



HUMAN RIGHTS
COMMISSION

Human Rights Audit

on the Operation of
ACT Correctional Facilities
under Corrections
Legislation

ACT Human Rights Commission, July 2007



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HUMAN RIGHTS COMMISSION



Mr Simon Corbell
Attorney-General
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Corbell,

On behalf of the Commission I present to you the report under s.41(1)(a) of the *Human Rights Act 2004* reviewing the effect and operation of Territory laws concerning correctional facilities from the perspective of human rights.

The report presents a snapshot of the treatment of detainees at the ACT's current remand centres, the Belconnen Remand Centre (BRC) and the Symonston Temporary Remand Centre (STRC), identifying issues to be avoided in the Alexander Maconochie Centre, as well as matters that should be improved prior to the establishment of the new prison next year. Of immediate importance are the recommendations concerning the establishment of a new secure mental health facility, as well as necessary interim arrangements; expanded premises for the Periodic Detention Centre due to overcrowding and its impact on women at the STRC; and the urgent need for a regime for remandees currently at the remand centres that includes at least nine hours out of cells, and a program of organised activities.

The recommendations in the report are designed to assist the transition from the remand centres to the Alexander Maconochie Centre and the philosophy of the healthy prison under which the new prison is to operate. I would like to acknowledge the excellent and tireless work of Dr Pene Mathew, Human Rights Legal Advisor, who was the principal researcher for the audit, as well as other Commission staff who assisted in this process. The Commission is also grateful for the cooperation of ACT Corrective Services, as well as detainees in conducting the audit.

Yours sincerely,

Dr Helen Watchirs
ACT Human Rights and Discrimination Commissioner
31 July 2007

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A. EXECUTIVE SUMMARY

This report reviews the operation of Territory laws concerning correctional facilities from the perspective of human rights compliance in practice, as well as on paper. The ACT Human Rights Commission's power to undertake this audit is contained in s.41(1)(a) of the *Human Rights Act 2004* (ACT) ('HR Act'). The report presents a snapshot of the treatment of detainees at the ACT's current remand centres. It identifies systemic problems that need to be avoided in the new ACT prison, the Alexander Maconochie Centre (AMC), as well as current practices at the remand centres that need to change if the human rights of detainees are to be respected and a successful transition to the new prison achieved.

There are many human rights dimensions to be considered in the context of corrections. As a closed population, detainees' human rights can be put at risk by the behaviour of other detainees as well as corrections staff and as a result of inappropriate systems and practices. It is also recognised that securing staff from human rights abuses committed by detainees is an important feature of occupational health and safety. In the case of sentenced prisoners (who are currently not held in the ACT but will be at the new AMC), the Commission recognises that many crimes have been perpetrated against victims whose human rights have been breached. However, the focus of this audit is primarily on detainees.

The audit is an ideal opportunity to document human rights compliance within the context of the current inadequate physical facilities so that opportunities for improvement can be pursued in the new AMC. However, some matters are so serious in their negative impact on detainees that urgent implementation of several recommendations is required. Some issues are not dependent on new facilities, and immediate measures can be taken which will make a difference to the humane treatment of detainees. It is also an opportune time to ensure that the new corrections legislation that is due to come into effect later in 2007 is human rights compliant in its implementation, as well as form.

The Commission recognises that corrective services staff work in remand facilities that are overwhelmingly inadequate. The level of commitment and professionalism of most staff working in a harsh physical and confronting human environment impressed the Commission. However, a small minority of staff were the subject of complaint by other staff and detainees, and there were some signs of a bullying culture. Ensuring the provision of humane treatment is a core function and competency required of staff. It is crucial that a human rights culture protective of both staff and detainees is developed as part of the healthy prison objective under which correctional facilities operate.

The Belconnen Remand Centre ('BRC') and Symonston Temporary Remand Centre ('STRC') were audited during the period August 2006 – May 2007. The Periodic Detention Centre is next door to the STRC, and was included in the audit mainly in relation to its impact on the operation of the STRC and BRC. The benchmarks for the audit are the provisions of the HR Act and relevant international laws. These laws include the following four sets of international legal instruments:

- the International Covenant on Civil and Political Rights;
- the United Nations Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment;
- the United Nations Basic Principles for the Treatment of Prisoners; and
- the Standard Minimum Rules for the Treatment of Prisoners.

A new secure mental health facility

Sadly, it has been reported that prisons have often become substitute accommodation for people with mental health problems. One of the two suicides in custody at BRC during the 1990s was a young man with a mental health problem. Staff at the remand centres have been vigilant to ensure

that no suicides have occurred since this time. But the ACT community needs to do much more to ensure that people receive adequate mental health treatment and care, and that forensic patients are not sent to the new AMC. The Territory Government has said it will build a new secure facility with 15 beds for forensic mental health patients by 2010. The Commission recommends that an interim facility be established as soon as possible, perhaps using existing facilities that are due to be vacated, such as Quamby with appropriate design and other adaptations.

New premises for the Periodic Detention Centre

Periodic Detention is a sentencing option for persons convicted for lower order offences to only be detained on weekends. As such, it is a means of preventing the disruption to community ties (families, work etc) that occurs with full-time detention. It can be a good sentencing option for women, especially if they have access to childcare on weekends. From April 2007, numbers attending the Periodic Detention Centre ('PDC') increased to around 50 people – well over the 30 it can accommodate. Because of the small number of women remandees, a decision was made to place people serving periodic detention next door, ie at STRC, and to bus women remandees from STRC to BRC at weekends where they would be accommodated in a substandard area. This resulted in significant disruption to the women. There were three additional strip-searches; missed meals, late breakfasts; disrupted visits; problems receiving medication; loss of the minimal opportunities for work that exist at the remand centres and the general stress of having to move accommodation every three to five days. The women alleged that on their return to STRC at the end of the weekend, they had to clean vomitus left by periodic detainees who had stayed there over the weekend. The inadequate facilities for women remandees may be considered a form of systemic discrimination, which needs to be addressed immediately. Steps should be taken before the establishment of the AMC to expand the capacity of the PDC to take sentenced prisoners. Consideration should be given to the use of mid-week periodic detention to reduce the numbers needing accommodation at the PDC on weekends.

Time out of cells and purposeful activities

People remanded in custody are presumed to be innocent, and their detention is not supposed to be a punishment. In the ACT remand centres, however, detainees are subjected to the worst features of a strict prison regime, including limited freedom, frequent strip-searching, and compulsory drug testing. Detainees cannot participate in purposeful activities that would be offered in most prisons and remand centres in some jurisdictions, such as Hakea prison in Western Australia.

The HR Act requires that all people in detention be treated humanely. In the ACT's remand centres, detainees are accommodated in average-sized cells, often with another person, and sometimes more than one other person. There are no organised activities during the periods out of cells, which is routinely from 7.30-11.30am and 1.00-6.30pm daily. In the last quarter of 2006, detainees spent many additional hours locked in their cells because of staff shortages. These conditions may amount to inhumane treatment and violate section 19 of the HR Act. The Commission recommends that detainees be guaranteed the opportunity to spend at least nine hours out of their cells each day. Remandees should also be offered educational and other activities, and the opportunity to work. Although this is difficult to achieve in the current facilities, it is particularly important as some detainees are held on remand for long periods of time. It is an essential component of the 'healthy prison' concept discussed below. A program of organised activities is an essential minimum requirement for detainees at the remand centres.

Moving to a human rights culture in a 'healthy' prison

The ACT Government and ACT Corrective Services are committed to making the new AMC a 'healthy' prison – that is, a prison in which everyone feels and is safe, is treated with respect as a human being, has the opportunity to improve him or herself through meaningful activities, and

is able to maintain contact with family and to prepare for release. The audit revealed a history of downplaying the needs and human dignity of remandees on the basis of operational and resource constraints. Changes in these areas must be implemented now at remand centres if there is to be a transition to a healthy prison.

The need for the Human Rights Commission to make many sub-recommendations about basic living conditions ranging from shower curtains to tampons exposed some reluctance to fully recognise detainees' rights and areas of systemic discrimination. Examples documented in this report include cutting back on welfare services; overcrowding and some insensitivity to privacy and women's needs; lack of discretion in the application of rules concerning visitors; inadequate systems for passing on lawyers' messages; lesser amenities for protected detainees; and inadequate attention to language problems for detainees from culturally and linguistically diverse backgrounds.

While intrusions into privacy such as searches and drug testing are sometimes necessary, detainees must always be treated as respectfully as possible. Instead of requiring a detainee to provide a urine sample, while only partially clothed, in the presence of two officers after the detainee has already been subjected to a strip-search, a detainee should be permitted to enter a room that is constantly monitored by a camera, unaccompanied in order to provide a urine sample. Strip-searching during cell searches should be abandoned and instead electronic scanning used where there is a suspicion of contraband, and a more orderly and respectful procedure for cell searching should be developed.

Contact with families is an important aspect of rehabilitation and it is one of the main reasons for building the new prison and bringing prisoners back to the ACT. Consequently, some rules concerning visits need to be relaxed, eg late arrivals should not automatically be cancelled, especially in exceptional circumstances. Messages from lawyers must be passed on to detainees as a priority in order to avoid breaching the right to prepare a proper defence. The establishment of a prisoners' legal service is also recommended in order to ensure ready access to quality legal advice.

Information about prisoners' rights is important as it enables them to enforce their own rights as well as be aware of others' rights. This information needs to be given to prisoners in written, verbal and visual forms, and at various times, not just on induction. It should not be assumed that as prisoners have been in detention before that they will remember what the rules are, or that the rules never change.

Equivalence of health services

Health services to detained persons must be equivalent to those available in the community and should form part of, and be broadly consistent with the wider community health system. When it comes to health, prisoners are patients first, although there must be some recognition of security needs.

ACT Health delivers health services to remandees. However, the correctional setting has sometimes permitted decisions to be made on the basis of security, rather than the promotion of detainees' health. A particularly concerning example was a man with a mental illness, who was HIV positive and suffering pneumonia but who was chained to his hospital bed as well as being guarded by two Corrective Services officers. Restraints should only be imposed where exceptional circumstances in an individual case require this. In addition, a mechanism for external scrutiny of decisions where there is a tension between security and health is needed.

In order to protect the rights to life and health, a harm minimisation approach to the issue of intravenous injection of illicit drugs in prison is recommended. Illicit drugs are a problem in all custodial settings throughout the world. Injectable drugs, injecting equipment and tattooing equipment have all been found in the ACT remand centres in recent times, and it is known that, when injecting, remandees will often share an intravenous needle. This may lead to the transmission of blood-borne diseases such as HIV/AIDS and Hepatitis B and C, therefore increasing the risk of disease infection in prisons, as well as further transmission when detainees

return to the community. The ACT has a community-based needle and syringe exchange in order to minimise the harm of disease transmission through intravenous drug use. Numerous studies have demonstrated the efficacy of these exchanges in communities around the world, as well as prisons in some countries. To deny protection against disease transmission in such a high-prevalence and closed population in prison may be viewed as inhumane. The Human Rights Commission recommends that a pilot program for a needle and syringe exchange should be developed, with adequate consultation, for the AMC. Other recommendations concern matters such as the promotion of safer sex practices, more access to allied health services, better record-keeping and improved means of ensuring confidentiality.

Corrections culture

Detention involves many intrusions into a detainee's liberty, security and privacy. For example, force may be used by corrections officers in some circumstances; detainees may be subjected to strip-searches; and compulsory drug testing regularly occurs. The culture of a correctional facility will influence the number of times that coercion such as use of force or disciplinary action will be required. Many ACT Corrective Services officers recognise that the emphasis should be on 'dynamic security' – that is, security based on good professional relationships between staff and detainees rather than physical barriers, uses of force and the use of restraints. Consistent with the ethos of a healthy prison, ACT Corrective Services is in the process of shifting from a culture that favours control and security over detainees' needs. Instead, meeting detainees' needs are to be acknowledged as assisting to maintain security and order in the prison.

The Human Rights Commission recommends that more officer training on use of force should take place on a regular basis, and it should provide additional focus on de-escalating situations that could otherwise lead to a use of force. In addition, digital footage of the lead-up (if any) to a use of force should be kept in order to demonstrate that there has been a proper emphasis on de-escalation, and footage should be stored for longer than at present, in order to aid investigation and to protect officers from unfounded allegations. In the long term planning of the corrective services workforce, consideration should be given to the development of a wider undergraduate degree program that can be used for recruitment purposes. Performance review procedures should include increased emphasis on assessing officers' ability to maintain effective relationships with detainees. More leadership, training and further procedures on anti-bullying and inter-detainee violence are also necessary.

Oversight mechanisms

Stronger accountability measures through independent monitoring protect not only detainees against potential abuses, but also can ensure that staff are not treated unfairly. Correctional services generally tend to be accused of being inward looking, and resistant to external scrutiny. Openness provides the best guarantee to detainees, their families and the community that human rights are being respected in detention. The Commission found that ACT Corrective Services was cooperative in enabling this audit to be performed and noted that staff from other agencies such as the ACT Ombudsman, Official Visitor and Public Advocate regularly visit the remand facilities and/or receive complaints from remandees. However, the fact that the 'regime' (of activities etc) for remandees has deteriorated, despite the fact that these bodies have repeatedly pointed out the need for it, indicates that a stronger inspection mechanism is needed with respect to sustained and systemic issues. Although none of these agencies have exclusive or comprehensive expertise in corrections, the Commission supports increased funding for their casework loads, which will escalate with higher demands from prisoners returning to the ACT at the AMC. The independence of the Western Australian prisons inspectorate (the Office of the Inspector of Custodial Services) which reports directly to the Parliament when performing regular inspections of facilities (each has one every three years on a rolling basis) is national best practice, which the Commission recommends should be emulated by the ACT. Apart from guaranteeing independence, the unique feature of reporting directly to Parliament is more effective in drawing

government's attention to areas of need, through increased public debate. Given the small size of the ACT, this would not warrant creating a new agency for this purpose, but the possibility of contracting services from the WA Inspectorate should be investigated. Its activities would be complementary to existing local oversight bodies, including the ACT Ombudsman.

Keeping custody rates down

Stakeholders suggested that the establishment of a new prison may increase the number of accused persons placed in custody. Increased care options within the community and across the in-patient non-forensic mental health facilities (such as the Psychiatric Services Unit and Brian Hennessy House) are required in order to ensure that the new prison is not inappropriately over-loaded by people suffering with mental illness in a non-therapeutic environment. The Commission also recommends that research concerning rates of recidivism amongst people attending the PDC and the uptake of periodic detention by Indigenous people should be conducted, with a view to lowering rates of full-time detention of Indigenous people. Finally, the Human Rights Commission recommends that reform of the law relating to fine-defaulters be re-considered.

Please note that a list of abbreviations and acronyms appears at the end of the report.

B. LIST OF RECOMMENDATIONS AND BENCHMARKS

Most of the recommendations set out below apply to the existing correctional facilities, and many will also carry over into the new prison. Benchmarks set out below relate to the new prison and are highlighted in italics, some of which have already been taken into account in planning for the AMC.

1. RECOMMENDATIONS THAT REQUIRE URGENT IMPLEMENTATION.

1.1. Periodic detention facilities

- 1.1.1. In order to address current overcrowding in the remand centres, the ACT Government should ensure that the Periodic Detention Centre has sufficiently large premises to accommodate persons currently sentenced to weekend detention, and should do so *urgently* before the establishment of the AMC.
- 1.1.2. Consideration should be given to mid-week periodic detention for people who are able to attend during the week.

1.2. Mental health facilities

In order to provide satisfactory treatment for forensic mental health patients, the secure facility to which the ACT Government has already committed itself should be established as soon as possible. If this is not possible in 2008 when the AMC opens, then an interim facility should be established as a matter of urgency.

1.3. Time out of cells

- 1.3.1. At the remand centres (*and at the AMC*), detainees should be guaranteed an opportunity to spend a reasonable part of the day, being nine hours (*and 10 hours respectively, or more*) outside their cells.
- 1.3.2. Monthly monitoring by an oversight body (for example, by the Ombudsman) should occur to ensure that detainees at the remand centres are able to spend at least nine hours out of their cells, and reports should be made to the Attorney-General, Human Rights Commission and the Chief Executive of the Department of Justice and Community Safety if the target of nine hours for individual detainees is not regularly met.
- 1.3.3. Staffing levels must be sufficient to ensure that lock-downs of the frequency and duration of those occurring at the remand centres in the last quarter of 2006 will be avoided.

1.4. Organised activities

- 1.4.1. A program of organised activities must be offered to detainees at the remand centres.
- 1.4.2. Officers should be required to take detainees at both remand centres to the library and activities room on a regular basis.
- 1.4.3. Detainees at BRC, particularly younger men, should be given more frequent opportunities to play sport in the large activities yard.

2. HUMANE TREATMENT OF DETAINEES

2.1. Shared cells and privacy

- 2.1.1. The procedures should specify that allocation of shared cells at the remand centres (*and the AMC*) requires careful consideration against a range of criteria, including:
 - consultation with detainees;
 - likely self-harm;
 - any history of conflict between detainees or their families; and
 - issues such as the vulnerability or predatory nature of particular detainees.
- 2.1.2. Privacy for detainees while showering should be achieved by:
 - providing plastic shower curtains that are shoulder height in every cell at the remand centres; and
 - replacing clear shower curtains with opaque or colored curtains.

2.2. Cell searches

- 2.2.1. Procedures for cell searches need to be reviewed, and strip-searching during cell searches should be abandoned.
- 2.2.2. Alternatively, detainees should be subject to electronic scanning (with consent) using the SOTER RS X-Ray Body Scanner, or, consistently with, and in the lead-up to entry into force of the *Corrections Management Act 2007*, pat-down searches should be conducted in order to satisfy the reasonable suspicion threshold.
- 2.2.3. A more orderly procedure for conducting cell searches should be developed. Detainees' possessions should not be left in a pile, or on the floor.

2.3. Drug testing

- 2.3.1. In order to preserve dignity, a detainee should be permitted to enter a camera'd room alone in order to provide a urine sample.
- 2.3.2. Tampering with the camera or sample should be classified as a refusal to provide the sample, with disciplinary consequences.

2.4. Welfare

Adequate social support should be provided to detainees through the case-management process and other appropriate mechanisms.

2.5. Education

- 2.5.1. Funding should be provided by the ACT Government so that, at a minimum, detainees in the current remand centres are assessed for literacy and numeracy.
- 2.5.2. Appropriate short courses should be offered to detainees at the remand centres, as pilots for programs that may be developed for the AMC.
- 2.5.3. *Educational programs should be offered to remandees immediately upon induction into the AMC.*
- 2.5.4. The drug and alcohol program at the remand centres should continue to use peer support wherever possible.
- 2.5.5. In order to permit the completion of schooling interrupted by time spent on remand, access to school materials by the internet and/or by email controlled by the case-manager should be arranged for detainees.

2.6. Work

Opportunities for useful and meaningful work that fosters the acquisition of basic skills should be offered to remandees. If the facilities at BRC and STRC cannot accommodate this, then funding should be provided so that courses focussing on the acquisition of basic skills that are helpful to gaining employment (such as resume writing, computer skills, first aid) should form part of the program of organised activities at the remand centres.

2.7. Clothing

- 2.7.1. ACT Corrective Services must consider allowing remandees to wear their own suitable clothing, in accordance with current legislation.
- 2.7.2. Alternatively, remandees should be provided with clothing that is as close to civilian clothing as possible (for example, jeans), which does not have brand logos, and which does not pose a threat to safety or security.
- 2.7.3. A better system for supervision of laundry is required.
- 2.7.4. The low quality of footwear provided to detainees needs to be upgraded to provide better support for their feet.
- 2.7.5. Warmer clothing is required in winter.
- 2.7.6. Detainees should be issued with seven new pairs of underwear when they are inducted.

2.8. Hygiene

Detainees should never be inducted to, or moved to cells that have been left in an unhygienic condition by a previous occupant. To implement this recommendation, detainees at the remand centres (*and the AMC*) should be employed, if only on an occasional basis, to clean cells for the purposes of late arrivals or inductions.

2.9. Visits

The rules at the remand centres (*and in future at the AMC*) relating to the conduct of visits have to accommodate exceptional circumstances. The rules concerning late arrivals should be amended so they are flexible guidelines or structured discretions, rather than rigid rules. The rules concerning physical contact should be amended so as to permit touching so long as it is not of an overly sexual or intimate character.

2.10. Legal advice

- 2.10.1. Messages from legal representatives must be passed on to remandees as a priority, otherwise Corrective Services officers may be responsible for impeding the preparation of remandees' defence in violation of s.22(2)(b) of the HR Act. As detainees are locked in their cells from 11.30 am – 1.00 pm, messages must be passed on before 4 pm on the same day that they are received, so that it is possible to return the call once the lawyer is back from court.
- 2.10.2. *A properly resourced prisoners' legal service with provision for community legal education concerning prisoners' rights should be established ready for when the AMC opens.*

2.11. Media and library facilities

- 2.11.1. Monitoring of newspapers by designated staff is encouraged, and separate newspapers ought to be provided to those staff.
- 2.11.2. Adequate numbers of newspapers should be ordered for detainees in each of the yards at both remand centres.

- 2.11.3. Detainees should be consulted about the subject matter of the books that should be held by the library, including a small legal library.
- 2.11.4. Reasonable access to the media must be permitted.

2.12. Information about rights

- 2.12.1. At the remand centres, information about detainees' rights needs to be provided in different media, that is, written, verbal and visual. The Commission commends the ACT Corrective Services' move to pilot displays of information on detainees' television screens.
- 2.12.2. More time needs to be spent explaining detainees' rights verbally upon induction.
- 2.12.3. A DVD on what to expect in custody should be produced and given to detainees on induction.
- 2.12.4. Visitors should be offered copies of the induction booklet.

3. RECOMMENDATIONS CONCERNING SYSTEMIC DISCRIMINATION

3.1. Women prisoners

- 3.1.1. Women detainees should not be guarded by male Corrective Services officers at night.
- 3.1.2. More effort should be made to recruit women Corrective Services officers.
- 3.1.3. Extensive training concerning issues for women in prison and sensitivity towards women prisoners should be compulsory for all custodial officers.
- 3.1.4. The remand centres should meet the special needs of female detainees, such as providing appropriate bras (eg with plastic supports, as underwire is prohibited) and underwear, as well as a choice of sanitary pads and tampons. A dispenser for pads and tampons should be installed.

3.2. Indigenous and culturally and linguistically diverse detainees

3.2.1. Cultural awareness and the incidence of racism

- 3.2.1.1. Non-Indigenous Corrective Services officers should be required to attend courses in cultural awareness.
- 3.2.1.2. Officers should be assessed on cultural competencies during recruitment and ongoing training – that is, particular skills that are relevant to interactions with people from culturally and linguistically diverse backgrounds.
- 3.2.1.3. Performance review measures should include an assessment of officers' ability to maintain effective relationships with detainees from culturally and linguistically diverse backgrounds.

3.2.2. Interpretation and translation services

- 3.2.2.1. Detainees from culturally and linguistically diverse backgrounds should be provided with information in their languages, including translations of the induction booklet.
- 3.2.2.2. The pilot program displaying messages with important information on detainees' television screens should use all languages that are commonly used in the remand centres.

3.2.3. Culturally important activities and responsibilities

The Indigenous Liaison Officer should be given more support and resources to enable more culturally important activities for Indigenous detainees to be provided. Also, opportunities should be provided for non-Indigenous detainees to participate appropriately in these Indigenous events. Corrective Services officers should be encouraged to play more of a role in Indigenous events such as NAIDOC week,¹ with participation counted as an aspect of ongoing cultural awareness training.

3.3. Protected status

- 3.3.1. Detainees in the protection yards at BRC must be treated equitably as compared with detainees in the mainstream yards, in terms of access to activities, the library and exercise.
- 3.3.2. Officers should be required to organise time at least daily in the activities room/yard at BRC for detainees who are accommodated in the protection yards.
- 3.3.3. Non-smokers in the protection yards (and elsewhere) must not be accommodated with smokers unless they freely consent. Any restrictions on this principle should only be for exceptional circumstances and a limited time period.

3.4. Religion

- 3.4.1. Detainees at the remand centres should be provided with information regarding their rights to request attendance by a representative of their faith. (See recommendations 2.12. and 3.2.2. above concerning different media, times and languages in which information should be provided.)
- 3.4.2. General rules need to be more flexible to enable those detainees required to cover their heads as part of observing their faith to do so.

3.5. Food

- 3.5.1. Detainees at the remand centres need to be informed about and offered the choice of culturally acceptable meals. (See recommendations in 2.12. and 3.2.2. above concerning different media, times and languages in which information should be provided.)
- 3.5.2. Detainees at the remand centres should continue to be consulted and offered more choice with respect to buy-ups, eg types of fresh fruit.

4. RECOMMENDATIONS RELATING TO HEALTH AND MEDICAL CARE

4.1. Health care service

- 4.1.1. In the period immediately preceding the repatriation of ACT prisoners, funding should be provided to conduct an audit of the medical records of prisoners in the ACT and NSW. *This should be followed by a survey of epidemiological health needs of prisoners at the AMC towards the end of its first year of operation, with a view to budgeting adequately for health services at the AMC.*
- 4.1.2. The Corrections Health Plan should recognise the need for a comprehensive health service that offers treatment underpinned by the principles of equivalence and equity, and a system that redresses poor health-seeking behaviours of detainees with mental illness and related problems such as personality disorders.

¹ National Aborigines & Islanders Day Observance Committee.

4.2. Infection control and harm minimisation

- 4.2.1. A pilot program for a needle and syringe exchange with provision for safe disposal of needles should be developed for the AMC. Consideration could also be given to establishing a safe injecting room (medically supervised injecting facility).
- 4.2.2. Detainees at the remand centres (*and at the AMC*) must regularly be provided with information about the availability of condoms and other safeguards, as well as safe sex practices, in order to prevent sexually transmitted infections and diseases such as HIV/AIDS and Hepatitis B and C.
- 4.2.3. *In addition to installing a condom-dispensing machine at the AMC, adequate means for disposing of condoms should be provided. A dispensing machine for latex gloves and dental dams should be provided for women at the AMC, along with adequate means of disposing of them.* In the meantime, these products should be available from health staff at the remand centres.

4.3. General health

4.3.1. Equivalence and access to Medicare

The ACT Government should seek a commitment from the Commonwealth Government to removing the bar on persons in detention accessing Medicare and the Pharmaceutical Benefits Scheme on the basis that the human rights principle of equivalence requires that detainees be treated equally to the community in terms of health care and services.

4.3.2. Allied health services

At the remand centres (*as well as the AMC*), detainees should have better access to allied health services such as physiotherapy and experienced, trained counsellors (for example, psychologists and social workers).

4.3.3. Dentistry

The induction booklet should contain information regarding health information and care such as the availability of dental appointments.

4.3.4. External consultations and hospital transfers

- 4.3.4.1. Detainees transferred to external health facilities, such as hospitals, should not be chained to furniture or be required to wear prison clothing unless exceptional circumstances in an individual case require this. The use of restraints on hospital watch should be recorded and notified to the Health Services Commissioner within twenty-four hours.
- 4.3.4.2. In any case where security reasons mean that medical decisions (for example, concerning transfer of a detainee to an external health facility) may be over-ruled, there must be a process for notification and external scrutiny – for example, by the Health Services Commissioner.

4.3.5. Health promotion

Hats should be provided to detainees when they are outdoors not in shaded areas. (See also recommendations concerning non-smokers **3.3.3.**, access to counsellors **4.3.2.**, and religious headwear **3.4.2.**)

4.3.6. Health records

- 4.3.6.1. The 2002 *Review of Health Services Provided to Offenders and Remandees in Custodial Settings in the ACT* has previously recommended that there should be an electronic data storage and retrieval system for medical records at the remand centres. Providing that the system operates in accordance with the provisions of the *Health Records (Privacy and Access) Act 1997*, this recommendation should now be implemented.
- 4.3.6.2. There should be clear procedures so that detainees are given a record of the treatment and medication they need on release into the community.
- 4.3.6.3. To preserve confidentiality, detainee request forms regarding medical appointments should be placed in a sealed envelope (or equivalent) and opened only by health professionals. Detainees should also be informed of the opportunities to approach health staff directly in order to make appointments.

4.4. Prisoners at risk

The remand centres (*and the AMC*) should have experienced, trained counsellors (for example, psychologists and social workers) available to talk with detainees who are having psychological problems in order to assist in preventing depression and other mental problems that may put a prisoner at risk of self-harm or suicide. (See also recommendation 4.3.2. concerning allied health services, recommendation 2.4. concerning welfare, and recommendation 1.4. concerning the need for organised activities.)

5. RECOMMENDATIONS CONCERNING CORRECTIONS CULTURE

5.1. Use of Force

- 5.1.1. Consistently with the emphasis on 'dynamic security', the Standing Orders and procedures must adequately implement s.137 of the *Corrections Management Act 2007* when it commences operation to ensure that force is only used as a last resort.
- 5.1.2. The Standing Orders and procedures should give guidance to officers, using case studies, as to when it is appropriate to use force.
- 5.1.3. Officer training regarding use of force, which should take place on a regular basis, needs to focus on de-escalation techniques and on the process of removing non-compliant detainees from cells.
- 5.1.4. There needs to be adequate coverage of the facility by cameras, as well as adequate maintenance of equipment, to ensure that digital footage of critical incidents may be captured and stored.
- 5.1.5. Stored digital footage of incidents involving the use of force should go beyond the actual use of force: an attempt should be made to keep footage of the lead-up (if any) to all uses of force, given that officers should be focussing on de-escalation.
- 5.1.6. More digital footage should be stored, and for longer, in order to aid investigation and to protect officers from unfounded allegations.

5.2. Discipline

- 5.2.1. Consistent with the ethos of a healthy prison, the emphasis must continue to shift from a culture that privileges control and security over detainees' needs. Instead, meeting detainees' needs should be acknowledged as assisting to maintain security and order in the prison.
- 5.2.2. Models already under consideration include a case-management role for officers. Consideration could also be given to the trial of principles underpinning therapeutic

communities.

- 5.2.3. As a preliminary step, initial training sessions, facilitated by experts, should be provided to inform officers about the model of officer-detainee relations expected in the new prison.
- 5.2.4. In the long-term planning of the corrective services workforce, consideration should be given to the development of a wider undergraduate degree program that can be used for recruitment purposes.
- 5.2.5. Performance review procedures should continue to include an assessment of officers' ability to maintain effective relationships with detainees.
- 5.2.6. The disciplinary procedures concerning 'confinement to cells' should be clarified and clearly described in the information given to detainees about their rights and obligations at the remand centres.
- 5.2.7. Given the poor conditions in E yard at BRC, its use, including for segregation, should continue to be avoided. Confinement to cells in addition to using A annex for segregation should be considered.
- 5.2.8. In the transitional period prior to the establishment of the AMC, the system in the *Corrections Management Act 2007* whereby certain entitlements cannot be removed should be written into the current Standing Orders and procedures so it can be applied prior to the commencement of the new Act.

5.3. Violence and bullying

- 5.3.1. Anti-bullying and harassment training should be offered yearly to all Corrective Services officers, and support mechanisms, such as contact officers for staff wishing to complain about another officer, should be regularly reviewed to ensure they are working appropriately.
- 5.3.2. A procedure should be developed on inter-detainee violence and bullying which formalises good staff practices of actively watching for and acting on signs of bullying. Information relating to this procedure encouraging detainees to seek help and warning about the consequences of bullying should be provided in the induction booklet and through other sources. (See also recommendation 2.1.1. regarding safeguards for sharing of cells.)

6. RECOMMENDATIONS CONCERNING OVERSIGHT

6.1. Inspectors

- 6.1.1. A culture of greater openness with respect to oversight bodies that have official inspection and complaints functions needs to be encouraged within ACT Corrective Services.
- 6.1.2. In the Commission's view, the Western Australian prisons inspectorate (Office of the Inspector of Custodial Services) represents national best practice and should be emulated by the ACT. Because of the ACT's small size, the possibility of contracting services from the WA Inspectorate to conduct a comprehensive inspection at least once every three years should be pursued.

6.2. Access to records

If detainees make reasonable requests to see their records, consideration should be given to allowing them to see their records and to waiving the requirement that the request is made through the *Freedom of Information Act 1999* (ACT) or that the material be subpoenaed.

7. MONITORING CUSTODY RATES AFTER THE ESTABLISHMENT OF THE AMC

- 7.1. *Custody rates should be subjected to close scrutiny once the AMC is established.*
- 7.2. *To prevent the AMC becoming substitute accommodation for mentally ill persons, increased care options across the current in-patient non-forensic mental health facilities (such as the Psychiatric Services Unit and Brian Hennessy House) and within the community are required.*
- 7.3. Research concerning rates of recidivism amongst people attending periodic detention and the uptake of periodic detention by Indigenous people should be conducted.
- 7.4. The ACT law concerning imprisonment of fine defaulters should be revisited with a view to including the options of periodic detention, or, perhaps, informally supervised community service, rather than simply full-time imprisonment. In addition, special circumstances such as mental illness or substance abuse that diminishes criminal responsibility, or homelessness should be taken into account. There should be a five-year limit on enforcement of fines.

C. TERMS OF REFERENCE: HUMAN RIGHTS AUDIT OF ACT CORRECTIONAL FACILITIES 2006-07

The ACT Human Rights Commission will, under s.41(1)(a) of the *Human Rights Act 2004* ('HR Act'), review the effect and implementation of existing and proposed Territory law governing the operations of ACT Correctional Facilities in the period preceding the establishment of the Alexander Maconochie Centre ('AMC'). In particular, the operation of Belconnen Remand Centre ('BRC') and Symonston Temporary Remand Centre ('STRC') will be audited. The audit will be undertaken in August 2006 – June 2007, and a report given to the Attorney-General in mid 2007.

The audit will assess the law, policy and practices of these institutions against the benchmark of international human rights norms enshrined in the HR Act, including the International Covenant on Civil and Political Rights, and other relevant international standards.

The audit will address concerns relating to the existing institutions, but its primary purpose is to establish benchmarks for the new ACT prison so that it will operate consistently with human rights, and so that any possible inconsistencies in current arrangements are not transferred to the new prison. In this regard, the audit is forward-looking and constructive, similar to the Quamby Youth Detention Centre audit in 2005.

The audit will examine the current legal framework and operational practice in relation to high priority areas that engage fundamental human rights, such as:

- conditions of humane detention, including accommodation and food, privacy, access to medical care, educational and vocational programs, sport and recreation, and prisoners' ability to observe their religion;
- discipline;
- searches;
- segregation and seclusion;
- classification (for example, remandees and prisoners);
- independent monitoring; and
- visits and freedom of information and communication.

Attention will be focussed on the treatment of vulnerable detainee populations, such as Aborigines and Torres Strait Islanders, women, persons with disabilities (including those with mental illnesses), persons from culturally and linguistically diverse backgrounds, and gay, lesbian, bisexual, transgendered and intersex persons.

The audit methodology will include a review of the *Crimes (Sentence Administration) Act 2005* (ACT) in its application to remandees, along with the *Remand Centres Act 1976* (ACT) and the *Remand Centres Regulation 1976* as the latter continue to apply until the passage and entry into force of the *Corrections Management Act 2007* (ACT) and adoption of related procedures. The BRC/STRC Standing Orders will also be reviewed.

Consultation in relation to the review will include interviews with a cross-section of the detainees, staff and management. Other stakeholders, including statutory office holders, non-government organisations, advocates, professionals and service providers will also be consulted as far as possible.

D. HUMAN RIGHTS PRINCIPLES UNDERPINNING THE AUDIT

a) Overarching principles – respect for human dignity and the presumption of innocence

Two very important human rights principles are of central importance to the audit. The first, reflected in s.19 of the HR Act, is that, except in so far as the fact of incarceration itself requires limitations, all detainees are owed human rights and must be treated with respect for the inherent dignity of the human person. The preamble of the HR Act states that human rights are necessary for all individuals ‘to live lives of dignity and value’. Section 19 emphasises that persons in detention are still owed human rights.

