Dear Mr Moss

Thank you for the invitation to make a submission to the Review which you are undertaking into the care of the late Mr Steven Freeman in the Alexander Maconochie Centre (AMC).

There are a number of issues which I wish to draw to your attention and I would welcome an opportunity to discuss these with you in greater detail if that would be convenient to you.

At the outset, however, I would like to reiterate how disappointed I am at the failure of the ACT Government and relevant authorities, including ACT Police and the AMC, to provide any meaningful information to Steven Freeman’s family or the Aboriginal community of Canberra about any aspect of Steven Freeman’s incarceration from the day of his admission and almost fatal bashing in April 2015 to the day of his untimely and tragic death in May 2016.

The refusal of the Government and its instrumentalities to communicate, in particular with Steven Freeman’s mother Ms Narelle King, other members of his family and the broader Aboriginal community has been and continues to be in my view unjustifiable and unprecedented. The lack of transparency and accountability exhibited in this case also flies in the face of the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody.

The absence of information has also impacted on the ability of people and organisations including Winnunga Nimmityjah, to make as detailed a submission to the Review as they would wish.

The particular issues which I wish to draw to your attention and which I believe warrant your consideration are as follow.

**Aboriginal Justice Advocacy and Support**

The incarceration rate of Aboriginal and Torres Strait islander people in the ACT is effectively the same as that throughout Australia. Indeed recent data suggest that in recent years the ACT has seen the greatest rate of increase in Aboriginal incarceration in Australia. Coincidentally the rate of removal of Aboriginal children in the ACT from their parents is also well above the national average and in fact the second highest in the nation.

While representing less than 2% of the Canberra population Aboriginal people at times constitute up to 25% of AMC inmates.
Despite the gross over representation of Aboriginal people in contact with the criminal justice system there is not in the ACT a community based Aboriginal organisation funded or supported by Government to act as an Aboriginal Justice Centre. As a consequence there is a serious void in services to support and work with Aboriginal members of the community at risk of arrest or incarceration or to act as advocate for or to support those members of the Aboriginal community who are incarcerated or otherwise subject to a corrections order.

Rather than simply abandon members of the Indigenous community involved with the criminal justice system to their fate and see Aboriginal detainees such as Steven Freeman or the members of his family receive no support or assistance Winnunga Nimmityjah has been forced by default to act as a de facto Justice Centre. This has required the diversion of significant resources from our health function.

As a consequence of the overwhelming and unmet need for a formal and discreet capacity to work with and assist members of the Aboriginal and Torres Strait Islander community in dealing with issues they may be facing in the justice system Winnunga Nimmityjah has formally resolved to broaden the scope of its operations from that of an Aboriginal Managed Health Centre to one which will in the future provide the a full range of services to the Aboriginal community. We have resolved, therefore, to develop the capacity to deliver the range of services that would ordinarily be provided by an Aboriginal Justice Centre and will be seeking the support of the ACT Government in funding this service.

AMC Treatment of Mr Freeman’s Mother Ms Narelle King and Family

Mrs King has been on the public record for over a year as having harboured concerns about the safety and welfare of her son Steven Freeman while incarcerated in the AMC. She went so far as to publicly express the view, including at a hearing of the ACT Magistrates Court, that she feared that her son would die if he was remanded to the AMC. Mrs Kings concerns expressed at the hearing of an application for bail initiated by Mr Freeman were reported as having been expressly rebutted by the ACT Police and a senior officer of the AMC. Both were reported to have given evidence to the Magistrate hearing the application that the safest place for Mr Freeman was in fact at the AMC.

Mrs King’s concerns were also aired in the ACT Legislative Assembly by Mr Andrew Wall MLA at a public hearing of an Assembly Committee on 13 November 2015 in which the bashing of Steven Freeman was being discussed.

Mr Wall in a question to the Minister for Corrections Mr Shane Rattenbury MLA asked:

“The concern that their families have is-what is being done to make sure that they remain safe and alive whilst they are in your care?”
Mr Rattenbury responded:

"In the case of Mr Freeman individually, after that incident, a series of measures were put in place to ensure his personal safety."

