

**Submission by the  
ACT Ombudsman**

**Inquiry into Community Corrections**

Submission by the acting ACT Ombudsman, Penny McKay

**30 November 2021**

## Introduction and summary

Thank you for the opportunity to make a submission to the Standing Committee on Justice and Community Safety's Inquiry into Community Corrections.

This submission outlines:

- the role of the ACT Ombudsman
- details of our 2020 investigation report into the administration of parole by ACT Corrective Services (ACTCS), and
- recent complaints received about ACTCS, which may be of interest to the Committee.

### The role of the ACT Ombudsman

The ACT Ombudsman's role is to:

- provide assurance that the organisations we oversee act with integrity and treat people fairly, and
- influence systemic improvement in public administration in the ACT.

This includes influencing improvements in the administration and management of the Alexander Maconochie Centre (AMC) by ACTCS.

The ACT Ombudsman's role is delivered by the Office of the Commonwealth Ombudsman (the Office) under a services agreement between the Office and the ACT Government. The agreement outlines activities undertaken by the ACT Ombudsman in relation to ACT agencies (including ACTCS), which include:

- managing individual complaints (including investigation when warranted)
- conducting own motion investigations in relation to ACT agencies
- outreach activities to inform the public and ACT agency staff about the role of the ACT Ombudsman, and
- making recommendations to improve public administration.

### Investigation into the administration of parole by ACTCS

In November 2020, the ACT Ombudsman published an investigation report into the administration of parole by ACTCS. The report is provided at **Attachment A**.

#### *Overview of investigation and recommendations*

The former ACT Ombudsman, Michael Manthorpe PSM, decided to commence this own motion investigation after concerns were raised with our Office during outreach with detainees at AMC about issues associated with the preparation for parole:

- the information available to detainees about the parole process
- detainees' level of preparedness and the support provided to them to participate in this process
- the natural justice afforded to detainees during the parole application process and their access to legal representation, and
- the accuracy and completeness of the information provided to the Sentence Administration Board for consideration when making decisions on parole applications.

Detainees indicated they were reluctant to make formal complaints about these issues because of concerns that doing so would impact on their parole outcome.

The investigation was prioritised as even the smallest administrative failure has the potential to result in a detainee unnecessarily remaining in prison beyond their earliest possible release date.

The investigation resulted in 15 recommendations. The first 6 recommendations focus on the development of a healthy and transparent policy framework, as well as the implementation of sound administration for business planning and record management. The remaining 9 recommendations specifically address opportunities for improving sentence management and parole processes.

All 15 recommendations were accepted by ACTCS, which advised it is committed to developing a holistic Integrated Offender Management system focused on preparing detainees for release at the earliest opportunity, with due regard for risk and community safety.

### ***Monitoring the implementation of recommendations***

Our Office regularly monitors the implementation of recommendations arising from our investigations.

In September 2020, we published our inaugural *Did They Do What They Said They Would?* report. The report analysed agencies' implementation of recommendations made in reports published between July 2017 and June 2019. We assessed the steps taken by agencies to determine whether our recommendations were 'fully implemented', 'partially implemented' or 'not implemented'.

The Office is currently reviewing the implementation of recommendations made in reports published in the period 1 July 2019 to 30 June 2021 (for both ACT Ombudsman and Commonwealth functions). This review includes the 15 recommendations from our 2020 investigation into the administration of parole by ACTCS.

Agencies, including ACTCS, will have the opportunity to comment on our proposed findings prior to finalisation of our report. Subject to Ombudsman approval, we anticipate a copy of the completed report will be published and provided to the Standing Committee on Justice and Community Safety in 2022.

### **Complaints summary**

Our oversight role in relation to the AMC involves managing individual complaints received by our Office, outreach activities, and regular engagement with other AMC oversight agencies.

#### ***Complaints received between 1 July 2020 and 30 June 2021***

Between 1 July 2020 and 30 June 2021, the Office received 116 complaints about ACTCS. Each complaint was about the AMC, and the complaints were made by detainees, their friends and families.

