

2021

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE REPORT OF A REVIEW OF A CRITICAL INCIDENT BY THE
ACT INSPECTOR OF CORRECTIONAL SERVICES - USE OF FORCE TO CONDUCT A STRIP
SEARCH AT THE ALEXANDER MACONOCHIE CENTRE ON 11 JANUARY 2021**

**Presented by
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Minister for Corrections
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INTRODUCTION

The ACT Government welcomes the report from the Inspector of Correctional Services ('the Inspector') titled *Report of a Review of a critical incident: Use of force to conduct a strip search at the Alexander Maconochie Centre on 11 January 2021* (the Report), tabled in the ACT Legislative Assembly on 16 September 2021.

Establishing an Inspector of Correctional Services was a commitment of the government in response to Recommendation 8 of the Moss Review¹, following the death in custody of Steven Freeman at the Alexander Maconochie Centre (AMC) in 2016. It recognised that effective independent oversight is vitally important to maintain public confidence in our correctional system.

The *Inspector of Correctional Services Act 2017* (the Act) establishes the independent statutory authority and systematic review framework to facilitate a preventative regime to oversee correctional centres in the ACT. Section 18(1)(c) of the Act provides that the Inspector "may examine a critical incident on the inspector's own initiative or as requested by a relevant Minister or relevant director-general". A critical incident is defined in s17(2) of the Act as "any event in a correctional centre or in the provision of correctional services that involved any of the following:

- (a) the death of a person;
- (b) a person's life being endangered;
- (c) an escape from custody;
- (d) a person being taken hostage;
- (e) a riot that results in significant disruption to a centre or service;
- (f) a fire that results in significant property damage;
- (g) an assault or use of force that results in a person being admitted to a hospital;
- (h) any other incident identified as a critical incident by a relevant Minister or relevant director-general."

The Report makes 23 findings and nine recommendations, which the ACT Government has carefully considered and agree to all nine recommendations.

ACT Corrective Services (ACTCS) recognises that the practice of strip-searching detainees, while at times necessary in a custodial setting to ensure safety, is distressing for detainees and staff involved. ACTCS is committed to moving towards a future where strip searches are greatly minimised, protecting the dignity of detainees where possible. This move is enabled by technology, with the procurement of two body scanners underway. ACTCS is also committed to ensuring that the consideration of human rights is embedded within all decision making by ACTCS.

While the findings of the Report are not formally responded to, the ACT Government notes the findings of the Inspector that the decision to strip search Detainee A had a lawful basis

¹ *'So much Sadness in our Lives, Independent Inquiry into the Treatment in Custody of Steven Freeman'*
https://cdn.justice.act.gov.au/resources/uploads/JACS/Reviews/submissions/Treatment_in_Custody/Report_of_Independent_Inquiry.pdf

under section 113B of the *Corrections Management Act 2007* (the CMA) and that the type and use of force used was reasonable in the circumstances. Annexure 1 includes proposed implementation actions and timeframes for addressing each agreed recommendation.

GOVERNMENT RESPONSE

Following allegations published by media outlets in January 2021 that a female indigenous detainee was strip searched in view of a number of male detainees and staff in the Crisis Support Unit (CSU), the Minister for Corrections identified the strip search to be a 'critical incident' under the Act and requested the Inspector conduct a review of the critical incident. The Inspector concluded that the strip search did not occur in front of male staff or detainees.

Overall, the Report found that the decision to use force to carry out the strip search was lawful under the CMA, as staff had a reasonable suspicion Detainee A was concealing a 'seizable item' that could be used to harm herself or others. The de-escalation and subsequent adjustment to the use of force was also identified to be appropriate. However, the Report concluded the way the decision was made to conduct a forced strip search did not comply with the *Human Rights Act 2004* (HR Act).

The Report also identified areas in which ACTCS could improve policy and procedures relating to the use of force to conduct a strip search and the consideration of human rights.

The first recommendation requires ACTCS to remove from policy, procedure and written directions any requirement for mandatory strip searches on entry to the CSU.