Attempts by Winnunga Nimmityjah to obtain advice or information on the basis of the evidence given by ACT Police and the AMC to the ACT Magistrates Court in contradiction of that provided by Ms King that Mr Freeman would be safe in the AMC have been rebuffed by the ACT Government. Attempts to obtain information of the steps that the Minister Mr Rattenbury advised the Assembly had been taken to ensure the safety of Mr Freeman while in the AMC have been similarly unsuccessful.

Winnunga Nimmityjah is concerned that no attempt was made by the AMC or any other authority to inquire of Mrs King about the basis or nature of her concerns for Steven’s safety.

In addition to the issue of Mrs Kings stated concern for Steven’s safety and the fact that relevant authorities did not take her seriously I am concerned at the way in which Mrs King was advised of her son’s death and of the dearth of information provided to her about the circumstances in which he died. I believe the apparent disinterest of the ACT Government in Mrs King’s rights and welfare has bordered on the callous. A cursory glance at Recommendation 19 of the report of the Royal Commission into Aboriginal Deaths in Custody will reveal that it has not been observed in relation to Mrs King. I believe it would be appropriate for you to look in detail at other recommendations of the Black Deaths report to determine whether they too have been similarly ignored.

I commend to you for your consideration a speech delivered in 2011 by Mr Hal Wooten AC, QC one of the Commissioners Involved with the Royal Commission into Aboriginal Deaths in Custody. In the speech Mr Wooten said, in a summary of the outcomes of the reviews undertaken by the Royal Commission of cases involving Aboriginal prisoners that ‘Again and again one found that the system of …investigations operated not to make custodial officers accountable but to protect them from scrutiny. Inadequate police investigations were commonly rubber stamped by ritualistic coronial inquiries in which the adequacy and competency of the police inquiry went unquestioned and custodial practices went unscrutinised.”

In his speech Mr Wooten drew from a report submitted by him to the Royal Commission in which he found : “There is a very great temptation on the part of custodial officers to be secretive. Instead of regarding relatives and their legal representatives, such as the Aboriginal Legal Service, as genuinely concerned people who want to know what happened, there is a tendency to treat them as trouble makers to be denied knowledge in case they misuse it, or (patronisingly) as people who should not be told things that might upset them”.

Mr Wooten concludes that “a particularly undesirable practice is the use of the coroner or a pending inquiry as a shield behind which investigative officers hide.”

I have attached for your information a range of correspondence and documents which reveal the numerous attempts that have been made to obtain information from the ACT Government, the Minister for Corrective Services and the ACT Police about matters relating to Steven Freeman.
Every attempt at obtaining information relevant to the bashing, care and death of Steven Freeman has been unsuccessful. The most commonly stated reason for denying access to information was exactly as described and criticised by Mr Wooten as “the use of the coroner or a pending inquiry as a shield behind which to hide.”

The Minister for Correction has consistently insisted that he could not provide any information to the Aboriginal community because of an ongoing police investigation into the bashing of Mr Freeman. However even after the police investigation was terminated calls for the release of information were still denied.

In confirmation of Mr Wooten’s finding of the use of a coronial inquiry as “a shield behind which authorities hide” the ACT Police in response to a FOI request by Winnunga Nimmityjah for information in relation to the bashing of Steven Freeman denied the request in full claiming an exemption on the basis that the release of any information would be in contempt of the Coroners Court. The Coroner has, however, determined that the inquest into the death of Steven Freeman will not include a review of any aspect of the bashing of Steven Freeman.

It is, even having regard to what I regard as the regrettably decision by the Coroner to exclude the bashing of Steven Freeman from the inquest, difficult to understand how the release of information, which was not prepared or gathered in anticipation of its use in a coronial inquest, can be characterised as exempt under the FOI Act on the basis that its release would be in contempt of Court. Mr Wooten describes this as “a particularly undesirable practice.” I think, on reflection, that Mr Wooten is being polite.

The Bashing

It is axiomatic that all possible information about the bashing should be made available to the Review and assessed by you. This should include the nature of Steven Freeman’s reception and induction into the AMC and the intelligence available to the AMC and the risk assessment undertaken by it in relation to Steven Freeman.

I believe the quality of the police investigation into the bashing as well as the steps taken by the AMC subsequent to the bashing to ensure Steven Freeman’s safety should be reviewed.

I also believe all documents related to the investigation and the response of the AMC to the bashing should be made publicly available.