The second important principle is that persons on remand must be treated in accordance with the presumption of innocence. Section 22(1) of the HR Act provides that ‘[e]veryone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law’, while section 19(2) of the HR Act requires that accused persons be segregated from convicted persons.

The presumption of innocence is largely concerned with how a criminal trial is run, but it also affects the treatment of remandees in detention. Detention of remandees is not meant to be a punishment. This is spelt out in international instruments such as the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (‘Body of Principles’)² and the Standard Minimum Rules for the Treatment of Prisoners (‘SMR’).³

b) Provisions of the HR Act generally

The following provisions of the HR Act provide the main benchmarks for the audit. These provisions all draw on the Articles of the International Covenant on Civil and Political Rights which, along with the general comments and views of the UN human rights treaty monitoring bodies,⁴ are expressly relevant to the interpretation of the sections of the HR Act.⁵

- Section 8 Recognition and equality before the law
- Section 10 Prohibition on torture, cruel, inhuman or degrading treatment or punishment
- Section 11 Protection of the family and children
- Section 12 Privacy and reputation
- Section 14 Freedom of thought, conscience, religion and belief
- Section 16 Freedom of expression
- Section 17 Taking part in public life
- Section 18 Right to liberty and security of person
- Section 19 Humane treatment when deprived of liberty
- Section 22 Rights in criminal proceedings
- Section 26 Freedom from forced work
- Section 27 Rights of minorities

2 Principle 8 says that ‘[p]ersons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.’ Principle 36(2) says: ‘[t]he imposition of restrictions upon [an untried] person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.’ Body of Principles GA Res 43/173, 4 December 1988.

3 Rules 84 – 93 make detailed provisions concerning a ‘special regime’ for untried prisoners that follows from the basic proposition that ‘[u]nconvicted prisoners are presumed to be innocent and shall be treated as such’ (rule 84(2)). The SMR were adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

4 The seven core UN human rights treaties are all monitored by committees of independent experts. The committees all review reports submitted by countries periodically and issue their ‘concluding observations’ on these reports. Additionally, the committees have the power to issue general comments or recommendations which usually set out the committees’ interpretation of particular provisions. Some of the committees also have the power to hear complaints or ‘communications’ by individuals and will issue their ‘views’ with respect to these.

5 HR Act, s.31.

c) Other United Nations standards concerning persons in detention

Section 31(1) of the HR Act provides that international law may be referred to when interpreting a human right. The HR Act dictionary includes in its definition of international law ‘declarations and standards adopted by the United Nations General Assembly that are relevant to human rights.’ These standards may therefore be referred to when interpreting the provisions of the HR Act. The following instruments are of key importance for the purposes of this audit.

- Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (‘Body of Principles’).⁶
- The Basic Principles for the Treatment of Prisoners (‘Basic Principles’).⁷
- The Standard Minimum Rules for the Treatment of Prisoners (‘SMR’).⁸

The Human Rights Committee, the UN Committee of 18 independent experts that supervises the International Covenant on Civil and Political Rights (‘ICCPR’), has said that the SMR ‘constitute valuable guidelines for the interpretation of the Covenant’,⁹ and it has invited countries to tell the Committee how they have implemented various UN instruments, including the SMR and the Body of Principles, when they make their five-yearly reports to the Committee.¹⁰

d) Provisions of the International Covenant on Economic, Social and Cultural Rights (‘ICESCR’)

Certain economic, social and cultural rights are also audit benchmarks, as they are components of the right to humane treatment in detention (protected by s.19 of the HR Act). The HR Act does not protect economic, social and cultural rights in general terms. However, human rights support each other, so some civil and political rights protect economic, social and cultural rights.¹¹ The following provisions of the ICESCR are particularly relevant:

- Article 11 Right to an adequate standard of living, including adequate food, clothing and housing
- Article 12 Right to the highest attainable standard of physical and mental health
- Article 13 Right to education, particularly ‘fundamental education’, which encompasses primary school level education for everyone who has not completed such education

Other United Nations instruments are also relevant – for example, the *United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*.¹²

e) National standards relating to corrections

The key national standards regarding corrections are the *Standard Guidelines for Corrections in Australia* (revised, 2004). These standards were adopted by the Corrective Services Ministers’ Conference in July, and the most recent revision was adopted in July 2004. Based on international documents such as the Standard Minimum Rules, the Standard Guidelines set down various principles such as the avoidance of prolonged solitary confinement. The Standard Guidelines are not legally binding.

6 GA Res 43/173, 4 December 1988.

7 GA Res 45/111, 14 December 1990.

8 Adopted in 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in resolutions 663C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Although the SMR were adopted by the Economic and Social Council of the United Nations, rather than the UN General Assembly, many of them reflect existing legal provisions – for example, rights set out in the ICCPR – and those which do not are commonly referred to during the interpretation of hard legal provisions. See for example, the Human Rights Committee’s views in *Mukong v Cameroon* (448/1991), UN Doc CCPR/C/51/D/458/1991 (1994), at para 9.3. See also, Nigel Rodley, *The Rights of Prisoners under International Law* (2nd edn 1998), at p 281.

9 *Potter v New Zealand*, 632/1995, UN Doc CCPR/C/60/D632/1995 (1995), at para 6.3.

10 See UN Human Rights Committee, General Comment 21 (Replaces General Comment 9 concerning humane treatment of persons deprived of liberty (Article 10)), at para 5. The general comments are available in a compilation, UN Doc HRI/GEN/Rev.7, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ca12c3a4ea8d6c53c1256d500056e56f?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ca12c3a4ea8d6c53c1256d500056e56f?Opendocument).

11 For example, the Indian Supreme Court has read the right to work into the right to life. See *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 Supreme Court 18.

12 Adopted by General Assembly Resolution 46/119, 17 December 1991.

National standards relating to health in corrections include the *National Statement of Principles for Forensic Mental Health* (2002). The National Mental Health Working Group of the Australian Health Ministers' Advisory Council approved this Statement, and the Statement was presented to the Correction Service Administrators Conference in May 2003. It contains 13 principles regarding offenders or those accused of crimes and who have a mental illness.

Key areas focussed upon in the audit are:

- conditions of humane detention, including accommodation and food, privacy, access to medical care, educational and vocational programs, exercise and recreation, and detainees' ability to observe their religion;
- detainee safety and prevention of deaths in custody;
- discipline;
- searches;
- segregation and seclusion;
- classification (eg remandees and prisoners; separation of vulnerable prisoners from the mainstream etc);
- monitoring;
- visits and freedom of information and communication;
- use of force; and
- drug testing.

These areas usually touch on more than one of the rights set out in the HR Act, and in many instances involve not only the prisoner's rights, but also the rights of others such as the prisoner's family, and the rights of custodial officers and other staff working at the remand centres.

The audit considered the position of particularly vulnerable detainee populations – namely, Aboriginal and Torres Strait Islanders, persons with disabilities, women, persons from culturally and linguistically diverse backgrounds, and gay, lesbian, bisexual, transgendered and intersex persons. It is important to the fulfilment of s.8 of the HR Act, which deals with recognition and equality before the law, and s.27 of the HR Act, which concerns the rights of minorities, that the experiences of these detainees are accounted for.

E. THE AUDIT METHODOLOGY

The Human Rights Commissioner, Dr Helen Watchirs, and the principal researcher, Dr Penelope Mathew, made preliminary visits to Belconnen Remand Centre, Symonston Temporary Remand Centre and Symonston Periodic Detention Centre, the Magistrates Court and Tribunals and Supreme Court cells and the City Watchhouse¹³ and to Junee prison (a privately run prison in New South Wales where some ACT prisoners are detained). Visits were also made to three correctional facilities in Perth: Boronia pre-release centre for women; Banksia Hill Juvenile Detention Centre; and Casuarina Prison (which is for male prisoners). In addition, Dr Mathew visited the Metropolitan Reception and Remand Centre in Silverwater, Sydney (which is a state-run institution), and Hakea Prison, which is a remand facility in Western Australia. Dr Watchirs visited, and Dr Mathew spoke with, the Victorian Ombudsman's office in connection with their report on the conditions for persons held in custody. The Commissioner and principal researcher regret that they were not permitted access by NSW Corrective Services to Goulburn gaol, where some ACT prisoners are accommodated. Given that other ACT government officers had visited Goulburn gaol without issue, it appears that there is undue sensitivity to human rights monitoring.

The audit was informed by legal research, particularly of decisions of the UN Human Rights Committee, the European Court of Human Rights and the UK courts. The principal researcher was ably assisted in this task by a final year law student at the Australian National University, Ms Elinor Jean. Ms Nadiyah Tarbet, Complaints Intake and Liaison Officer at the Human Rights Commission, also kindly and ably assisted with research tasks, while Ms Jenny Earle, Human Rights and Discrimination Law Policy Adviser gave advice concerning issues of discrimination, and Ms Kezlee Gray, Senior Conciliator and Review Officer, also provided information on discrimination.

After examining the Standing Orders governing the remand centres and related procedures, and consulting with stakeholders and other experienced persons in the field, three detailed qualitative questionnaires for detainees, staff and health professionals were developed for the purpose of conducting semi-structured interviews. In general, staff attempted to elicit answers to every question, but with a view also to allowing interviewees to tell Commission staff what they thought was important. (The questionnaires appear in the appendices to this report.) Over 30 detainees were interviewed using these questionnaires, along with nearly 20 custodial officers and other staff, and five health professionals.

Of the 36 detainees, 27 were non-Indigenous men, two were Indigenous men, and seven were women, none of whom identified as Indigenous. This breakdown is fairly representative of the overall population of the remand centres. The responses from interviewees were collated and studied to identify major patterns. They were used along with first-hand observations on numerous visits to the remand centres and consultations with other stakeholders in order to build a picture of adherence to human rights standards in the treatment of remandees in the ACT. In order to avoid the responses given by detainees being traced back to them, direct quotations have been avoided unless it is clear that the person could not be identified as a result of those quotes. The small size of the remand centres and the fact that detainees had to be called up to the visits room for interviews inevitably meant that some officers knew who had been interviewed by the Commission. Participants were well aware of this, but were assured that their interviews were confidential and that their responses would remain anonymous.

Detainees were asked questions from a long list, including questions about the process of induction, relations with staff, inter-detainee violence, discipline, searching, food, clothing, health, visits and access to lawyers. The interviews generally went for over an hour and gave detainees the opportunity to talk freely about their experiences on remand. A couple of the most interesting questions were asked at the end of the interviews, including whether detainees thought they were treated as human beings and persons of value at the remand centres. Over 60% of respondents

13 The Watchhouse and the court cells are temporary remand centres.

said they were not. When asked what the worst aspects of the remand centres were and what was the one thing they would change if they could, the most common answer was the boredom and lack of things to do in the remand centres, along with the loss of liberty and limited contact with family. Where at least 25% of respondents indicated a concern with a particular issue, this was identified as a theme. Common themes included the following. First, lack of privacy, for example, lack of shower curtains in some cells, lack of modesty walls for toilets in some cells, the fact that some shower curtains are clear rather than colored, and the fact that when a cell was shared or monitored by a camera there was no privacy when using the toilet. There were concerns about the way in which cell searches were conducted, with comments that the cell was 'torn' or 'ripped' up and things were not even put into a neat pile and that the process varied in terms of being neat or messy depending on the officers who were conducting the search. Detainees did not like the process of strip-searching generally or drug testing, which involves a strip-search and then two officers observe the urine sample being given, which, at the time most interviews were conducted, meant that detainees were completely naked while trying to provide a sample in front of two officers. Detainees often acknowledged that the staff didn't like these processes either and that the staff were just doing their jobs. At least 25% of respondents said that they had not been given sufficient information about their rights upon induction into the centre, saying that the induction booklet was either unavailable at the time, not given to them, not explained verbally to them, or that it was old and out of date in any event. Also, 25% of respondents had problems receiving phone messages from their lawyers. At least 25% of respondents said they had good relations with the staff, but at least 25% said their relations were variable depending on the staff member involved, with 10% saying that some or most of the staff had really bad attitudes towards detainees.

The interviews with staff sometimes provided information confirming that these general themes were real issues. For example, some staff confirmed that there could be problems providing a phone call on the first day or night in detention; that the process of cell-searching was not necessarily as neat or systematic as it could be; and that some staff did indeed have bad attitudes towards detainees. Interviews with staff also provided justifications for particular procedures, giving the 'other side' of the story. Sometimes, however, interviews with staff revealed blind spots about issues that were clearly more concerning to detainees than staff realised – lack of privacy being a good example. Other means of verifying information were also used – such as discussion about concerns raised by detainees with the Official Visitor and the ACT Ombudsman's Office. In the case of allegations of use of force and unfair disciplinary proceedings, the principal researcher undertook a review of the documentation and examined some digital footage of some incidents, as well as holding discussions with health staff about whether they had had any concerns about treating detainees after uses of force. The Commission always attempted to use multiple sources of evidence. Two drafts of the audit report were presented to ACT Corrective Services for correction of any factual errors and comments.

In addition to using these sources of information, the Commissioner and principal researcher are participants in the Human Rights Working Group for the establishment of the Alexander Maconochie Centre, chaired by John Paget. This detailed work helped inform the audit. The Commission also took into account the internal human rights audit of BRC conducted by ACT Corrective Services. The establishment of the Human Rights Working Group and the internal audit demonstrates a practical and principled commitment to human rights on the part of ACT Corrective Services. The Commissioner and principal researcher would like to thank the personnel of ACT Corrective Services for their assistance and cooperation throughout the course of the audit.

F. LEGISLATIVE FRAMEWORK GOVERNING BAIL AND THE TREATMENT OF REMANDEES

Remand in custody is an alternative to permitting a person to remain in the community on bail while awaiting trial, or prior to sentencing.¹⁴ Remand should be the exception, rather than the rule. This is reflected in s.18(5) of the HR Act.

‘Anyone who is awaiting trial must not be detained in custody as a general rule, but his or her release may be subject to guarantees to appear for trial, at any other stage of the judicial proceeding, and, if appropriate, for execution of judgment.’

Some stakeholders suggested that the establishment of a new prison may increase the number of accused persons remanded in custody, although studies suggest a more complex picture where factors such as the attitudes of prosecutors and judges determine the frequency with which imprisonment is ordered.¹⁵ Nevertheless, in a context where remand rates have risen,¹⁶ it will be important to monitor remand rates when the new prison is established, along with rates of custody more generally. It should be noted that the ACT has the lowest rate of imprisonment in Australia per head of 100,000 population – 70 (less than half the national average of 163), compared to 570 in the Northern Territory, 230 in Western Australia, and 180 in Queensland.¹⁷ As in all jurisdictions in Australia, Indigenous rates of imprisonment are disproportionately high, although the ACT figures are the lowest in the country. The national rate for imprisonment of Indigenous adult offenders in 2005-06 was 2,030.6 per 100,000 Indigenous adults, whereas the rate for non-Indigenous adult offenders was 118.7 per 100,000 non-indigenous adults.¹⁸ The ACT figure was about 500 Indigenous adults per 100,000 Indigenous adults, which is approximately 75% below the national average.¹⁹

Once a person is on remand, the applicable legal rules shift from those set out in the *Bail Act 1992* to the legislation that covers correctional institutions. Until 2 June 2006, the BRC and STRC were governed by the *Remand Centres Act 1976* and the *Remand Centres Regulation 1976*. These instruments have been formally repealed. However, sections 604, 605 and 607 of the *Crimes (Sentence Administration) Act 2005* make clear that, with a couple of exceptions,²⁰ remand in custody is governed by the *Remand Centres Act 1976* for the period of 2 June 2006 until the commencement of the legislation governing the new prison - the *Corrections Management Act 2007*, which was passed on 31 May 2007, has a default date for entry into force of 18 December 2007²¹ (although it is possible that an earlier date may be set).

Section 8 of the *Crimes (Sentence Administration) Act 2005* sets out an important basic principle concerning the treatment of remandees.

‘8. Treatment of Remandees

(1) Functions under this Act in relation to a remandee must be exercised, as far as practicable, as follows:

(a) to recognise and respect that the remandee must be presumed innocent of the offence for which the remandee is remanded;

¹⁴ For the relevant legislation governing bail in the ACT, see the *Bail Act 1992* (ACT).

¹⁵ See R. Sarre, S. King and D. Barnford, ‘Remand in Custody: Critical Factors and Key Issues’, Australian Institute of Criminology, No. 310 (May 2006): <http://www.aic.gov.au/publications/tandi2/tandi310.html>.

¹⁶ *Ibid.*

¹⁷ See the figures on average daily imprisonment rate compiled by the Australian Bureau of Statistics for the March quarter of 2007, <http://144.53.252.30/ausstats/abs@.nsf/Latestproducts/4512.0Main%20Features2Mar%202007?opendocument&tablename=Summary&prodno=4512.0&issue=Mar%202007&num=&view=accessed 22 June 2007>

¹⁸ Productivity Commission, *Report on Government Services – Indigenous Compendium* (2007), at p 74.

¹⁹ *Ibid.*

²⁰ The exceptions are ss.15 and 16 of the *Remand Centres Act 1976*, which do not apply during the interim custody period. See s.607(2) of the *Crimes (Sentence Administration) Act 2005*. In addition, it should be noted that s.605 of the *Crimes (Sentence Administration) Act 2005* imposes the caveat that provisions of the *Remand Centres Act 1976* have no effect if they are incompatible with provisions of the new law.

²¹ Under s.79 of the *Legislation Act 2001* (ACT), the default position is that an Act will commence 6 months after the date of its notification. The *Corrections Management Act* was notified on 18 June, 2007.

- (b) to respect and protect the remandee's human rights;
 - (c) to ensure the remandee's decent, humane and just treatment;
 - (d) to preclude torture or cruel, inhuman or degrading treatment.
- (2) Also, functions under this Act in relation to a remandee must be exercised, as far as practicable, as follows:
- (a) to recognise and respect that the detention is not imposed as punishment of the remandee;
 - (b) to ensure that the remandee is not subject to punishment only because of the conditions of detention;
 - (c) to ensure the remandee's conditions in detention comply with the requirements under the *Corrections Management Act 2007*.²²

The detail concerning remandees' treatment prior to the commencement of the *Corrections Management Act 2007* is to be found in the *Remand Centres Act 1976*. Its provisions include:

- medical examinations (s.19);
- entitlements of detainees (s.20) and their withdrawal (s.21);
- use of force (s.22);
- complaints (s.23 deals with requests or appeals by detainees); and
- the appointment of the 'Official Visitor' (s.6A, B and C) and his or her duties (s.25 requires the Official Visitor to visit once a week and inspect the centre and to inquire into complaints by detainees) and complaints to the Official Visitor (ss.25 and 26).

Further detail concerning remandees' treatment is found in the BRC/STRC Standing Orders and procedures. In this report, references are made to the existing Standing Orders and procedures where relevant. However, it should be noted that in anticipation of the enactment of the *Corrections Management Act 2007* and the establishment of the new prison, new procedures are in the process of being developed.

22 It was envisaged that the Corrections Management Bill would be passed in 2006, however it was not passed until 31 May 2007.

G. BRIEF DESCRIPTION OF THE ACT'S REMAND CENTRES AND BACKGROUND OF THE NEW PRISON

The Belconnen Remand Centre ('BRC') was established in 1976 to hold around 16 people. It now has a capacity for 69 people. BRC is generally not fit for purpose. It is a rabbit warren of extensions. The yards onto which the cells open are claustrophobic. They all have the feel of an internal space, as they are covered with mesh overhead, and walled in on all sides, with no sense of open space. Because of the large number of detainees accommodated in each yard, the yards are worse than the 'cage' at Quamby Youth Detention Centre that the Human Rights Commissioner recommended should be removed in 2005.²³ A detainee interviewed for the audit who had been in Junee prison commented on the difference that the open space and greenery there made to detainees' well being and to relations between staff and detainees.

A detainee's life on remand consists of time spent in a small cell – often with another detainee as many of the cells are dual occupancy or 'two-out' cells – broken by time spent in a larger, but still crowded yard, with very little to do. Detainees are locked in their cells at 6 pm during winter (the time is extended to 6.30 pm in summer). The desirability of a later time has been noted at least once before, in the Coroner's report concerning Mr Ian Bransby's death in custody in 1998.²⁴

Ian Bransby's death is one of three deaths in custody that have occurred at BRC. One death was due to natural causes, while two, in 1996 and 1998, were suicides. In his report, the Coroner noted the recommendation by Dr Rosendahl, who then ran the medical clinic in BRC, that detainees should be locked in their cells at 10 pm and said:

*'[i]t is necessary to return to the proposition that detainees are not convicted prisoners. The present Remand Centre incorporates all of the worst features of a gaol without having any of the ameliorating facilities available to provide the detainees with meaningful employment, occupations or recreations. It is therefore even more important that detainees not be isolated in cells for long periods of time. It would, of course, be preferable for a new facility to be constructed to replace the present, inappropriate remand centre.'*²⁵

In 2001, the Symonston Temporary Remand Centre ('STRC') was established on the site of the former youth detention centre, because it was recognised that the BRC could no longer accommodate all remandees in the ACT.²⁶ The capacity of STRC, which commenced operation in October 2002, is 30 detainees. STRC is a little less claustrophobic than BRC, as the cells are more modern, and the yards are lighter. However, the basic structure of STRC is similar to BRC and one of the yards (A yard) is substandard by comparison with the other yards and its use is avoided, if possible.

The undesirable consequence of the lack of space prior to the establishment of the STRC was that remandees were accommodated in the Magistrates' Court cells or the Watchhouse at night and ferried to the BRC during the day. In 1996, the Ombudsman conducted an own motion investigation into overcrowding at BRC. She made the following comments:

*'It is inappropriate to use the police cells as a de facto Remand Centre for a number of reasons including: detainees see it as punishment to be moved from the BRC to the watchhouse; detainees are strip-searched when returned to the BRC; AFP officers do not have the same training as the Corrective Services officers in dealing with detainees; detainees at the watchhouse lack facilities for exercise; the watchhouse prohibits detainees from smoking cigarettes; detainees do not have radios in their cells as they do at the BRC.'*²⁷

23 Recommendation 7.4. Human Rights Audit of Quamby (2005), available at: <http://www.hrc.act.gov.au>.

24 *Inquest into the Death of Ian Glen Bransby*: <http://www.courts.act.gov.au/magistrates/dec/bransby.html>.

25 *Ibid.*

26 See the *Declaration of Temporary Remand Centre*, 23 April 2001. A new declaration has been made each year pursuant to s.5 of the *Remand Centres Act 1976*. See the *Remand Centres (Temporary Remand Centre) Declaration 2007* (No 3), (effective 16 February 2007 – 15 February 2008), Notifiable Instrument 2007-58.

27 Ombudsman, *Own motion investigation of complaints about overcrowding at the Belconnen Remand Centre and the treatment of detainees*, December 1996, at p 12.

Use of police cells continues today in Victoria and has attracted adverse comment, most recently in the 2006 Report of the Ombudsman Victoria and Office of Police Integrity.²⁸

In the ACT, the Magistrates Court and Tribunals and Supreme Court cells, the City Watchhouse Cells and the Woden police station cells are declared as temporary remand centres.²⁹ As the Ombudsman and the AFP conducted a separate review of the Watchhouse in 2007, this report does not devote much attention to conditions of detention there.³⁰ However, it is necessary to comment on the suitability of the Watchhouse and the court cells for remand purposes. Although police lock-ups are required for prisoners refused bail over the weekend, and one can also imagine emergencies in which extra space might be required so that the court cells might be used, these cells are either unusable or inappropriate for the purpose of remand.

The Supreme Court cells have no shower facilities and bedding would have to be placed on the floor. The padded cell is archaic and is not to be used. The padding is black and there is no natural light. This means that a prisoner at risk of self-harm could not be accommodated there. It is highly questionable whether padded cells are the best means by which to deal with the problem of self-harm anyway, and the new prison has been designed without one. There was an incident during 2006 at the Supreme Court cells when a detainee injured himself severely by jumping headfirst off the modesty wall (which shields the toilet from view).

The Magistrates Court cells have not been used for remand purposes since the establishment of STRC. In some of the cells, there is no toilet, so detainees must be taken to a toilet outside the cells. In the cells for

adult males, the toilet has no modesty wall (despite the fact that when awaiting a court appearance, more than one man may be held in the cell). The padded cell is not completely safe as the windows are encased in metal. Court staff also noted that there were problems with the cleaning service and the cells were noticeably more dingy than either the Supreme Court cells, spartan though they are, or the City Watchhouse cells. Woden police cells are currently only used for transit of detainees, who are all transferred to the City Watchhouse. This is because of a problem with the layout of the cells area. The holding cells at the four Canberra police stations other than the City Watchhouse are only used as an interim measure prior to the transfer of arrested persons to the Watchhouse.³¹

The City Watchhouse cells accommodate prisoners denied bail over the weekend. The Magistrates' Court has a special sitting on Saturday morning and does not sit again until 9.30 am on Monday. If people are brought into the Watchhouse over the weekend and are not bailed by the police after they are charged, they are held in custody for the weekend. The cells do have the basic facilities to hold someone on remand for a very short period, as there are toilets in the cells,³² and there are common shower facilities. The Watchhouse review found that there were two ways in which the Watchhouse cells did not comply with the recommendations of the Royal Commission into Aboriginal Deaths in Custody, as well as identifying some other problems.³³ The Human Rights Commission shares the conclusion drawn by the Ombudsman in 1996 that it is inappropriate to use these cells in cases where BRC is overcrowded.

The ACT Government decided in 2003 to establish a new prison, to be called the Alexander Maconochie Centre (AMC),³⁴ and to decommission BRC. The decision to build the prison

28 Victorian Ombudsman & Office of Police Integrity, *Conditions for Persons in Custody* (2006).

29 For the latest declarations see the *Remand Centres (Temporary Remand Centre) Declaration 2006* (effective 18 August 2006 – 2007), Notifiable Instrument 2006-245 (Woden Police Station) and *Remand Centres (Temporary Remand Centre) Declaration* (No 1) NI 2007-56 (City Watchhouse) and (No 2) NI 2007-57 (Magistrates Court and Tribunals and Supreme Court cells), (both effective 16 February 2007 – 15 February 2008).

30 Commonwealth Ombudsman, *Review of ACT Policing's Watchhouse operations: A Joint Report by the Australian Federal Police and the Commonwealth Ombudsman* (2007).

31 *Ibid*, para 2.4.

32 One of the recommendations of the Watchhouse review was that modesty screens should be placed around toilets in all cells, except the two padded cells, in order to ensure privacy: *ibid*, recommendation 8.

33 *Ibid*, at paras 3.13 and 3.14.

34 Alexander Maconochie was governor of Norfolk Island from 1840 – 1844 when it was a prison island for the most recalcitrant convicts, and he also sought reform of the convict system in Van Diemen's land.

follows a number of inquiries dating back to 1984 as to whether the ACT should have a prison, which are documented on the ACT government's website.³⁵ The new prison is to be governed by the *Corrections Management Act 2007*, which was enacted on 31 May 2007 and will commence later this year. The prison will house up to 300 detainees, with 15 to be accommodated in a transitional release centre beyond the secure perimeter.

Whilst a new building is clearly essential, it is also vital that the culture and practice of the new prison respects human rights. The ACT Government and Corrective Services have made it their aim that the new prison should be a 'healthy prison' – namely one in which everyone feels and is safe, is treated with respect as a human being, has the opportunity to improve him or herself through meaningful activities, and is able to maintain contact with families and to prepare for release.³⁶ The government obtained expert input from a number of sources, including, at the early stages of the project, Professor Peter Camilleri and Dr Morag McArthur from the Australian Catholic University, who have independently undertaken important research into self-harm in prison.³⁷ Their research shows the importance of, among other things, changing the predominant prison culture of control and security in order to focus on detainees' needs. These needs include continued contact with family members, currently made very difficult by the placement of ACT prisoners in New South Wales, mostly at Junee, but some up to 500 kilometres away from Canberra.

Importantly, the Preamble of the *Corrections Management Act 2007* explicitly refers to the HR Act, and sections 9 and 12 refer to some of the standards contained in the HR Act. The HR Act provides clear and objective standards by which to measure the treatment of persons in custody. The current legislative framework governing the treatment of remandees is also informed by human rights standards. The present report now turns to a detailed examination of the current treatment of remandees in BRC and STRC against those standards, with recommendations for improvement in the short and longer terms.

35 <http://www.cs.act.gov.au/amc/home/history>.

36 See Functional Brief, Alexander Maconochie Centre, at 5: available at http://www.cs.act.gov.au/__data/assets/pdf_file/0010/35776/FB.pdf.

37 P. Camilleri and M. McArthur, 'Self-Harm in Prison: the Australian Capital Territory's (ACT) Prison Project and 'Best Practice' in Prevention and Intervention Strategies – Learning from Australian and International Experiences', *International Journal of Law and Psychiatry* (forthcoming, 2008).

THE AUDIT – INTRODUCTION

The report identifies a number of problems that require urgent attention. These are dealt with in the section below (section 1). These problems concern staffing levels and the impact on time spent by detainees out of cells; the lack of organised activities for detainees; the impact of overcrowding at the Periodic Detention Centre on the remand centres, particularly women detainees; and the question of an interim facility for forensic mental health patients prior to the establishment of a new facility as recently announced by the ACT Government.

The report then turns (in section 2) to examine a number of other areas in which rights essential to the humane treatment of detainees have been compromised on the basis of operational and resource constraints. This is followed by a section (section 3) concerned with areas of systemic discrimination. Changes in both these areas must be implemented now at the remand centres if there is to be a transition to a healthy prison. Health services are then discussed (section 4). The central principle of equivalence is shown to require a health service for prisoners that is as good as and which forms part of the health system for the wider community. A needle and syringe exchange as well as measures to promote safer sex are recommended, along with assured access to allied health services and better record keeping. The culture of the remand centres is then examined with particular reference to discipline, uses of force, and violence and bullying (section 5). The related question of oversight mechanisms is also considered (section 6). The report ends with a short discussion of monitoring measures to keep custody rates down (section 7).

In each section of the report, particularly relevant international human rights standards are identified in the grey shaded area at the beginning of the text. Of fundamental importance is the principle of humane treatment in detention. Section 19 of the HR Act sets out the basic principle that people in detention must be humanely treated. This provision emphasises the fact that all detainees have human rights, subject to any demonstrably necessary adjustments required by the fact of detention. Accordingly, any violation of human rights may contravene this section of the HR Act.³⁸ The more serious violations of s.19 will also violate s.10 of the HR Act, which prohibits torture and cruel, inhuman or degrading treatment or punishment.

In order to assess whether a detained person has been treated with humanity, the conditions, circumstances and purpose of the detention will be considered. Inhumane treatment cannot be justified on the grounds of lack of resources or financial difficulties.³⁹

³⁸ For example, deprivation of the right to privacy may mean that the person has been subjected to inhumane treatment.

³⁹ The obligations imposed with respect to civil and political rights are immediate and are not qualified in any way by questions concerning resources. By contrast, economic, social and cultural rights permit some consideration of resource constraints with respect to some obligations. Article 2 of the ICESCR imposes an obligation of progressive implementation of the rights. Countries are to ‘... take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights...’. However, even with respect to economic, social and cultural rights, some obligations, such as anti-discrimination, are immediate and are not resource-dependent.

1. MATTERS REQUIRING URGENT ATTENTION

1.1. INAPPROPRIATE ACCOMMODATION AND OVERCROWDING

Relevant Standards

HR Act, s.12 (privacy).

International Covenant on Economic, Social and Cultural Rights ('ICESCR') Article 11 – the right to adequate housing.⁴⁰

Standard Minimum Rules ('SMR') 9(1) 'where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.'

SMR Rule 86 'Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.'

SMR Rule 10 'All accommodation ... and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.'

SMR Rule 11(a) 'In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.'

SMR Rule 12 'The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.'

SMR Rule 13 'Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.'

SMR Rule 19 'Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.'

⁴⁰ The right to housing may be viewed as relevant to prisoners, as recognized by s.35(2)(e) of the South African constitution, which guarantees detained persons 'the provision, at state expense, of adequate accommodation.' See discussion in P. de Vos, 'The Right to Housing', in D. Brand and C. Heyns (eds) *Socio-Economic Rights in South Africa*, 85 (2005), http://www.chr.up.ac.za/centre_publications/socio/socio.html.



Figure 1 – toilet in a cell at BRC

A yard	Generally used for protected detainees
A annex	Used for segregation, and as a last resort when overcrowded
B yard	Mainstream or protection
C yard	Generally used for protection of detainees accused of particular offences (strict protection)
D yard	Accommodation for seriously mentally ill people, as well as women upon induction to the remand centre, and sometimes other detainees at risk of self-harm
E yard	Used for segregation, and when overcrowded
E dorm	Currently used for women, generally viewed as unsuitable
F yard	Mainstream (the most modern and comfortable)

Table 1 – Layout of yards, Belconnen Remand Centre

At BRC, detainees are accommodated in six different ‘yards’ which each have a number of cells. B and F yards are ‘mainstream’ yards for those remandees who do not require protection from any other detainees. F yard is the most modern and comfortable of the yards. Detainees requiring protection (for example, because they are vulnerable) are often accommodated in A yard, while C yard is often used for detainees who require strict protection because of the nature of the offence that they are alleged to have committed. The use of E yard is generally avoided because it is substandard, but it is sometimes used to segregate detainees for disciplinary purposes as well as when the centre is overcrowded. A yard has an annex (‘A annex’) that can be locked and used for segregation, and it may be used when the centre is overcrowded. There is also a dormitory, the ‘E dorm’ that is generally unused, although it has recently been used for women. D yard is where detainees with serious mental health problems are accommodated. It is a very modern area, but there are significant problems with it.

The cells at both remand centres are very basic. There is a bed with a fairly thin mattress, a couple of blankets, and a thin pillow. Some detainees complained about the linen being stained. The toilet and shower facilities are generally inside the cell, leading some detainees to say that they lived in their bathrooms. However, the Commission does not instead endorse the use of common shower blocks, due to increased opportunities for violence and rape. There are modesty walls for the toilets in the cells in most yards. The toilets are stainless steel and have no seats.

In interviews, detainees often responded that the cells got very cold or very hot and some said that they did not receive much natural light in their cells. In cases of small yards with cells that face North-South, the overhead mesh, which is there to prevent escape, can give the yards a fairly gloomy appearance, while not necessarily offering much protection from sunburn. Fans had been removed from BRC, because of damage to some of them by detainees, at the time interviews were being conducted, and there was a significant delay in their replacement.

Detainees at BRC are often housed in 'two-out cells' i.e., cells that two people occupy. In C yard, four detainees sleep in one cell. There is another 'four-out' cell in B yard. The dual occupancy cells are not large. During one tour, Human Rights Commission staff took measurements of cells that were unoccupied, or whose occupants were absent. A two-out cell in A yard was 2.9 by 3.6 metres, which is 10.44 square metres. A two-out cell in F yard was 3 by 3.2 metres, which is 10.8 square metres. The ungenerous size of the cell is concerning, particularly when detainees are subjected to extended time in cells.

One reason for the common dual occupancy is lack of space. In 1996, the Ombudsman criticized the practice of dual occupancy because it conflicted with the requirements of the *Remand Centres Regulation*,⁴¹ which only permits multiple occupancy where security or medical grounds require it, or with Ministerial approval. It would be impractical for Ministerial approval to be sought in each case as the remand centres are often full and the requirements to keep certain categories of detainees separate (for example, vulnerable detainees placed on protection, women and detainees with mental health needs) means that there is literally little room for movement.

