Ms Sandra Lambert AM

Chair ACT Remuneration Tribunal

PO Box 964

Civic Square ACT 2608

Dear Ms Lambert

**REMUNERATION OF THE ACT INSPECTOR OF CORRECTIONAL SERVICES**

**Foreword**

I was appointed as the inaugural ACT Inspector of Correctional Services (Inspector) on a five year contract which ends in February 2023. I wish to make clear that, for personal reasons, I will not seek or accept reappointment. In that regard, this submission concerns my successor and will not benefit me in any way.

**Background**

The ACT Inspector of Correctional Services was established in 2018 to provide independent oversight of ACT correctional and youth justice facilities, focusing on continual improvement and prevention of ill-treatment.

The Inspector provides this oversight through conducting reviews of ACT correctional facilities and services and reviewing critical incidents. Initially this was limited to adult correctional facilities and services. However, in December 2019 this expanded to youth justice, including oversight of Bimberi Youth Justice Centre.

The role of Inspector was established with the passage of the *Inspector of Correctional Services Act 2017* (ICS Act) in response to a number of critical incidents that had occurred at the Alexander Maconochie Centre, since it opened in 2009.

In particular, the tragic death of Mr Steven Freeman, a 25 year old Aboriginal man at the Alexander Maconochie Centre on 27 May 2016 prompted an independent inquiry to review the treatment and care of Mr Freeman. Mr Philip Moss AM was appointed and conducted a review that made a number of recommendations. The Moss review report is entitled “So Much Sadness in our Lives”. The ACT government’s response to the Moss review included a commitment to establish an Inspector of Correctional Services.

Although the Moss review was the immediate precursor to the establishment of the Office of the Inspector, a number of stakeholders had for a number of years called for a prison inspectorate, including the ACT Human Rights Commission in reviews of ACT’s now closed remand facility, the Belconnen Remand Centre. The establishment of a preventive oversight entity was particularly timely, given Australia ratified the Optional Protocol to the Convention Against Torture (OPCAT) in December 2017, which requires jurisdictions to establish or designate independent entities to provide oversight

of places of detention (National Preventive Mechanisms -NPM). The Inspector was designated by the ACT government as an OPCAT NPM for ACT adult and youth detention centres in February 2022.

The Inspector exercises significant powers under the ICS Act and reports only to the ACT Legislative Assembly.

Reviews carried out by the Inspector are conducted against the Inspector’s [published inspection standards](https://www.ics.act.gov.au/how-we-work), which set out the expectations for treatment and care, and indicators that help assess whether expectations are being met

The Standards are tailored for the ACT's unique conditions: a small jurisdiction, operating under human rights legislation, and at the time of writing, with one adult correctional facility and one youth justice that detains both remand and sentenced people, women and men. The Standards are informed by relevant ACT law and policy. For the adult Standards this includes the *Corrections Management Act 2007* (CM Act) as well as policies and procedures notified under this Act. For the youth Standards this includes the *Children and Young People Act 2008* and the relevant policies and procedures notified under the Act.

Reports are published in the ACT Legislative Assembly within six months of completion of the review. Prior to publication of the report, the relevant Minister and Director-General are consulted with and invited to correct any factual inaccuracies within the report.

The methodology for conducting reviews is based on international best practice standards. These standards are articulated in documents such as the Association for the Prevention of Torture (APT)’s Monitoring Places of detention: a practical guide (2004) and are reflected in practices developed and documented by international human rights monitoring bodies, including the UN Subcommittee for the Prevention of Torture and the Council of Europe’s Committee for the Prevention of Torture.

The Inspector’s Review Framework sets out this methodology and provides information on the context in which reviews are undertaken.

The Inspector can review critical incidents at the Alexander Maconochie Centre (AMC), ACTCS Court Transport Unit and Bimberi Youth Justice Centre. A critical incident is defined in the *Inspector of Correctional Services Act 2017* (ACT) to include:

* the death of a person;
* a person’s life being endangered;
* an escape from custody;
* a person being taken hostage;
* a riot that results in significant disruption to a centre or service;
* a fire that results in significant property damage;
* an assault or use of force that results in a person being admitted to a hospital;
* any other incident identified as a critical incident by a relevant Minister or relevant director-general.

