on a daily basis at the AMC.

4.1.35 These cohort lock-ins are not recorded on the Lockdown Register spreadsheet and are thus not reflected in the time out of cells data provided to ROGS. Furthermore, there is no AMC policy or procedure covering these lock-ins and nor is any record kept of individual detainee's lock-in durations. This creates a "blind spot" as far as external oversight of detainees' rights and treatment is concerned; in particular, their right to access to open air and exercise.⁶⁹

4.1.36 Detainees expressed frustration to the review team about having limited time to attend to their needs when they only have one hour out-of-cell per day. Detainees may have multiple tasks or activities to complete during this one hour, for example: laundry, making telephone calls to lawyers or family/friends, following up with corrections officers or case managers on issues, not to mention any physical activity they may wish to do. Lawyers that the review team spoke to noted the challenge for detainees in making contact with their lawyer when on a 23 hour/ significant lock-in regime: if the detainee is not able to reach the lawyer on the phone during that hour, it may be dependent on whether corrections officers have the capacity to supervise a detainee out of their cell to call the lawyer back. Although the entitlement under the CM Act to 1 hour each day of access to the open air, and 1 hour each day to exercise 'may both be satisfied during the same hour on any day', when key life activities must also be fulfilled during this time it is clear that remandees' minimum entitlements under the CM Act are not being met when they are subject to lock-ins approaching 23 hours per day.

68 Some 17 groups of detainees who can't mix with others for safety and security reasons e.g. rival Outlaw Motorcycle Gangs, protections.

69 See *Corrections Management Act 2007* (ACT), s 45.

Finding 11:

That it is not possible to verify if the minimum requirements in the Corrections Management Act 2007 (ACT) regarding access to open air and exercise are uniformly being met.

Finding 12:

That there are no ACTCS notified policies and procedures concerning the management of cohorts at the AMC.

Finding 13:

That the lock-ins of cohorts are not recorded on the AMC lock-ins data report.

Lunchtime lock-ins

- 4.1.37 At the AMC detainees are locked in their cells/cottages for at least an hour each day during the staff lunch break. In some other jurisdictions (for example, Western Australia and Queensland) while prisoners may return to their accommodation for lunch, they are not locked in cells, which means they can attend to other things such as phone calls, laundry, taking exercise, etc. This is facilitated by staff taking staggered lunch breaks (providing “meal reliefs”).
- 4.1.38 It is unclear as to why this lunch lock-in practice is followed at the AMC given that it does not form part of the *ACT Public Sector Correctional Officers Enterprise Agreement 2013-2017* and results in more time in cells for detainees than is necessary.

Finding 14:

That the lunchtime lock-in of detainees is an unnecessary restriction on their time out-of-cells.

4.2 Admission into custody

- 4.2.1 There are an excessive number of policies and procedures, and associated official forms, covering the admission of persons into custody in the ACT, which include:
- Corrections Management (AMC Detainee Classification) Policy 2012 NI2012-299
 - Corrections Management (Admissions) Procedure 2014 (No 1) NI2014-526
 - Corrections Management (Prisoner at Risk, Court Transport Unit) Policy 2008 NI2008-454
 - Corrections Management (Induction) Policy 2009 NI2009-130
 - Corrections Management (Receiving Prisoners from the Watch House) Procedure 2008 NI2008-443
 - Corrections Management (Protection) Policy 2011 NI2011-50
 - Corrections Management (Reception and Management of Non-English Speaking Detainees) Policy 2014 (No 1) NI2014-541
 - Corrections Management (Reception and Management of Transgender and Intersex Detainees) Policy 2014 NI2014-542
 - Corrections Management (Reception and Management of Female Detainees) Policy 2014 (No 1) NI2014-543

4.2.2 The review team has identified a number of concerns about the adequacy of some of these policies and procedures. For example:

- i. There is a lack of clear direction in the Admissions Procedure regarding the separation of male and female adult detainees, male and female young persons, transgender and intersex adult detainees and transgender and intersex young persons. Aside from an ambiguous statement apparently relevant only to 'young persons' (undefined) there is no direction at all regarding the separation of male detainees from female detainees, an omission which is repeated in the Reception and Management of Female Detainees Policy.
- ii. There is no mention of female detainees in the AMC Admission Procedures other than the statement, 'Female detainees and those detainees for whom English is not their primary language of communication have particular needs in custody. When admitting female detainees ... corrections officers must ensure they are familiar with the contents of the Reception and Management of Female Detainees Policy'. However, the Reception and Management of Female Detainees Policy states that 'the admission and discharge procedure for a female detainee is the same as the admission and discharge procedure for male detainees'.⁷⁰
- iii. The absence of consideration of early identification of any issues that may affect the detainee's placement and management, for example, mental health, detainees identified as or appearing to be under the influence of/or withdrawing from intoxicating substance; disabilities (including intellectual), a history of self-harm/suicide attempts, serious medical problem requiring immediate attention, pregnant detainees, escape attempts, history of violence towards staff, or other detainees, or the need for an interpreter.
- iv. The absence of consideration of early identification of domestic violence/apprehended violence orders to prevent any illegal or undesirable contact with victims (for example during the detainee's reception phone call).
- v. The absence of consideration of risk associated with a newly received detainee's immediate concerns outside of the prison, for example the safety of any unattended children or other person for whom the detainee has carers' responsibilities, the safety of detainees' pets, home, car, and any other property.
- vi. The absence of consideration of the needs of detainees who are or may be eligible for bail and have the means to enter bail, or who need to organise sureties or accommodation. There is no provision within the Admissions Procedure for remand detainees to make telephone calls to potential sureties, or to organise any funds required to be deposited as surety. These calls may take place in practice but capturing this requirement in relevant Policy and Procedure is crucial.

⁷⁰ Corrections Management (Reception and Management of Female Detainees Policy) 2014 (ACT), NI2014-543.

4.2.3 While it is beyond the scope of this review to conduct a detailed analysis of all ACTCS' policies and procedures related to the admission of people into custody, it is a subject that the Inspectorate will examine during the planned 2019 Healthy Prison Review of the AMC.⁷¹ In the meantime, the review team would encourage ACTCS to bring all the various admissions-related policies into one coherent document so that any gaps can be identified and, similarly, there should one procedure that covers all aspects of admissions rather than making staff forage through multiple policies and procedures.

4.3 Accommodation of new reception detainees

4.3.1 New male receptions to the AMC are, at the time of writing, accommodated in Sentenced Unit 1 (SU1) for a period of observation and assessment before being moved into the general detainee population, in order to keep new receptions separated from other detainees. This arrangement was put in place following the death in custody of Mr Steven Freeman at the AMC in May 2016. The Moss Report noted:

The Inquiry concludes also that had measures and processes adopted since Steven Freeman's assault been in place when he was admitted, including the assessment of new receptions in a separate unit generally for five days, the likelihood of his being assaulted would have been significantly reduced.⁷²

4.3.2 While the creation of this "assessment unit" was well-intentioned, the way it operates is probably not what Mr Moss had in mind. In practice the relatively small number of new receptions under assessment on any one day (5-10) in the 25 bed SU1 unit has resulted in the new receptions spending long periods in cells during normal unlock hours while the other SU1 residents are out of cells so that the two groups don't mix.

4.3.3 At the time the review was conducted the AMC did not keep records of individual lock-ins in SU1, or indeed other units, so it was not possible to quantify the extent of these individual lock-ins. However, remandees in SU1 complained to us about being locked in in cells for up to 23 hours per day with one individual stating to the review team that he had been on such a regime for 'weeks'. A number of other sources shared experiences of detainee experiencing a prolonged restrictive regime as a new reception detainee.

4.3.4 The following photographs are of a cell in SU1 where detainees may be locked in for protracted periods each day, and of course, overnight:

⁷¹ Under s 18(1)(a) and (b) of the *Inspector of Correctional Services Act 2017* (ACT), the Inspector is required to 'examine and review' each correctional centre and a correctional service at least once every 2 years.

⁷² Moss, P., (2016) *'So Much Sadness in our Lives', Independent Inquiry into the Treatment in Custody of Steven Freeman*, ACT Justice and Community Safety Directorate, 11.

Photo 4.1: Double bunked single cell in unit SU1 (view 1)



Source: OICS, 2018

Photo 4.2: Double bunked single cell in unit SU1 (view 2)



Source: OICS, 2018 – note the guard rail provides no roll-out protection

4.3.5 This cell was originally designed as a single occupant cell but has been “double-bunked” to accommodate two detainees. The bunk is rudimentary and appears unsafe compared to purpose-built double cells in other, newer units at the AMC:

Photo 4.3: Purpose design double bunk cell in SCC unit



Source: OICS, 2018 – note the integrated ladder and high top bunk guard rail

4.3.6 The SU1 cell pictured above measures about 9m² (including the toilet and shower), which is consistent with the *Standard Guidelines for Prison Facilities in Australia and New Zealand* for a **single person cell** (8.75m² as the minimum habitable single cell size including ablutions, and 12.75m² for a double cell including ablutions).⁷³ To put 9m² into perspective, it is about the size of a small bedroom in a family home into which a shower toilet, desk, chair and shelving have been added.

4.3.7 For the record, the SU1 cell was not photographed because it looked particularly unpleasant. Staff gave us access simply because both occupants were out at the time. Other cells we looked at in SU1 were in a similarly shabby state, which reflects poorly on the AMC.

⁷³ *Standard Guidelines for Prison Facilities in Australia and New Zealand* (1990), 31. The 2012 revision of the *Standard Guidelines for Corrections in Australia* refers back to the 1990 document in relation to cell size. The 2018 update, called the *Guiding Principles for Corrections in Australia* does not refer to cell size.

- 4.3.8 It is also constructive to compare SU1 cells with a single cell at the newly opened (2017) Ravenhall Correctional Centre (Vic):

Photo 4.4: Single occupant cell, Ravenhall Correctional Centre (Vic)



Source: Jason South/Fairfax Syndication, 2018 (under licence)

- 4.3.9 ACTCS is aware that the SU1 “assessment” accommodation is unsatisfactory and is exploring other options. While commendable, it would not be enough just to move new receptions to better accommodation if, for whatever reasons, they can’t be provided with reasonable time out-of-cells.

(The comments made in this section of the report do not apply to female new receptions who are accommodated in better conditions in the women’s unit, see photo 4.3. However, as discussed later in this report the accommodation for female detainees is unsatisfactory as a whole.)

4.4 Double bunking

- 4.4.1 As illustrated in the photos above (4.1 & 4.2), double bunking is a means to increase unit capacity but two detainees must reside in a cell only designed for one. This impacts in a very practical way on detainees, particularly during lock-ins: only one detainee has a place to sit upright, detainees have to share shelving designed for one and share the single computer terminal, there is less space to move around, and detainees must use the toilet and shower in close proximity to their cell-mate: something which may be highly degrading. This clearly impacts on detainees’ right to privacy (section 12, HR Act) and right to humane treatment when deprived of liberty (section 19, HR Act).

McKay notes in relation to crowding in Australian prisons that ‘there is significant potential for ‘cruel, inhuman or degrading treatment’ (contrary to section 10 of the HR Act) ‘if overcrowding leads to having to use a toilet in front of others’.⁷⁴

- 4.4.2 As an aside, it is of concern to the review team that the timber frame retro-fitted bunks observed in the SU1 and SU2 units did not have access ladders and the top bunk guard rail appeared inadequate to prevent someone falling out (see photo 4.2 above). We also saw metal double bunks in a cottage that while incorporating a proper ladder and guard rail, were not fixed to the floor or wall and wobbled whenever anyone lay on a bed or rolled over in bed. Detainees had “remedied” this problem to some extent by wedging packs of playing cards under the two ladder legs.

4.5 Cohorts at the AMC

- 4.5.1 It is not unusual in any correctional centre to find groups of prisoners, and in some cases, individual prisoners (e.g. ex-police officers) who, for safety and security reasons, need to be kept separate to a certain degree. At the AMC these groups are referred to as ‘cohorts’, and because the AMC does not separate remand and convicted detainees, any of the various cohorts could include remandees.

- 4.5.2 For reasons which are not entirely clear to the review team, the AMC has developed a bewildering array of cohorts that staff are expected to “manage”.

1. Men Mainstream Outlaw Motorcycle Gang (OMCG) (“A”) – Med/ Max
2. Men Protection – Med/Max
3. Men – Strict protection non sex offenders – Min
4. Men – Mainstream OMCG (“B”) – Med/Max
5. Men – Mainstream – OMCG (“C”) – Med/max
6. Men – Mainstream Therapeutic Community program
7. Men – Protection – Med/Max
8. Crisis Support Unit – Men (and at times women when necessary)
9. Management Unit – Men – Segregation (select mixing in yard and external to unit)
10. Men – New receptions of various pending classifications, separations to maintain safety during induction period
11. Men – Strict Protection – Med/Max
12. Men – Protection – Min
13. Men – Mainstream – Min (SC2)
14. Men – Mainstream – Min (SC3)
15. Men – Strict protection – non sex offenders – Min
16. Women – mainstream
17. Women – Assessment and transitional wing, including crisis support, mainstream, protection and strict protection running a restricted routine⁷⁵

⁷⁴ Mackay, A., (2015) ‘Overcrowding in Australia prisons: the human rights implications’ *Precedent*, 128.

⁷⁵ As advised by ACTCS (email) 19/07/18.

4.5.3 The existence of these cohorts affects most, if not all, daily operations at the AMC such as:

- Visits
- Medical appointments
- Oval access
- Gym access
- Education
- Internal movements
- External escorts
- Programs
- Time out-of-cells within units (in some cases)

4.5.4 Detainees can sign offender association agreements so that in certain circumstances detainees of different cohorts can associate.

4.5.5 It was beyond the scope of this review to delve into the detail of the rationale for the existence of these cohorts, or how the “system” is managed on the ground, but it is a matter that we will re-visit during the planned 2019 Healthy Prison Review of the AMC.

Finding 15:

That the existence of a plethora of “cohorts” at the AMC negatively impacts all detainees’ (remand and convicted) freedom of movement within the AMC and overly complicates visits, programs and activities and the overall management of the centre.

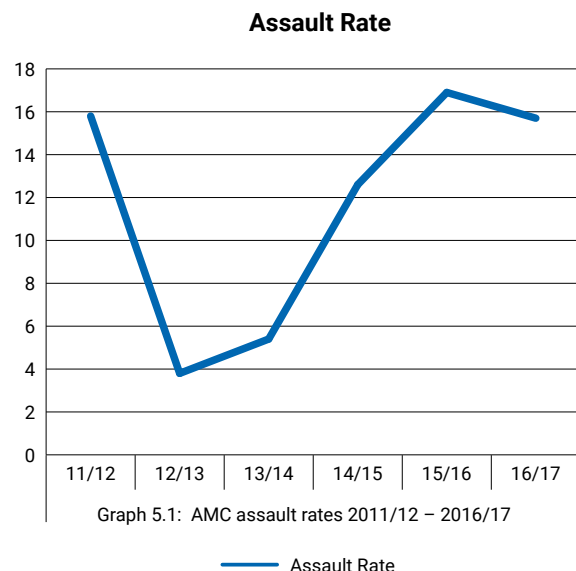
4.6 Safety of remandees

4.6.1 ACTCS does not keep data on assaults on or by remandees as a group but it does keep and report data on assaults generally for the annual Report on Government Services (ROGS).