ACTCS agrees, noting the Searching Program (formerly known as the Searching Strategy) is currently being updated in association with the review of the Searching Policy. This work is expected to be complete by 31 December 2021. ACTCS notes the finding of the Inspector that in practice, detainees are not mandatorily searched on admission into CSU.

The Report also recommends ACTCS expedite procurement of a body scanner, to provide less restrictive ways of assuring safety for detainees than strip searching. The procurement process for a body scanner is already underway and is being prioritised by ACTCS. The ACT Government has also committed to the provision of a second body scanner for the AMC. Both body scanners will be installed in 2022.

In response to recommendation three, the review of the Searching Policy currently underway will ensure there is an explicit requirement to consider human rights and document those considerations, when conducting a planned use of force to carry out a strip search.

The Inspector has recommended that Operational Managers and Corrections Officers level 3 and above have appropriate capability in considering human rights in decision making. ACTCS agrees and will source learning materials and training opportunities towards this objective.

While the sourcing and/or development of materials is expected by mid-2022, implementation of training will be scheduled in the context of other training priorities that have been impacted by the current COVID-19 restrictions.

The Inspector recommends that ACTCS amend the *Corrections Management (Use of Force and Restraint) Policy 2020* to require non-essential staff leave the scene prior to a planned use of force. Minor amendments to the Use of Force and Restraint Policy are required to ensure alignment with the newly revised Searching Policy. The Inspector's recommendation will be incorporated in these amendments prior to the end of 2021.

Although the Inspector noted it was not a particular issue in this incident, he recommended all ACTCS Tactical Personal Protection Equipment helmets clearly display numbers. These numbers would be recorded against the Corrections Officer they have been issued to, for identification purposes. ACTCS will implement this recommendation by numbering the helmets and establishing a mechanism to record the officer to which the equipment was issued.

The Inspector found the *Corrections Management (Duty Manager) Operating Procedure* was deficient in recording notifications received or instructions given and recommended the addition of requiring all such communications to be logged. ACTCS agrees and will update the *Corrections Management (Duty Manager) Operating Procedure* to ensure notifications to the Duty Manager, and the advice and directions given by the Duty Manager as a result of that notification are recorded.

The Report noted that while the *Corrections Management (Use of Force and Restraint) Policy 2020* requires the briefing prior to the commencement of the use of force to be captured on handheld camera, this did not occur. The Inspector recommended that ACTCS staff are trained in the correct use of handheld video cameras, to comply with policy.

All new recruits to ACTCS are trained in video camera use during their initial Custodial Recruit Training program. However, the Inspector's report indicates there could be benefit in providing refresher training to staff regarding the detailed purpose and policy of recording during a use of force incident.

With the completion of the revised Searching Policy expected by the end of 2021, there will be opportunity to re-visit this aspect of policy and procedure with staff during that implementation process.

The Report noted that the matter was reviewed by the Use of Force Committee, which agreed there was a lack of command and control, but no issues with the use of force itself. The Inspector recommended ACTCS develop terms of reference to guide the use of force review process and outline the clear objective of the review, including whether the use of force was found to align with policy and procedure.

ACTCS agrees to this recommendation, and will develop supporting materials to guide these reviews.

Conclusion

The ACT Government is strongly committed to maintaining correctional facilities which respect and protect the human rights of detainees, whilst also treating the safety of detainees and staff as a matter of paramount importance.

As such, critical incident reviews by the Inspector play a vital role in identifying both immediate concerns and systemic issues. ACTCS welcomes the findings and recommendations of this Report as they align to many initiatives already underway.

In particular, the review and implementation of the Searching Policy and associated procedures will give greater visibility and instruction to custodial officers in the consideration of human rights in their operational practice.

Similarly, the introduction of two body scanners should greatly reduce the number of strip searches conducted across the AMC. ACTCS is also implementing recommendations following a detailed review of the Custodial Recruit Training course and is developing new Use of Force training materials.

While the use of force may still be necessary to carry out strip searches in exceptional circumstances, ACTCS agrees that the human rights of detainees must always be considered as a priority in the decision making on these matters. ACTCS has committed to providing additional guidance and training to all custodial staff to support Human Rights informed decision making.