The Office of Inspector of Correctional Services (OICS) has conducted a number of significant reviews and other work since it commenced operations in April 2018 (see attachment).

**Workload and staffing**

OICS comprises the Inspector (PPOH), Deputy Inspector (SOG A)[[1]](#footnote-1) and a temporary (contract) SOG C Assistant Inspector.

The original budget allocation for OICS included a line provision, without explanation or details, for one Critical Incident Review (CIR) per year. As of 4 July 2022, about 4.5 years after its establishment, OICS had conducted 14 CIRs, or about three per year. Further, the ACT government is fully aware that OICS was never funded for its oversight of Bimberi, which was added to the *Inspector of Correctional Services Bill 2017* **after** the OICS budget had been finalised. I have made several attempts to obtain additional funding (1 FTE) for the Bimberi function but these have been rejected by Treasury.

As noted above, the Inspector was designated by the ACT government as an OPCAT NPM for ACT adult and youth detention centres in February 2022. Although this NPM role will involve additional work for OICS, no additional budget has been provided as is not likely to be.

Notwithstanding that JACS was responsible for creating the Inspector’s role (*Inspector of Correctional Services Bill 2017*), it cannot provide any detailed information about how the OICS budget was calculated (assumptions about workload, etc.), which begs the questions as to why the Inspector’s role was to be part-time (PPOH) and how the Inspector’s base remuneration was derived?

In summary, JACS grossly under-estimated the role of an ACT “OICS” and the Inspector’s personal workload, noting that at least some guidance could have been obtained from the (independent) Inspectors in WA (established in 2000) and NSW (established 2012). As far as I am aware there was no formal, if any, consultation with WA or NSW. As result of this lapse by JACS, in the past 4.5 years since my appointment I have consistently worked several days a week, including weekends, public holidays and on-call occasions after normal business hours (emergency notifications, etc.). However, I do not always “claim” working days due to the annual salary cap.

**Inspector’s remuneration**

Determination 13 of 2021 provides that, ‘The remuneration of the Inspector of Correctional Services cannot exceed **$205,749 per annum**’ with a ‘Base remuneration per diem’ of $895. I note that the Inspector does not receive any ACTPS employment “benefits” other than employer superannuation contributions.

Despite making requests to JACS in the past, I have not been provided with any information as to how the Inspector’s original (2017) remuneration was calculated e.g. was it aligned to an ACTPS position level? (see below)

Determination 1 of 2022 states that the ‘full-time base remuneration per year’ of an ACTPS Executive Level 1.4 (EL 1.4) was/is **$206,539**. This is slightly higher but roughly equivalent to the Inspector’s annual remuneration annual limit[[2]](#footnote-2).

If the Inspector’s position was aligned to an EL 1.4, I submit that the Inspector’s annual and per diem remuneration should have equated to an EL 1.4 base remuneration amount plus an amount that compensates for the other paid benefits that an EL 1.4 may receive such as:

* Not working on weekends (104 days) or ACT public holidays (about 18 days per year)
* Recreation and other leave entitlements
* Long service leave accrual
* Recreation leave bonuses

Conversely, the Inspector’s base remuneration *may* have been aligned with a lower level ACTPS position with an allowance for “benefits” added on to the base.

Even if the EL 1.4 level was the original benchmark, I am far from convinced that the roles and responsibilities of a typical ACTPS EL 1.4 match those of the Inspector. For example, I appear before Legislative Assembly budget and annual report hearings, produce a stand-alone annual report, deal directly with Ministers, Auditor-General, Integrity Commissioner, Ombudsman, Human Rights Commission (etc.) and I am frequently reported in the media when OICS reports are tabled - accountability rests with the Inspector, not the Chief Minister, other Minsters or Directors-General.

I am firmly of the view that the current remuneration of the Inspector does not reflect the roles and responsibilities of the position and request that the Tribunal review this matter before the appointment of the next Inspector in 2023.

I am happy to discuss.

Yours sincerely



Neil McAllister

4 July 2022

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Neil McAllister
ACT Inspector of Correctional Services

1. Currently working at 0.6 FTE for family reasons. [↑](#footnote-ref-1)
2. For reasons that are unclear to me, JACS costs the base remuneration of an EL 1.4 at $230,572. [↑](#footnote-ref-2)