4.6.2 ROGS reports prisoner-on-prisoner assaults as a rate per 100 prisoners. However, care needs to be taken when comparing assault rates as ‘this indicator is not comparable across jurisdictions’.⁷⁶ With that caveat in mind, in 2016/17 the ACT recorded a rate of 15.72 for minor assaults, the third highest rate after NSW (27.48) and Vic (20.88). The next highest below the ACT was Qld (10.49). The ACT recorded the highest rate for serious assaults (3.59), followed by Qld (3.08) and Tas (2.78).

4.6.3 Leaving aside jurisdictional comparisons, the ACT data over time has been quite varied for reasons which are unclear.

Graph 4.1: Detainee on detainee minor assault rates at the AMC 2011/12 – 2016/17



Source: Productivity Commission *Reports on Government Services 2013 – 2018*, Table 8A.16.

⁷⁶ Productivity Commission (2018) *Report on Government Services 2018*, Table 8A.16.

- 4.6.4 As the rate takes into account detainee numbers, the increase in the average daily population from 259 in 2011/12 to 445 in 2016/17 does not explain this increasing rate of assaults. It may be related to the fact that the AMC's secure accommodation design capacity of 424 beds (since 2016) has resulted in "double-ups" in a number of units and increased general pressure on common areas, work opportunities, telephone access, etc. Put simply, overcrowding results in less personal space for individual detainees and increases the potential for disagreements and violence. The overcrowding problem is further exacerbated by frequent lock-ins where two people are forced to spend hours together in a small cell. A 2014 investigation by the Victorian Ombudsman into deaths and harm in custody in Victoria found that 'with overcrowding, Victorian prisons are becoming more violent'⁷⁷ and 'prison staff are at greater risk of being assaulted by prisoners as a consequence of overcrowding'.⁷⁸
- 4.6.5 Ideally, a prison should not run at more than 85% capacity to allow for reception surges and the capacity to move prisoners between units for management purposes. In other jurisdictions with multiple prisons the "85% rule" can be stretched somewhat in individual prisons where the state has the ability to move prisoners between prisons in response to demand. This option is not available in the ACT. In the case of the AMC, 85% of design capacity would translate to a (secure) detainee population of 360.
- 4.6.6 Respondents to the survey self-reported involvement in situations involving bullying or physical altercations:
- Males reported a lower incidence of being involved in a fight (24.5%) compared to females (33.3%).
 - Males reported a lower incidence of being assaulted by another detainee (10.2%) compared to females (16.7%).
 - Males reported a lower incidence of being bullied or threatened (14.3%) compared to females (28.7%).
 - No respondents reported being bullied for sex by another detainee.
- 4.6.7 In response to other questions, female respondents reported feeling safe at the AMC most or all of the time (88.9%) compared to 85.4% of male respondents. When asked whether they thought it likely that they might be assaulted, 46.7% of females responded 'not likely' compared to 36.2% of males.
- 4.6.8 Given that the information elicited from these questions can't be validated, the review team has not relied heavily on this information.
- 4.6.9 Taken at face value it seems that while female remandees are more likely to be victims of bullying and involved in physical altercations than males, they generally feel safer than male remandees and less fearful of being assaulted than male remandees. It may be that due to the relatively small female population at the AMC, individual females are more cognisant of their "risk environment" than individual males.

⁷⁷ Victorian Ombudsman (March 2014) 'Investigation into Deaths and Harms in Custody', 34.

⁷⁸ Ibid 5.

4.6.10 Remandees were also asked if they minded mixing with convicted detainees. Of the 16 females who responded to this question, 15 replied 'no' while 44 of the 46 male respondents also replied 'no'. In total, three remandees of the 62 (4.8%) who answered the question indicated that they were unhappy about associating with convicted detainees.

4.6.11 Remandees were also asked a safety question of a different nature to the others i.e. 'Have you used non-prescribed drugs inside this centre? (E.g. sleeping pills)'. While the veracity of the responses cannot be confirmed, they indicate a high prevalence of drugs in the AMC with 43.7% of female respondents and 36.7% of male respondents reporting use of illicit drugs to one degree or another (from 'rarely' to 'often').⁷⁹

4.7 Remandees and the legal process

Access to lawyers and legal resources

4.7.1 The CM Act provides that access to lawyers is a right and not a privilege. Policy and procedure sets out the means for detainees to be in contact with their lawyers via visits, telephone calls, email and video-link. The AMC has a small library with the collection managed by a librarian. The legal selection is limited and some volumes were dated but further legal book orders were being contemplated by ACTCS at the time of the review. The list of legal resources required in Victorian Prison Libraries may provide a useful document in this regard.⁸⁰ The detainee survey asked whether remandees needed access to legal publications in the AMC library. Of the 61 remandees who responded to this question, 27 (44%) replied 'yes' (needed access to legal publications).

Those respondents who answered 'yes' were then asked whether the library met their needs to access such publications. Of the 20 remandees who responded to this question, 12 (60%) answered 'no' (needs not met). Further elaboration on this was not able to be gathered in the limited survey.

4.7.2 AMC remandees have access to Legal Aid's Prisoners legal service that visits fortnightly to provide one-off duty advice. The Australian National University runs a Prison Legal Literacy Program each semester that involves students working with detainees by running a series of legal workshops in the AMC, but this is general legal information not case-specific advice/support. Detainees can access the ACT Legislation Register and parts of Austlii (online legal database) on their in-cell computer.

Legal visits

4.7.3 Whilst Monday and Tuesday are indicatively reserved for professional visits, it is positive that lawyers may visit detainees 7 days a week. However, professional legal visits were not afforded any priority in terms of visits – so for example, lawyers had to go through the same screening, and waiting process as other visitors. The review team heard from lawyers that it was a very time consuming exercise to visit clients in the AMC. Lawyers reported that when they booked an appointment time to see their client and they would turn up for the scheduled appointment, they would often have a significant wait to see their client.⁸¹ Reasons given to them for the delay varied, including that their client needed to be roused from sleep, or that staffing shortages were a cause for delay (given staff have to escort detainees to visits).

⁷⁹ For further and more detailed data on drug use inside AMC (including broken down by drug), see Young J.T., van Dooren, K., Borschmann, R., and Kinner S.A., (2017), *ACT Detainee Health and Wellbeing Survey 2016 Summary Results*, ACT Government, Canberra ACT.

⁸⁰ Corrections Victoria (2017), *Commissioner's Requirements: Prison Libraries and Prisoner Access to Legal Resources*, August, 4.

⁸¹ One such occasion was observed by a team member where two lawyers waited a considerable period of time in reception while the detainee was brought down.

Delays mean lawyers are waiting in the visits area for a period, which was dead time for the lawyer as they had no access to the internet, mobile phone or a work computer. Once a client was brought to the visits area, lunch lockdown and musters also limited meeting times. It was reported by a lawyer that it was not uncommon for a visit to the AMC to take 3 hours total for a short (e.g. 20 minute) appointment with their client. An experienced lawyer the review team spoke to observed that as a result of this experience, lawyers were putting off non-essential visits, and/or seeking to see clients in court cells immediately prior to the court appearance.

Legal telephone calls

- 4.7.4 The detainee survey asked remandees whether there is enough privacy to talk to their lawyers on the phone with available answers of 'All of the time', 'Most of the time', 'Sometimes', 'Rarely' and 'Never'. Of the 56 remandees who responded to this question, 19 (34%) responded with 'All or most of the time' while 13 remandees (23%) gave a 'Never' response.
- 4.7.5 Lawyers reported a reluctance to take telephone calls from clients to discuss substantive legal matters, citing a number of reasons. One concern was a belief that 'calls are monitored'. The *Corrections Management (Detainee Telephone) Policy 2016* states 'Telephone calls between a detainee and their legal representative ... will not be monitored or recorded'.⁸² However, this policy also states that 'All telephone calls made by detainees on the Prisoner Telephone System (PTS) include a message indicating that the call is being made by a person inside an ACT correctional centre and that the call may be recorded' which may be a contributing factor for this belief. Another reason cited for reluctance to have in-depth legal

conversations over the telephone was that the custodial environment in which the unit telephones are located make it difficult for detainees to make calls with privacy and free from distractions. ACTCS may consider, for example, clarifying the fact that phone calls to lawyers are not monitored (see for example the practice in Victoria, noted in table 4.3 below), and also whether the number and placement of telephones afford sufficient privacy. The United Kingdom has recently announced plans to roll out telephone access in detainee cells in some prisons.⁸³

Video-link to lawyers

- 4.7.6 The use of video-link as a means for lawyers (and courts) to communicate with their clients is an important development that has the potential to improve efficiencies in court appearances but also improve the connections between lawyers and clients. The review team heard of technical difficulties – for example, link-ups with lawyers being cancelled at the last minute due to technical difficulties. It was pleasing to see video-link facilities in some units as well as the visits area (including one being installed in a professional visits room during the course of the review).

Case officers as a link to lawyers

- 4.7.7 The review team heard on a number of occasions from detainees and lawyers that, whilst some AMC case officers were excellent and have regular contact with detainees, in other cases, the contact between case officers and detainees is inadequate to meet detainees and lawyers perceived needs. Detainees reported significant periods where they had not seen their case officer. For example,

⁸² *Corrections Management (Detainee Telephone) Policy 2016*, NI2016-448.

⁸³ See 'In-cell phones for more prisons in drive to cut crime' Press Release, UK Ministry of Justice, 28 December 2018, online at: <https://www.gov.uk/government/news/in-cell-phones-for-more-prisons-in-drive-to-cut-crime>.

one detainee noted on the survey they had not seen their case officer for 7 weeks and had been waiting for the case officer to assist with housing in order to make a bail application.

- 4.7.8 As discussed in Chapter 5 there may be opportunities for ACTCS to have a more proactive role in identifying and supporting remandees who are eligible for bail. The review team recognises the professionalism of staff generally and the review team's finding in no way reflects negatively on their efforts in relation to bail supports. Rather, it seeks to promote a structural approach that places primacy on bail wherever an opportunity for bail exists.
- 4.7.9 In addition to remandees needing support to meet bail, timely support from case officers may be crucial for non-citizens and from culturally and linguistically diverse backgrounds in understanding their situation and options.

For example, a non-citizen may face a mandatory revocation of their visa if they face a sentence of 12 months or more (including time served).⁸⁴

- 4.7.10 Overall the review team found that whilst basic entitlements for remandees to access lawyers and legal resources were generally being met, the impact of crowding and the lack of expansion of infrastructure (for example, telephones) was having a negative impact on remandees' ability to access their lawyers.

Lack of clear policy intent guiding remandees' access to lawyers

- 4.7.11 As noted above, the AMC does not have a specific policy relating to remandees. Such a policy would be an ideal place to articulate remandees' entitlement in relation to access to legal representation. A broader review of AMC policies and procedures relating to access to lawyers revealed an inadequate consideration generally for remandee's rights to lawyers and legal resources. A comparison with the situation in Victoria is illustrative:

⁸⁴ See for example; Victoria Legal Aid (2017) 'Mandatory visa cancellations – information for lawyers'.

Table 4.3: Right to access lawyers in policy and procedure

Area	Corrections Victoria <i>Commissioners Requirements</i>	ACTCS Policies, Procedures, Executive Director Instructions and General Manager Instructions
Basic entitlement for remandees to access lawyer	<p>'Remand prisoners accommodated in restricted regimes such as management and high security units are to have equitable access to [lawyers/resources] for legal matters.</p> <p><i>Commissioner's Requirement – Remand Prisoners, para 6.2</i></p> <p>Prisoners with ongoing or anticipated criminal or civil legal proceedings are encouraged to seek the assistance of professional legal counsel. Where a prisoner declines the assistance of professional legal counsel, Corrections Victoria will assist as far as it is practicable to ensure the prisoner has sufficient access to legal resources.</p> <p><i>Commissioner's Requirement – Prison Libraries and Prisoner Access to Legal Resources, para 5.2.1</i></p>	<p>No overarching policy statement regarding ACTCS positive obligation to support detainees' access to legal advisors.</p> <p>'Detainees are able to ... have confidential meetings with professional visitors relevant to their imprisonment'.</p> <p><i>Corrections Management (Visits) Policy 2016 (No 2), NI2016-168, 2</i></p> <p>'ACTCS is obliged to ensure detainees are able to access legal representation or an accredited person relevant to their imprisonment ... A monetary advance for a detainee on reception to an ACT correctional centre may be approved ... if the detainee has no funds available'.</p> <p><i>Corrections Management (Detainee Telephone) Policy 2016 NI2016-448, p 8</i></p>
Access to legal resources / library	<p>'Where a prisoner declines the assistance of professional legal counsel, Corrections Victoria will assist as far as is practicable to ensure that the prisoner has sufficient access to legal resources.'</p> <p>'All libraries at maximum and medium-security prisons shall maintain a standard set of recommended legal texts.'</p> <p><i>Commissioner's Requirement – Prison Libraries and Prisoner Access to Legal Resources</i></p>	<p>Remandees have access to the AMC library and limited legal information on their in-cell computer . 'Access to ... Internet and LEARN [Legal Education and Resource Network] is deemed a privilege' (that is, can be removed due to a disciplinary breach)</p> <p>Remandees' access to legal information is not cited as one of two grounds for a detainee to be granted limited supervised access to specific websites on the internet (permissible grounds include reintegration needs, or education needs).</p> <p><i>Corrections Management (Email, Internet, and Legal Education and Resource Network [LEARN] for Prisoners) Policy 2010 (No 2) NI2010-115</i></p>

Area	Corrections Victoria <i>Commissioners Requirements</i>	ACTCS Policies, Procedures, Executive Director Instructions and General Manager Instructions
Access to lawyers by telephone	<p>'Prison Managers will: ... permit increased telephone access to facilitate calls to legal representatives'</p> <p><i>Commissioner's Requirement – Remand Prisoners, para 5.</i></p> <p>A permanent notice must be displayed next to telephones saying 'Exempt calls (including legal and ombudsman Victoria) will not be monitored of (sic) recorded ... If the recorded message you hear before your exempt call informs you that the call may be monitored or recorded, please report it to a staff member for action'</p> <p><i>Commissioner's Requirements – Prisoner Telephone System , para 4.3.3</i></p>	<p>'ACTCS is obliged to ensure detainees are able to access legal representation or an accredited person relevant to their imprisonment' – to this end, ACTCS may approve an advance where a detainee does not have sufficient money to make a call.</p> <p>'Within reason, there will be no time limit placed on telephone contact between a detainee and their registered legal representative or other accredited person'.</p> <p>'Detainees who have had their telephone access restricted are still entitled to ... telephone contact with their registered legal representative'.</p> <p>'Telephone calls between a detainee and their legal representative or accredited persons will not be monitored or recorded'.</p> <p><i>Corrections Management (Detainee Telephone) Policy 2016 NOI2016-448</i></p> <p>'All telephone calls made by detainees on the Prisoner Telephone System (PTS) include a message indicating that the call is being made by a person inside an ACT correctional centre and that the call may be recorded'.</p> <p><i>Corrections Management (Detainee Telephone) Policy 2016 NI2016-448</i></p>
Access to lawyers through visits (including video-link)	<p>Prison Mangers will permit visits, video conferencing and telephone calls to:</p> <ul style="list-style-type: none"> • lawyers; and • co-accused <p>subject to security and administration of justice requirements.</p> <p><i>Commissioner's Requirement – Remand Prisoners, para 6.1</i></p> <p>Detailed protocol for the use of Prisoner Video Conferencing / TeleCourt Procedures are set out in</p> <p><i>Commissioner's Requirement – Prisoner Video Conferencing / TeleCourt Procedures.</i></p>	<p>'All professional visits are in addition to the minimum visiting entitlement for each detainee'</p> <p>'An application may be made in writing to the General Manager (or delegate) requesting access to video conferencing for the purpose of an interview, assessment or special visit.'</p> <p><i>Corrections Management (Visits) Policy 2016 NI2016-168</i></p>