Annexure 1

ACT Government Response to Recommendations

Recommendation	Government Response	Implementation date
<p>Recommendation 1</p> <p>That ACT Corrective Services remove from policy, procedure and written direction any requirement for mandatory strip searches on entry into the Crisis Support Unit.</p>	<p>Agreed</p> <p>The Searching Program (formerly known as the Searching Strategy) is currently being updated in association with the review of the Searching Policy. The program will not include any reference to mandatory strip searching into CSU.</p>	<p>31 December 2021</p>
<p>Recommendation 2</p> <p>That ACT Corrective Services expedite the procurement of body scanner technology to provide options for less restrictive ways than strip searching to search detainees on entry to the Crisis Support Unit.</p>	<p>Agreed</p> <p>ACTCS has commenced the procurement process for a body scanner. The Government has also funded the purchase of a second scanner as part of this year's budget.</p>	<p>Procurement process underway.</p>
<p>Recommendation 3</p> <p>That ACT Corrective Services ensure that human rights are explicitly considered prior to conducting a planned use of force to carry out a strip search, and the reasons for a decision are documented. To support this, ACT Corrective Services should develop a practical decision making tool for operational staff, and incorporate it into relevant procedures.</p>	<p>Agreed</p> <p>The Searching Policy is currently being revised and includes consideration of Human Rights in decision making. A practical tool to inform decision-making and documentation of the rationale will be incorporated into a procedure relating to planned uses of force to carry out strip searches.</p>	<p>31 December 2021</p>
<p>Recommendation 4</p> <p>That ACT Corrective Services ensure that Operational Managers and Corrections Officers, level 3 and above have appropriate capability in considering human rights in decision making. Capacity building of staff should draw on expert input on human rights and decision making.</p>	<p>Agreed</p> <p>ACTCS will source learning opportunities to support building senior staff capability in human rights knowledge to inform decision making.</p>	<p>30 June 2022</p>
<p>Recommendation 5</p> <p>That ACT Corrective Services amend the Corrections Management (Use of Force and Restraint) Policy to require that non-essential staff leave the scene prior to a planned use of force.</p>	<p>Agreed</p> <p>The Corrections Management (Use of Force and Restraint) Policy will be amended to specify this requirement.</p>	<p>31 December 2021</p>

Recommendation	Government Response	Implementation date
<p>Recommendation 6</p> <p>That all ACTCS Tactical Personal Protection Equipment helmets display a clearly visible number and that the number on a helmet be recorded when issued to a Corrections Officer.</p>	<p>Agreed</p> <p>The tactical PPE helmets will be numbered and a mechanism will be developed to record the officer to which the equipment has been issued.</p>	<p>31 March 2022</p>
<p>Recommendation 7</p> <p>That the Corrections Management (Duty Manager) Operating Procedure be amended to require the Duty Manager to maintain a log of all conversations involving notifications to the Duty Manager and any advice or directions given by the Duty Manager.</p>	<p>Agreed</p> <p>The Corrections Management (Duty Manager) Operating Procedure will be amended to require the Duty Manager to maintain a written record of notifications, authorisations given, and the reason for the authorisation.</p>	<p>31 March 2022</p>
<p>Recommendation 8</p> <p>That staff are trained in the correct use of handheld video cameras to comply with relevant policy and procedure, for example, through recruit, refresher, or scenario training.</p>	<p>Agreed</p> <p>ACTCS already provides training in video camera use and associated policies during the Custodial Recruit Training course for new staff. Refresher training in the use of video cameras and relevance to policy will be covered within the implementation of the new Searching Policy.</p>	<p>31 March 2022</p>
<p>Recommendation 9</p> <p>That ACT Corrective Services develop terms of reference to guide the process of reviewing uses of force, that includes a requirement for reflective practice about whether the use of force complied with policy and procedure.</p>	<p>Agreed</p> <p>ACTCS will develop guidance and supporting materials to assist staff when conducting use of force reviews.</p>	<p>30 April 2022</p>