THE LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY

GOVERNMENT RESPONSE TO THE INDEPENDENT INQUIRY INTO
THE TREATMENT IN CUSTODY OF STEVEN FREEMAN

Presented by
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Minister for Corrections
INTRODUCTION

On 27 May 2016 a 25 year old Aboriginal man, Steven Freeman, died whilst in custody at the Alexander Maconochie Centre (AMC). Steven Freeman had been held in custody from 28 April 2015.

Steven Freeman was the subject of a serious assault in the AMC in April 2015. The matter was investigated by ACT Policing; however, in December 2015 ACT Policing advised that its investigation did not result in any charges being laid, noting that witnesses had not come forward and that there was insufficient evidence.

Steven Freeman’s death in custody is now subject to a Coronial Inquest as required by the Coroners Act 1997, and at the time of the publication of this response the Coronial Inquest remains underway.

On 2 June 2016, the Minister for Corrections, Shane Rattenbury MLA, announced an independent inquiry into Steven Freeman’s care and treatment in custody. The Minister appointed Mr Philip Moss AM as the independent reviewer. Mr Moss is a former Senior Assistant Ombudsman at the Commonwealth Ombudsman’s office and served as the Integrity Commissioner within the Australian Commission for Law Enforcement Integrity before his retirement in July 2014.

The independent inquiry was to examine Steven Freeman’s treatment during his period of incarceration, including whether ACT Corrective Services’ (ACTCS) systems operated effectively and in compliance with human rights obligations. The independent inquiry was precluded from examining matters relating to Steven Freeman’s death, which is a matter for the Coroner.

The Terms of Reference for the independent inquiry were:

- the adequacy of the management, care and custody of detainee Steven Freeman at the AMC and the compliance of this care and custody with human rights obligations;
- the overall effectiveness of the application of relevant policies and procedures in the care and custody of Steven Freeman;
- the adequacy of induction and risk assessment policies and procedures at the AMC and how these were applied to Steven Freeman;
- the adequacy of policies and procedures relating to separation of vulnerable detainees at the AMC and how these were applied to Steven Freeman;
- the extent of the consideration given to Aboriginal culture, traditions and beliefs in the management, care and custody of Steven Freeman;
- the effectiveness of information sharing arrangements between ACT Policing and ACTCS around new and remand detainees at AMC; and
- the accessibility and appropriateness of health and other support services within the AMC for Steven Freeman.

Mr Moss finalised his Review, titled “So Much Sadness in our Lives”, Independent Inquiry into the Treatment in Custody of Steven Freeman (the Moss Review), and made it available to the Minister for Corrections on 7 November 2016.

GOVERNMENT RESPONSE TO MOSS REVIEW
The death of Steven Freeman at the AMC on 27 May 2016 is a profound tragedy.

The ACT Government acknowledges the acute grief, loss and sadness that Steven Freeman’s family has experienced. The Government also acknowledges the significant impact that this death has had on the Aboriginal and Torres Strait Islander community.

A fundamental goal at the AMC is to keep people safe. Steven Freeman’s death clearly demonstrates the need to work even harder to make sure people are safe when residing and working at the AMC.

The inquiry into Steven Freeman’s care and treatment throughout his time at the AMC, and more broadly his experience of the ACT criminal justice system, serves to highlight the need for improvements in a range of areas, including increasing cultural proficiency to more effectively manage the welfare of Aboriginal and Torres Strait detainees.

The Moss Review makes nine overall recommendations for the improvement of services that were identified by examining the care and treatment of Steven Freeman during his time in custody. The Moss Review comprises eight specific recommendations and one overarching recommendation that seeks to address a number of other conclusions and suggestions relating to the justice system more generally.

The recommendations affect a number of Government Directorates and Statutory Office Holders including the ACT Ombudsman, ACT Health Services Commissioner, ACT Policing and the Office of the Director of Public Prosecutions. It also refers to the Winnunga Nimmityjah Aboriginal Health Service.

Eight of the nine recommendations have been agreed, wholly or in principle, by Government, while one has been noted.

The Moss Review, along with a number of other reviews in recent times relating to operations at the AMC, will result in significant reform within ACTCS, particularly around the provision of health and custodial services at the AMC, and has already had an impact on operations.

The ACT Government will implement each of the agreed recommendations as a high priority. However, some of these will need to be successively implemented, as a number of the recommendations will require long-term planning, cross directorate coordination and have multi-year implications. Implementation of recommendations from the Moss Review
will also consider any future recommendations that may result from the Coronial Inquest into Steven Freeman’s death.