In light of the revelations by ABC Four Corners about the management of corrections facilities in the Northern Territory and the role which CCTV footage played in the telecast in highlighting the most egregious behaviour of corrections officers in those facilities, I believe it would be appropriate for you to consider recommendations which provide for all CCTV footage from the AMC and Bimberi to be made available, on say an annual basis, to an independent external regulatory body such as the Human Rights Commission or the Auditor-General for review. Consideration could in addition also be given to providing the footage to say the Legislative Assembly Standing Committee on Justice and Community Safety, assuming of course that relevant privacy issues are addressed.

You would be aware of the existence of CCTV footage of the actual bashing of Steven Freeman which was provided by the AMC to ACT Police for the purposes of its investigation. This was referred to by
AMC Superintendent Mr Don Taylor in his evidence to the Standing Committee on Justice and Community Safety on 13 November 2016.

Mr Taylor advised the Committee that:

"In this case—again, following on from the Ministers comments, I do not want to say too much because it is still under investigation—there certainly has been footage of the area, which has been handed over to the AFP and has helped them in their investigation."

While it now appears the footage apparently didn’t help the AFP very much I am assuming it has been made available to you for the purposes of the Review.

Evaluation of Risk

The Review should I believe explore the extent to which relevant authorities explored and responded to not just the physical risks to Steven Freeman’s safety from other prisoners or from other aspects of the AMC environment but of other less tangible risks resulting from his health or other possible personal vulnerabilities.

Model of Care

As you would be aware there is universal acceptance in Australia that the model of care proven to produce the best and most permanent improvements to the health of Aboriginal and Torres Strait Islander people is that which is delivered by Aboriginal managed, led and staffed health organisations and which is informed by a deep understanding of and empathy for the circumstances of the Aboriginal community. Winnunga Nimmityjah is one such organisation which has operated in the ACT and serviced the Canberra and regional Aboriginal community for over a quarter of a century. Winnunga Nimmityjah has a national reputation as an Aboriginal Managed Health Service which is second to none.

At the time that the ACT Government began to plan seriously for the establishment of the AMC Winnunga Nimmityjah, encouraged by the then Governments stated commitment to establish a world leading human rights compliant prison developed what it believed was an appropriate model of care for Aboriginal prisoners who might be incarcerated in the AMC. The model of care is incorporated in the report “You Do the Crime you Do the Time”. This work was later supplemented in a report “We Are Struggling in Here”.

It is a matter of regret to Winnunga Nimmityjah that ACT Corrections has neither adopted the model of care proposed by Winnunga nor engaged seriously with it about the model of care which operates in the AMC and of its suitability for Aboriginal inmates.

While I accept that with the effluxion of time since the model of care was produced, and experience in the interim, that it may be that aspects of the model should be revisited. It is clear nevertheless that the AMC does not in respect of Aboriginal inmates operate under a model of care which is accepted by Aboriginal Health Services throughout the whole of Australia as important in assuring optimal outcomes for Aboriginal and Torres Strait Islander patients.

I believe your consideration of this issue should be the major focus of the Review.
Operating Culture at AMC

Because of the secrecy which has surrounded every aspect of Steven Freeman's treatment and death it is not possible to comment on the precise relevance of the issue of drugs to the Review, whether that may be in respect of

Recent revelations on ABC Four Corners of the operating culture within correctional institutions in the Northern Territory have revealed in the grossest terms the toxic consequences that can result from a culture characterised by a lack of transparency, accountability and of secrecy.

The bashing, care, treatment and death of Steven Freeman in the AMC have been characterised by a lack of transparency, accountability and of secrecy.

Not a single request by Winnunga Nimmityjah or by his mother Narelle King over the fourteen months between Steven Freeman's vicious bashing and his tragic death for information about the bashing, its investigation, his treatment or care has been met. It is unconscionable that it was more than eight weeks after Steven's death that his distraught and grieving mother and family were finally advised how he died.

The universal unanswered question in the Canberra Aboriginal and Torres Strait Islander Community is:

"What are they trying to hide?"

I would be pleased to discuss with you the issues raised above as well as any other matters that you think may be relevant.

Yours sincerely

Julie Tongs OAM
Chief Executive Officer

15 September 2016