The receipt of a complaint does not, on its own, indicate an issue is present. The Office can exercise discretion not to investigate complaints, under section 6 of the *Ombudsman Act 1989* (ACT) (the Act). Every complaint is assessed on its merits to determine whether it can be resolved quickly, or a formal investigation is required. We consider a number of factors in assessing complaints and determining appropriate action to take. This includes whether:

- the complainant has complained to the agency involved
- we can resolve the complaint quickly, for example, by providing a better explanation
- another agency or oversight body can provide a better outcome for the complainant
- it is clear the agency has made a reasonable and lawful decision, based on the information provided by the complainant, without the need for us to request additional information.

A preliminary analysis indicates the 116 complaints received during this period raised the following issues:

<b>Nature of complaint</b>	<b>Number of complaints</b>	<b>Percentage of total complaints<sup>1</sup></b>
<b>Medical treatment<sup>2</sup></b>	22	19%
<b>Safety / housing</b>	15	13%
<b>Access to visitors / arrangements</b>	11	9%
<b>Work / programs</b>	9	8%
<b>Parole processes</b>	8	7%
<b>Segregation and management</b>	7	6%
<b>Services</b>	7	6%
<b>Property</b>	5	4%
<b>Quality of food</b>	5	4%
<b>Other / multiple issues</b>	27	23%

#### ***Outcomes of finalised complaint investigations for ACTCS in 2020–21***

The Office decided to conduct investigations into 15 of the 116 ACTCS complaints received between 1 July 2020 and 30 June 2021 and 11 investigations were finalised in this reporting period.

Noting that more than one outcome may be recorded for each complaint investigation, the outcomes of these 11 complaint investigations were:

- a better explanation was provided by the Ombudsman (for 8 complaints)
- a better explanation was provided by ACTCS (for 7 complaints)
- there was no remedy (for 3 complaints)
- a remedy was provided by ACTCS (for 2 complaints)
- the decision was changed or reconsidered (for one complaint), and
- a financial remedy was provided (for one complaint).

<sup>1</sup> Percentages may not add up to 100 per cent due to rounding.

<sup>2</sup> Section 5(2)(o) of the *Ombudsman Act 1989* (the Act) states the Ombudsman is not authorised to investigate action taken by an agency in relation to a health service. Sections 6A and 6B of the Act provide for the referral of complaints to another statutory office holder or entity. This includes mandatory referral to the Human Rights Commission, if the Ombudsman decides it would be more appropriate for a complaint to be investigated by the HRC.

### ***Complaints received between 1 July and 30 September 2021***

Between 1 July and 30 September 2021, the Office received 23 complaints about ACTCS<sup>3</sup>. ACTCS was the ACT agency with the second highest number of complaints during the quarter. The ACT agency with the highest number of complaints was Housing ACT (25) and Access Canberra was the third highest (19).

### ***Complaints about ACTCS related to parole since publication of our 2020 investigation report***

As noted above, detainees may be reluctant to make formal complaints about parole due to concerns about the potential adverse impacts on their parole application. This factor, along with the multifaceted nature of many complaints, makes it difficult to provide reliable information on trends about parole complaints.

For example, complaints relating to parole can be difficult to separate from other complaints, as they may be mixed in amongst other issues, such as access to programs, which may or not be framed in the context of a parole application.

Between 1 January and 30 September 2021 – that is, the 3 quarters since the publication of our investigation report, preliminary analysis indicates approximately 8 of 82 complaints (or 9.8 per cent) received about ACTCS during this period referred to parole. Most of these 8 complaints related to a detainee at the AMC raising concerns about access to programs or case officers to progress or make a parole application. Three complaints referred directly to access and fairness before the Sentencing Administration Board. Two complaints related to issues with compliance and arrangements after parole was granted.

Of these 8 complaints, the Office conducted an investigation into one matter and made preliminary inquiries in relation to another. The investigation did not find any concerns about the support provided to the detainee to apply for parole by the case officer, though it did question whether detainees were provided with sufficient information about the role of case officers. The preliminary inquiry accepted that resourcing limitations meant the Sentence Administration Board was not using face-to-face or video conferences for its hearings at that time.

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<sup>3</sup> [ACT Ombudsman Quarterly Report](https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0016/112921/ACT-Ombudsman-quarterly-report_Q1-2021-22.pdf) – 1 July to 30 September 2021 - [https://www.ombudsman.act.gov.au/\\_\\_data/assets/pdf\\_file/0016/112921/ACT-Ombudsman-quarterly-report\\_Q1-2021-22.pdf](https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0016/112921/ACT-Ombudsman-quarterly-report_Q1-2021-22.pdf)