To progress the Government Response to these recommendations a high-level implementation working group comprising appropriate representatives from the JACS Directorate, ACT Health, Community Services Directorate, ACT Policing, ACT Ombudsman and ACT Human Rights President, as well as representatives from the ACT Aboriginal and Torres Strait Islander legal and health services sector and broader community, will be established to oversee and drive the implementation of the recommendations and report on its progress to the Minister for Corrections.

The Minister for Corrections will provide updates on progress as key milestones are met in implementing the recommendations.

The Minister for Corrections will also provide a Ministerial Statement to the ACT Legislative Assembly on the progress of implementation at appropriate intervals, with the first annual report scheduled to be tabled in February 2018 (the twelve month anniversary of the tabling of this response).

Implementation of a number of the recommendations to improve the safety, care and health of detainees at the AMC has already commenced. This includes:

- improved detainee assessment processes to address safety and security needs, including the creation of a designated unit available for placement of new arrivals in the AMC to allow for more comprehensive assessments to take place over a period of up to five days to better inform a detainee’s placement in the AMC;
- improved detainee monitoring and security through extensive upgrades including additional CCTV cameras being installed in some areas throughout the AMC, and additional training being provided to custodial staff;
- an increased focus on improving overall security of the AMC in response to a number of security incidents in 2016, including:
  - an independent review of operational security undertaken by Ms Marlene Morison¹, to identify what policy, procedural, compliance, governance, staffing, training, cultural and management structure improvements may be necessary; and
  - the appointment of a security specialist to bolster the management of security and ensure all procedures and protocols are effective and followed appropriately by all staff;
- increased and improved information sharing between ACT Policing and ACTCS when a person is remanded in custody;

¹ Ms Morison has extensive experience as a Commissioner of Corrective Services in Queensland and Victoria.
• a review of the procedures by ACT Health for prescribing and monitoring methadone use in the AMC;

• implementation of a more robust follow-up system for people discharged from the Canberra Hospital to the AMC, involving a review by the medical officer on return from Canberra Hospital and a process to identify any medical concerns and/or guidance for ACTCS regarding symptoms for monitoring and referral back to health if required. This system has been implemented and will be documented in the new procedures that are currently being developed and are anticipated to be endorsed in March 2017;

• the roll-out of a Mental Health electronic clinical record system to all Justice Health staff at the AMC, which is due to be complete mid 2017; and

• undertaking significant work to review and update all relevant ACTCS policies and procedures for the AMC.

REVIEW RECOMMENDATIONS

Recommendation 1
That ACT Corrective Services (ACTCS) conduct a survey of electronic surveillance at the Alexander Maconochie Centre (AMC) to ensure best practice protection for, and the security of, detainees including:

i) training for AMC custodial officers operating CCTV cameras; and

ii) developing protocols relating to camera settings, movement and recording.

Government Response: Agreed

The safety and care of detainees in the AMC is fundamental. The ACT Government acknowledges the observations made by the independent reviewer around the need for improved security and care of detainees at the AMC. It is acknowledged that improved security arrangements for detainees at AMC will provide a safer environment and help to reduce incidences of violence within the centre.

Improved security monitoring will enhance ACTCS’ capability to better detect, prevent, intervene and respond to incidents of violence or unrest within the AMC. It will also enhance its capability to capture evidence when such incidents occur to support improved prosecution, detainee intervention and/or disciplinary outcomes, and assist with oversight monitoring.

ACTCS will continue to assess its electronic surveillance capabilities to ensure best practice security arrangements are in place and that accommodate the security upgrades made in April and September 2016, to improve the protection and security of all detainees, staff and visitors at the AMC. This will include reviewing training in the operation of CCTV cameras and its operators, especially those CCTV operators stationed in the Master Control Room.
In progressing this recommendation, ACTCS notes the following observations of the independent review:

- increased use of the sweeping capacity of the CCTV cameras, including to record a log of all movements of CCTV cameras consistent with the requirements of the Australian Standard including ensuring accuracy of time stamps on the display of recorded footage [Page 41 of the Moss Review], and
- the provision of training consistent with the Australian Standards [Pages 41 and 42 of the Moss Review].

The continuing assessment of electronic surveillance capabilities at AMC will be used to inform the development of new protocols and updating of existing procedures and protocols relating to all aspects of CCTV camera operations.

Some work has already been undertaken by ACTCS to improve electronic surveillance at the AMC. Between April and September 2016, 28 additional cameras were installed throughout the AMC; 12 additional cameras were installed in the four cellblock accommodation units, a further 10 new cameras were installed in the education areas, two on the walkway to visits, another two in the visits centre and one in the sally port and oval, respectively. This brings to total number of CCTV cameras in the AMC to 558. The additional cameras have been installed with a view to providing enhanced surveillance and monitoring capability throughout the AMC.

**Recommendation 2**

That ACT Policing accord a higher priority to the investigation of any assault at the AMC.