Area	Corrections Victoria <i>Commissioners Requirements</i>	ACTCS Policies, Procedures, Executive Director Instructions and General Manager Instructions
Access to evidentiary material in electronic form	<p>Prisoner Managers will permit (subject to resources) access to equipment that allows evidentiary material provided in electronic formats to be viewed.</p> <p><i>Commissioner's Requirement – Remand Prisoners, para 6.1</i></p> <p>The Prisoner Computer policy allows for burned CDs / DVDs or use of external hard drives in certain circumstances for remandees preparing a legal case to view legal material etc.</p> <p><i>Commissioners Requirement – Prisoner Computers</i></p>	<p>'Legal visits</p> <p>...</p> <p>No electronic devices of information may be given to a detainee under any circumstances, for example, a DVD or USB.'</p> <p><i>Corrections Management (Visits) Policy 2016 (No 2) NI2016-168, p 8</i></p>
Access to in-cell computer for the purpose of preparation for trial	<p>Prisoner managers will 'consider applications for in-cell computers where access to a computer will assist the prisoner in his or her preparation for trial, particularly where the prisoner is self-represented, the trial is complex, the hand-up brief is in electronic format or the charges are serious'.</p> <p><i>Commissioner's Requirement – Remand Prisoners, para 6.1</i></p>	<p>The ACT is the leading jurisdiction in terms of providing detainees with access to in-cell computers and email.⁸⁵</p> <p>The <i>Corrections Management (Email, Internet and Legal Education and Resource Network [LEARN] for Prisoners) Policy 2010 (No 2) NI2010-115</i> does not cover how email, internet, in-cell computers and other resources can be used for remandees preparing their case.</p>
Access to photocopying, printing and faxing	<p>Where resources permit, this access must be provided on a cost recovery basis (suggested rate as at July 2018 is 10c per page).</p> <p><i>Commissioner's Requirement – Remand Prisoners, para 6.1</i></p> <p>'Charges to prisoners for loans [of legal material] or photocopy services are not to exceed what a prisoner might reasonably be capable of paying having regard to their prison income'.</p> <p><i>Commissioner's Requirement – Prison Libraries and Prisoner Access to Legal Resources, para 5.2.4</i></p>	<p>'All detainees are entitled to a maximum to [sic] 25 pages of photocopying, printing or faxing per day for personal, education or legal purposes. Where a detainee exceeds 25 pages they will be charged for each additional sheet of paper as follows:</p> <p>Black and white printing or copying \$0.10 per sheet; and faxing \$0.25 per sheet'.</p> <p><i>Executive Director Instruction 03/2017: Detainee Printing, Photocopying and Faxing</i></p>

⁸⁵ The ACT leads the nation with a ratio of 1 detainee to 1.5 computers, far exceeding the second place Victoria with a ratio of 1 detainee to 7 computers. Western Australian Office of the Inspector of Custodial Services (2018) 'The Digital Divide: Access to digital technology for people in custody', 1.

4.8 Contact with the outside world

- 4.8.1 In recognition of the principle that remandees should be held in conditions that are the least restrictive in the circumstances, remandees should be afforded the maximum available time to visit with family, particularly when children are involved. Technology, including free-of-charge Voice over Internet Protocol (VoIP) services should be utilized to the maximum extent possible to enable further contact with family.⁸⁶ Detainees at the AMC are able to maintain contact with the outside world through mail, telephone calls, visits and email, as discussed below but VoIP is not yet utilised.

Mail

- 4.8.2 Detainees are provided with writing materials and may send unlimited mail at their own cost. Correspondence between detainees and their legal representatives is considered 'protected communication' that may only be opened on safety and security grounds, in front of a detainee, and must not be read by corrections officers.

Telephones

- 4.8.3 Telephone calls are a key means of communication between detainees and the outside world.
- 4.8.4 At the AMC detainees must apply to establish a telephone account and add telephone numbers to their account. Detainees are entitled to 10 approved telephone numbers on their account. These numbers may include families, friends, legal representatives and diplomatic or consular staff relevant to the detainee. Each telephone number must be 'verified' by a corrections officer who will cross reference the detainee and proposed receiver against the list of court sanctions in place.

If no protection order is in existence, the officer will contact the proposed receiver of calls from the detainee to gain consent for their telephone number to be added to the detainee's telephone account and advise them that the telephone calls may be monitored or recorded.

- 4.8.5 ACTCS provides a common list of telephone numbers that detainees may call from the detainee phone at ACTCS' expense. This includes the ACT Ombudsman, the ACT Human Rights Commission, the Public Advocate, and Legal Aid.
- 4.8.6 Telephone calls to family or friends are limited to ten minutes duration (marginally shorter than Victoria's allocated 12 minutes for medium and high security and 15 minutes for minimum security detainees). There is no time limit imposed on telephone calls between a detainee and their registered legal representative. However, we were advised by lawyers that they avoid discussing substantive case issues with detainees over the phone due to privacy and noise issues. Detainees commented that noise and lack of privacy also inhibited their ability to discuss personal matters with family and friends.

Photo 4.5: Typical unit phone at the AMC



Source: OICS, 2018

⁸⁶ See, for example, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2017), 'Remand Detention', *Extract from the 26th General Report of the CPT*, CPT/Inf(2017)5-part, para 60.

- 4.8.7 ACTCS acknowledges, in the Detainee Telephone Policy,⁸⁷ the importance of detainees maintaining contact with family and friends. The stated policy objective of detainee telephone access is to maintain detainee links to family, friends and community to assist with successful reintegration on release.
- 4.8.8 However, the maintenance of connections with family, friends and community is not just important for the detainees' reintegration. The maintenance of relationships with family and children plays an important role in the ongoing well-being of detainees, their family members, and children. Primary carers, the majority of whom are women, need to contact their children to assure themselves of their well-being and to reassure their children during their enforced separation.
- 4.8.9 A 2016 South Australian report noted that the effects associated with remand in custody (particularly for those not subsequently convicted) include disintegration of social supports and family ties, and increased risk of suicide and mental distress.⁸⁸ While remand itself has been recognised as a risk factor for suicide or self-harm,⁸⁹ difficulties with family relationships and social isolation, which are prevalent for those on remand, have also consistently been related to the risk of suicide or self-harm amongst prisoners.⁹⁰

87 *Corrections Management (Detainee Telephone) Policy 2016* NI2016-448.

88 Department of Correctional Services (SA), Strategic Policy Panel Report – A Safer Community by Reducing Reoffending: 10% by 2020 (2016) 28.

89 Barker, E., Kölves, K., & De Leo, D., (2014) Management of Suicidal and Self-Harming Behaviors in Prisons: Systematic Literature Review of Evidence-Based Activities, *Archives of Suicide Research*, 18:3, 227-240.

90 Marzano, L. et al., (2016) Prevention of Suicidal Behaviour in Prisons: An Overview of Initiatives Based on a Systematic Review of Research on Near -Lethal Suicide Attempts, *Crisis* (2016) 37(5), 323-334.

Issues at the AMC

- 4.8.10 Detainees reported delays of up to two weeks in having their telephone accounts activated, and that the high cost of telephone calls impedes their ability to make telephone calls to family and friends. Lack of paid employment for remandees, and the low rates of pay for unskilled workers may also contribute to detainees' difficulties in funding telephone calls.⁹¹ It is noted that there is provision for an officer of Area Manager level or above to approve a monetary advance if a detainee on admission does not have funds available to make a telephone call.⁹²
- 4.8.11 Detainees must pay for all their telephone calls at the current service provider rate, including any associated fees, unless a welfare call is granted. They must have adequate funds in their telephone account prior to making a call. Detainees may transfer funds from their trust account to their telephone account to pay for their telephone calls.
- 4.8.12 The cost of calls emerged as the most common complaint (across all subjects) voiced by remandees who took part in the survey. Many said that they simply could not make calls, or make as many calls as they would like to, due to their limited financial resources and the high cost of calling mobile phones. One female remandee said that it costs her \$6.50 to ring her young daughter (cared for by her mother) because her mother only has a mobile phone. Other detainees talked about similar mobile charges which limited their phone contact with family, some of whom live interstate.

91 Unskilled detainees typically earn less than \$30 per week.

92 *Corrections Management (Detainee Telephone) Policy 2016* NI2016-448.

4.8.13 The reality for detainees of having to share the one or two telephones in the unit (depending on the unit) inevitably means that access to the phone is limited by unit demand, particularly at popular times. Clearly, calls can only be made when detainees are out of their cells, thus high levels of lock-ins impact telephone access.

4.8.14 The mobile call cost problem is not unique to detainees, it affects many Australians on limited incomes and the situation will only get worse as more households forgo landlines in favour of mobile phones only:

In June 2017, 36 per cent of Australian adults were mobile-phone-only, going without a fixed-line telephone in their home.⁹³

4.8.15 While it was beyond of the scope of this review to delve into the financial arrangements (e.g. cost of calls) between the AMC and its telecommunications provider, we note that this is a highly competitive market, and as such, all options to reduce call costs for detainees should be reviewed on a regular basis.

Summary

4.8.16 Considering the risk factors associated with being on remand, the social isolation of the Induction Regime and the need for detainees to be able to maintain contact with their families, children and significant others, as well as contact their legal representatives, it is unacceptable that some detainees are waiting for up to two weeks (and possibly longer) for their telephone accounts to be activated.

4.8.17 Detainees should be able to commence making telephone calls within 24 hours of admission, subject to availability of funds in their telephone accounts. Given that family and friends can deposit money into detainees' accounts on-line or by

telephone,⁹⁴ and an Area Manager can approve a monetary advance, lack of funds should not be a significant factor in the delays in activation of detainee telephone accounts.

4.8.18 Detainees should be provided with, and be able to complete, the telephone number nomination form on reception, so that verification of telephone numbers can begin as soon as possible after admission. At the very least, the detainee's next-of-kin's phone number should be verified and approved as a matter of urgency.

Finding 16:

That there are insufficient telephones to meet the needs of the detainee population.

Finding 17:

That unit phones do not provide privacy or a quiet environment for detainees to speak to legal representatives or to discuss personal matters with family and friends.

Email

4.8.19 ACTCS made the very progressive decision to provide detainees with access to email and limited internet. This excellent initiative is still unavailable to this extent in other jurisdictions.⁹⁵ Email contact provides detainees in the AMC with another means of maintaining contact with family and friends, as well as a potential opportunity for digital literacy.

⁹³ Australian Communications and Media Authority Communications Report 2016–17, tabled 8 December 2017.

⁹⁴ It should be noted that the Visitor Handbook states that money for a detainee's trust account may be deposited at the AMC during reception opening hours and needs to be updated to include what is a vital piece of information for visitors.

⁹⁵ A number of Western Australian prisons, for example, provide limited access to the internet and email, for example an 'email-a-prisoner' program or supervised access to internet and email as part of job-seeking programs. Western Australian Office of the Inspector of Custodial Services (2018) 'The Digital Divide: Access to digital technology for people in custody', February.

- 4.8.20 Detainees must apply for an email account, and may have up to five email addresses approved by the Intelligence Officer. All detainee email addresses include the identifier *amc@prisonpc.com*, and all incoming and outgoing emails may be vetted by AMC staff.
- 4.8.21 Emails are not monitored in real-time by staff but emails with attachments are automatically “parked” by the system until the attachment is viewed and approved by staff. This is to prevent inappropriate material (e.g. pornography) being delivered to detainees.
- 4.8.22 Detainees have direct internet access to specific whitelisted websites, including education sites, which can enable detainees to complete tertiary studies via correspondence.
- 4.8.25 In the case of delays in establishing a telephone account, detainee access to email would not replace the benefit of being able to speak with family and children. However, it would at least enable detainees and their significant others to remain in contact, and be reassured about each other’s well-being, and enable detainees to contact their legal representatives. Lawyers and detainees who the review team talked to indicated an unwillingness to use email for legal communication due to privacy concerns. However, notwithstanding this, email can still be used for some communication, for example, the need to meet in person, or procedural matters.
- 4.8.26 One other subject of complaint from the survey was the time taken for detainee email contact lists to be approved with some claiming it took weeks to get on the system. As the survey respondents were anonymous it was not possible to check these claims but the AMC acknowledged (informally) that setting up email accounts for detainees can be very time consuming as it involves checking each email address requested by a detainee and confirming with the proposed recipient that they agree to receive emails from the detainee. The review team recognises that this is an important process to help prevent traumatising of victims and help safeguard justice processes.

Finding 18:

That ACTCS was very progressive in allowing detainees access to email and limited internet in 2010, providing detainees in the AMC with another means of maintaining contact with family and friends that is unavailable in other jurisdictions.

Issues

- 4.8.23 During interviews with detainees, they spoke of long delays in establishing their email accounts: for example, 5.5 weeks in one case, and 3 months in another.
- 4.8.24 Email access is an important form of communication for detainees and a viable alternative if detainees have insufficient funds to make telephone calls or if telephones are unavailable for any reason. However, delays in establishing email accounts have a particularly acute impact when there are also delays in activating telephone accounts, reducing opportunities to contact family and friends – particularly where family and friends are unable to avail themselves of the two visiting slots per week.
- 4.8.27 As noted above, once email accounts are set up, the manual process of reviewing incoming emails can cause substantial delays in the delivery of emails to detainees. While the vetting of attachments is a necessary precaution for ACTCS to manage risk, and requires staff time and availability to complete, ACTCS should have reasonable timeliness targets and track performance against these targets.

“No phone account no email account” (after 9 days in custody)

— male remandee

Finding 19:

That reported delays in establishing email accounts, combined with reported delays in establishing detainee telephone accounts, impede detainees’ ability to communicate with family, friends, and legal advisors.

Personal Visits

The importance of visits

- 4.8.28 Visits by family and friends are important for both detainees and their visitors. They help maintain family relationships and provide detainees with a circuit breaker in the day-to-day sameness of prison life.
- 4.8.29 Imprisonment can be extremely challenging for detainees and their families due to strains placed on them by the fact of their imprisonment and/or remand, and the limitations of visits imposed by the facility.⁹⁶
- 4.8.30 There are numerous reports of the difficulties faced by the families and children of prisoners during the remand period. Several studies refer to the disorientation and disruption that occurs in the lives of the families of prisoners in the first few months after the prisoner is taken into custody.