One contributing factor to overcrowding is the length of remand. The length of time spent on remand is of concern for a number of reasons. In the course of interviews, many officers described the design of BRC as being for a couple of weeks stay by a small number of detainees. As this report will show, the facility is not appropriate for a stay that is much longer than a few weeks, and the periods of remand can be quite lengthy. The average time spent on remand, which is 41 days, is misleading. In one exceptional case, a detainee had been on remand for about three years. In this particular case, there were many factors that contributed to the lengthy period of remand, including changes in plea, a period during which he was unfit to plead, and the fact that two separate trials were required. Detainees are aware that time served on remand will count towards their sentence and sometimes would rather stay at BRC than NSW facilities, and consequently not press for their cases to be heard promptly. Detainees are closer to their families if they remain in the ACT remand centres. In some cases, detainees have reported that they fear for their lives if transferred to Goulburn gaol.

The periods of time spent on remand may be reduced when the AMC opens. In the meantime, however, the lengthy periods mean that conditions at the remand centres are unsatisfactory.

Unlike sentenced prisoners who will receive different security classifications according to their offences and behaviour, remandees are generally treated as high security risks. Both remand centres are maximum-security institutions. However, a distinction is made between men who may be accommodated at STRC and those who can only be accommodated at BRC. Only those men considered to be low risk, and who, in addition, do not require accommodation in the mental health area (BRC 'D' Yard) and who are not classified as prisoners at risk will be accommodated at STRC. Women are also generally accommodated at STRC. This is appropriate given the documented problems of overly high security classifications for women, and the Queensland

41 See 'Own motion investigation', footnote 27 above, p 4, and recommendations (a) and (b) at p 13.

Anti-Discrimination Commission's recommendation that female prisoners on remand should not automatically be classified as maximum security prisoners.⁴² In general, STRC is more relaxed, because it is a more pleasant environment, and has benefits such as regular barbecues that are appreciated by detainees. The use of STRC as an incentive for good behaviour is appropriate. On the downside, the main base for services such as health services is BRC, so transfers are sometimes necessary for this purpose.

1.1.1. Women at the remand centres – a prison within a prison

Women remandees are generally accommodated at STRC in a yard ('B' yard) that is separate to, though adjacent to the men's yard ('C' yard). From around April 2007, the women at STRC were subjected to significant disruption as a result of insufficient space at the Periodic Detention Centre (PDC) next door.

Periodic Detention on weekends is a sentencing option that minimises the disruption to community ties (families, work etc) that occurs with full-time detention. It is a particularly good option for women. The PDC has 30 beds and is cramped even when only 37 people attend, as seven extra camp beds are used, and one of the rooms is an eight-bed dormitory, with four double bunk beds. From April 2007, numbers attending PDC soared to around 50 people. There were few women on remand at STRC – approximately three of them at this particular time – and the women's yard at Symonston can accommodate 10 detainees. The decision was made to place people serving periodic detention sentences on weekends in STRC, and to bus women remandees to BRC for the weekend where they would be accommodated in the E dorm. This unsatisfactory arrangement may well continue until the construction of the AMC is completed. In addition, because of a problem in B yard, when Human Rights Commission staff visited the women in July 2007, they were being accommodated in sub-standard A yard at STRC.



Figure 2 – E dorm, Belconnen Remand Centre

On the Friday night (25 May 2007) that the Human Rights Commissioner and the principal researcher attended the PDC, six male remandees had also been transferred back to BRC – to E yard, a grim place commonly, though not exclusively, used for punishment. However, their places at the remand centres were, ultimately, not required and the men would therefore be transferred back to STRC on Saturday morning. Even if male remandees were not also affected by the situation at the PDC, it might be difficult to argue that the women were being discriminated against. Although the effect is unfair, the decision to move them is clearly necessitated by space

⁴² See *Women in Prison: a Report by the Anti-Discrimination Commission Queensland* (2006), recommendations 3 and 4, available on the Anti-discrimination Commission Queensland website: www.adcq.qld.gov.au.

constraints. The need to separate sentenced prisoners from remand centres means that moving some male remandees from STRC to BRC in order to accommodate other male sentenced detainees from the PDC in the men's yard at STRC is impermissible.⁴³ On the other hand, women should be detained in conditions that do not disadvantage them simply because there are only a few of them, and lack of resources are no excuse for poor treatment. Accordingly, it may be arguable that a violation of s.8 of the HR Act has occurred. Issues concerning systemic discrimination are returned to in section 3, below.

The treatment of women remandees compared with the male remandees could also be considered inhumane and contrary to s.19 of the HR Act. First, the dormitory-style accommodation is problematic for several reasons, not only because until recently it did not have heating, and it has problems with cockroaches.⁴⁴ Dorms would not be used for men because of security reasons. At one stage, the women said that 'nine and a half' women (referring to the fact that one of them was pregnant) were accommodated in the dorm, which has only six beds.

The bussing of women to STRC causes significant disruption to the women. At one point, there were three additional strip-searches (the subject of strip-searches is dealt with below under section 2.2.). After submission of this report in draft form to ACT Corrective Services, the number of strip-searches of these women was reduced. Other problems include packing and storage of property; travel sickness for one of the women; missed meals, with breakfast not being served until 11.30 am; disruption of visits; problems receiving medication; lost opportunities for the minimal work opportunities that exist at the remand centres; the general stress of having to move accommodation every three to five days; and, disturbingly, the women alleged that on their return to STRC after the weekend, they had to clean their cells of vomitus left there by sentenced detainees from the PDC. This is a likely scenario because while attendees at the PDC are breathalysed (oddly, they must be under 0.2 even though, provided they are not P- plater drivers, they can drive away from the centre so long as they are under 0.5), and their property is searched for drugs, they are not drug-tested and may therefore experience symptoms of drug withdrawal such as vomiting. Apparently this is due to a difficulty in processing the tests any night other than Friday night, which is an extremely busy time during which sentenced detainees are being admitted to the PDC.

CONCLUSIONS AND RECOMMENDATIONS

Arguably, women detainees are suffering a form of systemic discrimination because of the inadequate nature of the facilities. In addition to a possible breach of the right to equality (s.8 HR Act), the right to humane treatment may also have been violated (s.19 HR Act).

RECOMMENDATIONS.

1.1.1. In order to address overcrowding at the remand centres, the ACT Government should ensure that the Periodic Detention Centre has sufficiently large premises to accommodate persons currently sentenced to weekend detention, and should do so urgently before the establishment of the AMC.

1.1.2. Consideration should be given to mid-week periodic detention for people who are able to attend during the week.

⁴³ There might also be some argument concerning whether accommodation is an issue that may ground a claim in discrimination. In *James Rainsford v State of Victoria and Anor* [2005] FCFAC 163 (17 August 2005), a Victorian prisoner complained about the pain and discomfort that the prison transport had caused him due to a pre-existing back injury, and the effects on him of a nine-day lock-down that deprived him of exercise facilities. The Federal Magistrates Court held that there was no provision of a 'service' involved in relation to which the prisoner had been discriminated against. The Full Court of the Federal Court was critical of the Magistrates decision, however, and has remitted the case back to the Federal Magistrates Court and it was listed for hearing on 18 June 2007.

⁴⁴ Pest control is regularly used at BRC, but detainees and officers noted that cockroaches were a common problem.

1.2. MENTALLY ILL DETAINEES AT THE REMAND CENTRES

Detainees with serious mental health problems are accommodated in D yard in BRC. During the audit, D yard was the most distressing area Commission staff witnessed. One detainee who had recently been inducted was detoxing from ice. Commission staff also heard reports of a detainee who had refused to wear clothing for a number of days.

Sadly, it has been reported that prisons have become substitute accommodation for people with mental health problems.⁴⁵ One of the three deaths in custody at BRC was of a young man with a mental health problem for which he had tried in vain to get appropriate assistance in the community. This young man, Mr Shannon Camden, hanged himself at BRC in 1996 and was not found until much too late because of the actions and omissions of officers on shift that night – actions and omissions that they then tried to cover up. The Coroner ended his report with the words of this young man’s mother:

‘We would like it remembered that through the tragic death of our son, Shannon, the administering of the care, treatment and supervision of detainees at the Belconnen Remand Centre has been totally restructured to hopefully prevent a family ever having to endure the pain, suffering and grief which we will bear for the rest of our lives without our son, Shannon.’⁴⁶

In one case ongoing during the period of the current audit, a detainee was in the remand centre for nearly two years before suitable accommodation was found for him in a mental health facility (Brian Hennessy House). This man’s case illustrates the intolerable position faced by many mentally ill persons who come into contact with the criminal justice system in the ACT. Forensic mental health patients, that is, persons who are unfit to plead or found not guilty because of their mental health are often perceived as too dangerous to be placed in the available treatment facilities for mentally ill persons. Yet adequate treatment is not and probably cannot be provided in D yard. These problems have been acknowledged at least since the Ombudsman’s 1996 report.⁴⁷

Although D yard is one of the most modern parts of BRC, it is not a ‘therapeutic environment’, as it is rather like a fishbowl. Instead of an overhead mesh like the other yards, its roof is clear and traps heat. The cells, which are all camera’d in order to protect detainees from self-harm, are arranged in a semi-circle and have large windows that face a central podium where a correctional services officer monitors the yard 24 hours a day, seven days a week. Nurses and mental health staff visit D yard, but unlike an in-patient treatment facility, they are not present for most of the time. D yard is accurately described as a ‘holding yard’ by Correctional Services officers who are clearly distressed by what they witness there, particularly the deterioration of some detainees over time. It is clear that officers are aware that they do not have the appropriate expertise, nor is it their role to provide mental health care.

Officers confirmed that many uses of force in the remand centres involve mentally ill persons, often while in D yard. The conduct of the officers is not criticized here. Indeed, it should be noted that in one incident during the audit two officers injured their hands while trying vainly to prevent a woman in D yard from banging her head against the wall. However, mental health professionals indicated that it was highly unlikely that so many uses of force would be required if detainees were in a therapeutic environment. In such an environment, trained health professionals would have a constant presence and this would avoid, or those staff would be able to de-escalate, potentially violent situations.

It should also be noted that the Mental Health Official Visitors do not visit D yard because it is part of a correctional facility, rather than a designated mental health treatment facility. The

⁴⁵ See Mental Health Council of Australia, Brain and Mind Research Institute, and Human Rights and Equal Opportunity Commission, *Not for Service: Experiences of Injustice and Despair in Mental Health Care in Australia* (2005), at p 143. See also the *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living – Mission to Australia*, 11 May 2007, UN Doc. A/HRC/4/18/Add.2, at para 121.

⁴⁶ See the Coroner’s report, *Inquest into the circumstances surrounding the death of Shannon Robert Camden*, available at <http://www.courts.act.gov.au/magistrates/dec/camden.html>.

⁴⁷ Footnote 27 above, at pp 9 – 10.

Commission questioned experts about whether it would serve a useful purpose to recommend that the Mental Health Official Visitors visit D yard. Their view was it would only be helpful if there was a need to better voice any concerns of those detainees that could not be aired by the Official Visitor. Also as remand centres are not mental health facilities, to legally classify them as such would be inappropriate because they are not therapeutic environments.

D yard is also where young or otherwise vulnerable prisoners may be placed, as well as all women when they are first inducted into the remand centres. This situation violates the principle that women are to be separately accommodated from men when in detention (see 3.1. below). It is also not desirable for people without mental health problems to be placed there. Other detainees tend to describe D yard as 'the spinners' yard'. One young detainee who had been sentenced the day before his interview for the audit, described both his regret about his course of conduct, and the uncomfortable surroundings of D yard. There was also a woman detainee housed on several occasions in D yard whose mental state was not improved by the disruptive behaviour of detainees there. Everyone had to be exercised separately and large amounts of time were spent locked in the cells, while, at night, the noise of very distressed people prevented other detainees from sleeping.

After hours care was a particular problem addressed by officers in their interviews with Commission staff. The Mental Health Crisis Assessment and Treatment Team ("CATT") can be called after hours, but officers expressed concern about the assistance they received from CATT. These concerns were similar to those expressed by Watchhouse officers during the review of the Watchhouse.⁴⁸

More generally, officers expressed concern about the degree of 'ownership' by health authorities for detainees with mental health issues. Officers saw this as evident in the frequent inability to secure beds for detainees in the Psychiatric Services Unit ('PSU') at The Canberra Hospital, for example. The specialist psychiatrist for forensic services has been able to alleviate this problem to some degree, by using his powers to admit patients to the PSU.

Officers also perceived a difficulty when the detainee might have a 'dual diagnosis' of mental illness and substance abuse, or where there was some question as to whether, for example, psychosis was drug-induced. Similar comments were made to the Watchhouse review team by Watchhouse officers.⁴⁹

CONCLUSIONS AND RECOMMENDATION

D yard is not a therapeutic environment, and does not provide adequate mental health care for some detainees. This situation conflicts with the principle of equivalence in health care, which requires that health care services for people in detention must be as good as the services for people living in the community (see further section 4, below). The inadequacy of health care and the conditions in D yard, particularly in the case of women with very serious mental health problems, may, in combination, violate the prohibition of inhumane treatment in detention.

RECOMMENDATION.

1.2. In order to provide satisfactory treatment for forensic mental health patients, the secure facility to which the ACT Government has already committed itself should be established as soon as possible. If this is not possible in 2008 when the AMC opens, then an interim facility should be established as a matter of urgency.

⁴⁸ Watchhouse review, footnote 30 above, at para 4.32.

⁴⁹ *Ibid.*, at para 5.43.

1.3. TIME OUT OF CELLS

A feature of prison life of which the public is often unaware is the limited amount of time spent out of cells. At the remand centres, detainees are locked in their cells at 6 pm (or 6.30 pm in summer) until 7.30 am. Detainees are also locked in their cells at lunchtime, between 11.30 am and 1 pm. This means that routinely detainees spend at most nine hours out of their cell, and nine and a half hours in daylight savings periods. This latter period appears to be the one used for the ACT in Productivity Commission reports.⁵⁰ Detainees may also be locked in their cells for other reasons, for example if the centres are short-staffed. As Robinson comments, these unscheduled 'lock-downs' are in effect a form of separate confinement – although there is no restriction on association with other prisoners when released from the cells – but they are largely unregulated because prison authorities do not regard them as a form of separate or solitary confinement and legislation generally does not refer to lock-downs.⁵¹ These periods of time spent locked in cells also apply to all detainees, rather than being targeted at certain detainees (for disciplinary reasons, for example).

As stated earlier, the time of 6 pm for locking detainees in their cells led to criticism in the Coroner's Report on the death of Ian Bransby.⁵² Yet the situation has not changed. Detainees often complained about the early time they were locked in cells in the evening and overnight, at lunchtime, and the extra time spent locked down for various staffing reasons. A number of detainees complained that on one day during the last quarter of 2006 they had been locked in their cells for a period of 21 hours. According to the records kept by ACT Corrective Services, there were 41 lockdowns between July 2006 to 4 December 2006. By comparison, during the same period in 2005, there were only 12 lockdowns. The Human Rights Commissioner and others expressed concern in the media about the number and length of lock-downs. This suggests a need for external monitoring, as lock-downs may otherwise be viewed as small matters of operational consequence only. Apart from staff-shortages, some lock-downs were scheduled in advance for the purpose of much-needed training sessions for officers.

Detainees' complaints about lengthy periods of time spent in cells should not be dismissed. Many detainees dislike being locked in their cells, as would most people, although some appreciate the downtime away from crowded yards, and the fact that another day in detention is over. Locking detainees in at night, when staffing levels are always reduced, is a security measure designed to ensure the safety of detainees by lessening the risk of assault by other detainees, as well as decreasing the risk of escape. Unscheduled, lengthy lock-downs at the remand centres cannot be justified on these grounds, however. The further restriction on liberty over and above confinement within the remand centres and the cramped yards is keenly felt by many detainees.

Locking detainees in cells early or during periods when the normal schedule would be to have time out of cells has a number of undesirable consequences. The 6 pm time for locking detainees in cells affects the time of the evening meal and taking of evening medication, as well as detainees' ability to telephone their family. The unscheduled lock-downs had serious ramifications for privacy, particularly for those who were in the 'four-out' cells. At the other end of the spectrum, lock-downs result in loss of association, even with other detainees, for those in one-out cells. The adverse impact of confinement alone in a cell on a person's mental health is well understood. It is one of the reasons that the treatment of prisoners like David Hicks at Guantánamo Bay has been criticised. It was alleged that Hicks was locked in his cell for 22 hours a day. Similar criticism has been directed to the conditions of so-called 'super-max' facilities (also called a 'special handling unit'), where detainees who are perceived to be extraordinarily dangerous are confined in their cells for similarly long periods.

Although Corrective Services staff at the remand centres always attempted to keep visits going, there was at least one occasion on which a detainee and officers confirmed that a visit session for family and friends was cancelled owing to a lock-down. Officers and health staff confirmed that

⁵⁰ Productivity Commission, *Report on Government Services* (2007), at 7.15.

⁵¹ D. Robinson, 'Segregation', in D. Brown and M. Wilkie (eds), *Prisoners as Citizens* (2002), 214 at 231.

⁵² *Inquest into the Death of Ian Glen Bransby*, footnote 24 above.

external medical appointments were cancelled because of lock-downs or where the staff-shortage prevented an escort. Given the difficulty of arranging some appointments such as podiatry or dental work, the lock-downs could have consequences for detainees' health. Even the drug and alcohol program, which is run on-site, was negatively affected by lock-downs.

Resource constraints cannot be used to justify the excessively long periods of time spent in cells. This would be true for sentenced prisoners, but it is important to stress the fact that detainees in the remand centres have not been convicted. On particular days the limited time out of cells mimics some of the conditions of the worst offenders detained in super-max facilities. It should also be borne in mind that lock-downs create more work for officers as they need to engage with tense and disgruntled detainees, and to visit individual cells more frequently, meaning that there are occupational health and safety issues as well. It was apparent that there were a number of issues for staff at the remand centres that could lead to illness or injury, further contributing to staff-shortages, causing a cycle of further lock-downs, more stress and lower morale.

Decisions of courts and findings of international human rights bodies

The Standard Minimum Rules ('SMR') expressly provide for one to two hours out of cells. However, the SMR must also be read as a whole. In *addition* to the provisions concerning exercise and fresh air, the SMR contain provisions concerning work and education, and visits. The interrelationship between time out of cells and other activities important to a detainee's physical and mental health and well-being – education and work, visits with family and so on – requires a reasonable time out of cells.

It should also be remembered that the SMR are precisely that – a minimum. As stated in paragraph one of the Standard Minimum Rules,

'The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.'

Decisions of courts and international human rights bodies since the adoption of the SMR therefore provide essential guidance on the issue of time out of cells. The findings of the European Committee on the Prevention of Torture ('CPT') are that all prisoners should be able to spend a reasonable part of the day (eight hours or more) outside their cells.⁵³ Similarly, the 1978 Nagle Royal Commission into NSW prisons recommended that prisoners should not be locked in their cells overnight for longer than 10 hours.⁵⁴ In the Scottish case of *Napier, Re Petition for Judicial Review*,⁵⁵ a combination of factors that included remandees being required to spend around 20 hours locked in their cells, along with an archaic hygiene system, and lack of purposeful activities was held to violate the prohibition on degrading treatment in the European Convention on Human Rights.

Of course, some detainees may not wish to spend all of their allotted time out of their cells. During the audit, Commission staff observed that some remandees preferred to do quiet activities in their cells away from other remandees.

CONCLUSIONS AND RECOMMENDATIONS

The excessive periods of time spent in cells during the last quarter of 2006, combined with the small size of cells, particularly the two-out cells or the four-out cells and the impact on detainees' ability to have contact with the community outside (see further, section 2.9. below) could be

⁵³ European Committee on the Prevention of Torture 'CPT Standards', paragraph 47: available at <http://www.cpt.coe.int/en/docsstandards.htm>.

⁵⁴ *Report of the Royal Commission into New South Wales Prisons* (1978), 499 and 717.

⁵⁵ [2004] ScotCS 100. The case can be contrasted with some of the case-law from the European Commission of Human Rights (which was previously one of the supervisory bodies for the European Convention on Human Rights) where, for example, lock-downs had been necessitated by riots. See *Stephen Windsor v United Kingdom*, application no. 18942/91.

found to violate the right to humane treatment in detention. Given the difficulty in recruitment of experienced Correctional Services officers and the need to employ many more of them for the purposes of the AMC, the Human Rights Commission is concerned that time out of cells may continue to be adversely affected, and that steps must be taken to prevent this occurring. It is anticipated that there will be different shift arrangements at the AMC due to the larger workforce. Instead of the current two 12 hour shifts, three eight hour shifts are planned, which should permit the time that the detainees are locked in cells for the evening to be later than 6 pm. According to the Productivity Commission, the average out-of-cells time across Australia is 10.5 hours.⁵⁶ Therefore, the ACT should guarantee that individual detainees spend at least nine hours out of their cells each day, and should work towards ensuring that 10 hours are spent out of cells. This guarantee should not only be assessed on an average basis of the whole AMC as statistics could be misleading – eg the inclusion of detainees on transitional release with very long hours out of cells could disguise much fewer hours out of cells for detainees in cell blocks.

RECOMMENDATIONS.

1.3.1. At the remand centres (*and at the AMC*), detainees should be guaranteed the opportunity to spend a reasonable part of the day, being nine hours (*and 10 hours respectively, or more*) outside their cells.

1.3.2. Monthly monitoring by an oversight body (for example, by the Ombudsman) should occur to ensure that detainees at the remand centres are able to spend at least nine hours out of their cells, and reports should be made to the Attorney-General, Human Rights Commission and the Chief Executive of the Department of Justice and Community Safety if the target of nine hours for individual detainees is not regularly met.

1.3.3. Staffing levels must be sufficient to ensure that lock-downs of the frequency and duration of those occurring at the remand centres in the last quarter of 2006 will be avoided.

1.4. ORGANISED ACTIVITIES

Relevant Standards

HR Act, s.19 (humane treatment in detention).

SMR Rule 21 '(1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.'

SMR Rule 78 'Recreational and cultural activities shall be provided in all institutions for the benefit of the mental and physical health of prisoners.'

An important aspect of humane treatment is whether or not detainees have a 'structured day' or a 'regime' of organised activities. Exercise, recreation and work are all important aspects of a structured day. At the remand centres, more opportunities for exercise and recreation are urgently required. In the period of transition to a 'healthy prison', which entails the opportunity of self-

⁵⁶ Productivity Commission, *Report on Government Services* (2007) at 7.15.

improvement through meaningful activities,⁵⁷ it is important that the remand centres are not 'unhealthy'.

In 2007, the situation at the remand centres is worse than that criticized by the Ombudsman in 1996.

*'There appear to be few constructive regular activities provided to detainees other than television, weightlifting and volleyball/basketball available on an ad hoc basis. While there is a room provided for craft my staff were advised that detainees generally had to pay for material. This means that detainees with no income or limited means are not able to participate in activities such as woodwork and model building. There does not appear to be any provision made for providing modern technology for detainees' education or entertainment such as personal computers.'*⁵⁸

When asked two related questions – what was the worst thing about the remand centres, and what single aspect of the remand centres would they change – nearly half the detainees interviewed responded 'boredom' or 'activities'. When the audit was undertaken, there were simply no organised activities in which to participate and no designated activities staff to help detainees to access the library or the activities room. Detainees consistently stated that they would welcome a program of organised activities in order to occupy their minds and/or their hands. With respect to physical exercise, many detainees pointed out that the small, enclosed nature of the yards and the fact that there is no intermediate living space between the cells and the yards meant that physical exercise was difficult. Unless all detainees wished to take part in an activity (for example, squash), exercise could cause friction in the yard. The small size of some yards, such as C yard, made these problems considerably worse.

All detainees expressed feelings of frustration about the lack of activities available in the remand centres. Many described the effects of acute boredom as leading to higher tension levels, as well as feelings of depression for some detainees. They usually described it as doing 'head miles'. Often detainees seemed unable to take responsibility for their actions, even in cases where they acknowledged they had done something wrong, because of the mounting anger and frustration brought on by the unsatisfactory conditions at the remand centres, particularly the long periods spent in cells and the lack of purposeful activities. Both the presumption of innocence, and the eventual need for rehabilitation for those convicted of crime, support the provision of organised activities. Activities assist remandees to survive the time in custody without feelings of anger and resentment, feelings that do nothing to foster a sense of responsibility for their actions or victim awareness in the case of those eventually convicted. The comments by the Watchhouse review team, made in the context of the far shorter periods of detention at the Watchhouse are pertinent:

*'Isolation in a cell with little or no stimulation is boring. Commonsense, supported by experience in other custodial facilities, suggests that boredom is likely to lead to inappropriate detainee behaviour, particularly if detainees are emotionally disturbed or in custody for more than 8 hours.'*⁵⁹

The status of detainees as remandees, particularly in the context of facilities designed only for remandees means that some limitations on programs are understandable. Rehabilitation programs cannot be imposed, and may not be actively sought by people who are presumed innocent. The European Committee for the Prevention of Torture has acknowledged the difficulties of organising activities for remandees.⁶⁰ Nevertheless, in 1993 the Committee criticised Iceland for the absence of purposeful activities for remandees, who must not simply be 'stored in the establishment'.⁶¹ The Committee has also said that remandees must have some choice in relation to the manner in

57 See text accompanying footnote 36 for the definition of a 'healthy prison.'

58 Footnote 27 above, at p 11.

59 Watchhouse review, footnote 30 above, at para 4.66.

60 Liechtenstein Visit Report (1999). Visit reports are available at the CPT website: <http://www.cpt.coe.int/en/visits.htm>.

61 Iceland Visit Report (1993). These comments related to Siðumúli Prison, Reykjavik. Visit reports are available at the CPT website: <http://www.cpt.coe.int/en/visits.htm>.

which their time is spent. The *Standard Guidelines for Corrections in Australia* provide that '[t]he treatment of remand prisoners should not be less favourable than that of sentenced prisoners'.⁶² As mentioned previously, the lack of purposeful activities for remandees in combination with other factors was held to violate the prohibition on degrading treatment in the Scottish case of *Napier*.⁶³

In interviews and casual conversations with staff, the lack of activities was acknowledged to be problematic. The most common explanation for the lack of activities given in interviews with officers was that it had not been possible to hire an activities officer, as the job was only an eight-hour shift and therefore not as well-remunerated as ordinary custodial positions. The positions of activities officer, and welfare officer were axed during the period that the audit was conducted. Resources also appeared to be a problem as lock-downs owing to staff-shortages occurred on a regular basis during the last quarter of 2006. The Commission has no expertise in correctional management and administration and so will not make any recommendation as to the best deployment of staff in order to ensure that a program of organised activities is delivered. The important point is the outcome: activities must be offered to detainees.

CONCLUSIONS AND RECOMMENDATIONS

Remandees are being denied the right to participate in meaningful activities partially as a result of the physical constraints of the remand centres. For example, the fact that the activities yard is also the exercise area for D yard is cited as a reason for its relative lack of use. However, as D yard has a common area, it should be possible to organise more sharing of the large activities yard. Such problems should be overcome entirely by the construction of the AMC. However, it is apparent that currently there is also a failure to resource activities properly. In particular, the use of the activities room dropped when the position of activities officer was not filled. Failure to resource activities properly is unacceptable, particularly given the interrelationship between exercise and other activities and detainees' physical and mental health. Remandees must be permitted to participate in appropriate activities. In the AMC, this should occur without violating the principle of separation of remandees from sentenced prisoners.

The Human Rights Commission concludes that the lack of organised activities in the ACT's remand centres, when combined with other factors such as the relatively small size of two-out cells and the additional lock-downs to which detainees have been subjected may contravene the right to humane treatment in detention in s.19 of the HR Act, given the likely impact on detainees' mental health.

RECOMMENDATIONS.

1.4.1. A program of organised activities must be offered to detainees at the remand centres.

1.4.2. Officers should be required to take detainees at both remand centres to the library and activities room on a regular basis.

1.4.3. Detainees at BRC, particularly younger men, should be given more frequent opportunities to play sport in the large activities yard.

⁶² *Standard Guidelines for Corrections in Australia* (2004, revised). at para 1.10.

⁶³ *Napier, Re Petition for Judicial Review*, [2004] ScotCS 100.

2. HUMANE TREATMENT

This section of the audit turns to consider issues concerning the conditions of detention that are more closely related to the regime to which remandees are subjected at the remand centres, as opposed to the physical facilities. Despite the presumption of innocence, remandees are subjected to a very strict prison regime that has few of the mitigating features of prison life generally in Australia. Privacy is significantly compromised, for example. Often there is good reason for intrusions into privacy. In particular, although many detainees complained about the measures taken to ensure that detainees do not self-harm or suicide (particularly the night-time checks on detainees), the Commission was impressed by the care and attention paid by remand centre staff to these issues. Deaths in custody are tragic and the remand centre staff do all that they can to ensure that they do not happen in the ACT. However, any limitation on privacy must be proportionate, and the least restrictive measures must be applied. Through its internal human rights audit, ACT Corrective Services has already identified some ways of minimising intrusions into privacy, and the Commission makes some recommendations about further steps to be taken. Apart from privacy, the recommendations below focus on questions concerning contact with the outside community, in particular visitors and lawyers, as well as informing detainees about their rights, and adequately meeting their 'welfare' needs.

2.1. SHARED CELLS AND PRIVACY

Relevant Standards

HR Act, s.18 (security of the person). This includes violence committed by other detainees.

HR Act, s.12 (*arbitrary* interference with privacy). The fact of detention necessarily entails some justifiable limitation on privacy.

SMR Rules 9 and 86 (see 1.1. above).

International standards such as the SMR require accommodation in single cells. Single cell accommodation avoids some of the violence, which is often endemic in correctional facilities, particularly sexual assault. There was some evidence of sexual assault occurring in the remand centres, including at least one allegation of attempted sexual assault by one detainee on another during the period of the audit. In this case, an officer had intervened appropriately on the basis of his suspicions about stand-over tactics.

One of the impacts of overcrowding and the necessity of sharing cells is loss of privacy. In 1996 the ACT Ombudsman said:

*[t]hat the sharing of cells may be a practice elsewhere in Australia does not in itself make overcrowding more acceptable Detainees held more than one to a cell at the BRC lose their privacy in terms of showering and use of toilets.'*⁶⁴

The toilets are usually inside the cell, but there are modesty walls in the cells in many yards. However, they are not very high - a sloping modesty wall in F yard, for example, begins at a height of 70 cms and rises to a height of 120 cms. This might almost hide a seated person of around 5'4" (162.5 cms), but would not completely screen a man of average build. The point is to ensure that part of detainees' bodies may be seen by officers, for safety purposes. However, the modesty walls are not particularly effective as far as cellmates are concerned, when all detainees are locked in the cell. As one detainee put it, 'your cell mate is on the bed across from you, while you're shitting.'

One detainee described using the hatch (through which meals may be delivered or which may be

⁶⁴ Footnote 27 above, at pp 3 and 5.

used to cuff a detainee before unlocking the door) in order to avoid the smell of his cellmate using the toilet. Some detainees put up sheets in order to screen off the toilet and shower, but may be made to take them down by officers. Other detainees had informal rules about trying to shower and use the toilet at times when the cell is not being shared. Where there are shower screens, they are often made of clear plastic, providing little privacy.

Loss of privacy extends beyond sharing cellmates. In the control room at BRC, toilets in those cells with cameras are plainly in view. Cells in F yard, which is used to accommodate mainstream detainees, all have cameras. Moreover, as the cells in both BRC and STRC lead directly into the yards, and cell windows do not have blinds or curtains, a number of detainees complained to Human Rights Commission staff about the fact that officers doing the yard rounds could see detainees showering or using the toilet. While there are possible safety concerns regarding the shower as a hanging point, the shower screens are only shoulder high and could be opaque instead of clear, which would provide more privacy while not compromising safety.

Decisions of courts and findings of international human rights bodies

In the South Australian Supreme Court case of *Collins v State of South Australia*, the Court found that the conditions of detention were not humane where remandees were required to share cells that had not been designed for dual occupancy, to mix with convicted prisoners and to use the toilet 'within one metre of the person in the bottom bed and in his full view'.⁶⁵

The findings of the European Committee for the Prevention of Torture ('CPT') concerning cell size and its ramifications for privacy are also useful to consider. The Committee's recommendations have been adopted by the European Court of Human Rights.⁶⁶ The Committee has set the bare minimum standard for multiple occupancy at four square metres per detainee.⁶⁷ Although it has noted that features such as high ceilings can mitigate the small size of cells,⁶⁸ the Committee has stated that ideally cells for individual occupancy should be around nine square metres and regularly describes cells between 10 and 13 square metres as a 'good size'.⁶⁹ The Western Australian prisons inspectorate has adopted the CPT's ideal standard of nine square metres for single cells.⁷⁰ Whether or not cells are overcrowded depends on cell size considered together with factors such as the time spent in cells, the state of the sanitary facilities and the 'regime' of activities offered to prisoners.

In its reports on UK prisons, the Committee has said that cells of seven square metres should never be dual or multiple occupancy;⁷¹ that if detainees are expected to spend long periods of time in their cells, the cells should be larger; and that the in-cell toilets are a further problem in small cells with more than one occupant.⁷² As the Committee has stated in reports on its visits to the UK:

65 [1999] 74 SASR 512, at para 30. The precise factors that resulted in this finding are not entirely clear. The provisions of the SMR about shared accommodation were referred to, but found not to have the direct force of law. The problems using the toilet and the mixing of sentenced and accused persons clearly informed the finding. In any event, no remedy could be granted. Although the judge took the view that the ICCPR had been incorporated into Australian law by virtue of the fact that the ICCPR is scheduled to the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) ('HREOC Act'), a finding which is extremely controversial in light of relevant High Court decisions, the Judge found that the HREOC Act did not bind South Australia; that any legitimate expectation that the ICCPR would be complied with had been ousted by South Australian legislation; and that a declaration by the Court would be useless in any event, since the only remedy to be provided was by the construction of new correctional facilities.

66 *Peers v Greece* [2001] ECHR 296; *Kalashnikov v Russia* [2002] ECHR 596; *Melnik v Ukraine* [2006] ECHR 258.

67 Poland Visit Report (1996); Slovakia Visit Report (2000). Visit reports are available at the CPT website: <http://www.cpt.coe.int/en/visits.htm>.

68 United Kingdom Visit Report (1997).

69 See also the discussion in J. Murdoch, *The Treatment of Prisoners: European Standards* (2006), at p 214.

70 'There are no clear international standards on cell size. Nine square metres per person has been considered a satisfactory size for an individual cell. Seven square metres per person plus common space of up to 10.5 square metres for self-care with integrated w/c facilities.' See para 20.4, Office of the Inspector of Custodial Services, *Code of Inspection Standards for Adult Custodial Services* (19 April 2007): <http://www.custodialinspector.wa.gov.au/index.cfm?objectId=4C31D21F-C09F-1F3C-C89CE1C71CED014D>.

71 United Kingdom Visit Report (2003), United Kingdom (Northern Ireland) Visit Report (1999). Visit reports are available at the CPT website: <http://www.cpt.coe.int/en/visits.htm>.

72 United Kingdom (Northern Ireland) Visit Report (1999).

*'The overarching objective should be to avoid prisoners having to comply with the needs of nature in the presence of other persons, in a confined space which is used as their living quarters.'*⁷³

The Committee recommended that in-cell sanitary facilities should be fully partitioned from the prisoner's living space, in order that inmates were not 'living in a lavatory.'⁷⁴

In the case of *Napier, Re Petition for Judicial Review*,⁷⁵ the Scottish Court of Sessions had to apply the European prison rules requiring that accommodation should incorporate 'a reasonable amount of space.' The three main issues involved in the case were:

1. accommodation of two prisoners in a cell designed for one (size 8.47 square metres);
2. lack of toilet facilities in cells (a bucket was provided instead); and
3. limited time spent outside the cell and restricted daily activities.