**Government Response: Agreed in principle**

The ACT Government acknowledges the importance of ensuring that allegations and incidents of assault within the AMC are thoroughly recorded and investigated. The care and safe custody of detainees is a crucial part of ACTCS’ role. Improved security arrangements at AMC will aid in providing a safer environment for detainees and help to reduce incidences of violence within the centre.

The ACT Government notes that Steven Freeman was seriously assaulted soon after his arrival and detention at AMC on 27 April 2015, and to date no-one has been prosecuted for the assault.

The ACT Chief Police Officer confirms that ACT Policing will investigate all serious assaults\(^2\) at AMC.

\(^2\) Within the context of correctional facilities, serious assaults and assaults are defined differently according to its purposes. The Productivity Commission’s annual Report on Government Services (RoGS) considers an assault as serious where the victim is subjected to physical violence that resulted in physical injuries requiring medical treatment involving overnight hospitalisation in a medical facility (for example a prison clinic, infirmary, hospital or a public hospital) or on-going medical treatment related to injuries sustained during the assault. Serious assaults include all sexual assaults.
It is noted that the wording of the recommendation differs to the wording of the conclusion in the Moss Review [at clauses 11.2.12], which states that “...the investigations of serious assaults at the AMC should also be given a higher priority by ACT Policing”.

The wording of this recommendation may convey an expectation that all assaults, even minor assaults or those that do not result in injury, will be referred to the ACT Policing for investigation. Depending on the circumstances, it may be more appropriate for disciplinary action to be taken under the Corrections Management Act 2007 (CMA) as opposed to referring a minor assault incident to ACT Policing for investigation. Section 152 of the CMA outlines breaches of discipline that might be committed by a detainee, which include assault. ACTCS may still exercise its discretion to refer a minor matter to ACT Policing where necessary.

ACTCS has recently established a Violence Reduction Team (VRT). The VRT is a multidisciplinary panel of senior staff within ACT Corrective Services who are responsible for reviewing and responding to incidents of violence, aggression or assaults within the AMC, including referrals to ACT Policing.

ACTCS will continue to refer all serious assault allegations to ACT Policing for investigation.

The AMC environment presents particular challenges for custodial staff and police in obtaining evidence, and securing witnesses, to support successful prosecution against offenders for alleged assaults. Every effort is made to do so given that detainee victims, especially Aboriginal and Torres Strait detainees, are a particularly vulnerable cohort within the AMC.

To assist with the police investigation process, ACTCS has to date and will continue to fully support any investigation process by providing all available evidence and, in particular, ACTCS staff will provide a statement of first complaint where possible to better support improved prosecution outcomes and lessen the need for victim or other witness statements. ACTCS also gives due consideration to victim wellbeing and any adverse impacts in referring assaults to ACT Policing.

ACT Policing is routinely called to attend the AMC to investigate reports of assault that come to the attention of custodial staff. Referral of incidents within the AMC to ACT Policing can depend on the cooperation of a victim, the nature of the incident, severity of any injuries and availability of evidence; however, ACTCS will always refer serious violent incidents to ACT Policing. In circumstances of minor assaults or detainees fighting, ACTCS may take disciplinary action against identified perpetrators instead of a prosecution outcome for the reasons previously outlined.

The threshold for ‘serious assault’ for the purpose of investigation by ACT Policing is offence specific, with those offences prescribed in the Crimes Act 1900; grievous bodily harm, or wounding, or actual bodily harm, and varying degrees of sexual assault.
It is also noted that the investigation of a ‘serious assault’ within the AMC is considered a ‘management significant’ event by ACT Policing, meaning the Deputy Chief Police Officer (Crime) will be briefed throughout the investigation to afford a greater level of internal oversight, monitoring and prioritisation; these will continue to be investigated within ACT Policing Criminal Investigations portfolio.

A Memorandum of Understanding (MOU) between ACT Policing and ACTCS for ‘Working Relationships’ will be updated to reflect changes in the breadth of information shared by ACT Policing since August 2015 and as a result of the assault on Steven Freeman. Signed on 9 June 2015, the MOU sets out the arrangement between the Australian Federal Police\(^3\) (AFP) and ACTCS including information sharing, cooperative management arrangements relating to serious incidents and operations, and the nature of incidents to be reported to and responded by ACT Policing. ACTCS and ACT Policing will update this MOU as a high priority by no later than 30 April 2017.

The Moss Review also concluded that ACT Policing and ACTCS should work together in the context of investigations to achieve a coordinated response to relevant matters at the AMC. ACTCS and ACT Policing will consider further updates to the MOU to reflect agreed arrangements that would improve the coordination of response to incidents at the AMC.