In a Victorian study the partners of male prisoners spoke of their need to have contact with their partner when they were having difficulties with their children, or dealing with day-to-day issues on their own.⁹⁷

- 4.8.31 The effects of a parent’s imprisonment on children is also well documented. The imprisonment of a parent is a traumatic disruption to the parent-childhood relationship and attachment. For example:

... it is clear that the millions of children affected by parental incarceration are a vulnerable population. Losing a parent to incarceration is traumatic, and the disruption of the parent-child relationship and attachment is considered an adverse childhood experience. Adverse childhood experiences are associated with an increased risk of trauma and the potential for lasting effects such as risky health behaviors, chronic health conditions, and early death.⁹⁸

- 4.8.32 Parental incarceration has also been associated with children who exhibit antisocial behaviour and poor school performance. The negative effects of parental incarceration are often compounded by other adverse experiences these children are more likely to experience, including poverty, parental divorce or separation, and exposure to violence.⁹⁹

⁹⁶ Brunton-Smith, I., and McCarthy, D., (2016) ‘The effects of prisoner attachment to family on re-entry outcomes: A longitudinal assessment’ *British Journal of Criminology* doi:10.1093/bjc/az v129.

⁹⁷ Victorian Association for the Care and Resettlement of Offenders (VACRO) (2000) ‘Doing it hard. A study of the needs of children and families of prisoners in Victoria, Australia’, 53 cited in Woodward, Rosemary (2003) *Families of prisoners: Literature review on issues and difficulties*. Department of Family and Community Services. Australian Government, Canberra, 26.

⁹⁸ ‘About Adverse Childhood Experiences’, United States Centers for Disease Control and Prevention, cited in Cramer, L., et al., (2017) ‘Parent-Child Visiting Practices in Prisons and Jails: A Synthesis of research and Practice’, The Urban Institute.

⁹⁹ Cramer, L., et al., (2017) ‘Parent-Child Visiting Practices in Prisons and Jails: A Synthesis of research and Practice’, The Urban Institute.

4.8.33 As remandees currently have the same personal visit entitlements as convicted detainees, any observations or comments about visits at the AMC apply equally to both groups.

Visits policy

4.8.34 The CM Act provides that:

Section 49 Visits by family members etc.

- (1) *The director-general must ensure that each correctional centre has suitable facilities for detainees to receive visits from family members and other people.*
- (2) *A detainee may have at least 1 visit, of at least 30 minutes, each week by a family member.*

4.8.35 The Visits policy states in its objectives that:

ACTCS promotes the importance of family connection for detainees during periods of imprisonment enhancing opportunity for successful reintegration upon release. Visits facilitate the maintenance of family ties and friendships to detainees, continue their links with the community ...¹⁰⁰

The AMC visits centre

4.8.36 The visits centre is located near the main entrance of the AMC. It is visually attractive with both indoor and outdoor meeting areas, including a purpose-built play area for small children and a BBQ that detainees can book. It also has two family visits rooms to the side that are fitted out like a normal apartment (lounge room, rest space). Recently one of these rooms has been utilised to enable a detainee to spend long periods during the day to bond with and breastfeed her young baby.

4.8.37 As to the conduct of visits, we made an unannounced observation of a Sunday visit session and spoke informally to staff. It was pleasing to hear that staff were passionate about providing a relaxed, non-prison like visits experience for detainees and their visitors, and their high level of professionalism was obvious. We observed positive interactions between detainees/visitors and staff with evident, but unobtrusive, security monitoring. It was also pleasing to see a male detainee, trained as a barista, making coffee for the detainees and visitors. However, conditions were quite cramped, affording little privacy, while three professional visits rooms adjoining the central visits area, were unoccupied.

4.8.38 As pleasant as the visits area is, it is simply far too small to meet the current detainee population numbers. When the AMC opened in 2009 the visits centre was intended to cater for a detainee population of up to 300. The actual population of the AMC now sometimes exceeds 500. However, the visits centre remains as it was in 2009.

4.8.39 In light of the significant increase in detainee numbers, it is clearly a challenge for the AMC to provide an equitable visits program for 500 or so detainees in a visits centre that was intended to service about half that number. The current visit schedule is designed to provide fair access to visit opportunities to all detainees at the AMC, and provides two visit sessions per week for each accommodation area.¹⁰¹ The impact of population pressures on visits is starkly illustrated by the reduction in access to visits for women. In 2016 female detainees were able to access visits of 90 minutes, six days a week, 'with visit

100 Corrections Management (Visits) Policy 2016 (No 2) NI2016-168.

101 ACTCS, 'Visits schedule', http://www.cs.act.gov.au/detainee_visits, accessed 16 October 2018.

times staggered through the day to provide a range of times to meet visitors' schedules'.¹⁰² Currently, women have access to two one hour visits per week, as do all other cohorts.

- 4.8.40 Given the importance of visits for detainee health and wellbeing, by maintaining their contact with the community, and the contribution to detainee rehabilitation, there is a need for all options to be considered for increasing visit opportunities. The review team note that a significant amount of space in the visits centre is taken up by single and double non-contact visits cubicles. There are also three rooms for professional visits that could be utilised for family visits.

Finding 20:

That there may be scope for re-modelling or making better use of the visits centre to provide more capacity for social visits.

AMC visits program

- 4.8.41 In order to accommodate the various detainee cohorts the AMC has developed a weekly visits schedule, which is published on its website.¹⁰³ The complexity of this schedule is increased by the fact that the naming of accommodation units on the schedule follows the AMC's naming, which in many cases does not reflect the cohort detained in that unit. For example, 'Remand Unit 1' holds both remand and sentenced detainees, and the 'Special Care Centre' is the women's accommodation, whilst the 'women's cottages' currently hold male protection detainees. This could create confusion for family members who are trying to find out when they can visit. Furthermore, the published schedule had, at time of writing, not been updated since 1 May 2016 and does not reflect current arrangements.

Table: 4.4 Personal visits schedule (20 detainees per session maximum)

Visit Period	Wed	Thurs	Fri	Sat	Sun	Total
0830–0930	20	20	20	20	20	100
1000–1100	20	20	20	20	20	100
Lunch lock-in						
1315–1415	20	20	20	20	20	100
1445–1545	20	20	20	20	20	100
1615–1715	20	20	20	20	20	100
1745–1845	20	20	20	20	20	100
Total	120	120	120	120	120	600

¹⁰² ACT Human Rights Commission (2016) 'Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre', 59.

¹⁰³ ACTCS, 'Visits schedule', http://www.cs.act.gov.au/detainee_visits, accessed 16 October 2018.

The complexity of the visits schedule is evident from the table below:

Table 4.5 Personal visits schedule by unit/category

Unit	Wed	Thu	Fri	Sat	Sun	Sessions per week
Sentenced Cottages 1 & 4		X		X		2
Sentenced Cottages 2 & 3			X		X	2
Remand Unit 1	X			X		2
Remand Unit 2 & unplaced from RU2	X			X		2
Accommodation Unit West & Crisis Support Unit	X			X		2
Accommodation Unit East		X			X	2
Accommodation Unit North		X			X	2
Accommodation Unit South		X			X	2
Special Care Centre (Women)			X		X	2
Women's Community Centre (Male protection)		X				1
New Receptions	X		X			2
Inter prison visits		X				1
Women's Community Centre – RC2 (Male protection)				X		1
Sentenced Unit 1			X		X	2
Sentenced Unit 2			X	X		2
Management Unit & unplaced from SU1	X		X			2

Remandees' views of the visits program

- 4.8.42 The survey asked remandees if they thought that they should get more visits than convicted detainees. Somewhat surprisingly only 18% of the male respondents answered 'yes'. The 'yes' response from female respondents was 25%. The survey also asked if remandees thought they should get longer visits than convicted detainees. Only 10% of male respondents replied 'yes' compared to 18% of female respondents.
- 4.8.43 The responses to these questions suggest that, overall, remandees don't believe that they should be treated differently to convicted detainees when it comes to visits. The stronger responses from female remandees may be related to visits by their children. Of the 13 female respondents who have children, nine reported that their children visit them compared to eight of the 20 male respondents who have children. The survey also revealed that of those remandees with children, females were more often the 'primary carer' before they came into custody (seven of 13 respondents) compared to males (three of 20 respondents).
- 4.8.44 Sixty-six percent of female detainees and 56% of male detainees who responded to the detainee survey indicated that they were unhappy with the visits program at the AMC. Sixty-three percent of female detainees and 49% of male detainees responded that the visiting hours at the centre did not meet the needs of their family and friends.

"My child goes to school and plays sports so the allocated visits for us don't work for my family"

— female remandee

"We need more time at visits. Losing relationship"

— male remandee

Issues identified with the AMC visits program

- 4.8.45 Discontent about visits emerged as a major issue in the remandee survey. Many remandees complained about the shortness of visits (one hour), the number of visits allowed each week (two), visit times and the rigidity of the visits program. Remandees raised problems such as:
- School children can't visit on weekdays either because they are in school or the late visit times (4:15pm onwards) clash with meal times, homework, etc.;
 - Working adults find it difficult to visit at set times during business hours;
 - Many children have sport commitments on Saturdays, forcing them to decide whether to visit mum/dad or go to sport; and
 - Female detainees also complained that their visit slots are only one day apart (Friday & Sunday), which means they wait four days between visits.
- 4.8.46 As noted earlier in this report, ACTCS is currently not in compliance with section 44 (1) of the CM Act, which provides that the director-general must make a corrections policy or operating procedure providing for different treatment of convicted detainees and non-convicted detainees. There is not currently, nor has there ever been, a policy or operating procedure that meets this requirement. Such a policy or operating procedure should cover key aspects of the treatment and care of remandees and how they differ from sentenced detainees. Recognition of the heightened importance that access to visits has for remandees should feature in such a policy.

4.8.47 The review team notes that Corrections Victoria provides that additional visits for remandees may be achieved via 'additional visit days, longer duration of visits, access to personal visits via video conferencing, or increased numbers of visitors on their Valid Visitor List (up to 15).¹⁰⁴

Finding 21:

That the limited access of AMC remandees to social visits does not recognise the status of remandees as unconvicted persons, or of their need for increased access to visits during a highly stressful period for both the detainee and their family.

Finding 22:

That there is no policy that specifically recognises the importance of facilitating the access of remandees to the outside world, including through the opportunity to receive frequent visits from family and friends.

The cohorts issue and its impact on visits

4.8.48 The problem of fitting in visitors for some 500 detainees is further compounded by various cohorts of detainees who can't (for perceived safety and security reasons) attend visits at the same time e.g. males and females, rival bkie gang members. Remandees are not regarded as a cohort and attend visits with convicted detainees.

4.8.49 To a large extent the cohorts issue drives and shapes the entire AMC visits program as it results in units being allocated visit times rather than individual detainees, as is commonplace in other prisons in Australia.

4.8.50 We were informed that the AMC visits timetable was devised to manage association risks between different cohorts of detainees. It was explained to us that because the ACT is a small jurisdiction, most of the detainees know each other and conflicts between detainees flow between the prison and the community. We were also told that as a one-prison jurisdiction, it was not possible to spread detainees with association issues between a number of prisons.

4.8.51 However, separate visit times for each accommodation unit has not always been the approach at the AMC. As recently as 2016, for example, female and male detainees were able to visit concurrently. The Human Rights Commission's 2016 audit notes:

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.¹⁰⁵

4.8.52 Given the high value that detainees place on visits, and the importance of visits to their family and friends, there is a strong incentive to "behave" during visits.

Visits for new receptions

4.8.53 A new reception to the AMC (defined as someone serving their first 7 days in the AMC) is eligible to receive a one hour visit on the next Wednesday or Friday after their admission. This means that a newly arrived detainee, perhaps direct from court on remand, could have to wait up to four days to see their partner or children.

¹⁰⁴ Victoria Commissioner's Requirement 2.3.8: Remand Prisoners, 2.

¹⁰⁵ ACT Human Rights Commission (2016) 'Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre', 59.

- 4.8.54 Waiting for up to four days for a visit with family and friends is unacceptable given that the initial period of detention is a time of great stress and anxiety for most detainees, and a time of great vulnerability to self-harm or harm by others.
- 4.8.55 The remandee survey found that 11 of 18 female respondents described their arrival and induction at the AMC as either 'somewhat stressful' or 'extremely stressful'. Similarly, 40 of 49 of male respondents described their arrival and induction at the AMC as either 'somewhat stressful' or 'extremely stressful'.

Finding 23:

That, given the "stress factor" reported by new receptions, there should be a more flexible approach at the AMC to providing a first visit as soon as possible (e.g. within 24 hours) after admission.

Finding 24:

That there is a need to re-evaluate the AMC's restrictive approach to visits to enable remandees, detainees with children that visit, and others to have greater access to visits.

Attending visits by public transport

- 4.8.56 The remandee survey forms contained a number of comments about the difficulties faced by their visitors who are reliant on public transport. The only bus service to/from AMC is provided by ACTION route 88 (Monday – Friday) and route 988 (Saturday, Sunday & Public Holidays). Both routes start and finish at the Woden Bus Station with one stop between the AMC and Woden at Geoscience Australia (Jerrabomberra Ave, Symonston) inbound and an additional stop at the Hume Industrial Area outbound on week days. The inbound trip takes about 20 minutes. The bus service to the AMC is currently under review as part of the new Transport Canberra timetable with changes earmarked due to relatively low utilisation of the service.

Other possible approaches to visits at the AMC

Seven days a week visits

- 4.8.57 Currently there are no family visits on Mondays and Tuesdays (see Table 4.4). This is a lost opportunity.

More flexibility about visit lengths

- 4.8.58 Some detainees, especially those whose children visit them, may be willing to forgo 2 x 1 hour visits per week for 1 x 2 hour visit. This might also be an attractive option for visitors who are reliant on public transport i.e. one bus trip per week rather than two. Prisons in other jurisdictions provide for 2 hour visits e.g. Ravenhall Correctional Centre (Vic), Arthur Gorrie Correctional Centre (Qld).

Weekend visits

4.8.59 For obvious reasons weekends are typically the most popular visit days for prisons, and to its credit the AMC provides a Saturday or Sunday visit for every accommodation unit. However, it may be that some detainees don't "require" a weekend visit and might be happy to have a weekday visit instead. This could allow more or longer weekend visits for other detainees.

Video visits

4.8.60 Conducting visits by video conferencing technology (similar to Skype) was introduced in the US at least eight years ago and is used widely in a number of US jurisdictions.¹⁰⁶ Video conferencing for visits is also used in some prisons in Australia, for example, Skype visits are permitted in Acacia Prison in Western Australia.

Photo 4.6: Typical video visits facility at a US prison



Source: The Denver Post, RJ Sangosti

4.8.61 However, what began as an innovative idea to supplement "live visits" has expanded to the extent that some US prisons now only provide video visits, largely because they are cheaper (less/no staff required) than live visits and they remove the problem of contraband being introduced by visitors. Such a restrictive regime would be unacceptable in the ACT or indeed, any Australian jurisdiction. Nonetheless, there may be a place for video visits at the AMC in specific circumstances such as:

- Detainees with family who live interstate;
- Family and friends who have disabilities that make visiting the AMC difficult or impossible;
- Local family and friends who find travel to the AMC overly difficult (e.g. by bus);
- Special occasions outside normal visit days (e.g. child's birthday);
- New receptions on arrival;
- Urgent matters (e.g. sickness of a family member); and
- Visual contact with children who might otherwise not visit.¹⁰⁷

Finding 25:

That there may be a place for video visits at the AMC to supplement live visits.