The cell was found adequate for sleeping. However, the Scottish Prison Service Operating Standards said that '[p]risoners must have room to sleep comfortably; each have locker space to keep reasonable personal possessions; be able to get up to dress; to sit at a table; and to read or write a letter at the same time as other prisoners in the cell; be able to use the toilet in private.' In combination, the conditions for these Scottish remandees meant that there had been a breach of the prohibition on inhuman or degrading treatment or punishment.⁷⁶

Cell Design at the AMC

A great deal of research and thought has gone into the cell design at the AMC. The toilet and shower are screened from the view of a cellmate in the model cell, and are a great improvement on the cells at the remand centres. The cell size for men (women are only to be accommodated in larger cottage-style accommodation) is to be 8.7 square metres, while double cells are to be 10.5 square metres. It could not be said that the floor space is overly generous, but lack of floor space may be compensated for by other factors such as ceiling height, lighting, colour, vision and overall amenity.

At the AMC, nearly half of the accommodation will be cottage-style accommodation with shared common spaces where the bedrooms will have only one occupant. There will be two areas of cellblock accommodation for men, one each for remandees and sentenced prisoners. In the cellblock accommodation, there will be a proportion of 'buddy cells' specifically designed as shared accommodation. In total, there are 212 places of single cell accommodation, 88 which are double, and 16 buddy cells.

The experience at ACT remand centres and in other jurisdictions is that overcrowding may force sharing of cells. Expansion through the building of more single accommodation is integral to the design of the AMC.

In some instances, it is important that detainees be given the option of sharing a cell. For example, it is anticipated that Indigenous detainees may wish to share a cell, and the Royal Commission into Aboriginal Deaths in Custody made explicit recommendations that confinement alone in a cell should be avoided, and that detainees should be consulted about sharing accommodation.⁷⁷ The Coroner's findings in 1998 in the Bransby inquest also support the sharing of cells in cases where self-harm is likely. In this case, the cell in which Ian Bransby hanged himself had recently had an

73 UK Visit Report (1994) Section 18/103; UK Visit Report (1990) Section 16/57.

74 UK (Northern Ireland) Visit Report (1999) Section 19/40; UK Visit Report (1994) Section 18/103; Lithuania Visit Report (2000) Section 20/51.

75 [2004] ScotCS 100, 26 April 2004 (Scottish Court of Sessions).

76 Article 3 of the European Convention on Human Rights (the equivalent of s.10 of the HR Act).

77 *Royal Commission into Aboriginal Deaths in Custody*, Final Report, Recommendation 144. '... [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.'

upper bunk installed. However, Mr. Bransby was accommodated alone in that cell. The evidence considered by the Coroner was that making a cell completely safe by the elimination of all hanging points made the cell become 'less habitable'. The Coroner stated that 'safe cells are generally stark, sterile environments which can in themselves engender in detainees feelings of depression and a desire to self-harm.'⁷⁸ The Coroner recommended that two persons should be housed in a cell where practical, and that this was certainly preferable in cells with two bunks.

In Western Australia, where Indigenous people make up around 40% of the prison population, the Office of the Inspector of Custodial Services has adopted the following standard:

*'Prior to allocating prisoners to share a cell, a formal risk assessment must be completed, which includes consultation with the prisoners concerned.'*⁷⁹

The standard is specifically directed at situations of over-crowding, as 'double-bunking' is not the preferred option. The Commission is of the view that such a standard would provide important protection whenever accommodation is shared.

CONCLUSIONS AND RECOMMENDATIONS

The Human Rights Commission concludes that the cells at BRC are not generous when used for dual or multiple occupancy, particularly in light of the extra time that has been spent in the cells due to lock-downs, and that the lack of privacy afforded while showering and using the toilets in shared cells could constitute a violation of the right to privacy (s.12 HR Act), and possibly also of the prohibition on inhumane treatment (s.19 HR Act). The cell design for the AMC is impressive. However, the Human Rights Commission recommends additional safeguards for the allocation of shared cells, to ensure that this is done appropriately.

RECOMMENDATIONS.

2.1.1. The procedures should specify that allocation of shared cells at the remand centres (and the AMC) requires careful consideration against a range of criteria, including:

- **consultation with detainees;**
- **likely self-harm;**
- **any history of conflict between detainees or their families; and**
- **issues such as the vulnerability or predatory nature of particular detainees.**

2.1.2. Privacy for detainees while showering should be achieved by:

- **providing plastic shower curtains that are shoulder height in every cell at the remand centres; and**
- **replacing clear shower curtains with opaque or colored curtains.**

2.2. CELL SEARCHES

Relevant Standards

HR Act, s.12 (prohibition on *arbitrary* interference with privacy).

The fact of detention necessarily entails some justifiable limitation on privacy. However, where a search is undertaken, it should be of the least intrusive kind.

⁷⁸ Inquest into the Death of Ian Glen Bransby, footnote 24 above.

⁷⁹ Office of the Inspector of Custodial Services, *Code of Inspection Standards for Adult Custodial Services* (19 April 2007): <http://www.custodialinspector.wa.gov.au/index.cfm?objectId=4C31D21F-C09F-1F3C-C89CE1C71CED014D>.

Section 7 of the *Remand Centres Regulation 1976* (ACT) provides in part that:

7. Detainees to be searched

- (1) A custodial officer must search each detainee on admission to a remand centre.*
- (2) A detainee and the detainee's quarters may be searched whenever the Superintendent, in the interests of security, considers it necessary.*
- (3) The search of a detainee or the detainee's quarters under subsection (1) or (2) must, if practicable, be carried out by a custodial officer of the same sex as the detainee.'*

The Standing Orders deal with three types of searches – body (pat-down) searches; strip-searches; and cell and area searches. The focus here is on strip-searches as well as cell searches, since current practice at the remand centres is that these involve strip-searches. All searches are recorded.

Strip-searches

At the time the audit commenced, Standing Order 22.4.1 stated that a strip-search was to involve the complete removal of all clothing. As a result of the internal human rights audit by Corrective Services, this Standing Order was updated to provide for a procedure whereby the detainee only removed the top or bottom half of their clothing at one time.

Strip-searches are currently required before and after supervised (contact) visits and immediately prior to cell searches, as well as prior to urinalysis (as described below). Furthermore, the Standing Orders permit strip-searches to take place 'at any time specified by the Superintendent, Deputy Superintendent or Duty Chief.'

Detainees are therefore subjected to numerous strip-searches. If regularly visited, for example, it would be possible that a detainee could be subjected to ten strip-searches a week. Five visits in one week would involve ten strip-searches – one before each visit, and one afterwards. Three visits in one week, a court attendance and a cell search would involve nine strip-searches. Detainees who were receiving regular visits from family members said they were strip-searched several times each week. The bussing of women from STRC to BRC (see above section 1.1.) resulted at one point in three extra strip-searches of these women.

Strip-searches upon admission or which are undertaken when the detainee leaves the remand centre (for example, for Court) or for the purposes of urinalysis, are carried out at an area near the induction desk, which affords a reasonable amount of privacy to the detainee. The area is beyond sight of officers manning the induction desk, and the officers conducting the strip-search stand at the door of the area, ensuring it is blocked if there are passers-by.

The procedures describe an invasive procedure where all clothing is removed (although the person is now to be half-clothed at all times), the mouth is checked, including under the tongue, the detainee has to run their hands through their hair and to pull their ears forward, to lift genitals or breasts, present the soles of their feet for inspection, and finally to squat and cough.

During the period of the audit, a SOTER RS X-Ray Body Scanner ('SOTER') was piloted at the BRC. It may remove or at least greatly lessen the need for the invasive process of strip-searching. The SOTER works through irradiation by a very narrow flat scanning X-ray beam and its registration by a highly sensitive multi-element of the X-ray detector. It provides a visual image on a screen for analysis by an operator. The pilot of the SOTER took place with approval from the ACT Radiation Council. Amongst the limitations imposed on the pilot by the Council were the conditions that females were excluded in the trial, participation in the trial had to be voluntary, and no participant was to be scanned more than 20 times a month. Women were not permitted to participate in the trial of the body scanner because of possible concerns about unknown pregnancies, and potential effects of radiation on the foetus as well as unfertilized ova. The time

period for the pilot has been extended to 30 September 2007. Gammasonics Institute for Medical Research is measuring the radiation exposure levels of the SOTER. The final assessment will include an assessment as to whether women may be scanned by the SOTER.

Cell searches

Officers undertake random as well as targeted periodic searches of cells under regulation 7(2) of the *Remand Centres Regulation*. A cell search necessarily involves a strip-search. Strip-searches prior to cell searches are carried out in the cell. Detainees who share the cell (cell mates) leave the cell before being subjected to a strip-search themselves. There is little privacy given that there are no curtains or blinds for cell windows, and cells lead straight onto the yard where other detainees may be present. Some detainees said that the officers did attempt to ensure that detainees' privacy was respected by telling other detainees to stay away, and blocking the cell doorway.

Gender

The Procedures state that '*where possible* only female officers shall conduct a search of female quarters.'⁸⁰ Male officers frequently search the women's cells at STRC. Only female officers are to conduct a strip-search of women, and the new procedure requires a detainee to be secured until such time as two officers of the same gender as the detainee are available, which is to happen 'as soon as practicable'. However, there have been cases in the past in which only one female officer has been available to do a strip-search. In such a case, a male officer stood outside the room where the search was being conducted. He did not see the search, but he was able to hear what was going on. This undermined the protection provided by the second officer for both detainees and the officer conducting the search, and officers acknowledged that this situation was undesirable. Section 114 of the *Corrections Management Act 2007* requires that strip-searches in the new prison are to be conducted by two officers of the same sex as the detainee.

Several women were interviewed after the introduction of the new strip-searching procedure. One said that she was much happier with the new procedure. Another said that she had got used to the old procedure. The new procedure will certainly assist in mitigating some of the problems inherent in strip-searching women.

Other considerations of human dignity

Officers are also required to carry out searches with regard to the detainee's dignity. The Procedure on searching says that:

'Custodial officers shall conduct searches of detainees having regard to the detainee's dignity and self-respect and in as seemly a manner as practicable, without impeding the effectiveness of the search.'

Many detainees told the staff of the Human Rights Commission that they found strip-searches to be inherently degrading. There were few complaints about the manner in which officers conducted the searches. However, there was one allegation by a male detainee that he had been 'touched up', while another stated that derogatory comments had been made about his genitalia. Some others complained about peremptory treatment if the squat wasn't low enough (which is sometimes beyond the physical capacity of some detainees) or if the detainee, in the anxiety to get it over with, went too fast. Some detainees said they understood why they were searched, but were clearly still very upset by the procedure. For one detainee, who had experienced sexual abuse as a child, the procedure was clearly highly offensive and distressing. There were, as with many other aspects of life on remand, perceptions of favouritism given that some officers were described as being

80 'Searching', step 3(b).

more thorough with searching than others. Undoubtedly, the new procedure will be less confronting for people on their first time in custody.

There were a number of concerns with respect to cell searches (or 'ramping' as detainees call it). Some detainees complained that they did not think the process was random, which they thought it was supposed to be, despite the Regulations clearly authorising targeted searches. Also, they were unhappy that their belongings ended up strewn in a messy pile, sometimes on the floor, and they alleged that no contraband was ever found as a result of the searches anyway. (Officers confirmed that there were important 'finds' such as weapons, although the ratio of finds to searches was low. It was also confirmed that detainees' possessions should not be ending up on the floor.) One detainee alleged that his cell had been ramped when he was at court, rather than within his presence.

The European Court has found **routine** strip-searching to violate the prohibition on torture and cruel, inhuman or degrading treatment or punishment contained in Article 3 of the European Convention on Human Rights.⁸¹ Following this jurisprudence, the process of conducting a routine strip-search upon a random cell search may violate s.10(1)(b) of the HR Act. Presumably, the reason for strip-searching during a cell search is that detainees may use their bodies to hide items. However, given that all detainees are strip-searched before and after contact visits and will therefore not have had contact with the outside world when a cell search is undertaken, there is little objective basis for supposing that there will be contraband from the outside on the person, unless supply occurs from another source (a member of staff, for example). On the other hand, with the amount of time that detainees have on their hands at the remand centres, given the lack of purposeful activities, they do make contraband items such as weapons, nooses and tattoo guns. However, as cell searches are unannounced, there appears to be little basis for assuming that detainee will have items hidden on their persons. While detainees may be asked whether they have anything on their persons, the procedures do not provide for a pat-down search of detainees prior to moving to a strip-search. Moreover, the cells are also not particularly private places in which to conduct strip-searches.

The scanner, which has been purchased for BRC and placed at the induction centre, should remove the need for most strip-searches at BRC, at least for male detainees. A strip-search will only follow if contraband is located using the scanner. Section 113 of the *Corrections Management Act 2007* provides for a threshold of reasonable grounds for suspicion that something is concealed on the detainee's person, signalling an end to routine strip searches in the new prison. It is of concern that the large size of the AMC will probably mean that detainees will not always be searched by the scanner, for example, when conducting cell-searches, despite the significant expenditure of resources on this equipment and the fact that it will be quicker than strip-searching once officers and detainees become used to it. This is because the scanner will be close to the induction desk and it might be impractical to bring detainees to the scanner when cell searches are conducted. Therefore it is recommended that the routine practice of strip-searching during cell searches should not be transferred to the new prison.

CONCLUSIONS AND RECOMMENDATIONS

ACT Corrective Services has already done a lot of work to ensure that the least restrictive means are adopted for searching detainees. The *Corrections Management Act 2007* contains stricter thresholds for searches than the current Regulations. The new strip-searching procedure and the trial of the body scanner (SOTER) are important steps for minimising the impact of searches. However, the sheer number of strip-searches and the number of places they may be carried out means that further steps to reduce their occurrence should be taken.

81 *Van der Ven v the Netherlands* (2004) 38 EHRR 3 and *Lorsé v the Netherlands* (2004) 37 EHRR 3.

RECOMMENDATIONS.

2.2.1. Procedures for cell searches need to be reviewed, and strip-searching during cell searches should be abandoned.

2.2.2. Alternatively, detainees should be subject to electronic scanning (with consent) using the SOTER RS X-Ray Scanner, or, consistently with, and in the lead-up to entry into force of the *Corrections Management Act 2007*, pat-down searches should be conducted in order to satisfy the reasonable suspicion threshold.

2.2.3. A more orderly procedure for conducting cell searches should be developed. Detainees' possessions should not be left in a pile, or on the floor.

2.3. DRUG TESTING

Relevant Standards

HR Act, s.10(2) (protection from medical or scientific experimentation or treatment without free consent).

HR Act, s.12 (privacy).

Testing for drugs in prisons is often routine, as drug use causes health and behavioural problems. Drug use is often related to the criminal behaviour of prisoners. Communicable diseases are also a large problem in prisons and voluntary testing for Hepatitis B and C or HIV is desirable to assist in raising awareness of and combating communicable diseases. Testing for communicable diseases at the remand centres is voluntary, and counselling is offered before and after tests for HIV/AIDS.

Compulsory urinalysis has not been found to violate the right to privacy in some jurisdictions, although best practice indicates that testing should not be mandatory. According to Kate Dolan, the problems with mandatory drug testing include the cost as compared with provision of 'a credible drugs reduction and rehabilitation program' and the possible preference of heroin for cannabis because cannabis remains in the blood stream for longer.⁸²

Perhaps surprisingly, there is no reference to drugs or drug-testing in the *Remand Centres Act 1976* or the *Remand Centres Regulation 1976*, although possession of illicit drugs would be caught by s.17(d) of the Act, which makes it an offence for detainees to have in their possession anything intended to be used for an illegal purpose. Urinalysis is done on a routine, random and compulsory basis at the remand centres.⁸³ Remandees indicated their unhappiness with the way in which testing is conducted. The detainee is strip-searched and then has to urinate, in the presence of two officers.⁸⁴ The officers are of the same sex as the remandee. Remandees talked of difficulty urinating while being actively watched by officers. Refusal to provide a sample is a disciplinary matter. Owing to the change in strip-search procedure, detainees are at now partially clothed, rather than fully naked, when they provide the sample.

In *Galloway v UK*, the European Commission on Human Rights rejected a claim concerning a random urinalysis in a British prison.⁸⁵ The Commission relied on its previous decision in *Peters*

⁸² See K. Dolan, *The Epidemiology of Hepatitis C Infection in Prison Populations*, at 85: available at, [http://www.foodsecretariat.health.gov.au/internet/wcms/publishing.nsf/Content/DCFD52A1225E30D1CA256F1900040E25/\\$File/hepc_informing-prison-hep-c.pdf](http://www.foodsecretariat.health.gov.au/internet/wcms/publishing.nsf/Content/DCFD52A1225E30D1CA256F1900040E25/$File/hepc_informing-prison-hep-c.pdf).

⁸³ See Standing Order 31 which provides that all detainees may be directed to undergo urinalysis after 31 days in custody and that the Superintendent or deputy can direct routine or targeted screening of all detainees at other times. See also Procedure 'Drug Testing (Procedure for Taking a Sample of Urine)' which states that 'drug testing may take place at any time.'

⁸⁴ See the Procedures, 'Taking a Urine Sample.'

⁸⁵ Application No. 13499/96, (1999) 27 EHRR CD241.

v Netherlands, in which the Commission had found that random urinalysis was a valid method of dealing with drugs in prison. Mr. Galloway also complained about the manner in which the drug test was conducted, particularly that two officers were required to witness him when he provided the sample. Implicitly, the Commission did not accept that this method of testing violated the right to privacy. However, the Commission only dealt with the allegation that the prisoner's freedom of religion was violated (and found no violation of this right, either). In *Fieldhouse v British Columbia*, the Court of Appeal for British Columbia held that a policy which permitted random urinalysis and that required urination in front of two corrections officers was consistent with the *Canadian Charter of Rights and Fundamental Freedoms 1982*.⁸⁶ However, there was no consideration of any international decisions, and the judgment proceeds on the basis that a balancing exercise is required with little scrutiny as to whether the method of conducting drug testing is the 'least restrictive means.' This is required for the purposes of s.28 of the ACT HR Act.

CONCLUSIONS AND RECOMMENDATIONS

Given that detainees are currently strip-searched and, if the trial of the SOTER body scanner is successful they should be searched by the scanner in the future, a detainee should be permitted to enter, unaccompanied, a room monitored by a camera in order to provide a urine sample. This would comply with s.28 of the HR Act, which requires that the least restrictive means for searching is adopted. To protect the reliability of this system there needs to be disciplinary consequences for interferences by the detainee.

RECOMMENDATIONS.

2.3.1. In order to preserve dignity, a detainee should be permitted to enter a camera'd room alone in order to provide a urine sample.

2.3.2. Tampering with the camera or sample should be classified as a refusal to provide the sample, with disciplinary consequences.

2.4. WELFARE

A person taken into custody has little opportunity to organise his or her affairs. A detainee may be concerned about matters on the outside such as care arrangements for children, financial affairs, or about legal matters such as preparing a bail application. He or she will also need assistance with everything they require on the inside. There are request forms for everything, from a health consultation to a 'buy-up', which is when the remand centres buy groceries and other items for detainees, using detainees' funds.

During the course of the audit, the position of welfare officer was abolished. The Commission understands that there will not be a welfare officer at the new prison, but that all officers will have a case-management role.

The welfare officer assisted with 'induction phone calls' – that is the initial phone call to which a detainee is entitled upon being taken into custody – where the call had not been placed from the court cells. In interviews, several detainees stated that they had not received their induction call, and some staff indicated that they thought some detainees had missed their induction calls.

There is one case manager for all detainees who now assists with welfare needs, in addition to doing the things that would be expected of a basic case management system for remandees, such as ensuring that children had been taken care of and assisting with bail applications. The Indigenous

⁸⁶ (1995), 98 C.C.C. (3d) 207 (B.C.C.A.).

Liaison Officer has also taken on some welfare responsibilities, including for non-Indigenous detainees. These staff are stretched to capacity, and other means need to be found to ensure that detainees are provided adequate social support.

RECOMMENDATION.

2.4. Adequate social support should be provided to detainees through the case-management process and other appropriate mechanisms.

2.5. EDUCATION

Relevant Standards

UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment ('Body of Principles'), Principle 28 'A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.'

SMR Rule 77, '(1) ... [t]he education of illiterates and young prisoners shall be compulsory and special attention shall be paid to it by the administration;
(2) So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty.'

International Covenant on Economic Social and Cultural Rights, Article 13(2),

'(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
...
(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.'

UN Basic Principles for the Treatment of Prisoners, Principle 6 'All prisoners shall have the right to take part in cultural activities and education aimed at the full development of the human personality.'

World Declaration on Education for All (Jomtien, Thailand, 1990 (art. 1)).

Vienna Declaration and Programme of Action (Part I, para. 33 and Part II, para 80).

Plan of Action for the United Nations Decade for Human Rights Education (para 2).

The right to education has been described as an 'empowerment right' which enables the fulfilment of all other rights, including the civil and political rights enshrined in the ACT HR Act, such as s.17, the right to take part in public life.⁸⁷ Australia is obliged because it is a party to the ICESCR to *intensify* educational opportunities for detainees who do not have basic education.⁸⁸ (Basic or fundamental education is the equivalent of primary school education.) Moreover, there is in all cases an immediate obligation to take *positive* steps with regard to education, *and* to make both

⁸⁷ See UN Committee on Economic, Social & Cultural Rights, General Comment on Article 13, para 1.

⁸⁸ Article 13(2)(d) ICESCR. The general comments are available in a compilation, UN Doc HRI/GEN/Rev.7, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ca12c3a4ea8d6c53c1256d500056e56f?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ca12c3a4ea8d6c53c1256d500056e56f?Opendocument).

secondary and tertiary education *accessible to all without discrimination*.⁸⁹ As education is available to all in Australia, means should be found to make it available to those on remand who wish to undertake it in order to *fulfil* remandees' rights to education.⁹⁰ This is arguably part of the minimum core content of the right to education.⁹¹ Principle 28 of the Body of Principles, Rule 77 of the SMR, and Principle 6 of the Basic Principles also speak about the positive steps that prison authorities should be taking in Australia and confirm that educational opportunities should be provided to remandees.

The only program in the remand centres that could be described as educational is the Drug and Alcohol Program. This program was almost uniformly applauded by detainees. Some detainees said that the people responsible for this program had helped them with cognitive behaviour change and anger management. Many detainees said that the people running the program provided practical help, like getting them into rehabilitation centres, and that this was really appreciated.

One critical, but insightful comment was that it would be really useful to have former addicts or users involved in running the program. In other words, peer support would be valuable. In discussion with the people who deliver the drug and alcohol program, it was clear that peer support had been used where possible. So for example, if there was a long-term remandee who was stable and secure enough to assist with the program, he or she would be drawn on as a resource for other detainees.

Some detainees recognised that their life opportunities were limited by their lack of education. Many detainees said that if given the opportunity to pursue short-term educational programs while on remand, they would do so. A common suggestion was to focus on literacy and numeracy with the aim of completing formal secondary education. Many detainees interviewed indicated that their education had stopped at around Year 10. Other suggestions included courses in computer skills or small business or home office skills, the aim being to help get people back on their feet when they re-entered the community. Of great concern to the Human Rights Commission was the case of a young man on remand while in his final year of college. If he had been under 18 and detained in Quamby, he would have been permitted to attend school on day release. Access to school materials online or by email would assist in such cases, and would be equivalent to that offered in the community. Of course this access would be controlled by staff for security and other relevant reasons to prevent misuse.

While the temporary and unpredictable nature of remandees' stay may make provision of educational programs difficult, it is not impossible. The following are examples of courses offered at Hakea prison, where the average period of remand is 8 – 15 days:

- General Education (improvement of reading, writing and mathematics skills);
- Business and Computing;
- Construction Safety Awareness Training (Blue Card);
- Mining and Resource Contractors Safety Training Association (MARCSTA);
- Hospitality;
- Essential First Aid (a two-day short course);
- Senior First Aid (a three-day short course);
- Art and Drawing;
- Traditional Indigenous Society;
- Music; and
- Meditation.

Enrolment in these courses is open to remandees immediately. Short courses that may be completed within a few days are an opportunity to offer a person remanded in custody something that could assist with employment opportunities upon their release, potentially helping to prevent their return to custody.

89 Committee on Economic, Social and Cultural Rights: General Comment on Article 13 (right to education), *ibid*, para 6 (b) (accessibility); para 31 (non-discrimination).

90 See General Comment on Article 13, *ibid*, para 47.

91 See General Comment on Article 13, *ibid*, para 57.

CONCLUSIONS AND RECOMMENDATIONS

The current situation in the ACT's remand centres leaves Australia open to allegations that it is in violation of the right to education (Article 13 of the ICESCR). It is possible that denial of education opportunities in detention in combination with other problems identified in this Report may contribute to inhumane treatment in violation of s.19 of the HR Act.

The ACT should take up the opportunity to make a quick and positive intervention in remandees' lives. At a minimum, funding needs to be provided so that detainees in the current remand centres should be assessed for literacy and numeracy. Funding should also be provided for appropriate short courses to be offered to detainees at the remand centres, as pilots for programs that may be run at the AMC.

With the establishment of the AMC, remandees should benefit from the programs that are run for all detainees. However, under the *Corrections Management Act 2007*, participation in education is formally dependent on a case-management plan, which is not compulsory for a remandee. The Human Rights Commission is of the view that educational programs should be offered to remandees immediately upon induction into the AMC.

The Human Rights Commission commends the staff delivering the Drug and Alcohol Program at the remand centres for providing a program that is highly valued by detainees and encourages the continued use of peer support in the program wherever possible.

RECOMMENDATIONS.

2.5.1. Funding should be provided by the ACT Government so that at a minimum, detainees in the current remand centres are assessed for literacy and numeracy.

2.5.2. Appropriate short courses should be offered to detainees at the remand centres, as pilots for programs that may be developed for the AMC.

2.5.3. *Educational programs should be offered to remandees immediately upon induction into the AMC.*

2.5.4. The drug and alcohol program at the remand centres should continue to use peer support wherever possible.

2.5.5. In order to permit the completion of schooling interrupted by time spent on remand, access to school materials by the internet and/or by email controlled by the case-manager should be arranged for detainees.

2.6. WORK

Relevant Standards

HR Act, s.26(2) (prohibition on forced work or compulsory labour).

HR Act, s.26(3)(a) (exception for 'work or service normally required of an individual who is under detention because of a lawful court order.')

This provision reflects Article 8 of the ICCPR, and Article 2 of the 1930 ILO Convention No. 29, concerning forced labour. Article 2(c) of ILO Convention No. 29 exempts '[a]ny work or service exacted from any person as a

consequence of a *conviction* in a court of law ...’.

In principle, prisoners under sentence may be required to work according to the ICCPR, and Rule 71(2) of the SMR provides that ‘[a]ll prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer.’⁹² Rule 71 also lays down the basic principles governing prisoners’ work.

‘(1) Prison labour must not be of an afflictive [i.e. painful or distressing] nature.

...

- (3) Sufficient work of a useful nature shall be provided to keep prisoners actively employed for a normal working day.
- (4) So far as possible the work provided shall be such as will maintain or increase the prisoners’ ability to earn an honest living after release.
- (5) Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.
- (6) Within the limits compatible with proper vocational selection and with the requirements of institutional administration and discipline, the prisoners shall be able to choose the type of work they wish to perform.’

The following provisions of the SMR are also important.

SMR Rule 72 ‘(1) The organization and methods of work in the institutions shall resemble as closely as possible those of similar work outside institutions, so as to prepare prisoners for the conditions of normal occupational life.

- (2) The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution.’

SMR Rule 73 ‘(1) Preferably institutional industries and farms should be operated directly by the administration and not by private contractors.’

SMR Rule 74 ‘(1) The precautions laid down to protect the safety and health of free workmen shall be equally observed in institutions.

- (2) Provision shall be made to indemnify prisoners against industrial injury, including occupational disease, on terms not less favourable than those extended by law to free workmen.’

SMR Rule 75 ‘(1) The maximum daily and weekly working hours of the prisoners shall be fixed by law or by administrative regulation, taking into account local rules or custom in regard to the employment of free workmen.’

- (2) The hours so fixed shall leave one rest day a week and sufficient time for education and other activities required as part of the treatment and rehabilitation of the prisoners.’

SMR Rule 76 ‘(1) There shall be a system of equitable remuneration of the work of prisoners.

- (2) Under the system prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family.
- (3) The system should also provide that a part of the earnings should be set aside by the administration so as to constitute a savings fund to be handed over to the prisoner on his release.’

The situation of remandees with respect to the prohibition on forced labour is different from sentenced prisoners. They too are in detention on the basis of a court order, but they are presumed innocent. Rule 89 of the SMR provides that ‘[a]n untried prisoner shall always be offered opportunity to work, but shall not be required to work. If he chooses to work, he shall be paid for it.’

92 See for example, the decision of the European Commission on Human Rights in *X v. Switzerland*, App. No. 8500/79; 18 D.R. 238, cited in J. Simor and B. Emmerson, *Human Rights Practice*, at 4.028. But contrast with the criticisms of forced prison labour in the concluding observations by the Committee on Economic, Social and Cultural Rights: Concluding Observations on Estonia, E/2003/22(2002), 68 at paras 496 and 518.

The right to work in Article 6 of the International Covenant on Economic Social and Cultural Rights (ICESCR) imposes an obligation on states to take steps to provide the opportunity to work.⁹³ As there is no exception to the right to 'freely choose or accept' work contained in this treaty, the Committee on Economic, Social and Cultural Rights has criticised countries in which sentenced prisoners are forced to work.⁹⁴

The right to work (SMR Rule 89, Article 6 ICESCR) in its positive sense (as opposed to the prohibition on forced labour) is relevant in the context of detention and interrelated with the civil and political rights protected by the HR Act. Although remandees are in many respects provided for in detention, they, along with sentenced prisoners require funds if they want to keep in contact with their families. While detainees without funds may make a limited number of phone calls and send some letters at the expense of the government, other detainees are required to pay for phone calls and letters. Contact with family is fundamental to the protection of the family and children enshrined in s.11 of the HR Act, which says that '[t]he family ... is entitled to be protected by society.' Accordingly, it is important that remandees be able to work. Extra funds also enable remandees to participate in 'buy-ups' to relieve the monotony of institutional food – for example, they are able to buy pizza occasionally, and remandees at STRC may cook their own food on barbecues at weekends. (The quality of food at the remand centres is returned to below, section 3.5.) As recognised by SMR Rule 76, the ability to undertake *decently* remunerated work could also assist remandees and prisoners to continue to financially support their children, or at least to send gifts for celebrations, such as birthdays. The fact that some children have been placed in alternative care while parents are in detention is a sobering reminder of the consequences of detention that should be mitigated if at all possible.⁹⁵

Work provided in the remand centres is insufficient to satisfy demand. The available, jobs are as follows;

- 1) Laundry – \$15.00 per day
- 2) 'Dixie' – preparing detainees' meals by, for example, cooking toast for breakfast – \$10.00 per day
- 3) Washing the thongs for detainees having visits – \$6.00
- 4) Sweeping yards, cleaning windows and emptying bins – \$6.00.

There are generally too many remandees for everyone to have a job. There are no gardens to be maintained at BRC. The reasonably attractive gardens at STRC that are beyond the secure perimeter and therefore not enjoyed by remandees, are maintained by persons attending the Periodic Detention Centre next-door over weekends. Nor is there any industry, such as would be found in most prisons. At Hakea prison in Western Australia, which is a remand facility, remandees work in a concrete products workshop where pavers and other products are made, and a carpentry workshop.

Jobs at the remand centres are allocated according to the amount of money in remandees' accounts. Jobs go to those with less money so as to enable them to buy cigarettes and necessities, although some detainees expressed the view that jobs were allocated unfairly, with jobs going to detainees who were on good terms with staff. Women detainees complained that the men at STRC had had the laundry job for some time, and that their underwear disappeared. (It should be noted that disappearing underwear was a common complaint among both men and women, leading to a request that those detainees doing the laundry be properly supervised.) Men in F yard complained that they had not had access to the laundry job for some time either. Whilst the Commission has no role in relation to prison administration, it is important that issues like work allocation are done in a non-discriminatory manner and in accordance with fair procedures (an issue that can be investigated by the ACT Ombudsman).

93 In Article 6, countries 'recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts...'

94 See for example, Concluding Observations on Estonia, E/2003/22 (2002) 68, at paras 496 and 518.

95 See the reports concerning the impact of a parent's detention on children, footnote 173 below.

RECOMMENDATION.

2.6. Opportunities for useful and meaningful work that fosters the acquisition of basic skills should be offered to remandees. If the facilities at BRC and STRC cannot accommodate this, then funding should be provided so that courses focussing on the acquisition of basic skills that are helpful to gaining employment (such as resume writing, computer skills, first aid) should form part of the program of organised activities at the remand centres.

2.7. CLOTHING

Relevant Standards

SMR Rule 88 '(1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.'

SMR Rule 17 '(1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

2) All clothing shall be clean and kept in proper condition...'

SMR Rule 18 'If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.'

Section 20 of the *Remand Centres Act 1976* provides that remandees are entitled to wear their own clothing, while Standing Order 3.1.1 (g) states that remandees may 'wear [their] own clothing at the *discretion* of the Superintendent.' It appears that this discretion has not been exercised recently, perhaps making it arguable that s.20 of the *Remand Centres Act* is routinely not complied with.

The fact that detainees are generally required to wear a dark green prison uniform, consisting of T-shirt, track-suit pants and/or shorts was evident from the first visits by the Commissioner and principal researcher to the Remand Centre. Answers given by staff to questions about the issue and the internal review conducted by ACT Corrective Services indicate that there are a number of concerns about remandees wearing their own clothes. They include the difficulty of being able to tell who is a visitor to the centres and who is a detainee and the possibility that this could make escape easier, as well as the possibility of stand-over tactics being used by other detainees in order to get clothes they want for themselves, or for use as currency. The first is not particularly convincing given that visitors are required to provide identification when they visit, and could be required to show it upon leaving as well. The fact that an escapee is wearing a dark green tracksuit is also unlikely to lead to his or her re-apprehension. The second reason is more compelling, and some detainees identified this as a concern. However, it does not justify automatically disregarding the requirements of the *Remand Centres Act 1976*, especially given that these reflect international standards.

The vast majority of detainees indicated that they would like to wear their own clothes if given the choice. The reasons given were that it would promote some sense of normality, and provide more dignity and sense of identity in an institutional setting, which could lift a detainee's mood. Female detainees complained that male detainees are permitted to wear white singlets, which gives them some limited self-expression. During the course of the audit, maroon uniforms were introduced for women detainees, which several detainees were very happy about.

Several detainees made constructive suggestions for dealing with the possibility of stand-over

tactics such as a variation in the colour of the tracksuits (for example, different colours for top and bottom) or a requirement that detainees wear clothes that did not have logos. This occurs in other jurisdictions, such as Victoria.

Detainees complained about the state of the green clothes, which are often second-hand, and about not being issued with new underwear or with sufficient pairs of underwear. At Hakea prison, remandees are issued with seven pairs of new underwear. As mentioned previously, underwear disappeared in the laundry and a better system is required to ensure that this does not happen. Detainees also complained about the shoes with velcro fasteners they are required to wear. They have no shoelaces (because of concerns regarding self-harm), and some detainees said that the shoes were flimsy and did not provide sufficient support for their feet. The tracksuit is not a very warm option for a Canberra winter.

CONCLUSIONS AND RECOMMENDATIONS

The remand centres currently do not comply with international standards concerning the clothing to be worn by remandees.

RECOMMENDATIONS.

2.7.1. ACT Corrective Services must consider allowing remandees to wear their own suitable clothing, in accordance with current legislation.