**Recommendation 3**

That ACT Policing, ACTCS and ACT Director of Public Prosecutions develop and adopt pro charge and pro prosecution policies in relation to assaults at the AMC.

**Government Response: Agreed in principle**

The ACT Government acknowledges the importance of ensuring that assaults, including those committed within the AMC, are thoroughly investigated with a view to holding offenders to account through the prosecution of offences.

As stated in the response to recommendation 2, investigations of assaults in a custodial setting present particular challenges and the vulnerability of victims requires a careful approach. The ACTCS Violence Reduction Team has been established in recognition of these challenges with a view to providing senior Corrective Services staff with a broad overview of detainees involved in interpersonal violence including threats, verbal and psychological aggression, to guide decision making or other management options.

\(^3\) ACT Policing is a portfolio of the AFP, delivering community policing services to the ACT.
The ACT Director of Public Prosecutions (ACT DPP) has an existing policy – The Prosecution Policy\(^4\) - that supports the intent of this recommendation. The public availability of the document serves the dual purpose of making the decision-making process open and accountable, as well as ensuring that the public is informed of the principles which guide the ACT DPP in the performance of its functions, and can be accessed from the ACT DPP’s website.

The ACT DPP is not an investigative agency, with prosecution depending on matters being reported and investigated by other agencies; including ACT Policing.

As an independent statutory officer responsible for prosecution decisions, the ACT DPP has advised that if a report is made of an assault in the AMC and there is sufficient admissible evidence to support a prosecution, the matter will be treated in the same way as assaults in the community.

In October 2016, ACTCS adopted a proactive policy position for reporting violent incidents within the AMC and revised its incident reporting process to better capture information in relation to significant incidents at the AMC, including assaults and serious assaults. In addition to an increased focus on incident reporting at the time of any incident within the AMC, the revised process will review, categorise and compliance check all incidents to identify information gaps and remediate any operational issues. While incidents will continue to be reported to ACT Policing where appropriate, on an immediate basis, a weekly report is also compiled for the Executive Director of ACTCS, which includes details of the incident and outcomes, including disciplines, accommodation placement and referral to ACT Policing. It is anticipated that this process will enable improved identification of incidents that may require referral to ACT Policing.

To give effect to the policy of proactively reporting violent incidents within the AMC, ACTCS meets with relevant stakeholders (including the ACT DPP and ACT Policing) regarding the level of evidence required to progress a charge when a complainant does not wish to proceed.

ACTCS policies and operating procedures are being updated to include more detail about what is required to meet the threshold for discretion to proceed without the complainant. ACTCS is currently considering how to achieve this, and will do so in consultation with ACT Policing.

These measures are being implemented as part of ACTCS current review of all policies and operating procedures made under the CMA.

The ACT Chief Police Officer has confirmed that ACT Policing will undertake to progress all reported assault matters to the ACT DPP for prosecution where there is sufficient evidence. This evidence may be in the form of CCTV footage, observations from witnesses or ACTCS staff, or a statement of first complaint to a corrections officer. ACT Policing does not

require a statement or version of events from an alleged victim in order to pursue a prosecution, however, investigations without a cooperative victim may reduce the likelihood of a successful prosecution.

As outlined in the response to recommendation 2, in instances of minor assault or detainees fighting, action under the CMA may be a more appropriate vehicle for disciplining detainees and/or referral to the Violence Reduction Team.

**Recommendation 4**

*That the arrangements for the provision of health care at the Alexander Maconochie Centre be established under contract or memorandum of understanding to reflect the respective responsibilities of AMC (ACTCS) and Justice Health Services (ACT Health).*

**Government Response: Agreed**

The ACT Government recognises that detainees at the AMC with significant and often complex health needs necessarily require additional care. As the detainee population at the AMC grows, so too does the number and complexity of health needs. The health needs of Aboriginal and Torres Strait Islander detainees and detainees with complex mental health conditions must be a particular area of focus.

There is an expectation from the ACT Government that Justice Health Services (ACT Health) and ACTCS share information, clearly understand their roles and responsibilities and work together to improve the management of detainees’ safety and wellbeing.

The ACT Government is committed to putting in place the administrative and other supports necessary to ensure this occurs and commits to establishing a contract or MOU for health service provision at the AMC.

ACTCS and ACT Health have commissioned a joint independent review of mental health services at the AMC, which is scheduled for completion in March 2017. That review and any preliminary findings will be considered in the development of a contract or MOU for the provision of health care services at the AMC. The contract or MOU will be completed by June 2017.