¹⁰⁶ Whyte, L., (2010) 'Internet video visitation: Why and how to make the switch', *CorrectionsOne*, <https://www.correctionsone.com/products/facility-products/inmate-visitation/articles/2075432-Internet-video-visitation-Why-and-how-to-make-the-switch/>, accessed 14 December 2018.

¹⁰⁷ The remandee survey revealed that some detainees don't allow their children to visit because they don't want them exposed to the prison environment.

- 4.8.62 While video visits would not replace live visits at the AMC, detainees could be given the option of one or the other, and if a significant number of detainees opted for video visits, it could relieve pressure on the AMC visits centre.
- 4.8.63 When planning for the expansion of the bed capacity at the AMC (169 new beds added in 2015/16) it should have been realised that this would impact on facilities and services at the AMC, including the visits program and the visits centre. This failure has since been compounded by detainee numbers significantly exceeding the design capacity.
- 4.8.64 As a result of this lack of planning, the AMC has, arguably, one of the most restrictive visits program¹⁰⁸ of any comparable prison in Australia.

4.9 Indigenous remandees/detainees

- 4.9.1 As at 11 June 2018, there were 504 people in custody at the AMC of whom 16 were Indigenous women and 97 were Indigenous men (113 or 22.4% in total). Indigenous detainees comprised 20.9% of all male detainees and 39.0% of all female detainees.
- 4.9.2 Of the 191 remandees in custody on 11 June 2018, 35 were Indigenous men (21% of all male remandees) and 11 were Indigenous women (45.8% of all female remandees).
- 4.9.3 The AMC was designed as a “campus style” correctional centre with the “town square” as its epicentre. Campus style centres, as the name implies, are intended to mimic the open area feel of a university rather than a traditional prison environment.

The Centre environment which will be established will reflect the integration of design solutions with operational policies. Particular attention will be paid to the needs of Indigenous and female prisoners, which must be met objectively and not simply by striving for parity with male, non-Indigenous prisoners. The latter approach would be inadequate to address the disparity in circumstances.

The design of the AMC will avoid that design harshness which encourages aggressive behaviour, but rather will seek a softer institutional presentation which will foster socially acceptable behaviour. It will avoid dowdy colours, dim lighting and the use of excessively harsh materials.

Alexander Maconochie Centre Functional Brief (2005),
ACT Department of Justice and Community Safety
(Dr John Paget)

¹⁰⁸ E.g. limited to two slots at set times on only 5 days per week.

- 4.9.4 Unfortunately, since it opened in 2009, the AMC has moved further and further away from its campus origins due in part to the erection of numerous internal fences in response to the perceived demands of managing cohorts of detainees.
- 4.9.5 As a consequence of the fencing program, the town square is little more than an unused, barren waste of space.¹⁰⁹

Photo 4.7: AMC “Town Square”



Source: OICS, 2018

- 4.9.6 Given the perimeter fencing style chosen for the AMC, the green spaces within the prison, and the provision of windows in accommodation units, the AMC has the potential to provide a positive living environment for detainees.
- 4.9.7 Prison environments are typically inflexible to the cultural needs of particular groups, and Aboriginal and Torres Strait Islander people often fare very poorly in prison environments.
- 4.9.8 In a 2008 study, Elizabeth Grant interviewed Aboriginal men in South Australian prisons to investigate their needs and preferences for prison accommodation.¹¹⁰ The Aboriginal prisoners expressed a preference for prison environments that allowed the prisoner to stay connected to country, to maintain relationships with family and kin, to live within a specified group, and to have their privacy, safety and health needs met.

¹⁰⁹ On the many visits that Inspectorate staff have made to AMC since March 2018 we have not seen the town square being used for anything.

¹¹⁰ Grant, E., (2008), 'Prison Environments and the Needs of Aboriginal Prisoners: A South Australian Case Study', *Australian Indigenous Law Review*, vol. 12 no. 2.

4.9.9 Preferred prison locations were on or near traditional country, with continual visual and physical access to the external environment so prisoners can feel the wind and the sun, with specific outdoor spaces and places where Aboriginal prisoners could gather as a group, to have a 'yarn', and gain and share cultural knowledge. A football field was considered particularly important, as was a separate, purpose-built cultural centre for Aboriginal prisoners. Many Aboriginal prisoners wanted the choice of being placed in a dedicated Aboriginal living unit.

4.9.10 Grant's study also found that, although Aboriginal prisoners wanted to be able to be together, they did not want to live in double cells. Double bunking appeared to increase their stress levels and impinged on their feelings of well-being. Almost all of Grant's participant group (n=55) preferred single cell accommodation for safety, privacy and other issues, but wanted to be able to maintain verbal and visual connections to other Aboriginal prisoners. For example, they preferred cell doors with windows where they could see other Aboriginal prisoners in their social group after lockdown. They also preferred accommodation buildings with windows so that they could see what was happening outside before they left their unit. Dead end corridors were also disliked by the Aboriginal men in this study.

How does the AMC fare in relation to the preferences expressed by Aboriginal prisoners in the South Australia study?

4.9.11 The AMC is enclosed by extruded mesh fencing, which provides detainees with the possibility of a view of the land surrounding the prison and of the horizon. There is plenty of green space in the prison grounds. Male detainees can access the green space around their accommodation areas when they are unlocked from their units. Women, however, could not access green space unaccompanied by a corrections officer.

4.9.12 The accommodation units provide visual access to the outdoors. The secure accommodation areas have large windows in the day rooms, which can flood the area with light, and give detainees views outside the unit. Each cell in detainee accommodation areas has an external facing window. Some units have exercise yards attached. These are cages with concrete floors, but they do allow detainees access to the open air and to views outside the unit. The cottages allow smaller groups of detainees to live together in more 'domestic' style accommodation.

4.9.13 The HR Act recognises distinct cultural rights of Aboriginal and Torres Strait Islander people, including the right to maintain, control, protect and develop their:

- cultural heritage and distinctive spiritual practices, observances, beliefs and teachings;
- language and knowledge; and
- kinship ties¹¹¹.

In the Education Centre there is an art room which provides the opportunity for Aboriginal detainees to participate in art, and it is used for cultural programs including yarnning circles. Aboriginal detainees, regardless of security classification and cohort, are generally allowed to gather here for specific activities when organised, such as yarnning circles, which is a positive initiative. However, there is no dedicated Indigenous cultural centre and limited dedicated Indigenous cultural spaces. There is generally very little visual representation of Aboriginal culture across the centre, such as through murals and art, an often a highly attractive feature of corrective service facilities in other jurisdictions and is prominent at the ACT Bimberi Youth Justice Centre.

¹¹¹ HR Act, s 27(2).

- 4.9.14 To its credit, the AMC puts a lot of time, effort and funds into the annual NAIDOC Week celebrations. This is a significant event and almost all Indigenous detainees attend which involves various cohorts mixing. The AMC has also developed an art program, which allows detainee artists to sell their works to the public and keep the proceeds from those sales (deducting costs for art supplies). The review team observed detainees working on their art in their accommodation unit and art displaying impressive talent and skill was displayed in an art space in the community as well as at events such as NAIDOC Week. Detainees who participate in art programs demonstrate a great deal of pride in their work and were positive about the opportunity. The Culture and Land Management Program integrates traditional culture, art, music, horticulture and land management with various other skills. This is another program that has great value and is much appreciated by many attendees.
- 4.9.15 The restrictive management regime prevents Indigenous male detainees from various units from informally gathering together to learn and share cultural experiences, or to be together outdoors as a group – this is less so for the women, particularly when the door between cell wings is open. However, yarning circles are organised and conducted in the art room, or outdoors if the weather permits for the men, and in a programs room for the women.
- 4.9.16 The ovals are (at time of writing) unavailable to detainees as they are being refurbished.¹¹² This unavailability, combined with the management regime, denies Indigenous detainees' access not only to outdoor exercise, but also to the mental and physical benefits of participation in group sports.

¹¹² The ovals have been under refurbishment for several months at least in 2018.

Finding 26:

That while the AMC has many culturally appropriate design considerations, it lacks dedicated Aboriginal areas and spaces in which Aboriginal detainees can gather informally together, learn and share cultural experience.

Finding 27:

That while not conducted in a designated Aboriginal cultural space, the yarning circles at the AMC acknowledge Aboriginal remandees' need for connection and cultural sharing.

4.10 Female remandees/detainees

- 4.10.1 As at 11 June 2018, there were 41 women in custody at the AMC of whom 16 were Indigenous (39%). Of the 24 women on remand, 11 were Indigenous (45.8%). Women as a whole, comprised 8.1% of the AMC detainee population and 12.6% of the remandee population.
- 4.10.2 The following excerpts from the AMC Functional Brief (2005) and other sources speak to the manner in which women were to be managed and cared for at the AMC in recognition of the special needs of females in detention. Unfortunately those ideals have largely fallen by the wayside, to the detriment of female detainees, many of whom are remandees.

The design of the AMC will avoid that design harshness which encourages aggressive behaviour, but rather will seek a softer institutional presentation which will foster socially acceptable behaviour. It will avoid dowdy colours, dim lighting and the use of excessively harsh materials.

Researchers have noted that by the end of the 1980s, a substantial body of knowledge had been developed concerning the very specific ways in which women's imprisonment is different from men's imprisonment. This is not merely because women are biologically different to men and not only because they have a different role to play in society, but also because the social control of women in general is qualitatively different to the social control of men.

Women adapt to prison very differently to men. The loss of control over place, space and time affects women prisoners' sense of self and personal identity differently to the way the same losses affect men. Separation, particularly from children, is a major issue for female prisoners as it produces situational stress impacting adversely on health. It is known that excessive arousal, including violence,

can result from invasions of a prisoner's personal space. For women, control over environment and space are even more important because of the tendency of women to internalise emotional and psychological stress, which increases their risk of self-harm.

A striking feature of the woman prisoner is her dependency. The body of unmet needs identified on reception will include the need for independence, yet the culture and highly structured correctional environment usually denies the female prisoner control over many basic decisions, thus reinforcing her dependency. 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.

It will be important for the Centre in general, but for female prisoners in particular, for these issues, operational and administrative processes and programming, to be integrated with the Centre's design and operational model.

Alexander Maconochie Centre Functional Brief (2005),
ACT Department of Justice Community Safety
(Dr John Paget)

All ACT prisoners – sentenced and remand, male and female, minimum, medium and maximum security – are housed at the AMC. Nearly half the accommodation is in five bedroom cottages, and no female detainees are housed in cells. This model aims to ‘enable detainees to develop and practice living skills’ and ‘facilitates normalisation’.

**Human rights and prison.
A case study from the Australian Capital Territory
Lorana Bartels and Jeremy Boland (2015)**

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

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.

**ACT Human Rights Commission (2014),
Human Rights Audit on the Conditions of Detention
of Women at the Alexander Maconochie Centre**

All unsentenced female prisoners (sic) will be placed in cottage accommodation unless there is evidence that a more restrictive security placement is necessary.

**AMC Prisoner Classification Procedure
updated 29/08/2018**

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. The secure cottage accommodation building is protected by the secure perimeter.

AMC Detainee Classification Policy – NI2012-299

Living arrangements for women

4.10.3 In June 2017, The Canberra Times reported that the AMC had held 'as many as 45 female prisoners that year'.¹¹³ At this point the number of women exceeded the designated women's cottage design capacity by almost 50%, and some female detainees were being accommodated in the health centre and management unit, clearly an unsustainable prospect beyond the short term. A decision was made to repurpose a new 57 bed 'Special Care Centre (SCC) high security male unit within the main prison and move all the women into this unit to cater for the increased female detainee population 'while ensuring women were still kept separate'¹¹⁴. This decision was taken to address a pressing problem within budgetary and time constraints (that is, building a new women's prison was not on the table and nor would it have provided an immediate solution to the overcrowding). The transfer of the female detainees to the SCC was described in an ACT Government media release as a move into improved accommodation, with improved access to health, programs, education, employment and recreation.¹¹⁵

4.10.4 Notwithstanding the statement quoted above from the AMC Classification Procedure directing that all unsentenced female 'prisoners' will be placed in cottage accommodation, female detainees are currently held in a male, high security unit, which does not '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'.¹¹⁶ The women's current accommodation in the SCC is not a normalised or suitable environment for female detainees in line with the AMC functional brief and best practice for detention of women.

4.10.5 The review team note that the decision to move the women to the SCC was taken in June 2017. However, this review is concerned with the conditions and treatment of female remandees (and convicted detainees) and the significant impact of their current accommodation has on this. The review team therefore sought to better understand the context and background to the decision to move the women to SCC. The review team therefore requested the Director-General, Justice & Community Safety Directorate (JACS) provide:

...evidence as to what options were considered (e.g. an options paper, briefings to yourself and/or the Minister), including costings for any identified options, risk and impact assessments (including human rights impact), project timelines, and so on. There should also be documented evidence as to stakeholder consultation, including what information and proposals/options were put them and the responses from stakeholders. Similarly, notwithstanding that women involved in the move told us that they were not "consulted", I would be happy to see documented evidence of any such consultation (e.g. minutes of delegate's meetings).

4.10.6 The information given to the review team in response to the above request provided an incomplete picture of options development and analysis. The review team did not see documentation indicating a thorough cost/benefit and human rights

113 Lawson, K. (2017) 'Government considers reopening Symonston remand centre for overflow of female prisoners', *The Canberra Times*, 26 June, online at <https://www.canberratimes.com.au/national/act/government-considers-reopening-symonston-remand-centre-for-overflow-of-female-prisoners-20170626-gwypta.html>, accessed 14 December 2018.

114 Ibid.

115 Shane Rattenbury MLA, Minister for Justice (23 October 2017) 'Prison move to improve accommodation for female detainees', *Press Release*.

116 ACT Human Rights and Discrimination Commissioner (2014) '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'.

analysis on various options prior to a decision being made. Further, there was no indication in the documentation provided to us that there was consultation with key stakeholders *prior* to a decision being made to transfer the women to the SCC. The information provided of itself tends to support a conclusion that the decision to move the women to the SCC did not consider the specific needs of, nor the ramifications of, the new accommodation for female detainees, treating them as if they were just another cohort to manage. The review team notes that the HR Act requires public authorities to give proper consideration to human rights when making decisions, and act in accordance with human rights.¹¹⁷

- 4.10.7 Treating female detainees as simply another cohort within a men's prison is a risk identified by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in a January 2018 factsheet about women in prison:

*Women usually make up a very small minority of the overall prison population ... Importantly, they are characterised by having particular needs and vulnerabilities which differ from those of men. In combination with these differences, the fact that women are far fewer in number poses a variety of challenges for prison administrations, often resulting in less favourable treatment as compared to imprisoned men. This stems from the fact that prison rules and facilities have been developed for a prison population in which the male prisoner is considered to be the norm. ... There is a risk that the specific needs of women will be disregarded, especially as they are a minority category of prisoners.*¹¹⁸

¹¹⁷ Human Rights Act 2004 (ACT), s 40B(1).