2.7.2. Alternatively, remandees should be provided with clothing that is as close to civilian clothing as possible (for example, jeans), which does not have brand logos, and which does not pose a threat to safety or security.

2.7.3. A better system for supervision of laundry is required.

2.7.4. The low quality of footwear provided to detainees needs to be upgraded to provide better support for their feet.

2.7.5. Warmer clothing is required in winter.

2.7.6. Detainees should be issued with seven new pairs of underwear when they are inducted.

2.8. HYGIENE

Relevant Standards

SMR Rule 13 'Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.'

SMR Rule 14 'All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.'

SMR Rule 19 provides for regular changing of bedclothes.

Detainees described difficulties in maintaining the cleanliness of their cells. For example, apparently some cells do not have toilet brushes – they must be asked for – as must detergent. Particular problems can arise when moving detainees to a different cell, or when there are late arrivals from interstate transfers (for example, for an ACT court appearance) and the previous occupant of the cell has not cleaned it. One detainee gave details of a skin infection he caught through dirty bedding. (He described the bedding as looking as though it was urine-stained.) It is understood that on the occasions when detainees cleaned cells that had been left dirty by a previous occupant, they were instructed to wear gloves.

CONCLUSIONS AND RECOMMENDATION

The Human Rights Commission is concerned that detainees have sometimes been moved into cells that are not clean, particularly when a detainee has arrived after cells have been locked for the evening.

RECOMMENDATION.

2.8. Detainees should never be inducted to, or moved to cells that have been left in an unhygienic condition by a previous occupant. To implement this recommendation, detainees at the remand centres (and the AMC) should be employed, if only on an occasional basis, to clean cells for the purposes of late arrivals or inductions.

2.9. CONTACT WITH THE OUTSIDE WORLD

Generally relevant standards

International human rights law requires that persons should not be detained incommunicado. That is, they should not be denied contact with the outside world. One reason for this is the vulnerability of the detainee to inhumane treatment and torture. Incommunicado detention has been found to violate the prohibition on torture and cruel, inhuman or degrading treatment or punishment.⁹⁶ Rights concerning protection of the family (for example, s.11 HR Act) are also relevant. There are also specific provisions requiring contact with a judge (see s.18(4) HR Act).⁹⁷ The importance of visits generally, and, for example, to detainees' health has been recognised by the European Committee on the Prevention of Torture.⁹⁸

2.9.1. Visits, telephones and correspondence

Relevant standards

HR Act, s.11(1) (protection of the family as the natural and basic group unit of society).

HR Act, s.12(a) (the right not to have privacy, family, home or correspondence interfered with unlawfully or arbitrarily).

Principle 15, Body of Principles sets out the general rule that 'communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days.'

Principle 19, Body of Principles '[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given

⁹⁶ The case of *El-Megreisi v Libyan Arab Jamahiriya* involved incommunicado detention for three years. No. 440/1990, 24 March 1994, U.N. Doc. CCPR/C/50/D/440/1990 (1994).

⁹⁷ See also ICCPR art 9 (3) & (4).

⁹⁸ European Committee on the Prevention of Torture, 'CPT Standards', footnote 53 above, para 63.

adequate opportunity to communicate with the outside world, subject to *reasonable conditions and restrictions* as specified by law or lawful regulations.’

Principle 20, Body of Principles ‘If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.’

SMR Rule 37 ‘[p]risoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.’

SMR Rule 79 ‘[s]pecial attention shall be paid to the maintenance and improvement of such relations between a prisoner and his family as are desirable in the best interests of both.’

SMR Rule 92 ‘[a]n untried prisoner shall ... be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.’

HR Act, S.28. (Limitations on human rights). Limitations may be appropriate, for example, when dealing with organised crime. In *Messina v Italy*,⁹⁹ the European Court of Human Rights found that a special prison regime for a mafia member that restricted family visits to not more than two non-contact visits (that is, the prisoner was separated from his visitors by a glass partition) per month was a justifiable limitation because family relations played a crucial role in the crimes concerned.¹⁰⁰

Visits

Contact with the outside world, and with family in particular is important to promote continuous contact with the community from which all detainees have come, and to which they will generally return. Rehabilitation of persons who have served a sentence of imprisonment will only be made more difficult if the link with the outside world is completely broken. Women detainees frequently have special needs with respect to visits, as they are often the primary caregivers for their children.

Section 20(e) of the *Remand Centres Act 1976* provides that remandees are entitled to receive visits. Regulation 16 of the *Remand Centres Regulation 1976* provides that a detainee may have visitors at times that are specified in the Standing Orders. The Standing Orders provide that a detainee may receive a maximum number of three (3) visitors at any one time.¹⁰¹ The Duty Chief may approve additional visitors where conditions permit.¹⁰² The procedures then provide for visiting hours to be proclaimed by the Superintendent. Detainees are entitled to one visit a day. Family visits do not take place on Tuesdays and Thursdays. Visiting hours are 9 – 11.15 am and 1 – 4.30 pm. The procedural rules concerning visits are advertised in notices at the entrance of the remand centre. The times for visits during weekdays are problematic, given many visitors’ working hours. Although the number of visiting days is generous, the limit to an hour for visits is not as generous as some rural prisons. In the low security Mannus prison (rural NSW), it is possible to have extended visits from 8 am – 3 pm on weekends, although visits are not permitted on weekdays.

Section 49 of the *Corrections Management Act 2007* provides for a minimum of one visit per week of at least 30 minutes as an *entitlement* that cannot be taken away by virtue of disciplinary sanctions. Subsection 46(1) imposes a positive obligation on correctional authorities to ensure adequate contact is maintained between detainees and families. In practice, it is proposed that there will be visits available at the AMC on six days of the week, at times that extend beyond working hours.

99 *Messina v Italy* (No. 2) 25498/94 [2000] ECHR 440.

100 *Ibid*, at para 66. See also, *ex parte O’Dhuibhir and another* [1997] EWCA Civ 110, in which the English Court of Appeal held that restrictions in the form of closed visits for family members and legal representatives were justified in the case of prisoners categorised as exceptional escape risks.

101 Standing Order 13.1.2.

102 Standing Order 13.1.6.

Detainees appeared to know when they could have visits, and most were regularly visited. Problems with visits include the fact that detainees are strip-searched before and after each 'contact visit'. (The subject of strip-searches and the pilot of the SOTER body scanner at the BRC to minimise strip-searches is dealt with above at section 2.2.) Non-contact visits take place in individual rooms with a glass barrier between the remandee and the visitor. Contact visits take place in a larger room that has several tables and chairs, all of which are bolted to the floor. The visits room was acknowledged to be inadequate by everyone interviewed. It is small, uninviting, offers little privacy and does not accommodate the needs of small children. Another problem with visits is that they will be terminated if a visitor has to leave the visit room – for example, if a child has to go to the toilet.

The rules concerning visits seem overly strict, or to be enforced over-zealously by some staff. Visitors must arrive 10 minutes before the visit is due to start in order to ensure that ID checks are completed. This inevitably involves waiting, and yet visitors who arrived a few minutes late were sometimes turned away. Rigid application of the rules can undermine relationships between detainees and staff. An authoritarian approach to visitors who are ordinary citizens and who may have struggled with public transport in order to reach the remand centres is also not helpful. Some detainees complained that their visitors were treated disrespectfully by some officers. It should be said that some officers thought the same about some of the visitors.

It is recommended that officers accommodate visitors where possible, waiving the 10 minutes rule where possible. As one officer explained, the rules are really only an administrative guideline that aids visits. If a late arrival is going to hold up all visits for those who have arrived on time, it will be necessary to deny the visit. But often, this will not be the case. Some officers do apply the rules generously. Others follow the rules strictly, and some may use them as a means to display their power. The positive obligation in the *Corrections Management Act 2007* to maintain relationships between detainees and their families should promote some flexibility in the interpretation of procedural rules regarding visits.

There are also rules constraining physical contact: touching or 'fondling' is forbidden. Only a brief, restrained embrace is permitted upon arrival and departure. Detainees must all sit in the brown chair (that faces a camera and the glass wall opposite). Everyone's hands must be in full view. Apart from children, there is to be no moving around. It is understandable that there should be some limitations on physical contact of a sexual nature, such as fondling of breasts, buttocks or the genital area, but beyond that, physical contact should be allowed. It is notable that there is no special provision for children in the rules, although they are in practice allowed to sit in their parents' laps and cuddle them. The other rationale for the rules appears to be detection of contraband. Currently, detainees are subjected to strip-searches prior to and after visits, or the scanner may be used instead. The impact on families is regrettable, and the strictness of the rules cannot be justified by concerns about contraband.

The impact of discipline (see section 5.2. below), and the imposition of bans on visits by family members for certain conduct is also of concern. Currently, bans on visitors may be imposed where the visitor has introduced contraband – which is a criminal offence – but also for less serious reasons such as abuse of officers. The *Remand Centres Act 1976* leaves this matter to be governed by regulation, but the new legislation puts more constraints on the power to ban visitors. Section 148 of the *Corrections Management Act 2007* provides only that directions may be made to a person not to enter or to leave a corrections centre. The *Corrections Management Act 2007* also recognises that a certain level of contact between a prisoner and his or her family is a basic right that cannot be over-ridden by disciplinary sanctions against the detainee, and there is a positive obligation to promote communication with family members and others.

Telephones

Detainees may use the telephones at the remand centres after setting up a telephone account, which may have up to 10 telephone numbers on it. Most phone calls are paid for by detainees,

although those without funds will be permitted a limited number of telephone calls and free calls to organisations such as the Ombudsman are available. Subsections 47(2) and (3) of the *Corrections Management Act 2007* provide for entitlements of one phone call a week to family, and further calls for necessary contact with family, friends and others. In general, the detainee must pay for the calls.¹⁰³ Mobile phones are banned for security reasons.

There is one telephone in the open area of each of the six yards at the remand centres (that is, there is no booth). Only outgoing calls may be made from these phones. Some detainees had concerns about the competition for use of the phones and the lack of privacy while using them. The larger yards (B and F yards) house 14 men each. At Junee, a much larger prison, there are a number of phones in a central area away from the noise of the yards. There were also some complaints from officers as well as detainees about technical difficulties with the phones.

Detainees were unclear as to whether they were entitled to receive phone messages other than in an emergency or from their lawyers. There were a number of complaints from detainees that messages, even from lawyers, were received many hours or even days later, and in some cases, they suspected that messages were not passed on at all. Subsection 47(3) of the *Corrections Management Act 2007* provides for detainees' entitlement to receive telephone calls.

Phone calls were also adversely affected by lock-downs. The period between 11.30 am and 1 pm when detainees are locked in their cells prevents phone calls at that time. Lunchtime is a very good time to catch someone who is otherwise unavailable for phone calls because they work full-time. Additional lock-downs caused by staff shortages, addressed above in section 1.2., also limit detainees' ability to make phone calls and were the cause of great and understandable frustration.

Section 103 of the *Corrections Management Act 2007* provides for monitoring and recording of phone calls, although 'protected' calls, which include calls between detainees and their lawyer, are not to be monitored. Currently, legislation does not permit monitoring.

Correspondence

There are few limitations on incoming and outgoing mail at the remand centres. All incoming mail is logged and it is then opened by the detainee in the presence of an officer. The mail is searched, often by the detainee shaking or showing the officer the contents. The envelope is removed and any sharp objects such as paperclips are also removed. Outgoing mail is sealed in an envelope by a detainee while in the presence of an officer. The person and address to which the mail is sent is recorded by the remand centre. Mail is not read by officers. Subsection 48(2) of the *Corrections Management Act 2007* requires the detainee to nominate a person by written notice to the Chief Executive before sending mail to, or receiving mail from that person. Section 104 provides that unless mail is protected (because it is from a lawyer, for example), letters may be opened and searched, although they may only be read in limited circumstances.

CONCLUSIONS AND RECOMMENDATION

There were relatively few problems concerning the use of phones, other than the impact of lock-downs, and no problems were raised concerning correspondence. The main concern with visits at the remand centres, apart from the inappropriate visits room, was the welcome received by visitors in some instances. Arrangements for visits at the AMC are generous, and appropriate. In order to facilitate the transition to the new system, the rules at the remand centres need to be applied flexibly.

¹⁰³ Section 47(4) *Corrections Management Act 2007*.

RECOMMENDATION.

2.9.1. The rules at the remand centres (*and in future at the AMC*) relating to the conduct of visits have to accommodate exceptional circumstances. The rules concerning late arrivals should be amended so they are flexible guidelines or structured discretions, rather than rigid rules. The rules concerning physical contact should be amended so as to permit touching so long as it is not of an overly sexual or intimate character.

2.10. LEGAL ADVICE

Relevant Standards

HR Act, s.22(2) 'Anyone charged with a criminal offence is entitled to the following minimum guarantees, equally with everyone else: ...

(b) to have adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her.'

Principle 18, Body of Principles '(1) A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel; (2) A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel. ... (4) Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing of a law enforcement official.'

SMR Rule 93 'For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. ... Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.'

The procedures state that legal visits may occur between 8.30 am and 6.00 pm on any day, but that visits should be pre-arranged where possible. Tuesdays and Thursdays are specifically designated as legal or welfare visit days.

Remandees indicated that they did receive visits from their lawyers, and there were no complaints about visiting times with respect to lawyers. However, a number of detainees expressed frustration about the lack of contact they had with their lawyers, describing inadequately brief discussions at the court cells prior to hearings. A number of detainees were also concerned about the length of time – days in several cases – it took for phone messages, even from lawyers, to reach them. As indicated above, it was sometimes suspected that phone messages from lawyers had not been passed on. The Official Visitor, Mr Geoff Potts, indicated that there was constant frustration among detainees about their inability to speak to their lawyers by phone, owing to the fact that by the time they had got the message, the lawyers were generally out of the office, in court or at other appointments. In practice, busy criminal lawyers would generally not be accessible during court hours, which are 9.15 am – 1 pm, and 2pm – 4.30pm. The lock-downs during the last quarter of 2006 placed further constraints on detainees' ability to access their lawyers. A properly resourced prisoners' legal service similar to those in Queensland and NSW would assist in better meeting the needs of detainees in the AMC.¹⁰⁴

¹⁰⁴ For information about prisoners' legal services in other jurisdictions, see the website of the Queensland Prisoners' Legal Service: <http://www.plsqld.com>. See also the NSW Legal Aid Prisoners Legal Service: <http://www.legalaid.nsw.gov.au/asp/index.asp?pgid=595>.

RECOMMENDATIONS.

2.10.1. Messages from legal representatives must be passed on to remandees as a priority, otherwise Corrective Services officers may be responsible for impeding the preparation of remandees' defence in violation of s.22(2)(b) of the HR Act. As detainees are locked in their cells from 11.30 am – 1.00 pm, messages must be passed on before 4 pm on the same day that they are received, so that it is possible to return the call once the lawyer is back from court.

2.10.2. *A properly resourced prisoners' legal service with provision for community legal education concerning prisoners' rights should be established ready for when the AMC opens.*

2.11. MEDIA AND LIBRARY FACILITIES

Relevant Standards

HR Act, s.16 (Prisoners must have access to information concerning the outside world including through the media).

SMR Rule 39 provides that '[p]risoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.'

SMR Rule 40 provides that 'Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.'

Remandees often do not have radios in their cells, as these are in short supply. There are televisions in most cells at both remand centres, and detainees are able to watch the news and documentaries. However, the induction booklet warns detainees that there are limited numbers of televisions. One detainee talked of the difficulty of obtaining a television because of limited numbers, after having been deprived of it for disciplinary reasons.

Access to the newspapers appeared to be irregular. Some detainees expressed their frustration at not being able to read the paper, as they believed that some officers read the papers before delivering them to the yards.

The library was described as very limited by detainees, being filled with old, uninteresting books. Recently, \$3,000.00 was spent on the purchase of new books for the library. The principal researcher inspected the library and found that the books were in good condition. However, more attention might be devoted to detainees' views on the subject matter of the books that the library holds. Consultation is consistent with SMR Rule 40, as well as the more general right to receive information protected by s.16 of the HR Act. Detention imposes significant obstacles to detainees seeking particular reading material, and consultation concerning the library assists in overcoming these barriers. One detainee commented on the need for more self-help books and others were interested in cars. (Another joked that there were too many romances, and not enough true crime.) A small legal library should also be established, given detainees' interest in legal issues, especially those on remand or who are appealing their conviction/sentence, although technical books are expensive.

Access to the library was problematic for a number of reasons. One reason was the lack of activities staff who could take detainees to the library on a regular basis. The former welfare officer would drop off library books to detainees in C yard in an attempt to compensate for the lack of amenity in that small yard, but the position of welfare officer has since been abolished. Some officers at interview said that books and magazines were generally not permitted to be dropped off because of problems, such as drug-soaked pages, although one exception has been made in the case of a foreign language newspaper. The ACT Indigenous Services and Cultural Diversity Unit ensures delivery of a number of different newspapers, including the Koori mail.

Access to the media has been the subject of investigation by the Human Rights Commission with respect to a particular detainee at BRC in the recent past. During the audit, this detainee's letter to the editor of *The Canberra Times* was published. The issue is now dealt with in Standing Order 32. A visit with the media will only occur with express written approval of the Superintendent, but telephone and mail contact are not so limited. Although Standing Order 32.1.2. talks of media contact as though it is a matter for discretion of the Superintendent, Standing Order 32.1.3. requires the Superintendent to have regard to the following:

- The possible harm and distress, which may be caused to victims and/or their families (such as a detainee manipulating the media or making vexatious complaints);
- That it does not threaten the proper functioning of the Remand Centre;
- The public interest in the importance of the matter being open to debate;
- The purpose and nature of the visit [or other communication];
- Ensuring the detainee has a reasonable right to freedom of expression.

There is therefore no blanket policy of denying contact with the media, which is commendable, although most officers interviewed on this subject seemed unsure as to what the policy was.

CONCLUSIONS AND RECOMMENDATIONS

It is necessary that some officers monitor the press. For example, if a detainee's charges are mentioned in *The Canberra Times*, s/he may require protection from other detainees. However, staff should have access to separate newspapers to those intended for the detainees. The papers ordered for the detainees are an important and valued means of keeping in contact with the outside world. While officers can afford to pay for their own newspapers, the Centre should order a few more to deal with the fact that so many officers have to leave for work early in the morning and are not permitted to leave the centre in order to buy them while they are on shift. The impression that papers may be read by staff and then passed on to detainees only if and when staff have finished with them signals a failure of understanding concerning detainees' rights and needs, and does not foster good relations between staff and detainees.

RECOMMENDATIONS.

2.11.1. Monitoring of newspapers by designated staff is encouraged, and separate newspapers ought to be provided to those staff.

2.11.2. Adequate numbers of newspapers should be ordered for detainees in each of the yards at both remand centres.

2.11.3. Detainees should be consulted about the subject matter of the books that should be held by the library, including a small legal library.

2.11.4. Reasonable access to the media must be permitted.

2.12. INFORMATION ABOUT RIGHTS

Relevant Standards

SMR Rule 35 (1) 'Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.'

Ensuring that prisoners know their rights helps them to defend their rights. On induction, detainees are to be provided with a few sheets of information about their rights and obligations. Apparently, this should occur at the court cells. The induction booklet makes no reference to the *Discrimination Act 1991* (ACT) or the HR Act and does not contain enough information about the day-to-day operation of the remand centres.

A number of detainees said that they were not given the induction booklet. One acknowledged that he may have been given the booklet, but was not paying a lot of attention, as he was shocked about being sentenced, and his first couple of days in custody. Furthermore, some detainees complained that they had asked for copies of documents, such as the Standing Orders and the *Remand Centres Act 1976*, and had been refused access to them.

As with the Watchhouse staff,¹⁰⁵ some remand centre staff talked about the fact that many detainees had been on remand before, and assumed that they did not need information. However, as procedures change from time to time (eg strip-searching has changed, the SOTER scanner is being piloted, there is no activities or welfare officer) it cannot be assumed that detainees know what their rights are in the remand centres.

CONCLUSIONS AND RECOMMENDATIONS

In general, the reading age of many detainees and their state of mind at the time of induction means that handing them a booklet is only a first step towards the provision of a proper level of information about detainees' rights. Visitors should be given copies of the induction booklet as well, so that they can be a resource for the detainee at a later stage. In addition, a DVD or video should be developed (or borrowed from another jurisdiction with appropriate amendments) for the purposes of induction. Technology already exists in the remand centres and will also be available in the AMC to enable messages to be screened on detainees' televisions. The opportunity should be taken now to pilot that technology at the remand centres. More time also needs to be spent with detainees to explain their rights upon their admission to the remand centres, or the AMC, and soon afterwards.

RECOMMENDATIONS.

2.12.1. At the remand centres, information about detainees' rights needs to be provided in different media, that is, written, verbal and visual. The Commission commends the ACT Corrective Services' move to pilot displays of information on detainees' television screens.

2.12.2. More time needs to be spent explaining detainees' rights verbally upon induction.

2.12.3. A DVD on what to expect in custody should be produced and given to detainees on induction.

2.12.4. Visitors should be offered copies of the induction booklet.

¹⁰⁵ Watchhouse Review, footnote 30 above, para 4.2.

3. SYSTEMIC DISCRIMINATION

Relevant Standards

HR Act, s.8 (recognition as a person before the law, equality before the law, and protection from discrimination.)

SMR Rule 8 ‘The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

- (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
- (b) Untried prisoners shall be kept separate from convicted prisoners;
- ...
- (d) Young prisoners shall be kept separate from adults.’

SMR Rule 53 (1) ‘In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

- (2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.
- (3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.’

SMR Rule 67 deals with security classification. It provides that ‘[t]he purposes of classification shall be:

- (a) to separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;
- (b) to divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.’

The separation of remandees from sentenced prisoners is enshrined in s.19(2) of the HR Act, as well as Principle 8, Body of Principles.

The findings of the 1991 Royal Commission into Aboriginal Deaths in Custody lays down standards for the treatment of Indigenous detainees (see particularly recommendations 168 – 187). Of particular relevance on questions of placement is recommendation 181: ‘... it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention. ...’

Various prisoner populations have special needs, which need to be met if they are to enjoy real equality (or equality of result) and which are important to an assessment as to whether their treatment is humane. Classification of prisoners is also an important factor when considering whether their treatment is humane. It is well established that remandees must be separated from convicted prisoners, women from men, and young or vulnerable detainees from older, more experienced or dangerous detainees. This separation may ensure more equitable treatment of detainees, although it can also have undesirable effects in some cases.

Equality under international law means equality of result and reasonable accommodation of differences, as well as equality of opportunity and like treatment of similarly situated individuals.¹⁰⁶ Similarly under

domestic law, such as the *Discrimination Act 1991* (ACT) it is not necessary to prove that discrimination is intentional. Rather, what matters is the substantive effect of certain policies, and whether the policies are reasonable in the circumstances. There are cases in other jurisdictions where prisoners have successfully brought discrimination claims.¹⁰⁷

The following provisions of the *Remand Centres Regulation 1976* reflect international standards regarding the separation of men and women, remandees from sentenced prisoners, and adults from children.

- Regulation 10(5) Sleeping quarters occupied by male detainees must be segregated from sleeping quarters occupied by female detainees.
- Regulation 10(7) Sleeping quarters occupied by adult detainees must be segregated from sleeping quarters occupied by child detainees.
- Regulation 10(8) Sleeping quarters occupied by convicted detainees must be segregated from sleeping quarters occupied by unconvicted detainees.

These provisions are generally observed in practice, but not always. For example, sentenced ACT prisoners are generally relocated to NSW jails, and this practice will continue until the establishment of the AMC. However, there are sometimes delays transferring prisoners to NSW because of a lack of beds. Also, sentenced prisoners who are due in court in the ACT on another charge or appeal are currently transferred to BRC in order to attend court. Technically, a sentenced prisoner who has appealed is a remandee and will therefore be held in the remand centre, sometimes for a significant period (that is, longer than six months). Subsection 44(2) of the *Corrections Management Act 2007* provides that the chief executive must ensure that ‘convicted detainees are accommodated separately from non-convicted detainees.’ Thus, the separation of sentenced prisoners from remandees in so far as accommodation is concerned is provided for at the AMC.

Of greater significance are the issues such as the impact of the requirements of separation within the context of inadequate facilities for women and protected detainees and measures that might be taken at the remand centres to mitigate these problems.

3.1. WOMEN PRISONERS

When inducted, women are housed initially at BRC; they may be returned there if there are problems of a disciplinary nature; and women with serious mental health issues will be housed in D yard in BRC, along with male remandees. Only if the term ‘sleeping quarters’ meant ‘cell’ could it be said that women housed in the same yard as men have separate sleeping quarters, and it is apparent that neither SMR Rule 8(a) nor the *Remand Centres Regulation 1976* is fully complied with. It is, however, difficult to come up with alternative solutions within the existing facilities. The accommodation of a single woman in a yard by herself, even if possible, would be tantamount to segregation or solitary confinement, and might well be viewed and experienced as a punishment.

Contrary to Rule 53 of the SMR, women in the remand centres are not guarded solely by women. Cell searches at STRC and in D yard are often conducted by male officers. This is due in part to the difficulty of recruiting women as custodial officers, although the ACT does relatively well in this respect, as women are 27% of the custodial staff. Competent men may interact well with women detainees, however, the underlying rationale of SMR 53, which is to protect vulnerable

¹⁰⁶ See for example, Human Rights Committee, General Comment No. 18, at para 10. The general comments are available in a compilation, UN Doc HRI/GEN/Rev.7, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ca12c3a4ea8d6c53c1256d500056e56?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ca12c3a4ea8d6c53c1256d500056e56?Opendocument).

¹⁰⁷ See for example, *State of Queensland v Mahommed* [2007] QSC 18 (9 February 2007). In this case, Mr Mahommed successfully argued that he had been discriminated against on the grounds of his religion when he was not provided with fresh Halal meat.

women against sexual assault is unquestionable. In its recent report, the Queensland Anti-Discrimination Commission recommended that male officers should not be assigned to observe women at night.¹⁰⁸

Some women officers, like many of the male officers, expressed the view that women detainees were particularly needy and/or difficult. It appeared that on one occasion, the 'demanding' nature of the women detainees led to an inappropriate disciplinary measure. In interviews with women detainees, it was alleged that they were all moved to the cells which were formerly part of the old youth detention centre (STRC 'A' yard) and which are generally not used because they are not viewed as fit for purpose.

It is now well recognised that women in detention have very specific needs, ranging from very important issues, down to small but annoying problems.¹⁰⁹ Women generally have greater child-care responsibilities and therefore feel the impact of detention quite severely, especially if children have to be placed in care.¹¹⁰ At the AMC, women will be housed in cottage-style accommodation and will have access to separate recreational facilities, including green space, and arrangements for accommodating young children are being assessed. The Commission was consulted with respect to the draft ACT Corrective Services *Caregiver Protocol*. The Commission is encouraged by Corrective Services' preparedness to make arrangements for pre-school age children to stay with their mothers, if they are the primary caregivers. However, the Commission was concerned about Corrective Services' resistance to permitting older children to have extended visits with parents, as well as the automatic exclusion of male primary givers in detention from having pre-school age children stay with them.

Women are often more severely affected by strip-searching because of their frequent histories of sexual abuse.¹¹¹ Also, the fact that they are often better connected with their families and therefore have more visitors, usually means more strip-searches, or fewer contact visits, as some women forgo them because they cannot bear being strip-searched.¹¹² Women in custody have very high rates of mental illness.¹¹³ Although health services, including the attendance of a psychiatrist, are provided at STRC, women with reasonably serious mental health issues may be housed at STRC with fewer opportunities to consult health staff than those detainees at BRC. Alternatively, they may be transferred between BRC and STRC because the variations in their mental state require attention that can only be regularly provided in D yard. Less serious women's issues at the remand centres include the lack of choice concerning sanitary products (pads and tampons) and the prohibition on underwire bras (which are necessary to provide adequate physical support for women with larger breasts).

Women's needs are frequently not met because of the 'maleness' of the prison environment (this impacts on women corrective services officers too – for example, there is no maternity uniform for female ACT corrective services officers) and their small numbers. The remand centres have given some recognition to women's needs, allowing visits from non-government organisations such as WIREDD (Women's Information, Resources and Education on Drugs and Dependency) and Inanna Inc (a women's refuge). Inanna offers pleasurable activities such as having hair styled and manicures/pedicures.

The training offered by ACT Corrective Services addresses issues concerning women in prisons. However, it is not compulsory for existing staff to attend such training. It was notable in interviews that the majority of custodial officers, whether men or women, said that they would prefer to work with male prisoners, rather than women. It is possible to have a productive and rewarding working relationship with women prisoners. The Boronia women's pre-release centre in

108 Recommendation 43, *Women in Prison*, footnote 42 above.

109 See, for example, *Women in Prison*, *ibid*. See also, *Women Prisoners in Victoria: a Report on the considerations and conclusions of the Equal Opportunity Commission of Victoria in determining whether to seek the Attorney-General's consent to conduct a formal investigation into systemic discrimination against women in Victorian prisons* (2006), available at the Victorian Equal Opportunity and Human Rights Commission website: <http://www.humanrightscscommission.vic.gov.au/Home.asp>.

110 *Women in Prison*, footnote 42 above, at p 29.

111 *Ibid*, at p 72.

112 *Ibid*, at p 73.

113 *Ibid*, at p 92.

Western Australia is an example of a women's prison where the atmosphere is positive and staff are enthusiastic about their work with the prisoners. ACT Corrective Services has seconded at least one staff member who performs both policy and custodial roles for a week at Dillwynia prison in NSW to experience a similarly positive environment for women prisoners and staff.

CONCLUSIONS AND RECOMMENDATIONS

The design of the AMC has addressed the phenomenon of the prison within a prison for women. The training offered by ACT Corrective Services addresses the issues for women in prisons. However, the training needs to reach all custodial officers. In addition, more women custodial officers should be recruited. At the remand centres, more should be done to meet the special needs of women.

RECOMMENDATIONS.

3.1.1. Women detainees should not be guarded by male Corrective Services officers at night.

3.1.2. More effort should be made to recruit women Corrective Services officers.

3.1.3. Extensive training concerning issues for women in prison and sensitivity towards women prisoners should be compulsory for all custodial officers.

3.1.4. The remand centres should meet the special needs of female detainees, such as providing appropriate bras (eg with plastic supports as underwire is prohibited) and underwear, as well as a choice of sanitary pads and tampons. A dispenser for pads and tampons should be installed.

3.2. INDIGENOUS AND CULTURALLY AND LINGUISTICALLY DIVERSE (CALD) DETAINEES

Relevant Standards

HR Act, s.8 (recognition and equality before the law).

HR Act, s.22 and the Body of Principles¹¹⁴ refer to the right to an interpreter during the criminal process. Equal treatment when in detention, including pre-trial detention, also requires that interpreters be made available in relation to important interactions with authorities, such as searches or disciplinary procedures, where a detainee does not have an adequate grasp of English: see SMR Rule 30(3).

HR Act, s.27 provides 'Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority, to enjoy his or her culture, to declare and practise his or her religion, or to use his or her language.'

Recommendation 182 of the Royal Commission into Aboriginal Deaths in Custody: '... instructions should require that, at all times, correctional officers should interact with prisoners in a manner which is both humane and courteous. Corrective Services authorities should regard it as a serious breach of discipline for an officer to speak to a prisoner in a deliberately hurtful or provocative manner.'

114 Principles 10, 13 and 14.

3.2.1. Cultural awareness and the incidence of racism

The remand centres do reasonably well on the issue of placement of Indigenous detainees. For example, if placement at STRC is appropriate, Indigenous detainees will be moved across together. The Indigenous Liaison Officer is proactive and assertive on this and other issues relating to Indigenous detainees. There is also an active Indigenous Services and Cultural Diversity Unit. Training in cultural awareness, including training that concerns specifically Indigenous issues, is a mandatory part of the training for new recruits. It is also available for existing members of staff, although attendance is not compulsory. The training is part of a nationally approved training curriculum (the Training Package for Custodial Practice).

Overt racism among detainees appears to be relatively rare according to those knowledgeable about the experience of Indigenous detainees in the remand centres, and interviews with two Indigenous detainees confirmed this. Placement of Indigenous detainees together assists in combating racism and the Indigenous Liaison Officer is prepared to challenge racist detainees. Corrective Services currently uses psychological tests in recruitment to screen out candidates with racist and other discriminatory attitudes. However, the interviews revealed that some officers made racist comments.

CONCLUSIONS AND RECOMMENDATIONS

The position of the Indigenous Liaison Officer and regular offering of cultural awareness training is evidence of a serious commitment by ACT Corrective Services to creating an environment that is as free as possible from racism. In order to ensure that all officers take this commitment seriously, training should be made compulsory for existing staff; there should be an assessment of particular skills; and performance review procedures should also focus on these skills. Relevant skills include an understanding of matters such as prevailing myths and stereotypes about Aboriginal identity (for example, that it is all a matter of skin color); language issues; the impact of trauma on Indigenous people; and the importance of kinship.

RECOMMENDATIONS.

3.2.1.1. Non-Indigenous Corrective Services officers should be required to attend courses in cultural awareness.

3.2.1.2. Officers should be assessed on cultural competencies during recruitment and ongoing training – that is particular skills that are relevant to interactions with people from culturally and linguistically diverse backgrounds.

3.2.1.3. Performance review measures should include an assessment of officers' ability to maintain effective relationships with detainees from culturally and linguistically diverse backgrounds.

3.2.2. Interpretation and translation services

The principal researcher interviewed a number of detainees from culturally and linguistically diverse backgrounds, but only one who had significant language issues. Officers confirmed that a telephone interpreter service would be used on induction of a detainee whose English language ability required interpreting services. However, it appeared that there could be difficulties contacting interpreters for purposes such as disciplinary proceedings and that there was some reliance on other detainees of the same background providing assistance to these detainees.

During the audit interviews, no interviewee referred to any specific cases of detainees requiring, but not gaining access to interpreters. However, this could be a problem in the AMC, given the much larger population of detainees there. As interpreter services are expensive, it would be economical to recruit staff who have language skills, which could have other benefits including diversity of staff and heightened cultural awareness. There should also be more written information provided to detainees in their own languages. For example, the induction booklet should be available in different languages.

CONCLUSIONS AND RECOMMENDATIONS

Detainees from culturally and linguistically diverse backgrounds are denied equal treatment because information is not provided to them in their own languages. Detention is isolating enough without the added burden of language difficulties, and more should be done to overcome the language barrier.

RECOMMENDATIONS.

3.2.2.1 Detainees from culturally and linguistically diverse backgrounds should be provided with information in their languages, including translations of the induction booklet.

3.2.2.2. The pilot program displaying messages with important information on detainees' television screens should use all languages that are commonly used in the remand centres.

3.2.3. Culturally important activities and responsibilities

The lack of meaningful activities has particular ramifications for Indigenous detainees. As one detainee explained, the ability to paint is very important to many Indigenous people – lack of access to painting materials is therefore particularly keenly felt by Indigenous remandees. The only cultural activity provided for Indigenous detainees is NAIDOC week (8 – 15 July 2007),¹¹⁵ which is organised by the Indigenous Liaison Officer.

Permission to leave the remand centres for funerals is important to all detainees, but particularly to Indigenous persons. In one case involving an Indigenous detainee in the past, an informal complaint to the Human Rights Commission resolved the issue satisfactorily.

CONCLUSIONS AND RECOMMENDATIONS

The denial of culturally important activities to Indigenous detainees means that their rights under s.27 of the HR Act are not fulfilled. Similarly, denying an Indigenous detainee permission to attend a funeral may violate s.27 of the HR Act, unless it is possible to show that the denial is a valid limitation under s.28 of the HR Act.

RECOMMENDATION.