The ACT Government recently implemented a number of initiatives aimed at improving the provision of health service. In June 2016, the Mental Health Amendment Bill 2016 was passed in the ACT Legislative Assembly to coincide with the opening of the ACT’s Secure Mental Health facility, Dhulwa. The Bill amended the *Mental Health Act 2015* (MHA) and made consequential amendments to the CMA, permitting the transfer of legal custody of a detainee from ACTCS to ACT Health on admission to Dhulwa. ACTCS and ACT Health have worked collaboratively to ensure a smooth transition to improved service delivery and changed operating environment, including the joint development of legislation, policies and operating procedures.
Additionally, an information sharing MOU for custody transfers to and from Dhulwa is currently in development between ACT Health and ACTCS, taking into account professional standards, patient privacy and confidentiality, and relevant legislation. This MOU will support the transfer of custody arrangements between ACTCS and ACT Health in the operation of Dhulwa, as well as providing a framework for improved information sharing regarding detainees health information between the two agencies.

Managers and clinicians providing services at the AMC, from within both Corrections Psychological and Support Services (CPSS) and ACT Health, continue to consult regarding the implementation of these changes and daily issues arising. Additionally, the Executive Directors of ACTCS and Mental Health, Justice Health, Alcohol and Drug Services meet regularly to address operational issues that may arise.

More broadly, ACTCS and ACT Health have jointly progressed changes to health service delivery throughout 2016, with CPSS assuming responsibility for the management of detainees at risk of suicide or self-harm arrangements in May 2016; and various interventions relating to all complex needs detainees. ACT Health continues to provide primary health services, undertake initial health assessments of all detainees admitted to the AMC and remains involved in the high risk assessment process; provides specialist mental health care; and treats and supports detainees clinically managed through their service.

While these changes mark a maturity in the relationship between ACTCS and ACT Health, more work is required to develop operational and governance arrangements that clarify respective responsibilities and enhance primary and mental health service delivery at the AMC to implement the recommendation in full.

**Recommendation 5**

That Winnunga Nimmityjah Aboriginal Health Service be integrated into the provision of health care at the AMC in order to introduce its holistic model of care to Indigenous detainees.

**Government Response: Agreed**

Giving a central role to Aboriginal and Torres Strait Islander people in the delivery of outcomes in the criminal justice and health systems is vital to a holistic model of care to Aboriginal and Torres Strait Islander detainees. Experience in delivering services to Aboriginal and Torres Strait Islander people, cultural knowledge and trusted relationships with Aboriginal and Torres Strait Islander people are all important characteristics underpinning any service’s ability to improve health care within a correctional setting.
The Royal Commission into Aboriginal Deaths in Custody made several recommendations\(^5\) for the inclusion of appropriate Aboriginal and Torres Strait Islander organisations regarding the design and delivery of services and programs for Aboriginal and Torres Strait Islander offenders. ACTCS has an established history of consultation with such organisations and service providers in delivering existing programs and developing new programs for Indigenous offenders.\(^6\)

The ACT Government acknowledges that Winnunga Nimmityjah Aboriginal Health Service (Winnunga), the Aboriginal community controlled primary health care service provider for the ACT and region, has significant networks and information relating to Aboriginal and Torres Strait Islander people in the ACT and experience in delivering health care to Aboriginal and Torres Strait Islander people. The ACT Government also recognises the insight and expertise of Winnunga in ensuring the safety and wellbeing of Aboriginal and Torres Strait Islanders experiencing mental health concerns. Expanded health service provision by Winnunga in the AMC would provide a range of benefits supporting the clinical care of detainees. These include: better continuity of primary health care for detainees between time in custody and in the community; increased information sharing between the health teams leading to better patient care; and increased cultural awareness of staff at the AMC.

ACT Health and ACTCS welcome increased participation of Winnunga within the health care system and recognise that Winnunga has an important role in informing a best practice model of Aboriginal and Torres Strait Islander Health Service delivery at the AMC, as well as in delivering services to Aboriginal and Torres Strait Islander people engaged in the ACT correctional system.

The ACT Government agrees to work collaboratively with Winnunga and other stakeholders to develop and agree a contemporary and best practice model of Aboriginal and Torres Strait Islander Health Service delivery at the AMC that conforms with human rights obligations at the facility, and supports the ACT Government’s strategic goals to close the gap in Indigenous disadvantage. Such a model will need to consider culture, infrastructure, human resources, referral processes and relationships with other elements of the human services system. This model will also need to reflect the important roles that friends and family have in supporting the psycho-social welfare of detainees.

The model will clearly identify the scope and process for integration of any additional services at the AMC, will be co-designed with Winnunga and will build on previous funding arrangements, which have included funding for Winnunga to provide outreach to correctional facilities within aggregated funding for primary health services.

\(^5\) Royal Commission into Aboriginal Deaths in Custody Recommendations 111, 113, 114 and 116.