¹¹⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) (2018) *Factsheet: Women in Prison*, CPT/Inf (2018)5.

- 4.10.8 Similarly, the United Nations Office for Project Services wrote:

Complete separation means that women are absolutely separated from a security point of view, but also that there is no visual or sound transfer, wherever this is possible to achieve. Furthermore, women should not have to walk through areas that house men in order to access education or work areas.

*The design and construction of accommodation for women prisoners may be different from male counterparts and may need to consider different functional needs. The typical background, offending patterns, history of abuse, rehabilitation and support needs and care giving responsibilities of women prisoners should influence planners and architects to design facilities that are innovative and gender sensitive.*¹¹⁹

- 4.10.9 Whilst female prisoners are generally acknowledged in Australia to be 'low risk and high need' in comparison to male detainees,¹²⁰ ACTCS chose to relocate the female detainees from an accommodation area that was consonant with their generally lower risk profile and had a women specific 'community centre' with facilities to address various needs into a unit designed as, and intended for use as, a Special Care Centre. When this unit was first opened, Minister Shane Rattenbury described it as helping to 'better segregate (male) prisoners', and allowing 'troublesome detainees to be separated'.¹²¹

¹¹⁹ United Nations Office for Project Services (UNOPS) 2016, 'Technical Guidance for Prison Planning: Technical and operational considerations based on the Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)', Copenhagen.

¹²⁰ See generally, ACT Human Rights and Discrimination Commissioner (2014) *Human Rights Audit on the Conditions of Detention of Women at the Alexander Maconochie Centre*; Corrective Services Ministers' Conference (2012) *Standard Guidelines for Corrections in Australia*.

¹²¹ ABC News Online (9 September 2015) 'New cell block will help better segregate prisoners at Canberra jail, ACT Government says', online at <https://www.abc.net.au/news/2015-09-09/new-cell-block-will-help-better-segregate-prisoners-at-canberra/6763062>.

- 4.10.10 It should be noted that the purpose-designed women's area (a cluster of three cottages and a community centre building, collectively known as the Women's Community Centre – WCC) had a design capacity of 25 beds. The SCC provides 57 beds, including some purpose built two-person cells. As at 2 September 2018, there were 40 women in the SCC, leaving 17 beds unoccupied. On the other hand, the "women's cottages" (accommodating male protections) had 37 occupants on 2 September 2018, or 12 more than the design capacity i.e. 37 men in a 25 bed "unit" and 40 women in 57 bed unit.
- 4.10.11 We understand that the decision to move the women out of the cottages was driven by the increasing number of women coming into custody (something experienced in other jurisdictions)¹²² that could not be managed in the 25 bed WCC. However, the review team is firmly of the view that moving the women to a unit within the male area of the prison should have been the "option of last resort" after exploring alternatives such as temporary demountable accommodation. None of the documentation provided to the review team mentions the option of demountable accommodation in the women's area but rather they focussed on high-cost new builds and the un-costed recommissioning of the derelict Symonston facility.
- 4.10.12 The placement of female detainees in a high-security male accommodation unit creates the impression that they are being punished or are difficult to manage (noting the comment in the press-release extracted above regarding the original purpose for the SCC). This impression is strengthened by the ongoing description of the female accommodation area as the Special Care Centre, nomenclature which should have been discarded when the unit was 'repurposed' for women.
- 4.10.13 Combined with its location within the main male prison, the SCC accommodation subjects women to a higher level of security than most warrant given that women of all security classifications, including Minimum, are being held in a high security unit.¹²³ The area in which the female detainees are housed is fenced on one side by a "Colourbond" type fence to protect them from observation by male detainees in the remand unit. However, on another side the SCC adjoins the accommodation and exercise yards of two wings of the Accommodation Unit (AU), and women are visible by male detainees in this unit when they enter and exit the SCC. At the time of writing, women did not have unescorted access to "green space" around the SCC, that is, an open area around the accommodation unit that does not include caged/high walled exercise yards. Part of this green space opens onto the Colourbond fence, and other parts are fully visible from the AU where there is a risk of verbal and indirect physical harassment. In 2018 for example, a male detainee at the AMC was placed on non-association orders for shouting abuse at a female detainee who was his victim, whilst she was moving around the AMC.
- 4.10.14 Many women in prison have extensive histories of victimisation, including childhood sexual abuse, intimate partner violence and violence more generally. The rates of sexual victimisation for women in prison far exceeds those of women in the general community.¹²⁴ The location of the women's unit within the male prison (as opposed to on the outskirts of the prison, separated from the mainstream

¹²² New South Wales Bureau of Crime Statistics and Research (2018), 'Recent trends in the NSW female prison population', Issue Paper no. 130, January.

¹²³ Debbie Kilroy points out that in Australia, the conditions under which women prisoners are detained in 'mixed' prisons are generally discriminatory, with women prisoners kept under higher security conditions than their male counterparts. Kilroy, D. (2011) 'Submission to the Consultation of Draft Baseline Study for National Human Rights Action Plan', *Sisters Inside*.

¹²⁴ Stathopoulos, M., et al. (2012) 'Addressing women's victimisation histories in custodial settings', *Australian Institute of Family Studies*, ACSSA Issues No. 13.

prison by administrative and program buildings) may re-traumatise women who have histories of sexual victimisation.¹²⁵ The location of the women's current accommodation area at the far, northern end of the prison further exposes women with sexual victimisation histories to the possibility of re-traumatisation. The route from the women's accommodation area to visits, the medical centre and the education centre take female detainees past male accommodation areas and the ovals. Additionally, all movement of male detainees in the vicinity has to cease while women are moving about the AMC.

Exercise opportunities for women

4.10.15 The fitness equipment originally provided for male detainees (weightlifting stations) located on outdoor, fenced, uncovered concrete pads, still remains in the SCC, but based on conversations with female detainees, staff and others, this equipment is of no interest to the women. Although very recently a rowing machine and stationary bike have been placed in the SCC, the review team still consider this to be inadequate, particularly given the lack of green space available. Women have access to the gym in the multipurpose hall at scheduled times several times per week, however this requires them to be escorted past men's cell blocks in view of windows and men's outdoor areas.

Photo 4.8: One of the uninviting and unsuitable women's exercise areas at the AMC



Source: OICS, 2018

¹²⁵ Kilroy, D. (2011) 'Submission to the Consultation of Draft Baseline Study for National Human Rights Action Plan', Sisters Inside.

This lack of green space, which was available to women in the cottages, is an issue given that physical exercise such as walking is recognised as being beneficial general health and wellbeing, including for people suffering from depression,¹²⁶ and many female detainees have histories of mental illness, including depression.¹²⁷

Women with babies

4.10.16 Although at the time of writing there was an ACTCS policy that allows female detainees to have a child in custody with them, and provision was made in the design of a number of cells in the Women's Cottages for that purpose, a woman has yet to be approved for this program. The move into the SCC has eliminated the possibility of a woman being permitted to have her child in custody with her, due to the unsuitability of the accommodation. The creation recently of the staff position of AMC 'Women's and Children's Services Coordinator' is a positive step, as is the use of the family rooms adjoining the main visits centre for mothers to spend time with young babies. Accommodating babies with their detainee mothers where it is in the best interest of the child to do so should remain a concrete objective. However, as noted above, this seems unlikely given present accommodation arrangements.

Structured day for women

4.10.17 ACTCS has said on the public record that a "structured day" has been implemented for the female detainees,¹²⁸ and that employment has been made available for women in the bakery. However, except for the limited number of bakery workers, the structured day operates within the confines of the unit, with female detainees only intermittently leaving the unit (noting that some medical appointments and programs/activities can be delivered in the unit). Unlike a "real" structured day, the current structured day for female detainees does not replicate normal living in the community, and there are few structured activities to ensure that the majority of detainees are meaningfully engaged in some activity.

4.10.18 The female remandee survey provides an impression of the daily life of women remanded in custody at the AMC. From their responses to the survey and conversations we had with women in the unit during our inspection, their lives are boring, with little meaningful activity to occupy them.

4.10.19 From the detainee survey, 63% of female remandees (12 out of 19) reported that they were unemployed in the AMC while only one woman stated that she would not want to work if prison jobs were available. While some female remandees were employed in the bakery (and obviously very happy with their jobs) others told us that their "jobs" consisted of emptying the bins and other menial work. Jobs as unit cleaners are "make work" positions which occupy very little of the detainees' time, and will not assist detainees to develop marketable skills for their release.

126 See, for example: Victorian Government (2018) 'Depression and exercise'. *Better Health Channel*, online at www.betterhealth.vic.gov.au; Craft, L.L., & Perna, F.M. (2004) 'The Benefits of Exercise for the Clinically Depressed', *Primary Care Companion to The Journal of Clinical Psychiatry*, 6:3, 104.

127 National Institute of Drug Abuse (2014) 'What are the unique treatment needs for women in the criminal justice system? Principles of Drug Abuse Treatment for Criminal Justice Populations – A Research Based Guide', online at <https://www.drugabuse.gov/publications/principles-drug-abuse-treatment-criminal-justice-populations/what-are-unique-treatment-needs-women-in-criminal-j>; The Sentencing Project (2007), *Women in the Criminal Justice System: Briefing Sheets*; Van den Bergh, B. J., Gatherer, A., & Möller, L. F. (2009) 'Women's health in prison: urgent need for improvement in gender equity and social justice', *World Health Organization Bulletin*, 87:6, 406.

128 ACT Legislative Assembly (26 June 2018) 'Estimates Hearings: Evidence of Jon Peach, Executive Director, ACT Corrective Services', Hansard, 790.

4.10.20 Seventy-five percent of detainees (12 out of 16) responded that they did not have enough to do to prevent themselves being bored. One woman told us, that although she did not have a drug or alcohol problem, she had completed the same drug and alcohol program three times, to help alleviate the boredom.¹²⁹ The same woman spoke to us about the lack of courses and programs available to the female detainees. During visits to the women's unit over the course of the review we observed detainees generally sitting around doing nothing with the exception of a few who were engaged in art work. On one occasion when we needed to speak to a particular woman, she was still asleep in her cell at 9:30am.

4.10.21 Given that female offenders are recognised in Australia and internationally as having high rates of mental illness, including depression and post-traumatic stress disorder, as well as the stress that many female remandees experience due to separation from their children and families, participation in meaningful activities such as work, education and programs is considered essential for their ongoing mental wellbeing.

Womens' access to sufficient, diverse and relevant programs and activities

4.10.22 In light of the small cohort of female detainees, and the significant proportion on remand who may have a short period of time in the AMC or whose stay may end abruptly, there needs to be flexibility around the critical mass required for courses to run. The review team heard from ACTCS staff that, on occasion, it was difficult to get enough women interested in certain programs or activities to provide sufficient numbers for the program or activity to run. Whilst there are always practical considerations to keep in mind when offering programs and activities (and sufficient numbers

may be relevant, for example, to promote group discussion), extreme caution should be taken to ensure that women are not substantively disadvantaged in access to programs and activities. Other modes or means of delivery (for example, online courses, tutoring or mentoring etc.) must be considered to ensure women can access suitable programs and activities.

4.10.23 While women are able to participate in art while in the unit, there is no dedicated cultural area for the Indigenous women, but, as with the men, yarning circles are organised and provide an opportunity for cultural sharing and support.

Lack of incentives for women

4.10.24 Male detainees are able to progress from high/medium security cell accommodation to less restrictive minimum security cottages if they display appropriate standards of behaviour and attitudes. This option is not available to women who, regardless of behaviour and security classification, cannot progress from the high security SCC unit.¹³⁰ Similarly, male detainees approaching release may progress to the Transitional Release Centre (TRC) (cottage-style accommodation outside the AMC secure perimeter). Again, this option is not available to women, although the relevant policy does not specifically exclude women, it is the review team's understanding that women are not accommodated there as a matter of practice. It is noted that women approaching release can participate in pre-release programs and activities "outside the fence" but unlike the men in the TRC they must return to the secure sector of AMC after each excursion and may be subject to strip-searching on each re-entry.

4.10.25 In essence, there are few incentives for women to make an effort to improve their situation in the AMC.

¹²⁹ Not able to be verified by the review team.

¹³⁰ In Queensland, female remandees can be accommodated at the minimum security Numinbah Correctional Centre (farm)

Parenting programs for women

Maintaining meaningful relationships with family members, acquiring parenting and relationship skills, re-shaping negative patterns of thinking and behaviour in interaction with the family and having a supportive family to return to on resettlement are seen to be protective factors not only in reducing re-offending but also in preventing the inter-generational transmission of offending.

Children and families can play a significant role in supporting an offender to make and sustain changes which reduce re-offending. [We] recommend measures to reduce family breakdown, such as family learning and parenting skills.

**Department for Business, Innovation and Skills,
National Offender Management Service (NOMS),
Policis, Kingston University and Toynbee Hall (2014)
Parenting and Relationship Support Programmes
for Offenders and Their Families**

- 4.10.26 The AMC provides only one parenting program for detainees. 'Being a Man and a Dad' is available to male sentenced and remand detainees, and focuses on 'managing strong emotions such as frustration and anger and developing parenting skills'.¹³¹

- 4.10.27 The Queensland government has recognised the parenting needs of women in custody by establishing a new program:

In response to the increase in women's imprisonment rates in Australia and the Queensland Ombudsman's 2016 report on overcrowding at Brisbane Women's Correctional Centre (BWCC), the Queensland Government is introducing a suite of initiatives to assist with prison demand management and ensure women have access to appropriate support services. As a part of this suite of initiatives, the Department of Child Safety, Youth and Women (the department) is seeking to trial a parenting program for women on remand in prison. The purpose of the program is to assist women to improve connections with their children, enhance their parenting skills whilst in prison and then link them with appropriate parenting support upon release. Funding available for this pilot program is \$300,000 (excluding GST) over three years with the parenting programs to be delivered by one provider within the Brisbane Women's, Numinbah and Helena Jones Correctional Centres.¹³²

- 4.10.28 The review team learnt of good work done in relation to parenting and family supports by community organisations. However, the lack of specific parenting programs for female detainees at the AMC is an issue requiring urgent attention, given that many women in prison have children and are often the primary carer. The lack of parenting and other programs supportive of family relationships at the AMC is seen as a lost opportunity.

¹³¹ ACT Corrective Services (21 November 2018) AMC Compendium of Programs.

¹³² Queensland Department of Child Safety, Youth & Women (2018) 'Keeping us together – mothers on remand parenting program', Request for Quote (DCSYW063A).

Finding 28:

That the 2017 decision to move the female detainees from the women's community centre to a high security male accommodation block was at odds with the design philosophy of the AMC and recognised best practice concerning the care and management of women in detention.

Finding 29:

That the high-security accommodation unit designed for men and located within the main male prison is unsuitable for female remandees as it:

- *Subjects female detainees to a higher level of security than necessary;*
- *Restricts women's access to the outdoors due to the fencing around the area and supervision required whilst outside;*
- *Exposes women with histories of domestic and family violence or sexual assault to the possibility of re-traumatisation due either to the location, or the necessity to walk past male accommodation areas when accessing the clinic, education and visits.*

Finding 30:

That lack of access to the outdoors ("green space") and the unavailability of suitable exercise facilities within the unit may compromise the mental and physical wellbeing of female detainees.