3.2.3. The Indigenous Liaison Officer should be given more support and resources to enable more culturally important activities for Indigenous detainees to be provided. Also opportunities should be provided for non-Indigenous detainees to participate appropriately in these Indigenous events. Corrective Services officers should be encouraged to play more of a role in Indigenous events such as NAIDOC week, with participation counted as an aspect of ongoing cultural awareness training.

¹¹⁵ National Aborigines & Islanders Day Observance Committee.

3.3. PROTECTED STATUS

Relevant Standards

HR Act, s.8 (equality).
 HR Act, s.9 (right to life).
 HR Act, s.18 (liberty).
 HR Act, s.19 (right to humane treatment).

In addition to classification for reasons such as security, some detainees may require protection from other detainees. People who need protection include young or otherwise vulnerable detainees who may be experiencing their first time in custody.

Remanded youth under the age of 18 years are accommodated in the Quamby Youth Detention Centre, rather than BRC or STRC. Furthermore, s.69 of the *Children and Young Persons Act 1999* provides that a person under the age of 18 years and six months is to be treated as a young person until the time (if any) that the Children's Court finds the person guilty. This means that persons just over the age of 18 may be held on remand at Quamby. However, there are young remandees between 18 and 25 detained as adults at the remand centres whose needs must be recognised.¹¹⁶ The needs of older detainees also require recognition, as there is a significant generation gap between a detainee of 18 and one who is 30 or 40 years old. A frequent source of tension is the desire of fit, young men to play squash in a small, enclosed prison yard when the older men want peace and quiet. The Human Rights Commission understands that in making decisions about placement and the design of programs for detainees at the AMC, the age category of 18 – 25 years will be considered as a group with particular needs. In the meantime, ensuring that detainees, particularly younger men, have the opportunity to play sport in the large activities yard at BRC (Recommendation 1.4.3.) would do something to address the needs of this age-group.

Other categories of detainees requiring protection are those who have committed offences that are regarded with contempt by other detainees, such as sex offenders, especially paedophiles. Other categories of detainees who might require protection include relatives of officers, and GLBTI (Gay, Lesbian, Bisexual, Transgendered or Intersex) prisoners. However, it should be noted that the one openly gay detainee interviewed by the principal researcher had no problems in one of the mainstream yards.

Protection status is governed by the Procedures on 'Separation of Detainees'. Step one of the Procedures provides for placement on protection when:

- (a) the detainee has fears for his/her safety and applies in writing to be placed on protection, and is approved by the Superintendent;
- (b) in the opinion of the Duty Chief, the Deputy Superintendent/Manager or the Superintendent, the detainee is at risk of harm or exploitation from other detainee(s), due to the detainee's vulnerability (age, appearance, intellectual capacity, the nature of the criminal charges or previous criminal history, prior employment or any other thing);
- (c) when the detainee's warrant or other documentation is endorsed 'Prisoner at Risk' (unless it is established that the intention of that endorsement was to indicate the detainee is at risk of self-harm or suicide, rather than at risk from other detainees).

In addition to placing protected detainees in protection yards, detainees will be prevented from using common areas (for example, the library or activities room) or being at the induction area at the same time as 'mainstream' detainees.¹¹⁷ The protection yards are usually A and C yard at BRC. During the time that the audit was being conducted, A yard was generally being used for

¹¹⁶ The United Nations defines 'youth' as a person between 15 and 24 years of age (inclusive). See for example, UN Department of Economic and Social Affairs, *Guide to the Implementation of the World Programme of Action for Youth* (2006), at p 2. Recent research has found that brain development is not complete until a person is in his or her early twenties. See for example, Larry Brendtro and Scott Larson, *The Resilience Revolution* (2006), at p 8.

¹¹⁷ Procedures, step 4.

vulnerable detainees, while C yard was reserved for detainees who needed protection because of the offence they had committed. There is also a category of 'strict-one-out' protection for detainees who do not associate with other detainees.

The small size of the yards generally used for protection at BRC affects the well being of detainees in those yards. It is difficult to exercise adequately in any of the yards at the remand centres, but BRC yards A and C are particularly small, meaning that it is impossible to play most ball or other games that involve exercise. Although it is possible for the remandees in these yards to be taken to the activities yard for the purposes of exercise, according to staff and detainees interviewed, this does not happen often.

The accommodation also poses problems for non-smokers. Most detainees smoke. The Commission understands that an attempt is made to accommodate non-smokers separately from smokers, however, at least one non-smoker could not be separately accommodated.

RECOMMENDATIONS.

3.3.1. Detainees in the protection yards at BRC must be treated equitably as compared with detainees in the mainstream yards, in terms of access to activities, the library and exercise.

3.3.2. Officers should be required to organise time at least daily in the activities room/yard at BRC for detainees who are accommodated in the protection yards.

3.3.3. Non-smokers in the protection yards (and elsewhere) must not be accommodated with smokers unless they freely consent. Any restrictions on this principle should only be for exceptional circumstances and a limited time period.

3.4. RELIGION

Relevant Standards

HR Act, s.14 (freedom of thought, conscience and religion). It includes protection of 'the freedom to demonstrate [a person's] religion or belief in worship, observance, practice and teaching, either individually or as part of a community and whether in public or private.' Subsection 14(2) provides that '[n]o-one may be coerced in a way that would limit his or her freedom to have or adopt a religion or belief in worship, observance, practice or teaching.'

SMR Rule 41 provides for a 'qualified representative' of a religion to be appointed or approved if there are a sufficient number of prisoners of that religion and that the representative may hold services and pay pastoral visits to prisoners.

SMR Rule 42 'So far as is practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.'

The *Remand Centres Act 1976* does not completely reflect the requirements of religious representatives and services in Rules 41 and 42 of the SMR. Regulation 21 of the *Remand Centre Regulation 1976* provides for a more limited right with respect to religious instruction, including that '[a] minister of religion must have a reasonable right of access to a detainee who wishes to see the minister.' There are two Anglican chaplains (one is a clergyman, the other a layman) who attend the remand centres on a weekly basis and who conduct ecumenical services once a month. A representative of the Salvation Army also attends the centres. It is also possible for visits with other clergy to be arranged. However, several detainees indicated that they would like to see a

representative of their religion, which indicates lack of knowledge about this possibility. Books and other religious items have been permitted at the remand centres, and no detainees complained about this aspect of their detention.

The general rule against hats at the remand centres does not appear to make any exception for religious reasons. While a specific risk of self-harm to a particular detainee could sometimes require that certain headwear (for example, a Sikh's turban) be taken from the detainee, in principle, detainees required to cover their heads for religious reasons should be permitted to do so. The Commission notes the Watchhouse review team's recommendation that appropriate procedures be developed,¹¹⁸ and that 'closer liaison with community groups could be undertaken to develop new Watchhouse procedures for handling of property that has cultural or religious significance.'¹¹⁹

In the new prison, provision for a more substantial chaplaincy will be made. This is desirable for reasons that go beyond the importance of meeting the spiritual needs of those detainees who actively adhere to a religion. Prison chaplains fulfil a general pastoral role as well as a spiritual role, and at present there is no qualified counsellor at the remand centres, although mental health staff and GPs may offer counselling to detainees as a component of their medical treatment.

RECOMMENDATIONS.

3.4.1. Detainees at the remand centres should be provided with information regarding their rights to request attendance by a representative of their faith. (See Recommendations 2.12. and 3.2.2. concerning different media, times and languages in which information should be provided.)

3.4.2. General rules need to be more flexible to enable those detainees required to cover their heads as part of observing their faith to do so.

3.5. FOOD

Relevant Standards

HR Act, s.9 (right to life).

HR Act, s.19 (humane treatment in detention).

SMR Rule 20(1) 'Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.'

SMR Rule 87 'Within the limits compatible with the good order of the institution, untried prisoners may, if they so desire, have their food procured at their own expense from the outside, either through the administration or through their family or friends. Otherwise, the administration shall provide their food.'

ICESCR, Article 11 recognises the right of everyone to an adequate standard of food. The core content of the right to adequate food requires '[t]he availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.'¹²⁰

118 Watchhouse review, footnote 30 above, Recommendation 3.

119 *Ibid.*, at para 3.39.

120 UN Committee on Economic, Social and Cultural Rights, General Comment 12 on the right to adequate food, para 8. The general comments are available in a compilation, UN Doc HRI/GEN/Rev.7, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ca12c3a4ea8d6e53c1256d500056e56f?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ca12c3a4ea8d6e53c1256d500056e56f?OpenDocument).

Detainees receive three meals a day, provided by Spotless catering, which provides food at Calvary Hospital. Breakfast consists of toast and cereal. Lunch is sandwiches and fruit (limited to apples and oranges). Dinner is a hot meal. Remandees may also buy fruit with their own funds, but only oranges and apples are available.

Many detainees complained about the institutional food, consistent with complaints made by young persons detained at Quamby Youth Detention centre, prior to the employment of a cook as a result of recommendations in the 2005 *Human Rights Audit of Quamby*.¹²¹ In particular, detainees were tired of mashed potato with their dinner (one detainee described every meal as being accompanied by it, including meat and vegetables; lasagna; and beef madras). Some detainees said that there needed to be more variety in the sandwiches provided for lunch. Some indicated that the vegetables, which they described as usually frozen, were also a problem. Food waited in the reception area for a long time, potentially posing a health hazard. It was said that 4.30 pm was too early to receive the dinner (this time is imposed by the fact that detainees are locked in their cells at 6 pm). Those who were not on special diets (for example, for medical reasons such as diabetes) complained that they could not receive rice -they alleged that they were told it was deemed to be a choking hazard, even though some detainees would prefer rice for cultural reasons. One detainee said that it took 8 months for rice to be included in meals. Further complaints were made about the fact that the 'hot food buy-up' at STRC had been restricted to pizza, and that a request to have take-away from other cuisines (eg Chinese) was refused. There was criticism of the limited range of items available in the supermarket 'buy-up'. One detainee with serious health problems noted that he didn't get enough fibre, and needed to use laxatives as a result. Some detainees at the PDC complained that the vending machine food was expensive, but were reassured when told that any profits were used to buy a monthly breakfast of bacon and eggs.

CONCLUSIONS AND RECOMMENDATIONS

On the question of hot food buy-ups, it should be noted that s.20(c) of the *Remand Centres Act 1976* stipulates that there is a right 'to receive food from outside the remand centre.' This provision reflects SMR Rule 87. This does not mean that food can be given to detainees by visitors because of the likelihood of contraband being hidden in it, so for security reasons, it must be independently bought by Corrective Services from a provider. Obviously administrative resource constraints may limit remandees' ability to dictate that officers buy particular foods, even though the food is bought at remandees' expense. The process of buy-ups at the supermarket involves agreement between the supermarket and the remand centres administration as to what items may be purchased. However, it appears that the administration is unreasonably limiting remandees' choices with respect to both the supermarket and hot food buy-ups. It is not clear why, for example, fruit other than apples and oranges may not be purchased – perhaps because they are cheaper and more readily available due to a longer shelf life than other fruit - or why fast food other than pizza could not be ordered for detainees at STRC. Arguably, s. 20(c) of the *Remand Centres Act 1976* is not complied with on a regular basis.

RECOMMENDATIONS.

3.5.1. Detainees at the remand centres need to be informed about and offered the choice of culturally acceptable meals. (See Recommendations 2.12. and 3.2.2. concerning different media, times and languages in which information should be provided.)

3.5.2. Detainees at the remand centres should continue to be consulted and offered more choice with respect to buy-ups, eg a wider choice of types of fresh fruit.

121 *Human Rights Audit of Quamby* (1995), available at: <http://www.hrc.act.gov.au>.

4. HEALTH AND MEDICAL CARE

Generally Relevant Standards

HR Act, s.9 (right to life).¹²²

Body of Principles, Principle 24 'A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.'

ICESCR, Article 12 (right to highest attainable standard of physical and mental health).

SMR Rule 22 (1) 'At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

- (2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.
- (3) The services of a qualified dental officer shall be available to every prisoner.'

SMR Rule 23(1) 'In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

- (2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.'

SMR Rules 24 – 26 (duties of medical officer).

SMR Rule 91 'An untried prisoner shall be allowed to be visited and treated by his own doctor or dentist if there is reasonable ground for his application and he is able to pay any expenses incurred.'

The principle of equivalence. An important underlying principle for provision of health care to those in detention is the principle of equivalence. Principle 9 of the Basic Principles states that '[p]risoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.' Principle 20 of the *UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* says that the Principles apply to mentally ill persons 'serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings or investigations 'to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances.' The World Health Organization *Guidelines on HIV infection and AIDS in prisons* state in General Principles A(1), that '[a]ll prisoners have the right to receive health care, including preventive measures, equivalent to that available in the community'¹²³ It must be acknowledged that prisoners often have particularly poor health, and that equivalence means equal health *outcomes* for this needy group.¹²⁴

¹²² In *Fabrikant v Canada* (970/01), the Human Rights Committee said that the State is 'responsible for the life and well-being of its detainees' indicating that the right to life extends to provision of health care in detention.

¹²³ Principle 1. See also principle A(4), which states that 'preventative measures for HIV/AIDS in prison should be complementary to and compatible with those in the community'.

¹²⁴ Department of Justice, Government of Victoria, *Victorian Prisoner Health Survey* (2003), at pp 3 – 4; Office of the Inspector of Custodial Services, *Thematic Review of Offender Health Services* (2006), at p 13.

4.1. HEALTH CARE SERVICES

Relevant Standards

HR Act, s.19 (humane treatment).

ICESCR, Article 12 (the right to the highest attainable standard of physical and mental health).

United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care

SMR Rule 22 (see Generally Relevant Standards to Health and Medical Care, above).

Corrections Health within Community Health of ACT Health provides health services at correctional facilities. A review of Corrections Health conducted by KPMG in 2002 found various inadequacies with the physical facilities for health consultations, such as the health clinic. The facilities and procedures should be improved at the AMC, in line with the recommendations of this review. A Corrections Health Plan governing the operation of the AMC is currently being drafted. Winnunga Nimmityjah Aboriginal Health Service has made comprehensive recommendations in its recent report, *You Do the Crime, You Do the Time: Best Practice Model of Holistic Health Service Delivery for ATSI Inmates of the ACT Prison*.

One of the health services in highest demand at the remand centres is mental health services. The secure forensic mental health facility to which the ACT has committed itself (see section 1.2., above) will only be for the most severe cases. Mental illness and related problems such as personality disorders affect many detainees. Commission staff interviewed a number of detainees with mental illnesses and personality disorders who were not accommodated in D yard.

The health services to these detainees have been increased in recent years, and the role of the current staff specialist psychiatrist for forensic services, Mental Health ACT, has been crucial to the provision of better mental health services in the past year. However, the health staff are stretched to capacity and do not have a constant presence at the remand centres. There should be a comprehensive health service that offers treatment for detainees at the AMC who have a mental illness or a related problem such as a personality disorder. In order to budget properly for the health services required in the AMC, including mental health, a systematic process collecting information concerning detainee health needs is required.

RECOMMENDATIONS.

4.1.1. In the period immediately preceding the repatriation of ACT prisoners, funding should be provided to conduct an audit of the medical records of prisoners in the ACT and NSW. This should be followed by a survey of epidemiological health needs of prisoners at the AMC towards the end of its first year of operation, with a view to budgeting adequately for health services at the AMC.

4.1.2. The Corrections Health Plan should recognise the need for a comprehensive health service that offers treatment underpinned by the principles of equivalence and equity, and a system that redresses poor health-seeking behaviours of detainees with mental illness and related problems such as personality disorders.

4.2. INFECTION CONTROL AND HARM MINIMISATION

Relevant Standards

HR Act, s.9 (right to life).

ICESCR, Article 12 (the right to the highest attainable standard of health).

Principle of equivalence

World Health Organization *Guidelines on HIV infection and AIDS in prisons*, Principle 24, states that in countries where a needle and syringe exchange program operates in the community, ‘consideration should be given to providing clean injecting equipment during detention and on release to prisoners who request this.’

The commentary to Guideline 4 of the *International Guidelines on HIV/AIDS and Human Rights*, says that ‘[p]rison authorities should ... provide prisoners ... with access to ... means of prevention (condoms, bleach and clean injection equipment).’¹²⁵

Similarly, the Model Law on Drug Use and HIV/AIDS (prisons) provides for the supply of sterile syringes in Article 15.¹²⁶

Illicit drugs are a problem in all custodial settings throughout the world. UNAIDS has noted that ‘long experience has shown that drugs, needles and syringes will find their way through the thickest and most secure of prison walls.’¹²⁷ Injectable drugs, injecting equipment and tattooing equipment have all been found in the ACT remand centres, and it is known that, when injecting, remandees will often share an intravenous needle.¹²⁸ This may lead to the transmission of blood-borne diseases such as HIV/AIDS and Hepatitis B and C,¹²⁹ therefore increasing the risk of further transmission when detainees return to the community.

There is a methadone program for heroin users at the remand centres and the PDC. This harm-minimisation program assists in preventing transmission of blood-borne diseases such as HIV/AIDS and Hepatitis B and C. As the ACT has a community-based needle-syringe exchange program, the principle of equivalence would normally require a needle exchange within correctional facilities in order to minimise the harm of injecting drug use.

Since drugs and syringes do find their way into the remand centres and other correctional facilities, despite frequent and intrusive searches of detainees (see above section 2.2) and, in some jurisdictions, visitors and staff, harm minimisation is a rational response to the problem. It does not preclude other programs which have the aim of eliminating drug dependency, including peer support programs, which are highly effective in reaching detainees at risk. A number of correctional facilities overseas have introduced needle-syringe exchanges.¹³⁰

Several detainees indicated that they had used needle-syringe programs in the community and that they would use such a service while in detention. They expressed dismay, sometimes disgust (directed at the system) about sharing a blunt needle.

125 This resulted from the *Second International Consultation on HIV/AIDS and Human Rights* in September 1996, convened by UNAIDS and the Office of the UN High Commissioner for Human Rights.

126 This was produced by the Canadian HIV/AIDS Legal Network for UNAIDS in 2006.

127 Joint United Nations Programme on HIV/AIDS (UNAIDS), *Prisons and AIDS: UNAIDS point of view* (1997), at p 6; available at http://data.unaids.org/Publications/IRC-pub05/Prisons-PoV_en.pdf.

128 This is consistent with studies in Australia and elsewhere. See R. Lines, R. Jürgens, G. Betteridge, H. Stöver, D. Laticeski, and J. Nelles, *Prison Needle Exchange: Lessons from a Comprehensive Review of International Evidence and Experience* (2nd edn, 2006), at p 10: <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=184>.

129 Studies have demonstrated that transmission of such diseases does occur: *ibid*, at 11.

130 See R. Lines, R. Jürgens, G. Betteridge, H. Stöver, D. Laticeski, and J. Nelles, *Prison Needle Exchange*, footnote 128 above. See also, S. Rutter, K. Dolan, A. Wodak and H. Heilpern, *Prison-based Syringe Exchange Programs: a Review of International Research and Program Development*, NDARC Technical Report No. 112, 2001.

However, staff interviewed by the principal researcher were opposed to a needle syringe exchange. Their concerns related to occupational health and safety (one death from a needle-stick injury in a correctional facility occurred in Long Bay jail in New South Wales in 1990); the paradox of permitting ongoing drug use, when the offending behaviour is drug-related; and the problems associated with permitting detainees to use illicit drugs in prison (such as overdose). The Human Rights Commission is also concerned by the prevalence of meth-amphetamine (ice), which is a stimulant and, at least anecdotally, related to violent behaviour making it more problematic in correctional facilities than opiates (such as heroin). (Although ice is often smoked, some users inject ice. Injection of drugs usually correlates with a higher level of addiction.) Many of these concerns could possibly be overcome by a safe injecting room (formally known as a medically supervised injection facility).¹³¹ Switzerland has two prisons (Realta and Oberschöngrün prisons) in which the drugs are medically prescribed.

Evaluations of needle and syringe programs in overseas prisons have shown that they do *not* increase drug consumption or injecting,¹³² and they effectively reduce needle sharing.¹³³ The reduction in needle sharing also reduces transmission of blood-borne diseases and skin ulcers, as well as overdoses because prisoners can better regulate the amount of the drug injected as a result of ready access to their own needle.¹³⁴

Visits by Corrective Services officers to prisons that operate needle-syringe exchanges should be arranged, perhaps through the United Nations Office on Drugs and Crime, the World Health Organisation or UNAIDS. This could help to overcome staff objections to the idea of a needle-syringe exchange. The warden at a Swiss prison stated in 1996 that:

*'Staff have realized that distribution of sterile injection equipment is in their own interest. They feel safer now than before the distribution started. Three years ago, they were always afraid of sticking themselves with a hidden needle during cell searches. Now, inmates are allowed to keep needles, but only in a glass in their medical cabinet over their sink. No staff has suffered needle-stick injuries since 1993.'*¹³⁵

Harm minimisation is also among the appropriate responses to sexual intercourse in prison. As mentioned previously (section 2.1., above), there was some evidence of sexual assault among detainees at the remand centres. As far as consensual sex is concerned, generally detainees simply stated that they had no clue if any detainees were having sex or whether condoms were available. There do not appear to be any safe sex measures available for women who have sex with women or who have oral sex, such as dental dams and latex gloves. The induction booklet does not mention that condoms are available only through the health staff. This is disappointing given that the ACT was the first jurisdiction in Australia to introduce condoms in correctional facilities but has now fallen behind other jurisdictions. The functional brief for the AMC states that a condom-dispensing machine will be installed in the multipurpose sports hall.¹³⁶ It would be desirable for such a machine to be installed at the current remand centres as well, although placement in an easily accessible yet reasonably inconspicuous location would be extremely difficult, if not impossible, given their layout.

CONCLUSIONS AND RECOMMENDATIONS

The Human Rights Commission notes the concerns raised by officers regarding a needle-syringe exchange. It also notes the concerns raised by the Executive Director of ACT Corrective Services

131 For information concerning the terminology and an account of the Sydney Medically Supervised Injecting Centre in Kings Cross, see I. van Beek, *In the Eye of the Needle: Diary of a Medically Supervised Injecting Centre* (2004).

132 *Ibid.*, at 46.

133 *Ibid.*, at 48.

134 *Ibid.*, at 50.

135 Quoted in R. Lines, R. Jürgens, G. Betteridge, H. Stöver, D. Laticeski, and J. Nelles, Prison Needle Exchange, footnote 128 above, at p 21: <http://www.aidslaw.ca/publications/interfaces/downloadFile.php?ref=184>.

136 See Functional Brief, Alexander Maconochie Centre, at 55: available at http://www.cs.act.gov.au/__data/assets/pdf_file/0010/35776/FB.pdf.

that as the new prison will take time to settle in, it would be undesirable for a needle-syringe exchange to be operational in its first year. The Commission concludes that proper health care requires that clean injecting equipment be supplied and that a pilot program for a needle and syringe exchange and/or a safe injecting room should be developed for the AMC. The Commission commends ACT Corrective Services on the plans to install a condom machine at the AMC and makes further recommendations concerning information about and means for safer sex for detainees.

RECOMMENDATIONS.

4.2.1. *A pilot program for a needle and syringe exchange with provision for safe disposal of needles should be developed for the AMC. Consideration could also be given to establishing a safe injecting room (medically supervised injecting facility).*

4.2.2. Detainees at the remand centres (and at the AMC) must regularly be provided with information about the availability of condoms and other safeguards, as well as safe sex practices, in order to prevent sexually transmitted infections and diseases such as HIV/AIDS and Hepatitis B and C.

4.2.3. *In addition to installing a condom-dispensing machine at the AMC, adequate means for disposing of condoms should be provided. A dispensing machine for latex gloves and dental dams should be provided for women at the AMC, along with adequate means of disposing of them. In the meantime, these products should be available from health staff at the remand centres.*

4.3. GENERAL HEALTH

Relevant standards

HR Act, s.9 (right to life).

HR Act, s.19 (humane treatment).

ICESCR, Article 12 (right to highest attainable standard of health).

Principle of equivalence

4.3.1. Equivalence

Detainees are denied access to Medicare and the Pharmaceutical Benefits Scheme ('PBS') under Federal legislation.¹³⁷ In one unsuccessful bail application before the ACT Supreme Court, which involved an argument that bail was necessary to receive non-urgent orthodontic work, the prosecution argued that the applicant could not access public non-urgent treatment because of a Commonwealth directive that prisoners are ineligible for Medicare.¹³⁸ However, Medicare does not cover dental work. The detainee would have to organise private health care, and escorts are available for such treatment. While the decision to deny bail may be sound because the treatment was not urgently required, especially in view of the long waiting lists for public dental treatment,

¹³⁷ Section 19(2) of the *Health Insurance Act 1973* (Cth) provides that '... a medicare benefit is not payable in respect of a professional service that has been rendered by, or on behalf of, or under an arrangement with: ... (b) a State ...'. Medical services provided to persons in correctional facilities fall within this definition.

¹³⁸ *R v Trotman* SCC No 73, 2007, available at <http://acthra.anu.edu.au/cases/case.php?id+59>.

it would be a breach of the principle of equivalence to deny such treatment altogether. Similarly, it would breach the principle of equivalence to require a detainee to access private health care if a public service was funded by Medicare. The Commission was informed that Corrective Services Ministers' Conferences have consistently made this request, but have been refused by the Federal Government, so other inter-governmental avenues of cooperation must be explored.

RECOMMENDATION.

4.3.1. The ACT Government should seek a commitment from the Commonwealth Government to removing the bar on persons in detention accessing Medicare and the Pharmaceutical Benefits Scheme on the basis that the human rights principle of equivalence requires that detainees be treated equally to the community in terms of health care and services.

4.3.2. Allied health

Detainees sometimes had existing health problems, which they thought were not well catered for at the remand centres, particularly with respect to allied health services. Physiotherapy is not automatically available, yet there was clear need for physiotherapy – for example, in one case a man's hand had been injured quite severely by a knife, which was concerning because the man's trade was carpentry. Counselling services are also evidently required. Although psychologists from Mental Health ACT visit the remand centres, and they take requests from any detainee, they only involve themselves in ongoing management of detainees with mental illnesses or mental disorders. However, many remandees were suffering psychological problems of a less serious nature and would benefit from therapies, such as acceptance and commitment therapy.¹³⁹ The case of one detainee who, in addition to having a serious mental illness, was haunted by the circumstances that had led to serious charges was particularly poignant. Optometry services can be provided, although one detainee reported going without glasses for a period. Otherwise, detainees had few complaints about the health services offered within the remand centres.

RECOMMENDATION.

4.3.2. At the remand centres (*as well as the AMC*), detainees should have better access to allied health services such as physiotherapy and experienced, trained counsellors (for example, psychologists and social workers).

4.3.3. Dentistry

Dental work is often urgently required by detainees. In addition to the impact of poor socio-economic status, a large percentage of detainees are drug users and the drugs damage their teeth.¹⁴⁰ Detoxification means that the pain of the damaged teeth is no longer masked by drug intake. SMR Rule 22(3) provides that '[t]he services of a qualified dental officer shall be available to every prisoner.' A dentist does not visit the remand centres, but an escort to the public dental clinic at ACT Community Health in Civic is available once or twice a week. The focus is on emergency treatment – rather than cosmetic dentistry – such as removing or filling teeth. The induction booklet for detainees does not mention that dental appointments may be made. Complaints were

¹³⁹ Acceptance and Commitment Therapy as described by one of the health professionals interviewed for the audit focuses not on controlling thoughts and feelings (as with cognitive behaviour therapy) but on being mindful of them, accepting them, and trying to step back from them so that positive choices (commitments) can be made. For further information see the website of Acceptance and Commitment Therapy Australia, <http://www.actaus.com.au/>.

¹⁴⁰ For a collection of literature on dental health in prisons, visit the Prison Health Research Network, <http://www.phrn.nhs.uk/library/>.

made by some detainees that they were simply given painkillers by staff. However, at least one detainee had visited the dentist in Civic to have some teeth removed.

RECOMMENDATION.

4.3.3. The induction booklet should contain information regarding health information and care, such as the availability of dental appointments.

4.3.4. External consultations and hospital transfers

It appeared that it was possible if necessary for detainees to receive pathology or other tests or specialist treatment outside the remand centres. However, it is noteworthy that those who had accessed outside health services often felt embarrassed by the procedure, which involved them being hand-cuffed and wearing their corrections-issued green clothes. This resulted in some reluctance to access necessary external treatment. Detainees in Victoria raised similar concerns when interviewed by the Victorian Ombudsman.¹⁴¹ There will be a dentist onsite at the AMC, which will avoid these sorts of problems with respect to dental work.

Interviews revealed that detainees transferred to a hospital will usually be restrained by attaching them to the furniture (eg with handcuffs). The European Committee on the Prevention of Torture has recommended against this practice.

If recourse is had to a civil hospital, the question of security arrangements will arise. In this respect, the CPT wishes to stress that prisoners sent to hospital to receive treatment should not be physically attached to their hospital beds or other items of furniture for custodial reasons. Other means of meeting security needs satisfactorily can and should be found; the creation of a custodial unit in such hospitals is one possible solution.’¹⁴²

Commission staff became aware of a case where a man suffering from mental illness, and pneumonia had been chained to the bed when transferred from the remand centre to hospital under guard by two Corrective Services officers. Although it was alleged that the man concerned could be volatile on occasion, it is questionable whether such restraint was necessary. Under s.309 of the *Crimes Act 1900* (ACT), an examination was conducted in order to assess whether the man needed treatment for mental illness, and he was subsequently transferred to the PSU and the Mental Health Tribunal made an order.

An important safeguard for provision of appropriate health services to detainees is to ensure that ACT Health controls these services. After a review of different models of health service provision to prisoners in Australia (health-managed, justice/corrective services-managed, or mixed), the Western Australian prisons inspectorate recommended that prisoner health services in WA be transferred from the Department of Corrective Services to the Department of Health.¹⁴³

Subsection 21(1) of the *Corrections Management Act 2007* provides that ‘[t]he chief executive responsible for the administration of the *Public Health Act 1997* must appoint a doctor for each correctional centre.’ However, situations arise in which medical decisions may be overridden because of security concerns. Subsection 54(1) of the *Corrections Management Act 2007* envisages that sometimes a doctor’s advice to transfer someone to an external health facility will not be followed. Subsection 54(4)(b) says that the Chief Executive of the Department of Justice and Community Safety may direct that a detainee be removed from an external health facility. These provisions reflect the idea that security decisions should not be the responsibility of health professionals. However, in order to ensure that security does not unnecessarily override health

¹⁴¹ *Conditions for Persons in Custody*, footnote 28 above, at 88.

¹⁴² European Committee on the Prevention of Torture, ‘CPT Standards’, footnote 53 above, at para 36.

¹⁴³ See Office of the Inspector of Custodial Services, *Thematic Review of Offender Health Services* (2006), recommendation 1.

considerations, there ought to be external scrutiny of these decisions – for example, by the Health Services Commissioner.

RECOMMENDATIONS.

4.3.4.1. Detainees transferred to external health facilities, such as hospitals, should not be chained to furniture or be required to wear prison clothing unless exceptional circumstances in an individual case require this. The use of restraints on hospital watch should be recorded and notified to the Health Services Commissioner within twenty-four hours.

4.3.4.2. In any case where security reasons mean that medical decisions (for example, concerning transfer of a detainee to an external health facility) may be over-ruled, there must be a process for notification and external scrutiny – for example, by the Health Services Commissioner.

4.3.5. Health promotion

There are various problems with the BRC itself that pose health hazards. Most detainees smoke. While one detainee described being able to get into a one-out cell in order to avoid smokers, another detainee was unable to avoid being accommodated with smokers. Factors such as protection and limited accommodation can affect the ease with which non-smokers are accommodated (see above, section 3.3.).

Detainees are not permitted to wear hats or sunglasses because it means that they cannot be easily identified on camera. This means that detainees are exposed to the sun, from which the mesh over the yard (which is there to prevent escape) does not provide much protection. Detainees use sunscreen provided by the centres, but the Cancer Council recommends wearing a hat as Australia has the highest rate of skin cancer in the world. This protection is a legal duty of care issue and should be supplied to detainees who are exposed to the sun for long periods, particularly those detainees who have skin complaints, or are on medication that makes them predisposed to sunburn. In addition, those detainees who are required to cover their heads for religious reasons should be able to do so. In Western Australia, hats are provided for prisoners when they are out of doors. At the AMC there will be provision for shade in many outdoor areas.

Finally, there are the stresses and limitations imposed by virtue of detention. Detainees complained of weight loss (attributed to stress and increased smoking in one case) or, more commonly, weight gain due to the minimal opportunities for exercise, the food, and, in some cases, psychotropic drugs for some detainees with mental health problems.

RECOMMENDATION.

4.3.5. Hats should be provided to detainees when they are outdoors not in shaded areas. (See also recommendations concerning non-smokers 3.3.3., access to counsellors 4.3.2., and religious headwear 3.4.2.)

4.3.6. Health records

Detainees' health records are subject to the *Health Records (Privacy and Access) Act 1997* (ACT). A review of Corrections Health conducted by KPMG in 2002 recommended that there should be an electronic system for storage and retrieval of medical records. It is apparent that there are

few safeguards for confidentiality given that detainees must give officers a request form if they wish to see the doctor. Detainees should be informed that they do not need to provide reasons in their requests to see health staff and that there are opportunities to make verbal requests on the occasions when nurses visit the yards. At the AMC, it should also be possible for prisoners to approach health staff directly.

RECOMMENDATIONS.

4.3.6.1. The 2002 *Review of Health Services Provided to Offenders and Remandees in Custodial Settings in the ACT* recommended that there be an electronic data storage and retrieval system for medical records at the remand centres. Providing that the system operates in accordance with the provisions of the *Health Records (Privacy and Access) Act 1997*, this recommendation should now be implemented.

4.3.6.2. There should be clear procedures so that detainees are given a record of the treatment and medication they need on release into the community.

4.3.6.3. To preserve confidentiality, detainee request forms regarding medical appointments should be placed in a sealed envelope (or equivalent) and opened only by health professionals. Detainees should also be informed of the opportunities to approach health staff directly in order to make appointments.

4.4. PRISONERS AT RISK

Relevant Standards

HR Act, s.9 (right to life).

ICESCR, Article 12 (right to health).

Royal Commission into Aboriginal Deaths in Custody, Recommendation 181: ‘... Corrective Services should recognise that it is undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention. ...’

Since the Coroner’s inquest into the death of Shannon Camden in 1996, the remand centres have been diligent in ensuring that detainees do not self-harm. The Human Rights Commission understands that there will not be safe or padded cells for detainees at risk of self-harm because of the damage these cells may cause to a person’s mental state. The Commission also understands that calming colours will be used throughout the AMC to assist in decreasing the risk of self-harm.

The treatment of prisoners at risk of self-harm is governed by Standing Order 4. Detainees are routinely assessed by a mental health worker as part of their induction to the remand centres. Those detainees assessed as being at risk of self-harm will be designated as ‘Prisoners at Risk’ (PAR) or ‘Prisoners at High Risk’ (PAHR). These detainees are placed in cells with a camera that is operational full-time. Pursuant to the Procedures, PARs are observed at 15 – 30 minute intervals, while PAHRs are observed at five-minute intervals. An inducted detainee will also be designated as a PAR if s/he threatens to self-harm under Standing Order 4.6.

If self-harm occurs in a cell, the PAR will be placed in a safe cell – that is, one with few, if any, hanging points and a camera, or possibly they will be placed in a two-out cell with a person who

is preferably not a PAR. Consistent with the recommendations of the Royal Commission into Aboriginal Deaths in Custody, Standing Order 4.4.4. provides that Indigenous detainees are generally not to be placed in isolation or segregation.