\(^6\) Details about this consultation can be found in the ACT Corrective Services 2014-15 Internal Review of Relevant Recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) and the ACT Aboriginal and Torres Strait Islander Justice Partnership 2015-18.
This model will be integral to a holistic model of care for service delivery in the AMC. ACT Health, with ACTCS, agree to developing this model with Winnunga, ensuring that due consideration is given to resourcing within Winnunga and ACT Government Directorates. Consequently, the timing, detail, funding and resourcing arrangements will take some time to fully develop. Therefore a separate working group made up of representatives from ACTCS, Health and Winnunga will be convened in March to begin this work.

**Recommendation 6**

**That ACTCS establish a separate remand prison within the AMC to ensure remanded detainees are segregated from sentenced detainees.**

**Government Response: Agreed in principle**

The ACT Government agrees that where practicable and in the best interests of individuals, remanded detainees be segregated from sentenced detainees within the AMC.

In addition to addressing recommendation 6 and associated findings in the Moss Review, improved separation of remanded and sentenced detainees at the AMC would also address concerns raised in the *Standing Committee on Justice and Community Safety: Inquiry into Auditor-General’s Report on the rehabilitation of male detainees at the AMC* and the *Independent Review of Operational Security: Alexander Maconochie Centre (ACT)*.

These reviews acknowledged the operational complexity of the AMC servicing a small jurisdiction and a detainee population comprising male and female detainees of multiple security classifications, and often with longstanding interpersonal relationships. Grievances, debts, and interpersonal conflicts often dictate non-association rules between sets of detainees due to threats or risks of violence, which often prevents separation of remand and sentenced detainees.

Additionally, there may be circumstances where temporary placement of remand and sentenced detainees may be beneficial for individuals for cultural, religious or other well-being reasons.

The need for separation is reflected in the segmentation of the AMC environment from the originally intended open campus. The review of operational security of the AMC describes a segmented and constrained physical environment with movement walkways constructed to move and manage separate groups of detainees, and most accommodation being designed so that out of cell time can also be managed in secure yards. Recent expansion of accommodation units now includes enhanced program and service space to limit movement through the facility and reduce associated risks.

The Moss Review concludes that AMC management needs to achieve both the obligations of detainee safety and human rights protection, including the separation of remand and sentenced detainees.
Establishing a future operating model to manage remand status in addition to security classifications; cultural and linguistic attributes; health needs; and accommodation-based program participation will be a continued focus for ACTCS as AMC continues to develop.

ACTCS will consider the development of an AMC Centre Logic in the first half of 2017. Centre Logic in this context can be understood to mean the charting of accommodation placements, the detainee classification regime, movement of detainee cohorts within the AMC, and program access.

The AMC Centre Logic will take account of recommendation 6 and associated conclusions in the Moss Review as well as recommendations from the Independent Review of Operational Security: Alexander Maconochie Centre (ACT) completed in December 2016. The AMC Centre Logic will inform the development of a future operating model to better manage remand status, security classifications, cultural and linguistic attributes, health needs, case management and rehabilitation, and accommodation-based program participation in line with population increase trends for the ACT.

**Recommendation 7**

That the Health Services Commissioner (of the ACT Human Rights Commission) conduct an own initiative investigation into the prescription of methadone to detainees at the AMC.

**Government Response: Noted**

The Health Service Commissioner has advised she will conduct an ‘own motion investigation’ into matters relating to delivery of health services within the AMC including matters associated with methadone prescription. The Commissioner expects to report on this investigation by 30 June 2017.

ACT Health is also currently developing more comprehensive processes and procedures related to the Methadone program at the AMC, following a comprehensive internal review. Benchmarking against the process used within the ACT Health Alcohol and Drug Services in the community, and benchmarking with similar NSW and Victorian justice health services in prisons is currently underway to further improve the Methadone Program at the AMC. Additionally, as a major quality improvement activity, ACT Health is currently implementing an electronic Methadone dosing system into the AMC to significantly improve prescription, identification and dosing of detainees.

This work is being completed as a matter of priority and will be completed within six months from the tabling of this response.
**Recommendation 8**

That the ACT Ombudsman have the role of reviewing the response to all critical incidents at the AMC including serious assaults.

**Government Response: Agreed in principle**

Effective independent oversight is important to build and maintain public confidence in the ACT’s corrections system. The ACT Government supports strengthening the current oversight regime to ensure the external and independent review of all critical incidents in the AMC.

The Justice and Community Safety Directorate (JACS), represented by ACTCS, and the Ombudsman will continue to liaise to ensure that detainees, and their families and advocates, are fully aware of their right to contact the Ombudsman to make complaints.

The Minister for Corrections also believes that, due to the unique make up of the ACT’s correctional system and the growing population pressures, a new model of oversight is required.