Finding 31:

That female detainees are not provided with sufficient meaningful activity, including work, education and programs that meet their needs.

Finding 32:

That female remandees are being subjected to restrictive living conditions that do not reflect their legal status as unconvicted persons.

Finding 33:

That the current conditions and treatment for women remandees, specifically:

- *accommodation in high security cellular accommodation designed for men, with limited access to green space;*
- *visual and aural proximity to male prisoners; and*
- *a limited regime of work, programs and activities;*

represents a significant limitation on women's rights to privacy, to humane treatment when deprived of liberty, and equality under the Human Rights Act 2004.

CHAPTER 5: GOING FORWARD

5.1 Bail

Bail is a key part of our justice system with over half the people arrested each year given bail. Bail has significant benefits both for people accused of offences and the State. However, the release of accused persons on bail carries risks that need to be managed, usually through the monitoring and enforcement of Court imposed bail conditions. If the risk is too great, the Court will direct the accused person be held on remand.

People granted bail should be released as quickly as possible and their bail conditions should be effectively monitored and enforced. In these areas, the bail system can work better.

The granting of bail is made on the understanding that the defendant will appear at their Court hearing. Bail conditions can be imposed to give greater assurance that the defendant will return to Court or to address concerns about the safety of the community whilst the defendant is on bail.

Defendants can have difficulty satisfying some bail conditions such as providing a permanent address or finding a surety. In 2014, of the 43 249 defendants granted bail, 1663 were held in prison until they could meet their bail release conditions. This represents a significant cost to the State. Of the 1663 people held in remand, Bail Coordinators helped 1356 meet their conditions of which 740 were released within a week. Providing more support to defendants at the time bail is granted would help reduce the number of people granted bail but held in prison.

Imprisoning defendants who have been approved bail is costly. For instance, a person granted bail but who is remanded in prison for one week while they arrange to meet their bail conditions will cost the State about \$5390. This is because the cost of bringing a defendant into the prison system is high regardless of the short time they spend there.

WA Auditor General (2015), Management of Adults on Bail

- 5.1.1 There is scant information available as to how many alleged offenders may be held on remand at the AMC on any one day due to an inability to meet bail conditions. Such data is not kept by the ACT courts' system or ACTCS, and it should be noted, ACTCS does not have any legislative responsibilities regarding the management of bail orders (save from where reporting to ACTCS is a condition of bail). In effect, bail is a matter for alleged offenders and their lawyers to manage. However, given the WA Auditor General's report (2015), it would be naïve to think that there are not some remandees at the AMC who are being held in secure custody due to their inability to meet bail conditions.
- 5.1.2 More specific information about attaining bail was gathered via the review team's self-administered survey of 67 remandees at the AMC. The survey included two questions about, in effect, whether the person had been granted bail but the person could not meet conditions. We asked 'In relation to the offence for which you are here now, were you granted bail?' Of the 50 male respondents to this question 13 (26%) answered 'yes'. While none of 13 females that responded to this question answered 'yes', five women (38%) responded to a subsequent question asking about support to meet bail conditions, which suggests that they were granted conditional bail. However, the review team's best interpretation of the answers suggest that 3-5 female remandees and as many as 13 male remandees were being detained due to not being able to meet bail conditions. A total of 18 in all equates to about 27% of the survey respondents. Although speculative, if this percentage was extrapolated to the entire remandee population it would equate to about 60 detainees in this situation, or 12% of the prison population.¹³³

- 5.1.3 Whilst the survey data is indicative only, it indicates that beds at the AMC are being taken up by remandees who don't need to be there. In addition to the cost to ACTCS of "maintaining" a detainee in custody, there are also costs and risks associated with admitting and discharging people. As the WA Auditor General (2015) observed:

Last year, 118 people went through these (admission) procedures but then were released on bail in less than six hours. Avoiding an admission into the prison system saves resources and reduces the emotional stress on the defendant. But as well, defendants held in remand for long periods because they cannot meet basic bail conditions such as providing an address are exposed to other high risk defendants. Research suggests that this sort of exposure can lead to people becoming involved in more serious offences.

...

Providing a residential address while on bail and providing a surety were the two conditions most difficult to meet.¹³⁴

- 5.1.4 Discussions with interlocutors indicates, this comment applies in the ACT. While surety conditions are a matter for the court and beyond the control of ACTCS, there is scope for addressing the often imposed condition of having a place to live that is acceptable to the court.¹³⁵
- 5.1.5 Inability to provide a suitable residence can be very problematic for people who have transient life styles (e.g. the homeless) or people who have a family home but can't live there for one reason or another (e.g. the alleged offence(s) were committed against a family member).

¹³³ Presneill A. (2018) 'A Viable Solution? Bail Hostels in the ACT', Research report prepared for ANU College of Law Winter Internship with the ACT Office of the Inspector of Correctional Services for the ANU Law School, 5.

¹³⁴ Office of the Auditor General of Western Australia (2015) *Management of Adults on Bail*, Report No. 10.

¹³⁵ Surety is where someone else agrees to pay a sum of money to the court if the defendant breaches their bail conditions. Sureties are typically provided by family and friends of the defendant.

5.1.6 Coincident with this review, the ACT Justice and Community Safety Directorate (JACS) is currently examining a range of strategies aimed at reducing the number of people entering the criminal justice system, including the bail issue. As a contribution to that work and this review, the Inspectorate engaged Ms Asher Presneill, a final year ANU law student, to provide advice as to 'whether, in practice, bail hostels offer an effective means of keeping individuals who are eligible for bail out of remand in custody, with a focus on the potential introduction of bail hostels in the ACT.'¹³⁶ A copy of Ms Presneill's research report ('A Viable Solution? Bail Hostels in the ACT') has been provided to JACS and is available to read on the Inspectorate's website: www.ics.act.gov.au.

5.1.7 The work of the community organisations (for example, the Aboriginal Legal Service, particularly their Bail Support Team; and Advocacy for Inclusion) in supporting clients understand bail and meet conditions is acknowledged. Yet this approach is targeted to specific cohorts and is fairly limited. The review team heard from lawyers who noted that because there was often no one else to provide the support to clients, lawyers sometimes ended up playing the support role to assist clients to meet bail conditions. This is not the role of lawyers, and high caseloads often make it difficult for lawyers to perform these additional functions. ACTCS may consider what role they can play to provide a comprehensive fall-back bail support role that could involve tasks such as:

- Ascertaining whether or not the defendant understood their options around bail, and obtaining if necessary, additional supports (such as an interpreter service);

- Ascertaining whether the defendant was initially granted bail subject to conditions and has breached that bail order (if necessary by consulting with the defendant's lawyers and/or court officers);
- Ascertaining whether the defendant can meet all the conditions a court is likely to impose, and if not, which conditions are causing a problem (e.g. surety);
- Facilitating telephone contact by the defendant with individuals or agencies concerning fulfilment of bail conditions; and
- Making a report for the AMC admissions staff about the defendant's bail situation so that the AMC can follow-up outstanding matters.

5.1.8 If a defendant is admitted to the AMC unable to satisfy certain bail conditions or having breached certain bail conditions there should be a formal process (e.g. AMC Procedure) to ensure that the person receives all possible assistance to satisfy bail conditions as quickly as possible.

5.1.9 It is also important to recognise that some defendants might not understand the bail process or what they may be required to do in order to be released on bail for reasons such as having English as a second language, having a cognitive impairment, or being under the influence of alcohol or other drugs. As the WA Auditor General (2015) commented:

The bail population is complex in that the defendants can be charged with multiple offences. In turn, each of these offences can have their own set of conditions attached.

136 Not-for-fee internship arranged with ANU College of Law.

- 5.1.10 Having an ACTCS officer whose role specifically includes bail support as a central part of their functions would assist with keeping remandees eligible for bail out of the AMC or reducing their time spent in custody. While additional staff will come at a cost, there would be offset savings from fewer admissions or early discharge of people from custody at the AMC, and savings in terms of reduced daily costs of keeping people in custody (a cost of \$436 per detainee per day in 2016-17).¹³⁷ Saving “beds” at the AMC would also relieve some of the pressure on detainees, management and staff in the current climate of overcrowding.

Finding 34:

That there are strong arguments for having dedicated ACT Corrective Services’ “Bail Support Officers” working at the courts and at the AMC.

5.2 Ngunnawal Bush Healing Farm (NBHF)

The eight-bed centre, located in bush land to Canberra’s west, will provide rehabilitation services to Aboriginal and Torres Strait Islander people from the Canberra region, with a focus on Indigenous spiritual healing.

“We’re just over the moon, just overwhelmed, we can’t wait to see it opened and for services to start for our people,” the healing farm’s co-chair Roslyn Brown said.

“Our people need healing, not jail, jails aren’t good for any people.”

The centre had been advocated for by the ACT’s Indigenous community for years, and its development was fast-tracked when Planning Minister Mick Gentleman used his call-in powers last year.

ABC News, 8 October 2015

¹³⁷ Productivity Commission (2018) ‘Justice, Chapter 8: Corrective Services’, *Report on Government Services 2018*.

The future of an Aboriginal drug and alcohol rehabilitation centre south of Canberra is in doubt after it was revealed the zoning of the land does not allow for some clinical services.

The \$12 million Ngunnawal bush healing farm in the Tidbinbilla Valley was completed in November last year, but since then Winnunga Nimmityjah Aboriginal Health Service chief executive Julie Tongs said it has been "sitting empty" after confusion over what the land could be used for.

On Wednesday, health minister Meegan Fitzharris reaffirmed her commitment to opening the healing farm as soon as possible and confirmed it would provide rehabilitation services.

"We need to have that service there, there has been some confusion which I regret and which I am seeking to now understand about the type of care and type of services that will be provided there," she said.

"It will be able to be used as a rehabilitation centre, what it will not be able to be used for is a detoxification centre."

The Canberra Times, 10 May 2017

Clients of the new \$11.7 million Ngunnawal bush healing farm will be bussed 30 minutes to and from the farm near Tharwa each day, after plans to make it a residential drug and alcohol facility were abandoned earlier this year.

Health Minister Meegan Fitzharris officially opened the facility on Monday, some 10 months after capital works were completed in November last year.

After the government controversially abandoned the indigenous community's original proposal for an indigenous residential drug and alcohol rehabilitation centre, clients will now be bussed to and from daily from activities at the farm.

The Canberra Times, 4 September 2017

5.2.1 The NBHF is an excellent but underutilised facility that could accommodate up to eight Indigenous men or women who need a suitable place of residence to satisfy bail conditions.

5.2.2 The idea of NBHF accommodating Indigenous people on bail is not new. It was raised by Philip Moss AM in his report on the death in custody of Mr Steven Freeman:

Further, the Inquiry notes the ACT is establishing a Ngunnawal Bush Healing Farm. The Farm will provide a culturally appropriate alcohol and other drug residential rehabilitation service. Construction was delayed in the face of opposition from neighboring landholders. The Farm is expected to open in early 2017.

This facility could have been a suitable placement for Steven Freeman following his assault at the AMC. The Inquiry heard from the Aboriginal community that the initial eight beds at the new facility may not be sufficient, particularly if it is an option for those on bail.¹³⁸

5.2.3 We have not canvassed the potential use of the NBHF for people on bail with ACT government agencies or the ACT Indigenous community. We simply note that there are eight unused beds at the NBHF that could, in theory, be used to divert some Indigenous people from serving time on remand at the AMC and avoid the social and economic costs that are attached to imprisonment.

Finding 35:

That the Ngunnawal Bush Healing Farm offers the prospect of being able to accommodate Indigenous people on bail orders as an alternative to serving time on remand at AMC.

¹³⁸ Moss, P. (2016) 'So Much Sadness in our Lives', Independent Inquiry into the Treatment in Custody of Steven Freeman, ACT Justice and Community Safety Directorate.

CHAPTER 6: OTHER MATTERS

6.1 ACTCS policies and procedures

- 6.1.1 The CM Act provides the legal framework for the operation of ACT correctional centres and services. As the Act does not address the details of *how* ACTCS is to deliver corrective services, provision is made under section 14 that:
- (1) The director-general may make corrections policies and operating procedures, consistent with this Act, to facilitate the effective and efficient management of correctional services.
 - (2) Each corrections policy or operating procedure is a notifiable instrument.
- 6.1.2 Section 18 of the *Legislation Act 2001* (ACT) requires there to be a register of Acts and statutory instruments (the ACT Legislation Register). Section 19 sets out the required contents of the ACT Legislation Register and includes 'notifiable instruments as made'.
- 6.1.3 In effect, ACTCS must notify all policies and procedures, which must all appear on the ACT Legislation Register.

Currency of policies and procedures

- 6.1.4 ACTCS is currently (2018) undertaking a review of its policies and procedures to bring them up-to-date and address matters such as naming conventions. While we commend that work and note that it is a significant body of work (as at September, there are 170 policies and procedures notified under the CM Act¹³⁹) it is necessary to make some observations about the current "system".

- 6.1.5 Since 2009 AMC policies and procedures have fallen into a state of disrepair to the extent that many are blatantly out-of-date with current nomenclature (e.g. some refer to prisoners rather than detainees, some refer to the 'Superintendent' rather than the General Manager etc.) while more than half (80 of the 154 policies and procedures notified at the time of writing) have not been updated in the last five years. Over the same period, detainee muster has almost doubled with consequential impacts on many areas of AMC operations and infrastructure use.¹⁴⁰ Furthermore some policies contain procedures and vice versa which may create confusion and lack of clarity for staff and others.

- 6.1.6 Under section 15(1) of the CM Act, the director-general may:

exclude from a corrections policy or operating procedure ... any matter that the director-general believes, on reasonable grounds, would be likely to disclose ... information that may endanger public safety or undermine justice, security or good order at a correctional centre.

However, the policy or procedure itself must still be notified and on the ACT Legislation Register.

¹³⁹ A search of 'Notifiable Instruments' under the *Corrections Management Act 2007* (ACT) on the ACT Legislation Register reveals 154 policies and procedures. However, the *Corrections Management Policies and Operating Procedures 2017* (No 2) (ACT), NI 2017-55 contains two schedules listing 18 additional policies and procedures, 16 of which are not listed on the ACT Legislation Register.

¹⁴⁰ Report on Government Services (ROGS) data (2014) recorded the current daily detainee population in 2012–13 as 266, compared to the current daily detainee population, which at times has exceeded 500.