A strip-search may be authorised by the Duty Chief in order to ensure that no items which could be used for self-harm are hidden on a detainee's person or in the cell under Standing Order 4.4.6.. According to the procedures, PARs are to be strip-searched every night before they are locked in their cell. Frequently, a suicide smock is used for PARs. The smock is not a straitjacket and is therefore not a restraint. It is made of heavy non-tearable material, which means a PAR cannot use it to harm him or herself. Detainees who had to wear the smock spoke of their humiliation about wearing the smock and there was one allegation that the smock was stained with another detainee's blood and faeces. There was also concern expressed that suicide smocks were used as a containment device, rather than because of a real need to avoid self-harm. It would be preferable to focus on suicide prevention measures, including those identified by Liebling as follows:

- family support and visits;
- constructive activity within the prison system;
- support from other prisoners;
- support from prison visitors and other services;
- having hopes and plans for the future;
- being in a system with excellent inter-departmental communication; and
- staff who are professionally trained and valued by the system.¹⁴⁴

CONCLUSIONS AND RECOMMENDATION

Suicide smocks may contribute to the poor mental state of prisoners at risk. Some key ingredients for a preventative approach are missing at the remand centres. In particular, the absence of a regime of activities can only contribute negatively to the mind-set of vulnerable prisoners. This report recommends that a program of organised activities be offered to detainees at the remand centres. The Commission recommends that more counselling be available for the purposes of preventing self-harm and suicide.

RECOMMENDATION.

4.4. The remand centres (*and the AMC*) should have experienced, trained counsellors (for example, psychologists and social workers) available to talk with detainees who are having psychological problems in order to assist in preventing depression and other mental problems that may put a prisoner at risk of self-harm or suicide. (See also recommendation 4.3.2. concerning allied health services, recommendation 2.4. concerning welfare, and recommendation 1.4. concerning the need for organised activities.)

¹⁴⁴ *Women in Prison*, footnote 42 above, at p 101, drawing on Liebling, 'Suicide Amongst Women Prisoners', (1994) 33 *Howard Journal of Criminal Justice*, 1 – 9.

5. CORRECTIONS CULTURE

This section of the audit report examines three areas affected by corrections culture: the use of force; discipline; and violence and bullying. Consistent with the ethos of a healthy prison, ACT Corrective Services is in the process of shifting from a culture that favours control and security over detainees' needs. Instead, meeting detainees' needs is to be acknowledged as assisting to maintain security and order in the prison. At the remand centres, however, there are only two staff with a formal role for assisting with detainees' welfare, and the position of the welfare officer has been abolished. There is one case-manager for all detainees at the remand centres and the Indigenous Liaison Officer also takes responsibility for non-Indigenous detainees' welfare.

The Human Rights Commission understands that officers may be required to generally take on a case-management role at the AMC. Several officers interviewed had already had such a role in other jurisdictions, and some officers adopted informal welfare or case-management roles. However, it was apparent that some officers viewed their role as strictly that of providing security and safety. The same phenomenon was observed in the Watchhouse,¹⁴⁵ although to a far greater degree there, given that police do not have the expertise in custodial care that corrections staff have. In order to make the transition to the AMC, training sessions facilitated by experts should be devoted to the provision of information regarding the model of officer-detainee relations expected in the new prison.

5.1. USE OF FORCE

Relevant Standards

HR Act, s.9 (right to life).

HR Act, s.18 (security of the person).

SMR Rules 33 and 34 set down limitations on the use of restraints 'such as handcuffs, chains, irons and straitjackets.' Rule 33 states that 'chains or irons' are never to be used as restraints, and that other restraints may only be used to prevent escape during transfer, on medical grounds by direction of the medical officer, or to prevent injury or damage to property.

SMR Rule 54

- '(1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.
- (2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.
- (3) Except in special circumstances, staff performing duties that bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.'

Aside from these provisions, the key instruments dealing with use of force are the UN Code of Conduct for Law Enforcement Officials,¹⁴⁶ and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.¹⁴⁷ Article 3 of the Code of Conduct for Law Enforcement Officials simply provides: 'Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.' The Basic

¹⁴⁵ Watchhouse Review, footnote 30 above, at para 2.37.

¹⁴⁶ United Nations General Assembly Resolution 341169.

¹⁴⁷ Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba 27 August to 7 September 1990.

Principles on the Use of Force and Firearms by Law Enforcement Officials are more useful as they contain provisions specific to the policing of persons in custody or detention, as follows:

‘15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.’

Force may be required in the prison context, just as it is sometimes required in the general community. As with police use of force in the community or in police lock-ups,¹⁴⁸ force is sometimes used disproportionately in prisons, and may even result in a death in custody, or possibly of staff.¹⁴⁹ The prison system, with its heavy emphasis on rules may make it more likely that force is resorted to, in order to prevent or stop even minor disciplinary infractions.

The rules currently in force at the remand centres are not helpful in this respect as they talk of ‘defiance’ as sufficient basis for use of force. Section 22 of the *Remand Centres Act 1976* states that ‘[t]he Superintendent may use or direct the use of such force as is necessary and reasonable to maintain security and good order within a remand centre.’ Standing Order 20.1 outlines when reasonable force may be used. The grounds include:

- to ensure compliance with a lawful and reasonable order, or maintenance of discipline where a detainee is failing to comply with any remand centre requirement which is lawful, in a manner which cannot otherwise be adequately controlled; and
- to achieve the control of detainees acting in a defiant manner.

The second ground mentioned above does not comply with international standards. The first ground appears to accord with international standards, although it would clearly be preferable to use force as a last resort, especially given the relatively trivial nature of some remand centre rules (for example, not smoking in the non-smoking zones).¹⁵⁰ The *Corrections Management Act 2007* now says that use of force is only to be used as a last resort.¹⁵¹

Standing Order 20.4 states that ‘[a]n aid to the use of force, a Custodial Officer may, with the approval of the Deputy Superintendent or the Officer-In-Charge, use approved instruments of restraint (for example, batons, shields, handcuffs, restraining belts, or cuff ties).’ In order to ensure compliance with Rule 33 of the SMR, the Standing Order should specify that approval should only occur in situations where injury to a person or damage to property is likely to occur. With respect to use of restraints or weapons, section 140 of the *Corrections Management Act 2007* imposes general constraints of proportionality, but does not go into details.

The Procedures ‘Use of Force’ refer staff to the discussion of coercive powers in the Public Sector Management Standards, and warn that ‘where unreasonable force is found to have been used, criminal and/or disciplinary sanctions may apply.’ The legislation and standing orders should guard

148 The ACT Ombudsman’s *Annual Report 2004-05* gives details of one incident involving disproportionate force by an officer at the City Watch House (at p. 20).

149 For example, in the UK, the Carlisle inquiry was initiated after the death of a 15 year old boy, Gareth Myatt, who died as a result of injuries inflicted while being restrained by custodial officers. See The Howard League for Penal Reform, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes*, by Lord Carlile of Berriew, QC (2006).

150 The procedures on riots and public demonstrations place more stringent safeguards on uses of force.

151 See s. 137 of the *Corrections Management Act 2007*.

against uses of force merely because a detainee acts in a defiant manner, and should ensure that instruments of restraint are only used to prevent personal injury or damage to property.

The *Corrections Management Act 2007* attempts to balance officers' authority and detainees' personal security. Section 138(1)(c) provides that force may be used to prevent or stop the commission of a disciplinary breach. One of the breaches is 'being disrespectful or abusive towards a corrections officer *in a way that undermines the officer's authority*' (s.151(h), emphasis added). Section 138(2) provides that force may only be used if the officer believes, on reasonable grounds, that the purpose for which the force may be used cannot be achieved in another way. In addition, s.137 also imposes a general constraint – that force may only be used as a last resort. This is compliant with the international standards outlined above. Further, the wording used in the provision relating to undermining an officer's authority is drawn from the International Centre for Criminal Law Reform and Criminal Justice Policy's *International Prison Policy Development Instrument*.

However, there is some circularity here – by viewing disrespectful behaviour as crucial to maintenance of order and then declaring it a rule that detainees are not to be disrespectful, the use of force may be authorised. The language could also be interpreted as promoting reliance on authority, rather than effective relationships to achieve security outcomes. In practice, of course, officers will not only be reading the legislation. The point is that the overall philosophy should focus on effective relationships, rather than authority and this should be reflected in all policies, procedures and training.

In interviews, many officers spoke of the importance of maintaining a working relationship with detainees so that uses of force would be unnecessary. In other words, it was recognised that 'dynamic security' – that is security that is not dependent on physical restraints or barriers – was important. However, it was clear that some officers had a lower threshold than others when it came to seeing that their authority had been undermined. In addition, some officers indicated in interviews that they did not think that they received enough training on use of force generally.

Officers are given training on the continuum of use of force that moves through the following phases:

- officer presence (show of strength, presence of specialised personnel etc);
- verbal (negotiations or commands);
- physical force; and
- impact weapons (batons).

Officers are also advised to call on options such as medical staff, the Indigenous Liaison Officer and the case management officer. In order to properly implement s.137 of the *Corrections Management Act 2007*, the Standing Orders and procedures should emphasise the element of verbal negotiations and de-escalation, as should officer training which should be offered regularly. Another focus for training should be the relatively rare, but difficult situation of removing a non-compliant detainee from a cell ('cell extraction'). It is notable that during the Watchhouse review, police officers commented on the need for specialised training on use of force in the confined spaces of the Watchhouse.¹⁵² The design of the new cells at AMC is such that this training will be particularly important.

Detainees made several allegations that excessive force was used. The principal researcher examined the incident reports. The general impression gained was that force was not used inappropriately. In relation to one incident, however, there were some unanswered questions concerning officers' conduct. One sentence in the report written by an officer after a particular incident was inconsistent with detainees' accounts of what had happened and seemed implausible. This raised the issue of whether one officer may have exacerbated the situation, so digital footage of this incident was requested, along with footage of other incidents.

¹⁵² Watchhouse Review, footnote 30 above, at para 4.91.

On viewing the digital footage of the incident of particular concern, the actual use of force by officers had not been captured. All that was available was the footage of a senior officer attempting to talk to the detainee and de-escalate the situation, followed by a large number of officers running to the corner where the detainee must eventually have been subdued. When an incident occurs, the cameras are moved by an officer in the control room. The camera could not be moved into the relevant position at the time. The principal researcher was provided with documentary evidence of the request to repair the equipment that was lodged with ADT Security.

The gap in the footage meant that it was impossible to verify whether the use of force had been appropriate, although it was clear that a senior officer had attempted to talk to the detainee for a reasonable period of time prior to the use of force. Similarly, the lack of any footage taken in the lead-up to the incident meant that it was impossible to tell whether any of the officers had escalated the situation so that it had reached the point where it was impossible, despite the best efforts of a senior officer, to assist the detainee to regain his self-control. Given the comments by some detainees and officers in interviews to the effect that some officers were known to 'wind up' detainees (see discipline, above section 5.2.), this was concerning.

CONCLUSIONS AND RECOMMENDATIONS

Many officers at the remand centres maintain the highest standards of professionalism, and some show quite extraordinary compassion in the face of extremely challenging behaviour. However, several officers indicated that more training concerning uses of force and de-escalation was necessary. The Human Rights Commission concludes that the Standing Orders and procedures should provide guidance to officers as to when it is appropriate to use force and that training, which should occur regularly, should focus on de-escalation and the process of removing a non-compliant detainee from a cell. It is also important that facilities have adequate camera coverage for evidentiary purposes in matters involving detainees, as well as occupational health and safety reasons. The investigation into the violent death of NSW prison officer Wayne Smith at Silverwater in 2007, which has led to a charge of murder against a prisoner, highlights the need for comprehensive and operational cameras for the protection of staff as well as detainees.

RECOMMENDATIONS.

5.1.1. Consistently with the emphasis on 'dynamic security', the Standing Orders and procedures must adequately implement s.137 of the *Corrections Management Act 2007* when it commences operation to ensure that force is only used as a last resort.

5.1.2. The standing orders and procedures should give guidance to officers, using case studies, as to when it is appropriate to use force.

5.1.3. Officer training regarding use of force, which should take place on a regular basis, needs to focus on de-escalation techniques and on the process of removing non-compliant detainees from cells.

5.1.4. There needs to be adequate coverage of the facility by cameras as well as adequate maintenance of equipment, to ensure that digital footage of critical incidents may be captured and stored.

5.1.5. Stored digital footage of incidents involving the use of force should go beyond the actual use of force: an attempt should be made to keep footage of the lead-up (if any) to all uses of force, given that officers should be focussing on de-escalation.

5.1.6. More digital footage should be stored, and for longer, in order to aid investigation and to protect officers from unfounded allegations.

5.2. DISCIPLINE

Relevant Standards

Body of Principles, Principle 30:

- ‘1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.
2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action to higher authorities for review.’

SMR Rules 27 - 32 are also relevant. SMR Rule 30 is particularly noteworthy:

- ‘(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.
- (3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.’

SMR Rule 31 provides that ‘[c]orporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.’

Subsection 21(1) of the *Remand Centres Act 1976* provides that as a disciplinary measure, a detainee may be ‘confined to the detainee’s sleeping quarters, or deprived of one or more of his or her entitlements, or both.’ The entitlements, set out in s.20, include receiving visits, correspondence and phone calls, medical treatment, work and recreational materials. These provisions are very problematic. Medical treatment simply cannot be denied as a disciplinary measure. Incommunicado detention – that is, detention which does not permit any contact with the outside world – cannot be justified either. In one case, a detainee described a disciplinary measure that meant he had no visits with particular members of his family, as well as not being permitted to make phone calls. While discipline of reasonable severity may well have been required, if there were no other visitors for this detainee, the only route for communication with the outside world would have been mail. Such treatment is close to incommunicado detention.

The legislation underpinning the new prison will be different, making clear that there are certain core entitlements that cannot be denied. These relate to:

- food and drink;
- clothing;
- separate accommodation for sentenced prisoners and remandees;
- access to the open air and exercise;
- communication with family and others;
- news and educational services; and
- health care and religious observance.¹⁵³

In the transitional period prior to the establishment of the AMC, the system in the *Corrections Management Act 2007* whereby there are certain entitlements that cannot be removed should be written into the Standing Orders and procedures immediately and applied prior to the commencement of that Act.

¹⁵³ See Chapter 6, together with the definition of a ‘privilege’ in s.154: *Corrections Management Act 2007*.

Currently, Standing Order 3.2 outlines certain detainee obligations that may result in loss of privileges if breached. The detainee must:

- (a) keep himself or herself clean;*
- (b) ensure that his or her accommodation, clothing, bedding and any other articles issued for his or her use are kept clean and in good order;*
- (c) not disobey a lawful order given by the Superintendent, or a Custodial Officer;*
- (d) not commit any act contrary to the provision of the Standing Orders concerning the good order, discipline and security of the Remand Centre;*
- (e) not escape or attempt to escape;*
- (f) not make, conceal, or have in his or her possession without authority a tool, weapon, knife, key, syringe or other implement or thing intended to be used, and capable of being used, to effect the escape of a detainee or intended to be used for an unlawful purpose;*
- (g) not have in his or her possession any unauthorised article or any article that is the property of another detainee;*
- (h) not conceal, have in his or her possession, without authority, bring or attempt to bring into the Centre, any drug, whether prescribed or not, conceal or have in his or her possession any syringe or implement capable of being used to administer a drug of dependence not prescribed for his or her use, or any alcohol;*
- (i) not use any obscene, indecent, offensive or racist language to any person;*
- (j) not behave in an obscene, indecent, offensive, racist or disorderly manner;*
- (k) not unlawfully lay hold of or strike any person;*
- (l) not misappropriate food of any kind; and,*
- (m) not willfully and without lawful excuse destroy or damage any property belonging to the Centre, or another detainee.'*

Standing Order 3.2.2 provides that in case of a breach of these obligations, 'the Superintendent may exercise his discretion and may cause the detainee to be confined to his or her sleeping quarters and/or cause the detainee to be deprived of one or more of his or her entitlements.' Standing Order 3.2.3 provides for a maximum period of loss of privileges for three days, unless specified by the Superintendent. The discretionary element is of concern.

It is quite difficult to understand the Standing Order and procedures regarding discipline with respect to length of confinement to cells. After interviews, it became clear that a Custodial Officer Level 3 ('CO3') has the power to order confinement to cells for up to three days, although this is subject to a review hearing. The Superintendent may order confinement for longer periods. In relation to the CO3 power to confine someone in cells for three days, it is unclear whether the hearing has to take place within or merely some time during, or even after, the three days has passed. This was cause for concern for some detainees.

In order to fully appreciate what punishments may accompany confinement to cells, it is necessary to read the procedure concerning 'separation of detainees'. Detainees may be placed on a 'management plan' in order to 'maintain, prevent a threat to, or to restore the good order or security of the custodial facility.' The detainee may also be deprived of some or all entitlements for up to 28 days. The alternatives are a verbal warning; a 28-day good behaviour bond; and imposition of unspecified 'conditions' on the detainee. This may involve ensuring that the detainee does not come into contact with other detainees, including securing the detainee in the cell if necessary. The longest period for any one management plan will be 28 days.

Segregation

Relevant Standards

Basic Principles, Principle 7, ‘efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.’

Removal of a detainee at the remand centres to a separate yard for disciplinary purposes is commonly called segregation. Effectively, the person is subjected to solitary confinement. Solitary confinement is simply a situation where ‘a detainee is removed from association with other prisoners for reasons of the administration of justice, security, protection or discipline.’¹⁵⁴

The *Standard Guidelines for Corrections in Australia* (Revised, 2004) provide that ‘[p]rolonged solitary confinement, corporal punishment, punishment by placement in a dark cell, reduction of diet, sensory deprivation and all cruel, inhumane or degrading punishments should not be used’ (para 1.75.). Punishments such as placing someone in a dark cell will violate the prohibition on torture and related forms of harm, as may the practice of denying contact with the outside world, that is, detaining someone incommunicado. Solitary confinement on its own – that is, without these additional punishments – is permissible. However, as the UN Human Rights Committee stated in *Kang v Republic of Korea*, solitary confinement ‘is a measure of such gravity, and of such fundamental impact on the individual in question, that it requires the most serious and detailed justification’.¹⁵⁵ In Kang’s case, the Committee found that solitary confinement for three years for political reasons was inhumane treatment.

The Standing Orders reflect Recommendation 181 of the *Royal Commission into Aboriginal Deaths in Custody*, which provides that it is undesirable for Aboriginal prisoners to be placed in segregation. However, there are certainly cases where Indigenous detainees are placed in segregation for disciplinary reasons. This is not formally inconsistent with Recommendation 181 as it implicitly admits exceptions, providing that if segregation is required, there should be minimum standards concerning ‘fresh air, lighting, daily exercise, adequate clothing and heating, adequate food, water and sanitation facilities and some access to visitors.’ However, one non-government organisation expressed concern that segregation was frequently used as an inappropriate response to challenging behaviour by Indigenous detainees with mental illness.

In practice, at BRC, E yard and the ‘A annex’ – a small area off A yard – are used as segregation yards when a person is placed on a 28-day management plan. E yard is the old police cells and is a particularly depressing area.

The Human Rights Commission’s main concerns relating to the use of segregation at the remand centres are the substandard nature of the accommodation, and the possibility that some officers may provoke detainees to the point where segregation can then be imposed as a punishment. In E yard, the lighting and ventilation are very poor, contrary to Recommendation 181 of the *Royal Commission into Aboriginal Deaths in Custody*. The AMC will not contain substandard areas like E yard. In the meantime, it would be preferable not to use E yard for any purpose, including segregation. The Commission notes that officers at the remand centres do attempt to avoid the use of E yard.

Urine Samples

There is a particular regime of punishment for provision of a urine sample that tests positive for drugs, or a refusal to supply a sample. Punishment for the first offence entails eight weeks of non-contact visits. Non-contact visits take place behind a glass screen instead of the supervised contact visits in the visiting room in which detainees are permitted ‘a restrained embrace.’ It is

¹⁵⁴ R. Clayton and H. Tomlinson, *The Law of Human Rights*, at 8.51.

¹⁵⁵ *Kang v Republic of Korea*, Communication No. 878/1999, U.N. Doc. CCPR/C/78/D/878/1999 (2003), at 7.3.



Figure 3 – Natural light in E exercise yard, Belconnen Remand Centre

very difficult to hear someone on the other side of the glass screen in the non-contact rooms. On or about the end of the eight-week period, a further sample is taken and, if positive, the detainee remains on non-contact visits until a negative sample is supplied. The second offence entails non-contact visits for 12 weeks and 14 days loss of privileges. The third entails non-contact visits for 16 weeks and 21 days loss of privileges. As with the first offence, non-contact visits will be maintained until a negative sample is supplied.¹⁵⁶

Records and review of disciplinary action

A survey of the disciplinary records shows that it is very rare for someone to be acquitted of charges. In some cases, the ‘justice’ appears rather rough. For example, in one case a detainee pleaded not guilty to the charge of diluting his urine sample. The analysis provided by the laboratory was that there was urine creatinine of less than 1.8 mmol/L, which may indicate sample dilution in some individuals. The detainee wrote in his response that he didn’t believe that the sample was diluted or that the pathology report said that his sample was diluted. Nevertheless, the detainee was given the punishment of eight weeks non-contact visits.

The Superintendent may and does sometimes ‘overrule’ or decide not to accept the recommendation concerning discipline that is put to him by the CO3 (Custodial Officer level 3). For example, the acting Superintendent overruled the decision to place a detainee on non-contact visits for returning a positive urine sample while he was being bailed on a daily basis to see his grandfather in hospital. This was necessary because the court’s ruling on bail cannot be overridden by internal disciplinary proceedings. However, a decision to overrule is fairly rare. It was also apparent from interviews with officers that there are distinct differences in approach by the officers who perform the role of Superintendent. The *Corrections Management Act 2007* provides for external review of disciplinary proceedings, which may assist in providing greater transparency and consistency of approach.¹⁵⁷

¹⁵⁶ See Standing Order 31.6, and Procedures ‘Drug Testing’, Step 5.

¹⁵⁷ See Part 10.3. Disciplinary action and review.

Quality of interaction between officers and detainees and its impact on discipline

Whether or not disciplinary measures will need to be invoked depends in part on the quality of relationships between officers and detainees. The response to the question concerning the relationship between staff and detainees (Question D.1. Appendix 2) drew mixed reactions from detainees. Some detainees said that they tried to be polite and that officers were therefore courteous to them. Other detainees complained of a superiority complex or authoritarian attitudes on the part of officers. In some cases, detainees seemed to contribute to the situation by taking the view that they wanted little to do with officers. In relation to the behaviour of detainees at the Watchhouse, the review team identified some reasons for this:

*'No one wants to be taken into custody. No one is happy about being detained in the Watchhouse. Detainees are often at their worst when relating to Watchhouse staff.'*¹⁵⁸

For those who had long experience of the prison system, there was a clear distrust of those in charge of the keys. One detainee asked, 'how would you feel about someone who locked you in your bathroom every night?'

From interviews, it was equally clear that some staff did hold the majority of detainees in contempt. Some concerning allegations of inappropriate behaviour are mentioned below (section 5.3.). More generally, while many officers routinely addressed detainees as Mr or Ms, behind detainees' backs, some officers called detainees 'crims', which ignores the fact that detainees are on remand and is in any event derogatory. In some cases, this was used lightly and it was accepted that detainees would call the officers 'screws'. While the term 'crim' is often used by prisoners to describe themselves, it was notable that in interviews for the audit, detainees stressed the fact that they were remandees and to be presumed innocent. One woman said that she only regarded herself as a 'crim' when she was sent to jail in NSW. Moreover, some detainees thought that officers deliberately wound them up to the point where disciplinary action would be taken against them, or that if detainees 'stuffed up,' officers' attitudes towards them changed for good. Detainees' perceptions were confirmed as generally correct by comments made by some staff.

Consultant adult psychotherapist in Forensic Psychiatry, David Jones, has written that 'splitting' language (that is, language that divides or splits 'us' from 'them') degrades individuals so they are viewed as 'despicable objects'.¹⁵⁹

*'Through the psychological process of splitting and projection, prisoners ... become the holders of the badness in society and we can feel relieved that that badness is safely locked up and does not exist in us. ... Similar splitting can occur within staff groups, between security and 'care bears', for example. In this, one side becomes invested with characteristics of harshness and the other can be seen as 'purist' or not living in the real world, so can be readily sidelined.'*¹⁶⁰

Although this process of splitting may not be as deeply entrenched as it is in large NSW prisons, it is reasonably entrenched at the remand centres. This has resulted in conflicting approaches to detainees depending on the officer concerned, as well as labelling of officers who care about detainees' welfare as 'crim lovers', and the feeling by some non-custodial staff that they are being sidelined as 'care bears' or 'welfare wendys'.

There is a clear need to mediate between the needs of security and the welfare of detainees, and management has to take a leading role in achieving some sort of middle ground or consensus. A rigid, rule-bound response to minor infractions is not necessarily helpful for more volatile detainees who have problems accepting authority. This is not to suggest that officers should put up with any and all abuse, just that simply resorting to disciplinary measures does not always assist. Moreover, consistency of approach is necessary. In interviews, some staff confirmed that senior officers had

158 Watchhouse review, footnote 30 above, at para 6.11.

159 D. Jones, 'Psychopathological considerations of prison systems', in D. Jones (ed) *Humane Prisons* (2006), 29, at p 39.

160 *Ibid*, at p 43.

different styles, which does not necessarily assist in the development of a common approach. Detainees generally said that there was no consistency and that they were often in trouble for doing the wrong thing when they had received inconsistent messages about what was the right thing to do. In part, this highlights the need for information to be provided in different media and repeated. However, it is also about consistency of approach among staff. The principal researcher observed that the atmosphere at BRC varied greatly according to who was on shift.

Proactive models for achieving better relationships should be looked at, and the initiative will need to be taken by management and staff. The diversity resulting from recent recruitment rounds and the development of the undergraduate Degree in Social Science (Criminal Justice) for existing staff is a step in the right direction. The Human Rights Commission understands that officers in the new prison will have a formal case-management role and will therefore have a more active responsibility for prisoner welfare than is the case with the current role of custodial staff at the remand centres, which is concerned primarily with self-harm and security, and only informally with attending to the broader welfare of detainees. As Camilleri and McArthur have argued, a shift away from security and control and towards a needs-based approach is necessary.¹⁶¹ If prisoners and remandees have the perception that officers are there to actively assist them in surviving their experience in detention, this could lead to better relationships and less need for disciplinary measures, and uses of force. It was clear from interviews with officers and detainees that some people on both sides were already well aware that this was the case, and that those officers who did take on something of a case-management role were often liked and respected.

There is some discussion of the possibility of developing a therapeutic community model for drug treatment in the ACT Corrective Services *Drug, Alcohol and Tobacco Strategy* (2006). The term 'therapeutic community' can mean different things. Grendon Prison in the UK is a 'democratic therapeutic community',¹⁶² which Campling describes as a small cohesive community:

*'where patients ... have a significant involvement in decision-making and the practicalities of running the unit. Based on ideas of collective responsibility, citizenship and empowerment, therapeutic communities are deliberately structured in a way that encourages personal responsibility and avoids unhelpful dependency on professionals.'*¹⁶³

Although Grendon is an entire prison run along these lines, it is possible to have particular units within a prison that use the therapeutic community concept. The Governor of Grendon Prison reported that 79% of prisoners responded positively to a survey question that 'they were treated as a person of value in the prison'.¹⁶⁴ By contrast, the response to a similar question asked by the principal researcher during the audit was disappointingly low.

CONCLUSIONS AND RECOMMENDATIONS

Officer training and monitoring of implementation is necessary for either model (case management or therapeutic community) to work. Developing consistency in the approach by staff is also important.

The procedures concerning confinement to cells should be clarified and clearly described in the information given to detainees about their rights and obligations at the remand centres. Given the poor conditions in E yard, its use, even for segregation should be avoided. Instead, use of the A annex or confinement to cells should be considered.

¹⁶¹ See footnote 37 above.

¹⁶² See the description of this prison by its governor: P. Bennett, 'Governing a humane prison', in D. Jones (ed) *Humane Prisons* (2006), 129.

¹⁶³ For differing approaches, see Penelope Campling, 'Therapeutic Communities', 7 *Advances in Psychiatric Treatment* (2001), 365, at 365.

¹⁶⁴ See Bennett, footnote 162 above.

RECOMMENDATIONS.

5.2.1. Consistent with the ethos of a healthy prison, the emphasis must continue to shift from a culture that privileges control and security over detainees' needs. Instead, meeting detainees' needs should be acknowledged as assisting to maintain security and order in the prison.

5.2.2. Models already under consideration include a case-management role for officers. Consideration could also be given to the trial of principles underpinning therapeutic communities.

5.2.3. As a preliminary step, initial training sessions, facilitated by experts, should be provided to inform officers about the model of officer-detainee relations expected in the new prison.

5.2.4. In the long-term planning of the corrective services workforce, consideration should be given to the development of a wider undergraduate degree program that can be used for recruitment purposes.

5.2.5. Performance review procedures should continue to include an assessment of officers' ability to maintain effective relationships with detainees.

5.2.6. The disciplinary procedures concerning 'confinement to cells' should be clarified and clearly described in the information given to detainees about their rights and obligations at the remand centres.

5.2.7. Given the poor conditions in E yard at BRC, its use, including for segregation, should continue to be avoided. Confinement to cells in addition to using A annex for segregation should be considered.

5.2.8. In the transitional period prior to the establishment of the AMC, the system in the *Corrections Management Act 2007* whereby certain entitlements cannot be removed should be written into the current Standing Orders and procedures so it can be applied prior to the commencement of the new Act.

5.3. VIOLENCE AND BULLYING

Relevant Standards

HR Act, s.10 (prohibition on torture and other related forms of harm) and s.18 (protection of security of the person). The obligations imposed by the ICCPR, the treaty implemented by the HR Act, requires the State to 'respect and *ensure*' the rights contained therein. This means that violent actions by private individuals, such as other detainees, must be prevented or punished. In serious cases, the obligation of the State would require punishment through the criminal justice mechanisms, not merely the disciplinary proceedings available in correctional facilities.

Discriminatory bullying is addressed by the *Discrimination Act 1991* (ACT), and for employees, bullying is generally covered by the *Occupational Health and Safety Act 1989* (ACT).

Assaults by detainees at the remand centres are to be reported to police.¹⁶⁵ The Human Rights Commissioner and the principal researcher witnessed the arrival of members of the Australian Federal Police who were investigating an assault on a detainee during the audit. Unsurprisingly, however, detainees indicated that there were numerous problems involved in complaining about bullying or violence, including sexual violence (see above section 4.3.), amongst detainees. In particular, the fear of retribution contributes to a code of silence. Even if a situation is serious

¹⁶⁵ Standing Order 7.

enough to break that code, there are practical difficulties. The small size of the remand centres means that if someone gets moved to another yard, inevitably people will end up knowing who complained. Complaining about a cellmate is particularly difficult given the limited opportunities for private conversations. Detainees reported in interviews that staff would treat inter-detainee violence seriously. The principal researcher was at the remand centre when officers intervened to stop inter-detainee violence. The upshot was that two officers were also injured. However, detainees feared that confidentiality would or could not be maintained, and that adverse consequences would follow.

There were some credible allegations of inappropriate conduct by officers, ranging from racist comments made to other detainees, commenting on the size of a detainee's genitalia during and after a strip search, and one threat of violence to a particular detainee. Officers are under pressure and undoubtedly the behaviour of some detainees is inappropriate and extremely challenging to deal with and can result in injury to officers. The principal researcher witnessed the aftermath of one incident in which an officer had his blood drawn. However, some credible allegations made of conduct that does not model appropriate behaviour, and which feeds into an entrenched 'us and them' mentality, cannot help the situation. Racism simply cannot be justified on any basis. As stated in Recommendation 182 of the *Royal Commission into Aboriginal Deaths in Custody*: '... instructions should require that, at all times, correctional officers should interact with prisoners in a manner which is both humane and courteous. Corrective Services authorities should regard it as a serious breach of discipline for an officer to speak to a prisoner in a deliberately hurtful or provocative manner.' Such conduct is contrary to the Standing Orders.

Some officers concurred that there were a small number of officers who were not suited to the job, and who exacerbated detainees' behaviour, as well as making life unpleasant for some staff. It should be noted that in 2006, the Administrative Appeals Tribunal found that a Corrective Services officer had developed a serious illness (depression) as a result of her treatment at work.¹⁶⁶

CONCLUSIONS AND RECOMMENDATIONS

Although ACT Corrective Services delivers training on anti-bullying that gives good practical examples of bullying in the workplace and which warns against accepting the culture and clientele as justification, there is a need for more leadership on this issue. Anti-bullying and harassment training should be offered yearly to all Corrective Services officers, and support mechanisms, such as a contact officers for a staff member who wishes to make a complaint against another officer, should be regularly reviewed to ensure they are working appropriately. A procedure should also be developed on inter-detainee violence and bullying which formalises the good practices adopted by many officers of actively watching for signs of bullying, letting suspected bullies amongst detainees know that they are being watched, and that there are consequences for bullying. In addition, the guidelines recommended in relation to sharing of cells should assist in the avoidance of inter-detainee violence and bullying.

RECOMMENDATIONS.

5.3.1. Anti-bullying and harassment training should be offered yearly to all Corrective Services officers, and support mechanisms, such as contact officers for staff wishing to complain about another officer, should be regularly reviewed to ensure they are working appropriately.

5.3.2. A procedure should be developed on inter-detainee violence and bullying which formalises good staff practices of actively watching for and acting on signs of bullying. Information relating to this procedure encouraging detainees to seek help and warning about the consequences of bullying should be provided in the induction booklet and through other sources. (See also recommendation 2.1.1. regarding safeguards for sharing of cells.)

¹⁶⁶ *Montesinos and Comcare* [2006] AATA 706 (17 August 2006).

6. OVERSIGHT MECHANISMS

6.1. INSPECTORS

Relevant Standards

'Body of Principles, Principle 29 '(1) In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.'

(2) A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1 of the present principle, subject to reasonable conditions to ensure security and good order in such places.'

SMR Rule 36(2) 'It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.'

The remand centres are visited on a weekly basis by the Official Visitor and the Public Advocate. Remandees were aware of their right to call and complain to the Official Visitor and the Ombudsman.

The ACT Ombudsman is funded to handle about 100 complaints a year relating to ACT Corrective Services.¹⁶⁷ The Ombudsman has raised concerns regarding overcrowding, lack of exercise and need for access to educational facilities, and was originally agreed to participate jointly in the audit with the Human Rights Commission.¹⁶⁸ There are issues regarding the adequacy of funding arrangements between the Ombudsman and the Department of Justice & Community Safety. Ultimately, the Human Rights Commission had sole carriage of the audit, but the Ombudsman participated in a review of documentation concerning incidents and discipline. The fact that the 'regime' for remandees has deteriorated despite the efforts of the Ombudsman indicates that a stronger inspection mechanism is needed with respect to systemic issues.

The Official Visitor makes weekly visits to the remand centres in order to listen to detainees, take up complaints and attempt to improve conditions for detainees. He has, for example, pursued the case of a mentally ill detainee detained for nearly two years at BRC.¹⁶⁹ Again, although his reports have noted that the main problem is the lack of organised activities for remandees, the situation has not changed.¹⁷⁰

The Human Rights Commission's view is that the inspection regime should be improved. While grateful for the cooperation of ACT Corrective Services, more could be done to encourage a culture of openness, which would protect detainees from abuse and officers from unjustified allegations. Although other agencies such as the ACT Ombudsman, Official Visitor and Public Advocate regularly visit the remand facilities and/or receive complaints from remandees, the conditions of detention for remandees appear to have deteriorated, despite the recommendations of these bodies. This indicates that a stronger inspection mechanism is needed with respect to sustained and systemic issues. Although none of these agencies have exclusive or comprehensive expertise in corrections, the Commission supports increased funding for their casework loads, which will escalate with higher demands from prisoners returning to the ACT at the AMC. The Commission regards the independence of the Western Australian Office

¹⁶⁷ ACT Ombudsman, *Annual Report, 2004 – 05*, at 28 (table 1).