JACS will therefore progress work on developing an Inspectorate of Custodial Services function. JACS will explore existing models in other jurisdictions. These include the Western Australian and NSW Inspectors of Custodial Services, which are independent statutory bodies focusing on performance standards in custodial facilities and the rights of people in detention, as well as the Commonwealth Ombudsman’s immigration detention centre inspection function. The model selected as most suitable will provide a high level of transparency and accountability of the sector through reports to the Legislative Assembly.

It is anticipated that the ACT Inspectorate functions will be operational by the end of 2017, and that critical incident review will either be performed by that body, or allocated to an existing statutory oversight scheme in the same timeframe.

**Recommendation 9**

That the Inquiry’s conclusions, which provide detail of various aspects of the treatment in custody of Steven Freeman that were deficient, be addressed with a view to implementing change and bringing about improvement.

**Government Response: Agreed**

The ACT Government acknowledges the opportunity for change and improvements in the care, custody and treatment of detainees at the AMC, especially for Aboriginal and Torres Strait Islander detainees, and the need to do more to improve how people in custody are kept safe and receive appropriate health care. In this context, the conclusions and suggestions made throughout the report will inform the implementation of the Moss Review recommendations.
The conclusions in the Moss Review address four important themes:

- **Steven Freeman’s custodial experience** including accommodation placement on admission to the AMC, information sharing relating to Steven Freeman’s health treatment and his vulnerability while in custody;

- **Availability of bail to Aboriginal and Torres Strait Islander detainees** including a potential role for an Aboriginal-led organisation to provide bail support and advice to the court in the bail support service;

- **Information sharing to ensure that AMC management and other service providers within AMC have access, to the greatest extent possible, to all information relevant to the care and management of detainees** (page 54) including relevant health care, personal safety, intelligence holdings, current charges and other information directly relevant to individuals who are transferred into ACTCS’ custody, as well as experience with youth justice. Mr Moss’s conclusions extend to sharing relevant information with anyone responsible for the health care and management of detainees including, where relevant, the Canberra Hospital (page 34); and

- **Aboriginal cultural awareness and proficiency** including the importance of initial and ongoing cultural awareness training, and the need for greater sensitivity and cultural awareness when notifying next of kin about a death in custody.

The ACT Government notes all the conclusions made throughout the Moss Review. Some of these conclusions are observations made by the independent reviewer, some are findings about particular issues and others provide constructive suggestions for the need for action or change.

Progress in giving effect to this recommendation and the various conclusions in the Moss Review will be addressed through a Ministerial Statement to the ACT Legislative Assembly by the Minister for Corrections, with the first report scheduled to be tabled in February 2018.

Many of the conclusions in the Moss Review are relevant to, or can be addressed through, other work currently underway to address elements of the criminal justice system that disproportionately impacts on Aboriginal and Torres Strait Islander people.

**RELEVANT ISSUES - ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLE AND THE JUSTICE SYSTEM**

**Aboriginal and Torres Strait Islander overrepresentation in the justice system**

Regrettably, Aboriginal and Torres Strait Islander people continue to be significantly overrepresented in the criminal justice system, as both victims and offenders.

The ACT Government is committed to reducing this overrepresentation.

In 2015-16, Aboriginal and Torres Strait Islander peoples accounted for 22.8 per cent of the total AMC prisoner population - an average of 91.9 out of a total 402.
As a step towards addressing this over-representation, in 2010 the ACT Government entered into the ACT’s first Aboriginal and Torres Strait Islander Justice Agreement (2010 -13) with the ACT’s Aboriginal and Torres Strait Islander Elected Body. Not only was the Agreement the ACT’s first Aboriginal and Torres Strait Islander Justice Agreement, it represented the first formal agreement between the ACT Government and the local Aboriginal and Torres Strait Islander community.

The Agreement has been redeveloped as a Justice Partnership (2015 – 2018) and takes a more targeted approach to addressing the over representation of Aboriginal and Torres Strait Islander people in the ACT justice system through increased diversionary and rehabilitation options and improved access to justice services.

Aboriginal and Torres Strait Islander employment within ACT Corrective Services

The JACS Aboriginal and Torres Strait Islander Employment Action Plan 2016–2019 sets out employment targets and measures to encourage the attraction, retention and capability of Aboriginal and Torres Strait Islander workforce and for the monitoring and evaluation of our strategies in this area. ACTCS maintains a commitment to employing Aboriginal and Torres Strait Islander staff both within specific identified positions and non-Indigenous positions; this enhances ACTCS’ ability to provide culturally appropriate and sensitive responses to Aboriginal and Torres Strait Islander issues.