Lack of prominence of policies and procedures for community members

- 6.1.7 There is a significant public interest in making policies and procedures of a correctional centre available and widely accessible. Detainees, lawyers, oversight entities, family members, and community groups working in the AMC or with clients about to enter or exit the AMC may need to know a range of matters relating to detainee wellbeing, basic routine, privileges and entitlements and visit procedures for example.
- 6.1.8 The AMC's policies and procedures must all be publically available on the ACT Legislation Register (subject to exclusions as noted above). However unless one knows specifically *where* to look and *how* to find them on that website, it is unlikely that many stakeholders would know to look there for this material, particularly family and friends, and community groups.
- 6.1.9 Furthermore, the review team noted discrepancies with how policies and procedures are notified. For example, there are 16 policies and procedures that are not separately listed on the ACT Legislation Register under the list of 'Notifiable Instruments' under the CM Act but instead, listed in two schedules to a notified policy, the *Corrections Management Policies and Operating Procedures 2017 (No 2)*. This has the effect of reducing transparency around operational and governance issues (for example, it is not easy to ascertain that the AMC has a Firearms Policy given it has been notified via another policy and hence does not appear in the list of notifiable instruments under the CM Act).

6.1.10 Detainees are able to access policies and procedures through their in-cell computers although the review team observed that they were difficult to locate on the system. Furthermore, not all detainees have access to in-cell computers, for example where equipment is being repaired or there are delays in being provided one after admission (the review team heard from a number of detainees that they had experienced significant delays in accessing a computer).

6.1.11 In other jurisdictions policies and procedures are available from the agency's website e.g.:

Qld:

<https://corrections.qld.gov.au/documents/procedures/custodial-operations-practice-directives>

WA:

<https://www.correctiveservices.wa.gov.au/prisons/adult-custodial-rules/default.aspx>

NSW:

<https://www.correctiveservices.justice.nsw.gov.au/Pages/CorrectiveServices/related-links/publications-and-policies/policies-defined-gipa-act/policies-defined-gipa-act.aspx>

Finding 36:

That it is difficult to locate AMC policies and procedures unless one has specific knowledge of how to access them via the ACT Legislation Register.

Use of Executive Director Instructions and General Manager Instructions

6.1.12 The review team notes that the requirement in section 14 of the CM Act that all policies and procedures governing correctional centres and services be notified as a legislative instrument. This requirement ensures transparency in a policy and operational sense, something very important for closed environments. As the Explanatory Statement to the CM Act notes:

Clause 14 – Corrections policies and operating procedures

In her review of Quamby, the place of detention for offenders under 18 years old, the ACT Human Rights Commissioner noted that there were important matters that were not in the substance of the Children and Young People Act 1999 relating to detention, the use of force, personal searches etc. The Commissioner wrote that the substance of matters like these should be in the principle legislation, not in regulations or standing orders [Human Rights Audit of Quamby Detention Centre, ACT Human Rights Office, June 2005, pages 29 & 30].

Mindful of the Commissioner's advice and her contribution to the development of this Bill, the Bill provides the substance to the powers and functions to be exercised by ACT Corrective Services. Clause 14 enables the chief executive to make and notify policies and operating procedures within the framework of the powers set out in the Bill. Consistent with accountability, 14(2) and (3) ensure that policies and procedures are public documents, and are also available to detainees. These documents may be exempted from being a public document under section 15.

It is important to note however, that the need to notify any amendments or new policies or procedures may inhibit ACTCS from being able to react quickly to changes in circumstances that might require a new or amended policy/procedure e.g. following a critical incident.

6.1.13 As a consequence of this, and also to cover minor matters, ACTCS developed "Executive Director's Instructions" (EDIs) and "General Manager's Instructions" (GMI's).

6.1.14 These instructions were originally intended to be temporary measures pending the creation/amendment of a Notifiable Instrument but, in practice, this often did not occur i.e. the EDI/GMI became new practice (for example, the review team noted a GMI dating back to 2010 covering matters that arguably should be in a notified procedure¹⁴¹).

6.1.15 This is a matter of concern given that EDIs and GMIs are not published. The review team has no argument with ACTCS issuing "instructions" about administrative matters (e.g. servicing of vehicles, staff dress codes, maintenance of equipment) but EDIs and GMIs that cover matters that should be in policy or procedure must only be a short term (weeks or months) stopgap measure and the content should be transferred to a notified policy or procedure as a priority. Even with this approach, publication of relevant EDIs and GMIs on the ACTCS website would fill the public "information gap" that currently exists between the creation of EDIs/GMIs and their eventual transition to Notifiable Instruments.

141 Superintendent's Instructions AMC 29/2010 'Supervising Offenders at the Court Transport Unit', 5 November 2010, which details procedures concerning ACTCS supervision of detainees in court.

Finding 37:

That in the interests of openness and accountability it is highly desirable that ACTCS publish Executive Director Instructions (EDIs) and General Manager Instructions (GMIs) that contain policy or key procedures on its website in a timely manner, subject to any necessary redactions of material of a security or privacy nature.

6.1.16 It is pleasing to see that ACTCS have recently sought to clarify the status and use of EDIs and GMIs:

	Description	Intended use	Timeframe
Executive Director Instructions (EDIs)	EDIs are instructions to ACTCS staff to create or implement amendments to policy and operating procedures in response to changes in operational requirements or in response to an incident.	EDIs are intended as a short-term measure to provide immediate directions to ACTCS staff, while policies and operating procedures are being formally developed or amended.	EDIs are in effect until formally revoked and are to be reviewed every 12 months.
General Manager Instructions (GMIs)	General Manager Instructions (GMIs) are created in the absence of EDIs.	GMIs are short term instructions to either custodial staff or community corrections staff.	In effect for a maximum of six months, however it is not clear if this has retrospective effect (i.e. if for example, a 2010 GMI is no longer valid).

Source: Corrections Management (Policy Framework) Policy 2018, NI2018-575

6.1.17 Just as important will be the next step of eliminating historic GMIs and EDIs through the process of reviewing and updating policies and procedures, and ensuring the Policy Framework Policy is adhered to in relation to EDIs and GMIs.

Finding 38:

That significant work must be done in a timely manner to bring policies and procedures to a standard the community should expect for a custodial environment.

6.2 Detainee Hard Files

6.2.1 During the course of reviews at the AMC the Inspectorate has examined a random sample of detainee hard files as not all information is stored electronically. This is not unique to the ACT – other jurisdictions keep both hard and electronic files on prisoners.

6.2.2 The hard files the review team examined were in a very poor state as evidenced by:

Loose documents (i.e. not attached to a binder) which could easily fall out

Documents placed in files in no apparent order (e.g. chronological sequence)

Different types of documents mixed in together, notwithstanding that the files have pre-printed subject dividers.

6.2.3 The review team notes that section 23(1)(d) of the *Territory Records Act 2002* (ACT) stipulates:

- (1) An agency must not—
 - (d) neglect a record in a way that causes, or is likely to cause, damage to the record.

Finding 39:

That a considerable body of work needs to be done to bring detainee hard files to an acceptable state.

APPENDIX 1: REVIEW METHODOLOGY

1. The Review Team

1.1 The review team comprised:

- Neil McAllister, ACT Inspector of Correctional Services
- Rebecca Minty, ACT Deputy Inspector of Correctional Services
- Lee Downes, External Expert Contractor (former Assistant Commissioner, Corrective Services NSW)

2. Research and consultation

2.1 The main on-site (AMC) component of the review with the full team was conducted from 11 to 15 June 2018. The methodology adopted for the review comprised:

Analysis of data provided by ACT Corrective Services on a range of matters concerning remandees (e.g. Aboriginality, length of time in custody, Most Serious Charge, incident data, random remandee file reviews)

A review of the relevant ACT Corrective Services policies, procedures and instruction relevant to the management and care of remandees

Analysis of corrective services data published annually in the Report on Government Services (ROGS) and data published by the Australian Bureau of Statistics, principally its annual Prisoners in Australia series

A review of how other Australian jurisdictions manage remand prisoners

A review of international human rights law and standards in relation to remand prisoners

A review of the UK bail hostel program with regard to whether the program has relevance to the ACT

A female remandee focus group meeting and informal discussions with a number of male remandees

A limited, self-administered survey of male and female remandees

An entry and exit meeting with the AMC senior management team and the Executive Director, ACT Corrective Services, and other meetings to better understand issues

Informal discussions with ACTCS Custodial Officers during visits

Meetings with the ACT Chief Justice and ACT Chief Magistrate

Visits to the Metropolitan Remand Centre (Vic) and Ravenhall Correctional Centre (Vic) for briefings and observation of the management of remandees

Meetings and informal discussions with ACT civil society groups, and ACT Legal Aid.

Ongoing participation as part of the AMC Oversight Group consisting of oversight entities including the ACT Human Rights Commissioner; ACT Health Services, Discrimination, Disability Commissioner; ACT Ombudsman; ACT Corrections Official Visitors and Aboriginal and Torres Strait Islander Official Visitors; ACT Public Advocate.

3. Comment about the remandee survey

- 3.1 The survey was designed in-house by the review team based on prisoner surveys conducted in other jurisdictions, but modified to focus on matters relevant to remandees. It comprised a number of "simple" questions (e.g. yes or no answers), other questions using the Likert scale format, and free text space where respondents could (and did) write comments. Respondents were asked not to put their name on the survey forms i.e. they were to be anonymous.
- 3.2 The intent of the survey was principally to provide the review team with an aide-mémoire of issues and themes rather than as a tool for hard data collection.
- 3.3 As there were some 200 remandees at AMC it was not physically possible for the three person review team to administer the survey one-on-one with remandees except in a few instances where we assisted detainees who asked for help due to literacy or other problems with understanding.
- 3.4 For the most part the surveys were completed by detainees in small groups in their units with team members present to answer any questions. In the end, the review team surveyed 18 of the 24 female remandees and 49 of the 167 male remandees. The disparity in numbers came about because while the females are

accommodated in one unit the males were spread across a number units making it more difficult to access them and get them together. Furthermore, the cohort regimes operating at the AMC restricted access to detainees. As an aside, the females seemed far more interested in participating than the males and engaged in a lengthy session of discussion with each other and the review team.

- 3.5 While the survey provided a great deal of useful information it was evident that some questions were not well-understood by some respondents (e.g. about their bail status) while others elicited some confusing responses such as respondents stating they had no children then answering questions about maintaining contact with their children. These sorts of problems commonly arise in self-administered surveys where respondents are unable or unwilling to ask for help from the researchers and thus place their own interpretations on questions, which may not reflect the intent of the research.
- 3.6 Given the limitations of the survey, the review team has not relied on data obtained from it to reach definitive conclusions of fact but have referred to survey data as one source of information, and to provide detainee perspectives and reflections. Likewise we spoke informally to custodial officers during the review team's visits to the AMC and have referred to their perspectives and reflections.

APPENDIX 2: HOW DO OTHER JURISDICTIONS DEAL WITH REMANDEES?

As part of this examination and review of remand in the ACT, we are required to both consider whether the rights under international and Territory law of detainees are protected, and also to consider best practice.¹⁴² The human rights and legal framework around remandees is considered in detail in Chapter 2.

In assessing best practice, it is useful to consider practices in relation to treatment and care of remandees in Victorian (as the only jurisdiction aside from the ACT to have human rights legislation) and other Australian jurisdictions.

There is no single approach to management of remandees in Australia. Each jurisdiction is different (see below). However, the ACT is the only jurisdiction that *requires* the separation of convicted and unconvicted prisoners – CM Act, section 44(2).

Jurisdiction	Treatment and care of remandees
Victoria	<p>The <i>Charter of Human Rights and Responsibilities</i> (Vic) (Victorian Charter) contains most of the rights in the ACT Human Rights Act, although there are some differences.¹⁴³ Relevantly, section 22(2) of the Victorian Charter provides:</p> <p>‘An accused person who is detained or a person detained without charge must be segregated from persons who have been convicted of offences, except where reasonably necessary.’ (emphasis added).</p> <p>Victoria does not make any provision in its corrective services legislation (Act or Regulation) for unconvicted prisoners to be separated from convicted prisoners.</p> <p>Corrections Victoria Correctional Management Standards for Men’s Prisons in Victoria, section 5, requires remand prisoners, who are not also serving a sentence of imprisonment, to be kept separate from sentenced prisoners, where possible and appropriate (emphasis added).</p> <p>Commissioner’s Requirement 2.3.8, Remand Prisoners, dated July 2016, requires remand prisoners to be managed differently from convicted prisoners, ‘in a manner which acknowledges their legal status and the presumption of innocence until proven guilty.’</p> <p>Further, Victorian prison managers are required to ‘consider all options to separate unconvicted prisoners from sentenced prisoners’. Corrections Victoria acknowledges that this may not be practicable in prisons accommodating both unconvicted and convicted prisoners where prisoners are attending key services and activities (clinics and visits) or participating in group activities (industries, program, education). It is also acknowledged that separation of unconvicted prisoners from sentenced prisoners may not be practicable when there is insufficient designated remand accommodation.</p>

¹⁴² *Inspector of Correctional Services Act 2017* (ACT), s 27(2)(c) and (d).

¹⁴³ For example, unlike the Victorian Charter, the *Human Rights Act 2004* (ACT) includes cultural and other rights of Aboriginal and Torres Strait Islander people in s 27(2) and includes a direct right of action to the ACT Supreme Court in case of alleged breach.

Jurisdiction	Treatment and care of remandees
Tasmania	Tasmania does not make any legislative provision for the separation of convicted and remand prisoners.
Northern Territory	Section 40 of the <i>Correctional Services Act 2014</i> (NT) provides that 'The General Manager of a custodial correctional facility must ensure that, to the extent it is practicable : (a) sentenced prisoners are kept separate from other prisoners; and (b) male prisoners are kept separate from female prisoners; and (c) youth prisoners are kept separate from adult prisoners.' (emphasis added)
South Australia	South Australia does not make any legislative or procedural provisions for unconvicted prisoners to be separated from convicted prisoners. ¹⁴⁴ The <i>South Australia Correctional Services Act 1982</i> , Part 4, Division 1 (22) provides only that persons remanded in custody will be detained in a correctional institution determined by the Chief Executive (CE). Unless requiring protection or placement in a management unit, unconvicted prisoners are accommodated with, and can participate in work, recreation and programs (not criminogenic) with sentenced prisoners.
Queensland ¹⁴⁵	Queensland does not make any legislative or procedural provision for unconvicted prisoners to be separated from convicted prisoners. However, Custodial Operations Practice Directive, <i>Accommodation and Case Management</i> , (Version 03) dated 21 September 2017, requires prisoners to be assessed and placed in 'suitable accommodation having regard to the prisoner's risks and needs and the safety, security and good order of the corrective services facility'.
Western Australia ¹⁴⁶	Clause 57 of the <i>Western Australia Prison Regulations 1982</i> requires prisoners on remand to be kept separate from convicted prisoners ' as far as practicable and where the interests of security permit .' (emphasis added).
New South Wales ¹⁴⁷	The <i>NSW Crimes (Administration of Sentences) Regulation 2014</i> , s 33 prescribes three classes of inmates – convicted, unconvicted and civil – and requires these classes to be kept separate from each other as far as practicable . In practice this does not always occur, principally due to overcrowding.

144 Based on an interview with Director, Operational Support and Performance, Statewide Operations Directorate, South Australia Department of Correctional Services.

145 Information sourced from documents available on Queensland Corrective Services' website <https://corrections.qld.gov.au/>.

146 Information sourced from Western Australia Department of Corrective Services' website <https://www.correctiveservices.wa.gov.au>.

147 Information sourced from Corrective Services NSW website <https://www.correctiveservices.justice.nsw.gov.au/> and from Corrective Services NSW.