¹⁶⁸ ACT Ombudsman, *Annual Report, 2004 – 05*, at 22.

¹⁶⁹ Official Visitor's Annual Report, in Department of Justice and Community Safety, *Annual Report 2005-06*, 143, at 144.

¹⁷⁰ *Ibid.*

of the Inspector of Custodial Services, which reports directly to the Parliament when performing regular inspections of facilities (each has one every three years on a rolling basis) as national best practice - the Commission recommends it should be emulated by the ACT. Apart from guaranteeing independence, the unique feature of reporting directly to parliament is more effective in drawing government's attention to areas of need, through increased public debate. Given the small size of the ACT, this would not warrant creating a new agency for this purpose, but the possibility of contracting services from the WA Inspectorate to provide a comprehensive inspection at least once every three years should be explored. Its activities would be complementary to existing local oversight bodies, including the ACT Ombudsman. (It should be noted that the Victorian inspectorate does not report directly to parliament).

RECOMMENDATIONS.

6.1.1. A culture of greater openness with respect to oversight bodies that have official inspection and complaints functions needs to be encouraged within ACT Corrective Services.

6.1.2. In the Commission's view, the Western Australian prisons inspectorate (Office of the Inspector of Custodial Services) represents national best practice and should be emulated by the ACT. Because of the ACT's small size, the possibility of contracting services from the WA Inspectorate to conduct a comprehensive investigation at least once every three years should be pursued.

6.2 ACCESS TO RECORDS

Relevant Standards

HR Act, s.12.

Body of Principles, Principle 12 '1. There shall be duly recorded:

- (a) The reasons for the arrest
- (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
- (c) The identity of the law enforcement officials concerned;
- (d) Precise information concerning the place of custody.

3. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by the law.'

Body of Principles, Principle 26 'The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefore shall be in accordance with relevant rules of domestic law.'

SMR Rule 7 '(1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefore;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.'

The *Remand Centres Regulation 1976* imposes obligations on the Superintendent to keep certain records. Section 3 refers to the maintenance of a daily journal recording important events, including those relating to health and discipline of detainees, any infringements of Standing Orders and withdrawal of detainee entitlements pursuant to s.21 of the *Remand Centres Act 1976*. Registers relating to admission and discharge, movement between remand centres, and transfer of detainees to NSW must also be maintained. Section 8 then provides that details of the following matters must be recorded with respect to every detainee:

- (a) *the warrant under which the detainee is held;*
- (b) *any committal order made in relation to the detainee;*
- (c) *the clothing and other personal property in the detainee's possession at the time of the detainee's admission to the remand centre;*
- (d) *any financial transactions made by the detainee;*
- (e) *the detainee's medical history;*
- (f) *the name and address of each visitor received;*
- (g) *the name and address of each person with whom the detainee communicates by mail or telephone.'*

The Procedures ('Incident Reports') require officers to write reports concerning certain incidents, such as deaths in custody.

Large files on detainees are maintained, that contain a great amount of information about them, including personal identification material, their warrants, disciplinary action, information about visits and phones, and information about detainee property. Through the interviews with officers and detainees, it became apparent that the general rule applied is that any paper work generated by detainees (for example, request forms) may be viewed by detainees, but paper work generated by the remand centres is generally not available to detainees and will need to be subpoenaed or accessed under the *Freedom of Information Act 1989* (ACT). The *Health Records (Privacy and Access) Act 1997* (ACT) requires the health professionals at the remand centres to provide access to detainees' health records. Arguably, the *Privacy Act 1988* (Cth) requires better access to records other than health records given that much of the material may be 'personal information'. In principle, it would appear that if detainees make reasonable requests to see their records, consideration should be given to these requests instead of requiring them to go through the freedom of information process, for example.

RECOMMENDATION.

6.2. If detainees make reasonable requests to see their records, consideration should be given to allowing them to see their records and to waiving the requirement that the request is made through the *Freedom of Information Act 1999* (ACT) or that the material be subpoenaed.

7. MONITORING CUSTODY RATES AFTER THE ESTABLISHMENT OF THE AMC

The ACT has the lowest custody rates in the country (see discussion in section F, above). However, the impact of the AMC's establishment on custody rates should be monitored. Some areas of concern include the detention of mentally ill persons, Indigenous custody rates and the imprisonment of fine defaulters.

Prisons have become substitute accommodation for the mentally ill. This indicates that there is a need for increased care options across the in-patient non-forensic mental health facilities (such as the Psychiatric Services Unit and Brian Hennessy House) and within the community.

The rates of imprisonment of Indigenous persons in the ACT are low by comparison with the national rate (see section F, above), but they are still disproportionately high compared with non-Indigenous people. The ACT has taken a leading role in innovative approaches to Indigenous offenders, with Ngambri Circle Sentencing being a good example of an initiative that aims to improve the accountability of Indigenous offenders to their own communities and thereby to reduce recidivism.¹⁷¹ Areas for further research include the uptake of periodic detention by Indigenous people.

Another area of ongoing concern is the imprisonment of fine defaulters.¹⁷² In NSW, the impetus for changes in the law relating to fine defaulters was the vicious attack by a prisoner on an 18 year old fine-defaulter, Jamie Partlic. Economic circumstances are currently taken into account in the ACT (for example, in the sentencing process if the fine is being imposed by a court). However, it is still likely that some opportunities are lost because of the chaotic circumstances of some offenders lives. This was confirmed by an interview with an imprisoned fine defaulter during the course of the audit.

Given the disproportionate cost of imprisonment of a fine defaulter,¹⁷³ and the impact of imprisonment on families (the interviewed fine defaulter had a school-age child),¹⁷⁴ consideration should be given to further opportunities for avoidance or termination of imprisonment. The fine defaulter interviewed by Commission staff had apparently served periodic detention previously, and this would have been a good option in relation to the fines as well. In NSW, there is now a phased process for enforcement of a fine, including the option of community service, with imprisonment as a last resort.¹⁷⁵ While this option has not been taken up in the ACT because of the apparent impact on the system for community service,¹⁷⁶ it should be possible to organise an informal type of community service, perhaps co-ordinated by non-government organisations, or, provided there is sufficient accommodation, to use the option of periodic detention, which includes an element of community service. In Victoria, there is a phased system for enforcement of 'infringements', such as parking fines.¹⁷⁷ It also has some attractive features including community service and safe guards

171 For a discussion of the issue of specialty courts generally, see Australian Institute of Criminology, *Specialty Courts in Australia, Report to the Criminology Research Council* (2005); available at <http://www.aic.gov.au/crc/reports/2005-07-payne/2005-07-payne.pdf>.

172 A person who does not pay their fines may be imprisoned under ACT legislation. Section 154D of the *Magistrates Court Act 1930* says that, unless the fine has been remitted (that is, the person has been allowed not to pay the fine), the Registrar of the Magistrates Court must order imprisonment if satisfied that all reasonable action has been taken to get the fines paid and it is not reasonably likely that the fine will be paid. An order made by the registrar is a 'committal' order and means that the fine defaulter must be imprisoned: s.11 *Crimes (Sentence Administration) Act 1995*. The fine may be paid at any time and will end the imprisonment under s.157 of the *Magistrates Court Act*.

173 The targeted average cost of detention per remandee per day in 2006-07 was \$435.00, while the estimated actual cost was \$490.00: Budget Paper No 4, Department of Justice and Community Safety, Estimates. Fine defaulters pay their fines off at the rate of \$100.00 per day.

174 It is now acknowledged that the children and families of imprisoned offenders are the hidden victims of imprisonment, serving their own 'sentences'. See ACT Standing Committee on Community Services and Social Equity, *The Forgotten Victims of Crime: Families of Offenders and their Silent Sentence* (2004), available at <http://www.parliament.act.gov.au/>; and Flat Out Inc, and the Victorian Association for the Care and Resettlement of Offenders, *Children: Unintended victims of legal process* issued (2006), available at <http://www.vacro.org.au/>.

175 See the *Fines Act 1996* (NSW).

176 The issue of fine defaulters was debated last year: Legislative Assembly for the ACT: 2006 Week 5 Hansard (11 May), p 1655.

177 See the *Infringements Act 2006* (Vic).

for 'special circumstances' that acknowledge that there may be factors in some people's lives such as drug addiction, mental illness or homelessness, which may explain the non-payment of fines.¹⁷⁸ Another important feature is that an infringement warrant is void after five years.

RECOMMENDATIONS.

7.1. Custody rates should be subjected to close scrutiny once the AMC is established.

7.2. To prevent the AMC becoming substitute accommodation for mentally ill persons, increased care options across the current in-patient non-forensic mental health facilities (such as the Psychiatric Services Unit and Brian Hennessy House) and within the community are required.

7.3. Research concerning rates of recidivism amongst people attending periodic detention and the uptake of periodic detention by Indigenous people should be conducted.

7.4. The ACT law concerning imprisonment of fine defaulters should be revisited with a view to including the options of periodic detention, or, perhaps, informally supervised community service, rather than simply full-time imprisonment. In addition, special circumstances such as mental illness or substance abuse that diminishes criminal responsibility, or homelessness should be taken into account. There should be a five-year limit on enforcement of fines.

¹⁷⁸ These special circumstances include mental or intellectual disability or drug-addiction that causes incapacity to understand that conduct is unlawful or inability to control unlawful conduct, as well as homelessness that results in the person being unable to control unlawful conduct. The safeguards include internal review by the agency that issued the infringement notice as well as a court power to discharge the fine entirely in order to avoid imprisonment.

APPENDIX 1: LIST OF PUBLIC AND PRIVATE CONSULTATIONS AND FORMAL INTERVIEWS

Roundtable of stake holders

invitees – ADACAS, public advocate, prisoners aid, representatives of Mental Health ACT and Forensic Mental Health, Hepatitis Australia, Supreme Court senior sheriff's officer, representatives of ACT policing, women in prisons group, representatives from ACT Corrective Services, Women's legal service, Restorative Justice Unit, Official Visitor, Youth Coalition of the ACT, Legal Aid Commission, Mental Health Consumers Network, ACT Ombudsman, Samaritan House, AIDSAction, Health Complaints Commissioner, Sexual Health and Family Planning ACT, Gugan-Gulwan, ACT Director of Public Prosecutions, SEALS, academics from ANU College of Law.

Private consultation with Dr Peter Sharp, Winnunga Nimmityjah Aboriginal Health Services

Private consultation with Mr Geoff Potts, Official Visitor

Private consultation with Mr David Clarke, chaplain at BRC

Private consultation with Mr William Bashford and Ms Nerida Gordon, Aboriginal Justice Centre

Private consultation with Mr Fred Monaghan, Gugan-Gulwan

Private consultation with Ms Robyn Holder, Victims of Crime Co-ordinator

Private consultation with Dr Gregor Urbas, Chairperson of Victims of Crime Assistance League

Private consultation with Professor Peter Camilleri and Dr Morag McArthur

Private consultation with Dr Peggy Brown, Director of Mental Health ACT

Private consultation with Ms Julie Whelum, Manager Training and Development, ACT Corrective Services

Private consultation with Ms Caroline Hughes, Head of Department, Yurauna Centre, Canberra Institute of Technology

Meeting with Community Corrections Coalition concerning the Corrections Management Bill and issues arising from the audit

Interviews with 16 officers and support staff, including the superintendent and deputy superintendents, the indigenous liaison officer, the case-manager, and the outgoing welfare officer

Interviews with 36 detainees, including two Indigenous detainees and seven women.

Interviews with 5 health professionals responsible for services at the remand centre.

Principal researcher delivered address to Human Rights Commission's bi-annual community forum, 8 December 2006.

APPENDIX 2: QUESTIONNAIRES/INTERVIEWS – DETAINEES

Cover Sheet

TIME DAY DATE

Length of interview

Detainee 1, 2, 3 etc Consent given?

I'm going to ask you a few details about your background that could help identify important issues – you don't have to answer questions if they are too sensitive.

Basic Profile

Male/female Age
Period on Remand Days Months Years

ATSI/NESB

Sexuality?

Disability?

First time on remand? Y/N

General Warm Up Question : What interests you in talking with us today? Have you signed the consent form and given it to the CO? Did you read it yourself or did someone explain it to you?

A. Length of Remand/comparison ACT v NSW

1. If you have been on remand for longer than 6 months, what has been the main reason for the length of time you have been in remand? e.g., plea changes, multiple cases?
2. If you have been in a NSW jail, do you prefer BRC/STRC or the NSW prison? Why? e.g., contact with relatives.

B. Induction procedures

1. When you arrived at the remand centre, were you strip-searched? Who performed the search – was it male or female officers? Was it a half/half strip search?
2. Were you given any information about your rights and obligations at the remand centre and did you understand the information? (eg NESB background or hearing/sight impaired?) Did you need/have the assistance of an interpreter?
3. [not STRC] When you arrived, were you assessed as needing protection in the remand centre?
4. Was a mental health assessment carried out? What about a general medical check? How long had you been at the remand centre when this happened?
5. Did you have access to a telephone on your first night? Y/N, If yes, who did you call?

C. Accommodation/Segregation/safety

1. In which yard is your cell? If you are in Symonston Remand Centre, how long were you at BRC before you were moved from BRC to STRC?
2. Is there any bullying or harassment or violence between detainees?
All the time Often Sometimes Rarely Never
3. Have you experienced this personally? Did you report it? Would you, if it happened in the future? Why/not? How do you think staff would handle the situation?

D. General Treatment of Detainees by Staff

1. How would you describe your relations with staff at the centre?
Friendly Neutral Unfriendly Hostile
2. Have you ever complained to a staff member about your treatment by either a detainee or staff or in relation to the way the centre is run? What happened?

E. Discipline

1. Have you ever been disciplined? What happened to you? Was the process fair?
2. Have you ever been segregated (eg sent to a cell away from other prisoners) as a form of discipline/for breaking centre rules? Can you tell me what this was like?
3. Have you ever been physically restrained by a staff member? Why? What happened to you?
4. Have you ever been forcibly removed from your cell?

F. Drug Testing

1. Have you been tested for drugs? Why? How often?
2. What do you think about the way urine testing is done?

G. Searches

1. How often are you strip-searched? Are the searches "half/half" searches? Has it been male or female officer(s) who carried out the search? What was the reason for the search?
2. Has your cell been searched? How often? What was the reason for the search? How was the search carried out? Confirm – detainees are strip-searched in cell before the cell is searched. Does this include the full routine of squat and cough? Where do the officers stand – at the door? What happens to the other detainees in the yard when you are being strip-searched in the cell?

H. Cells

1. Is your cell warm during cold weather and cool during hot weather? Does it have enough light, including some sunlight?
2. Do you share a cell with another detainee or detainees? Is this generally an acceptable arrangement?
3. Are you or have you ever been in a cell with a camera? What do you think about this?

I. Lock-downs

1. When do lock-down happen? What is it like being locked in? What do you do? Do you think the times for lock-downs are fair?

J. Personal Hygiene

1. What are the shower and toilet facilities like? Do you think you have enough privacy when you use the shower and toilet?

K. Clothing

1. Do you always wear “greens”? What do you think about this? Would you wear your own clothes if you had the choice?

L. Food

1. What is the food like at the Remand Centre? Is there enough food? Do you think it is healthy? (eg fat/salt)
2. Do you have any special dietary needs – eg allergies, religious reasons? How are these met at the Remand Centre?
3. [STRC only] Do you use the barbecues? Are the barbecues good?

M. Sport, Recreation and other Activities (including education)

1. What sort of exercise do you get in the remand centre? How often do you do this?
2. Are you able to participate in other activities eg educational programs while in the remand centre? Would you like to? What kind?

N. Work

1. Do you work in the remand centre? Why/not?
2. Is there enough work? Would you like to work outside the remand centre if it was possible?

O. Health

1. Is your health looked after in the remand centre? Have you got any special health requirements that need attention? How are these met? How soon did you get any prescription medication that you need? Have you asked for any tests to be done?
2. How would you describe your relations with health service staff at the centre?
Friendly Neutral Unfriendly Hostile
3. Have you used the drug and alcohol program? Was it helpful? Are there other special services that you need/receive eg mental health, maternal and childcare? What about the dentist?
4. What health or disability services have you used in the outside community? Have these been continued on remand? (eg. Own general practitioner, ante-natal, disability support, diet to manage diabetes etc.)
5. Have you ever been released from remand to receive health services? Can you tell me how this worked?
6. Do you participate in a drug treatment program (methadone)? How do you get your methadone in the Remand Centre? Does this treatment work well for you at the Remand Centre?
7. Have you ever used the needle and syringe exchange in the community? Which drugs were you injecting? Would you use a needle and syringe exchange if it was available in the Remand Centre?
8. Do many detainees use drugs while in the remand centre? What is the drug most of them like to use? Do they inject drugs? What do they use to clean their needles?
9. Do many detainees have sex while in the remand centre? Do they use condoms? How do they get condoms? Is there a vending machine? If not, would this work better?
10. [BRC only] Do any detainees get tattoos while in the remand centre? How do they do this? Do people get infections because of tattooing?

P. Communication with the outside world - family

1. When are your family able to visit you and how many of them can come? [Distinguish centre rules v visitor circumstances.]
2. Did you have your first visit within the first 2 days of detention? Why/not?
3. Do you ever experience difficulties with visits? (eg Privacy, kids going to toilet, breastfeeding mothers) How do people react to the white overalls and thongs?
4. Are you able to phone your family and/or your friends? When? How many times a week? During what hours? For how long?
5. Do you ever experience difficulties with the phone in your yard? (e.g. faults, eg competition for the phone.)
6. Can you receive phone messages from your family? In what situations? (eg emergency only)

Q. Communication with Outside World – legal etc

1. Did you defend yourself in court or did you have a lawyer?
2. Do you now have a lawyer? Have you been visited by your lawyer? When and how often is your lawyer able to visit you?

3. When can you call your lawyer? How often and for how long? Is it easy to get a call or a message through to your lawyer?
4. Do you get phone messages from your lawyer? Is it easy to speak with your lawyer once you have received their message?
5. Do you know about the free calls to organisations such as the ombudsman? Have you ever made a call and complained? Which organisation? What was the result? Were you happy with the outcome?

R. Access to information about the outside world

1. Are newspapers delivered to the Remand Centre? Which ones, and what do you read?

S. Leave

1. Have you ever been granted leave of absence from the Remand Centre? e.g., for a funeral.

T. Individual Records

1. Do you know what records are kept about you while you are living at the Remand Centre? Have you ever seen or asked to see them?
2. If you disagreed with a member of staff about an incident, and you knew it was written on your record, what would you do?

U. Voting Rights [skip if not on remand before 16 October 2004]

1. Has there been an election during the time you have been on remand?
2. Did you vote in the election?
3. What was the procedure for voting while on remand?

General Comments

What is the worst thing about living at the Remand Centre?

If you were able to improve one area of the Remand Centre, what would it be?

Ask detainee to agree or disagree:

“I am treated as a human being and a person of value at the Remand Centre.”

Is there anything else you would like to tell us about your experience at the Remand Centre or are there any suggestions you have as to how the Remand Centre can be improved?

Reaffirm Consent

The information you have given us will help us write our report. Nothing in the report will identify you. Do you agree to allow us to use the information? Y/N?

APPENDIX 3: QUESTIONNAIRES/INTERVIEWS – MANAGEMENT AND STAFF

Cover Sheet

TIME DAY DATE

Length of interview

Staff (1, 2, and 3 etc) Consent given? Y/N

Basic Profile

Male/Female

Background

Management/ Corrective Services/Medical/Support-Liaison/Other

Months/years at the BRC/STRC Permanent/casual

Introductory questions

Why did you decide to work in the field of corrective services?

In your opinion, what makes a good corrections officer?

Describe an average day at the Remand Centre?

A. Induction Procedures

1. How is information about a remandee's rights and obligations conveyed to them? Who is responsible for issuing the induction booklet (eg Remand Centre or Watchhouse)? Does the Remand Centre check on whether the booklet has been received? Is an oral explanation also given by the Remand Centre?
2. What happens if staff of the same gender as a detainee (particularly a female detainee) are not available to strip search the detainee? e.g. is the search delayed until the staff are available?
3. Can you describe the classification system and the purposes for which it is used? Who undertakes the classification?
4. Are there times when a detainee does not have the opportunity to call someone on their first day/night in detention? Y/N If not, what is the reason and how long do they have to wait?

B. Accommodation/segregation/safety

1. Is there any bullying or harassment between detainees? Y/N?
2. How do you respond when you see a detainee being bullied or provoked? What about when a detainee complains to you about another detainee's behaviour, but you haven't seen anything? (e.g. do you use the surveillance tapes? Are tapes shown to detainees?)
3. Does the presence of female detainees raise particular issues? What of Indigenous detainees? NESB? Detainees with disabilities? Different sexualities?
4. Are female detainees ever accommodated with male detainees? Y/N If yes, when does this occur?

5. Are you aware of any situation where a female detainee has been afraid of, or abused by, any of the male detainees or staff? Y/N And what action was taken?

C. Fine Defaulters

1. What are your views about fine defaulters being detained in the Remand Centres?

D. Length of Remand

1. Where a person has been on remand for longer than 6 months, what, generally speaking, has been the reason for the length of time?

E. General Relationships between Detainees and Staff

1. How would you describe the every day relationship between detainees and staff? Does it depend on the particular yard?
2. Does management encourage staff to take an active interest in the well being of the detainees? How?
3. How does the case-management system work at the Remand Centre? Are you involved? If so, how?
4. When would you recognise that a detainee needs to see a social worker/counsellor/psychologist/psychiatrist, even if they are not asking to see one? What do you do to assist this detainee? Are all these services available to detainees?

E. Discipline

1. What constitutes misconduct that would trigger disciplinary proceedings under the standard operational procedures? How do detainees know what constitutes misconduct?
2. Do you generally follow the procedures if detainee misconduct occurs? Y/N
3. What punishments may be imposed under the procedures and who decides what is appropriate?
4. What appeal rights does a detainee have?
5. When is segregation imposed as a punishment? For how long may it be imposed? How is a detainee segregated? Are they confined to their cell or sent to a punishment cell?
6. When a detainee is segregated as punishment, how are they observed?
7. Have you had to use force or physically restrain a detainee? How? Why?
8. Have you ever used instruments of restraint? Y/N If so, what were they?
9. Have you ever had to participate in a cell extraction? What happened?
10. Are you aware of, or have you witnessed any cases where either a detainee or a member of staff has been assaulted or suffered an injury because of the use of force?
11. Are staff required to provide written reports after incidents requiring use of force/assaults? Y/N Who reviews them? Who monitors them e.g. ombudsman, official visitor?

12. Do you think you have been given adequate training (e.g. in de-escalation) to allow you to handle such situations? What sort of refresher training do you receive while working at the Remand Centres?
13. Are you aware of any cases where a detainee has been given medication to calm them down? Voluntarily or involuntarily? What was it?

F. Drug Testing

1. How are decisions made to test detainees for drugs? How are decisions made to test detainees for drugs? What sanctions apply for the provision of a “dirty urine” sample by a detainee?
2. Are staff tested for drugs or alcohol or screened for contraband on the way in or out of the remand centre? Y/N

G. Searches

1. How are decisions made on when, who and how often to search? Are detainees given any notice of and/or reasons for a search of themselves or their cell?
2. When and how often do you conduct a low level body (pat-down) search? Is such a search always conducted by a person of the same gender?
3. How often are detainees subjected to a strip-search? Are detainees strip-searched prior to and after contact visits, during cell searches and before urine tests? Are they strip-searched at any other time?
4. Is a strip-search ever carried out by or in view of a person of the opposite sex? Where and when does that happen?
5. When a strip-search is conducted, is the person half clothed or fully unclothed?
6. How do you talk to a person during a strip search?
7. What time of day or night are searches usually carried out?
8. What items been found during these searches? Can you give me a rough idea of the ratio of finds to searches?
9. What areas of the Centre are not under video surveillance? How are risks (to security or detainee well-being) managed in these areas?

H. Lock-downs

1. What is the reason for the recent extra lock-downs? How long have these additional lock-downs been occurring and for how many hours are detainees locked in their cells?

I. Clothing

1. Why are detainees generally required to wear BRC “greens”?

J. Food

1. How could the quality and variety of the food given to detainees be improved? (e.g. preparation of own food?)

2. How are different religious or dietary needs catered for?

K. Sport, Recreation and Other Activities

1. Do you think that the recreational and other activities available to detainees in the Remand Centre are adequate? Y/N. What improvements could be made?
2. What cultural activities are available for minority groups (eg ATSI)?
3. Are there barber/hairdresser services?

L. Work

1. Is there work that could be done in the remand centre that is not currently available?
2. Would it be possible for work to be done outside the remand centre?

M. Health

1. What sort of health services are available to remandees?
2. Do you have access, whether formal or informal, to information about detainees' health and/or disability? If so, how is that information shared and for what purpose?
3. Have you received training in mental health issues? Are you given information (general or specific) by mental health professionals about managing detainees with mental health issues or personality disordered detainees?
4. What happens if a detainee has an acute episode of their mental illness?
5. Do detainees receive assistance from their community based general practitioner, community health services, counselling, drug and alcohol service etc. while on remand?
6. What are the transport arrangements for external health/disability consultations? How well do they work?

N. Communication with the outside world - family

1. What happens if a detainee does not receive visits from his/her family? Does the Remand Centre try to encourage detainees' family relationships? How? What of visits from ngos (eg religious organisations)?
2. Are detainees' friends allowed to visit? How are they approved? Are ex-detainees allowed to visit?
3. How are children catered for when they visit the Remand Centre?
4. When would a visitor be turned away from, or asked to leave, or banned from attending the Remand Centre? Can this happen to family members? Are there alternatives e.g. non-contact visits? Would a detainee be informed of any of these decisions? Can the decision be appealed?
6. Are there restrictions on STD calls by detainees or to mobiles or other numbers?
7. What is the reason for the limit of 10 names/numbers on the approved telephone contact list?
8. When and how are phone messages relayed to detainees?

9. How are phone calls monitored? Are legal calls treated differently? How?
10. How and when do you search detainees' incoming and outgoing mail? Do you read detainees' mail? Are letters ever not forwarded to detainees? Why, and do you notify the detainee or the correspondent?

O. Communication with the outside world – legal etc

1. Can detainees speak to their lawyers in private and away from the hearing of staff and other detainees?
2. Are you aware of any occasions when an NGO, the Office of the Public Advocate or a lawyer has not been permitted access to a detainee? Or vice versa? (e.g. as a result of lock-downs.)
3. If a detainee wants to contact the Canberra Times or the local television or radio station, how would they do that? How often have detainees been permitted to contact the media?
4. Is legal mail treated differently to other mail? How is legal mail identified as such?

Q. Access to information about the outside world

1. Are newspapers, magazines, books and videos/dvds readily available? Can detainees make requests? Can visitors drop off such materials? Why/not? Is the newspaper made available every day? Do staff ever read the newspaper first? (Should they?)
2. Do detainees have access to a computer? Internet/email? Would this sort of service be feasible?

R. Records

1. What records are kept about detainees while they are living at the Remand Centre? Can detainees access these records? How?

S. Voting Rights

1. What is the procedure for voting when there is an election?

T. Religion

1. How are the religious requirements of detainees met at the remand centres?

U. Working conditions for staff

1. How would you describe working conditions for staff at the remand centres?
 Excellent Good Average Poor Very Poor
 What improvements should/could be made?
2. What is the reason for the recent staff shortages? Have such shortages occurred before? What effect do staff shortages have on the day-to-day operation of the remand centres?

V. Human Rights Training

1. Have you received training about the ACT Human Rights Act? How often? What about the Discrimination Act? Who did the training?

2. Are you aware of the internal human rights audit undertaken by ACT Corrective Services? Do you know what recommendations were made? How have these recommendations been implemented?

General Questions

In your opinion, is there sufficient training and ongoing training and support of staff?

If you were able to improve one area of the Remand Centre, what would it be?

General Comments

Is there anything else you would like to tell us about how the Remand Centre is run or would you like to make suggestions about how the operating procedures can be improved?

Reaffirm consent

The information you have given us will help us write our report. Nothing in the report will identify you. Do you agree to allow us to use the information? Y/N

APPENDIX 4: QUESTIONS FOR HEALTH PROFESSIONALS

A. Health standards and services offered

1. Is there an agreed set of health standards for provision of prisoner health care in the ACT?
2. Please describe the health services offered at the remand centres:
 - mental health
 - General Practitioners
 - Nurses
 - Allied health (eg physiotherapy, nutrition)
 - Specialist Medical Care
 - Dental
 - Optometry
3. Are these services adequate to meet the needs of detainees?
 - mental health
 - General Practitioners
 - Nurses
 - Allied health (eg physiotherapy, nutrition)
 - Specialist Medical Care
 - Dental
 - Optometry
4. Please describe the services provided by Winnunga. Is the service provided by Winnunga adequate?
5. How are Culturally and Linguistically Diverse detainees with health concerns catered for at the Remand Centres? Is this service adequate?
6. How are detainees with disabilities catered for? Are these services adequate? Who is providing these services? Who should be providing these?
7. Who undertakes the health assessments on induction of a new detainee to the remand centre? Are these assessments adequate? (eg is there sufficient time to do the assessment? Are the physical facilities adequate?)

B. Governance

8. Please describe the funding, employment and accountability structures for the Corrections Health Service.
9. Does the Department of Justice and Community Safety have any control over corrections health services?
10. Is there a system of clinical governance and clear professional reporting lines?

C. Information/evidence basis for health program

11. Is there a system for gathering epidemiological information about patients at the remand centres?
12. Is there a regular inmate health survey? What sorts of issues are covered by this survey? Does the ACT participate? How is data collected for this purpose in the ACT?

D. Clinic and general issues

13. Would you describe the clinic room as adequate? Why/not?
14. Are there any Occupational Health and Safety issues?
15. Do health staff have an adequate office for conversations concerning patients that cannot be overheard by custodial officers?
16. Where and how are surgical and medical supplies stored? Is the storage adequate?
17. Describe the safety and security protocols for dealing with aggressive and agitated clients. Are they adequate? Do they work well in practice?
18. What system is used for maintaining the health records of patients at the remand centres? What information is kept?
19. Are detainees able to access their health records in the remand centres?
20. Are health staff able to access other records of remand centre patients, and how do they do this?
21. Are there procedures for transferral of health records from the remand centres to community-based health providers once a detainee has been released?
22. What protocols are there in relation to infection control? (Eg disposal of clinical waste, barbering, skin penetration, tattooing, clean injecting equipment, segregation for the purposes of quarantine.)

E. The facility and management of detainees

23. Is there always someone with first aid qualifications available to assist detainees? (eg custodial officers?)
24. Are health matters included in the case management of detainees?
25. Do you have any concerns about hygiene in the remand centres? For example, general cleanliness; food; clothing; bedding. Is the centre regularly inspected in regard to these issues?
26. Do lockdowns prevent medical consultations, whether within the remand centre or external consultations?
27. Does the facility (ie BRC) pose particular problems for mental health patients?
28. Is D yard an appropriate place to accommodate and treat mentally ill detainees?
29. How often would you say that custodial officers have to use physical force or instruments of restraint on mentally ill detainees? Is this appropriate? Are there alternatives?
30. Does BRC pose any problems for patients suffering from chronic or acute physical illnesses? Can you give me some practical illustrations of the sorts of problems that arise?
31. Do detainees have appropriate opportunities for exercise and recreation at the Remand centres? (Assuming inappropriate) What is the impact on detainees' health? Can you give some practical examples (eg weight gain)?
32. Is the food provided to detainees at the remand centres nutritionally adequate in your view? Does delivery of food to the detainees once it is in the remand centres comply with food safety standards?

33. Do health staff ever participate in searches of detainees (eg body searches)? Is this appropriate?
34. Have you any knowledge about the trial of the scanner for conducting searches? Have custodial officers raised health problems with respect to detainees as a result of using the scanner? Was this appropriate?
35. Are health staff ever involved in decisions about whether a detainee is fit to sustain punishment (eg segregation)? Is this appropriate?
36. Are you aware of any examples where detainees with mental illness have been disciplined for their behaviour? Was this appropriate?
37. Can mentally ill detainees be subjected to involuntary treatment while in BRC? Is this appropriate?

F. Delivery of health services to detainees

38. Are you aware that detainees are ineligible for medicare or the pharmaceutical benefits scheme (PBS)? Is there a good reason for this? What difference would be made to delivery of services or the corrections health budget by eligibility for medicare and the PBS?
39. How does a detainee obtain an appointment with health staff at the remand centres? What measures are in place to protect confidentiality?
40. Do you know if custodial officers receive any training about patient confidentiality? Do custodial staff pass on request forms to health staff promptly?
41. For how long may a detainee have a consultation with one of the health staff? How long is the average consultation? What follow-up do health staff undertake?
42. How frequently do detainees ask for tests for diseases such as HIV/AIDS or Hepatitis? What counselling do detainees receive in relation to these tests?
43. Are there any problems relating to administration of medications eg methadone? What happens to medication sessions when there are lockdowns?
44. When will a patient require regular observation (eg mental health) and what role do health staff play in the observation process?
45. Do custodial officers treat detainees who complain of illness with respect?
46. Are you aware of examples of medical decisions being overridden by custodial staff? Was this appropriate?
47. Are detainees made aware of their right to complain to the Health Services Commissioner?
48. Are the escort procedures for external health consultations appropriate from both the health and security perspective?
49. What are the security arrangements on a hospital watch? Are you aware of any examples where a patient has been attached to a piece of furniture?
50. What arrangements, if any, are in place to help ensure detainees continue with treatment or programs begun while in detention once they have been released from the remand centres?
51. Have you encountered any cases where a detainee has refused medical treatment or has voluntarily starved him or herself? How was the situation handled, and was this appropriate?

52. Have you ever treated detainees with injuries resulting from a use of force by custodial officers? Have these injuries ever been severe? Have they ever given you cause to believe that the force used was excessive?

G. Psychiatric assessments for legal purposes

53. Who undertakes psychiatric assessments for the courts/mental health tribunal? Are there delays in these assessments? If so, what are the reasons for these delays?

H. Health Promotion

54. Is there a condom dispensing machine? If not, how are condoms distributed to detainees? Are detainees aware that condoms are available? How often are unused condoms replaced?
55. Is bleach made readily available to detainees?
56. Approximately what percentage of detainees are drug-users? Do they continue to use drugs while in the remand centres?
57. In your experience, have those detainees who are drug users availed themselves of community services such as the needle and syringe program?
58. Should a needle and syringe program be introduced to the Alexander Maconochie Centre? Do you have a view on how such a program should be introduced and managed?
59. Do you have concerns about the impact on detainees' health of policies or practices in the remand centres such as the prevalence of smoking or the rule against hats and sunglasses? Can you give practical examples illustrating the health impact of these practices or policies? Do you have suggestions for improving the situation?
60. What is the impact of family visits on detainees' health? Do health staff have any input into or concerns about the way in which visits are run at the remand centres?

I. Other

61. Are there any other issues you'd like to raise that have not been covered by this interview?

APPENDIX 5: LIST OF ABBREVIATIONS AND ACRONYMS USED IN THIS REPORT

BRC	Belconnen Remand Centre
STRC	Symonston Temporary Remand Centre
PDC	Periodic Detention Centre
AMC	Alexander Maconochie Centre
CATT	Mental Health Crisis Assessment and Treatment Team
HR Act	Human Rights Act 2004 (ACT)
SMR	Standard Minimum Rules for the Treatment of Prisoners
Body of Principles	Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment
Basic Principles	The United Nations Basic Principles for the Treatment of Prisoners
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
CPT	European Committee for the Prevention of Torture