There are currently 23 ACTCS employees who identify as being Aboriginal or Torres Strait Islander out of a total of 443 employees, which represents 5.2 per cent of all ACTCS employees. This figure is double that of the Council of Australia Government target of 2.6 per cent Aboriginal and Torres Strait Islander public sector employment (2015).7

Royal Commission into Aboriginal Deaths In Custody

The Moss Review appropriately considered the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), which undoubtedly remains the cornerstone document and key point of reference for practitioners in the area of justice service delivery to the Aboriginal and Torres Strait Islander population of this country.

The ACT Government remains committed to responding to the recommendations of the RCIADIC report in both policy and practice in our efforts to prevent deaths in custody from occurring.

In 2016 the Minister for Corrections released an official publication of the ACTCS 2014-15 Internal Review of Recommendations of the RCIADIC, outlining progress against those recommendations.8 This self initiated review undertaken by ACTCS commenced in 2014 as

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8 ACTCS identified 71 of the RCIADIC recommendations as being either directly or indirectly relevant to its business and then reviewing its current service delivery against those recommendations.
part of the organisations ongoing recognition of the importance of the RCIADIC, and involved extensive consultation with local Aboriginal and Torres Strait Islander bodies, such as the Aboriginal and Torres Strait Islander Elected Body, the Indigenous Official Visitor, the Aboriginal Legal Service NSW/ACT Ltd, the Office of Aboriginal and Torres Strait Islander Affairs, and Northside Community Services.

ACTCS recognises the expertise and knowledge that is offered by Aboriginal and Torres Strait Islander bodies in the ACT, noting their recent contribution to assessing ACTCS’ performance against the recommendations of RCIADIC. This relationship is based on ACTCS’ ongoing collaboration with those organisations that deliver services to Aboriginal and Torres Strait Islander detainees.

**CONCLUSION**

The ACT Government has prepared this Response in the hope that it will go some way to offering Steven Freeman’s family, friends and the Aboriginal and Torres Strait Islander community some comfort that positive changes will result from the tragic death of Steven Freeman.

The ACT Government acknowledges the distress and anguish that the loss of Steven Freeman has caused, and the impact it has had on his family and the Aboriginal and Torres Strait Islander community.

A number of the Moss Review recommendations will have long-term planning implications and will need to be implemented in accordance with budget cycles. Nonetheless, the ACT Government will now focus on implementing the recommendations as a high priority.

The commitment to improving governance arrangements, including through the review of the response to critical incidents; a commitment by ACTCS to report all serious assaults in the AMC to ACT Policing; and a commitment from ACT Policing to investigate all serious assault matters referred to it demonstrate that the ACT Government is committed to ensuring the safety of detainees and the prosecution of perpetrators for significant acts of violence as a priority.9

The method of analysis used in the review was to assess each relevant RCIADIC recommendation and then group them against five key streams: collaboration to build a strong knowledge base; ensuring cultural awareness in correctional protocols; promoting rehabilitation and cultural resilience; effective partnering with the Indigenous community; and maximising health outcomes for Indigenous offenders.

The review found ACTCS performance against the relevant recommendations to be satisfactory, with 67 recommendations found to have been fully implemented, two recommendations were assessed as being partially implemented, and another two recommendations assessed as being not implemented due jurisdictional and/or legislative issues.

9 Recommendations 2, 3 and 8 Moss Review
By 30 April 2017, ACT Corrective Services and ACT Policing will update their MOU outlining the working relationship between the two agencies, ensuring that recent changes in information sharing and cooperative working arrangements are reflected.

The ACT Government recognises its responsibility to ensure people in custody receive health services equal to those that are available in the community and meet individual needs. The ACT Government will work with Winnunga to ensure more culturally specific and appropriate health services are available to Aboriginal and Torres Strait Islander detainees in the AMC.

The operating arrangements for the delivery of health services in the AMC will be closely examined and an appropriate model for the way forward will be agreed between affected Government agencies. ACTCS and ACT Health have committed to finalising these arrangements, either through contractual arrangements or an MOU, within three months from the tabling of this response.\(^{10}\)

Additionally, the Health Services Commissioner has committed to completing an investigation into the prescription of methadone to detainees by 30 June 2017.\(^{11}\)

The ACT Government has a responsibility to keep sentenced detainees and remandees at the AMC safe. The ACT Government will consider the development of an AMC Centre Logic in the first half of 2017 to establish an operating model to manage all detainees, including those with a remand status. This will inform master-planning for the AMC\(^{12}\) to improve security, safety and management of detainees.

The ACT Government recognises that it needs to do more to improve the safety and wellbeing of people in custody at the AMC, especially Aboriginal and Torres Strait Islander people. The ACT Government takes this responsibility very seriously and will work to develop a safer environment for detainees through the implementation of these recommendations.

\(^{10}\) Recommendation 4 Moss Review
\(^{11}\) Recommendation 7 Moss Review
\(^{12}\) Recommendation 6 Moss Review