

Australian Capital Territory

Corrections Management (Human Rights Principles for ACT Correctional Centres) Direction 2019*

Notifiable instrument NI2019–303

made under the

Corrections Management Act 2007, section 13 (Ministerial directions to director-general)

1 Name of instrument

This instrument is the *Corrections Management (Human Rights Principles for ACT Correctional Centres) Direction 2019*.

2 Commencement

This instrument commences on the day after its notification day.

3 Declaration

I direct that, in making corrections policies and operating procedures under section 14 of the Act, the director-general must consider the Human Rights Principles for ACT Correctional Centres in Schedule 1.

Shane Rattenbury MLA
Minister for Corrections and Justice Health
15 May 2019

*Name amended under Legislation Act, s 60



Shane Rattenbury MLA
Minister for Corrections and Justice Health

FOREWORD

The ACT has a notable history in the protection and promotion of human rights, and continually strives to lead human rights improvements for all in our community, including those in our correctional centres.

The ACT Government has worked hard to make sure detainees can be appropriately supported and cared for. This requires ongoing commitment to a human rights culture and a willingness to admit and face the issues that need more work. In particular, we must better respond to the needs of the Aboriginal and Torres Strait Islander community, which, regrettably, continues to be significantly over-represented in prisons across Australia.

Establishing the Human Rights Principles for ACT Correctional Centres is a part of the ongoing process to improve the safety and wellbeing of detainees. Supporting detainees' human rights will also help to maximise their ability to live positive lives upon release.

The deprivation of liberty is society's agreed punishment for a crime. Imprisonment does not remove or deny a detainee's human rights.

The Human Rights Principles for ACT Correctional Centres are a clear statement that detainees must always be treated with humanity and with respect for the inherent dignity of the human person, and gives important support to ensuring a safer, more just community in the ACT.

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PREFACE

These **Human Rights Principles for ACT Correctional Centres** constitute outcomes or goals to be achieved by ACT Corrective Services, rather than a set of absolute standards, and reflect the basic expectations we as a community, and the ACT Government, should rightly have of adult correctional facilities and services.

These Principles address the unique features of the ACT and its correctional centres, including that we are a relatively small community and our corrections service must cater for a range of detainees, including female, male, intersex and gender diverse, Aboriginal and Torres Strait Islander, culturally and linguistically diverse, those with a disability, older detainees, sentenced and remand, and special protection, as well as multiple security classifications.

ACT Corrective Services cares about the experience of people in prison, acknowledging that detainees have rights and responsibilities, and that detention involves the limitation of some rights.

These Principles will be reflected in ACT Corrective Services' policies and procedures. Our staff will act compatibly with human rights in delivering services, and will give proper consideration to relevant human rights in making decisions as outlined in Section 40B of the *Human Rights Act 2004* (Human Rights Act).

These Principles are informed by international human rights law, policy and practice, including general principles in the Universal Declaration of Human Rights, the Nelson Mandela Rules (the *Standard Minimum Rules for the Treatment of Prisoners*) and the United Kingdom Her Majesty's Inspectorate of Prisons' *Expectations*, which detail criteria for 'healthy prisons' that meet human rights standards.

THE IMPORTANCE OF HUMAN RIGHTS PRINCIPLES

The observance of human rights is integral to good correctional centre management and the most effective and safest way of managing correctional centres.¹ What this approach underlines is that the concept of human rights should not simply be another subject to be added to the training curriculum, but must be embedded in all aspects of good prison management.

The ACT Government's commitment to ensuring respect for human rights is entrenched in the Human Rights Act, which states that human rights are required for Canberrans to 'live lives of dignity and value'. This applies to all parts of our Territory, including correctional centres.

The Human Rights Act incorporates international human rights obligations into our local law. It provides, as a starting point, that everyone has the right to liberty and that no one may be arbitrarily arrested or detained. People may not be deprived of liberty except in accordance with the law, and anyone in detention is entitled to be treated with humanity and with respect for their inherent human dignity. Detainees also retain all of the other human rights recognised in the Human Rights Act while in detention and these may only be limited in accordance with that Act.

Imprisonment is one of the most coercive measures that the State can take against an individual, and for that reason it must be a last resort and done in accordance with law.

1. Coyle, A 2009, *A Human Rights Approach to Prison Management: Handbook for prison staff*, 2nd edn, International Centre for Prison Studies, London, p.9.

UNDER WHAT CIRCUMSTANCES CAN DETAINEES' RIGHTS BE LIMITED?

Detainees are sent to correctional centres as punishment, not for punishment. That is, the deprivation of liberty is the punishment that flows from a sentence of imprisonment. The conditions of imprisonment and the management of prisoners are not to create an additional punishment to the sentence.

Any further restriction on detainee rights, beyond the unavoidable limitation on liberty resulting from imprisonment, must, under the Human Rights Act, be reasonable and demonstrably justified in a free and democratic society.

Limitations must be:

- > in accordance with the law, and not arbitrary;
- > necessary to meet a pressing need (such as security or good order);
- > in accordance with a legitimate objective that limitation is seeking to meet; and
- > the least restrictive on rights as is possible in the circumstances.

Limitations on rights should not be discriminatory, that is, they must not unfairly impact on a detainee or group of detainees. Furthermore, decisions must be fair, decision makers must be accountable, and those affected by decisions must have rights to challenge such decisions. Restrictions on rights should be clearly documented (particularly in relation to use of force, segregation and searches). The legislative framework for the prison in the *Corrections Management Act 2007* (ACT) also references human rights standards and contributes to the protection of rights.

THE ROLE OF INDEPENDENT OVERSIGHT ENTITIES

The ACT has four entities that provide independent oversight and conduct investigations in relation to correctional centres: the ACT Human Rights Commission, the ACT Ombudsman, ACT Corrections Official Visitors and the Inspector of Correctional Services. These entities may use the Principles in the performance of their functions and will work together to ensure that ACT Corrective Services complies with its human rights obligation. The functions of these entities include: investigating detainee complaints, undertaking systemic reviews, entering and inspecting correctional facilities, monitoring trends of concern, and identifying and investigating systemic issues in correctional facilities.²

HOW WILL ACT CORRECTIVE SERVICES USE THESE PRINCIPLES?

These Principles are a tool to guide ACT Corrective Services and the ACT Government in the performance of functions under the *Corrections Management Act 2007* (ACT) and reflect the applicable rights enshrined under the Human Rights Act.

These Principles will be reflected in ACT Corrective Services policies and procedures and are intended to apply to all who provide services and support to detainees in a correctional centre. The ACT Government is responsible for the treatment and care of detainees in adult correctional facilities and this includes ensuring all aspects of treatment and care meets human rights standards.

2. The **ACT Human Rights Commission** investigates complaints in relation to health services and unlawful discrimination, has the power to enter and inspect correctional centres, and can undertake systemic reviews on the impact on human rights of ACT Government laws. The **ACT Ombudsman** receives and investigates complaints that raise a matter of administration in relation to correctional centres, and monitors systemic issues in correctional centres. **Official Visitors** receive and investigate detainee complaints and grievances and have the power to enter and inspect correctional centres. The **Inspector of Correctional Services** has a key role in preventing ill-treatment and identifying systemic issues in adult corrections to promote continuous improvement. The Inspector examines and reviews correctional centres and services and must review critical incidents at correctional centres or in the provision of correctional services at least once every 2 years.

SAFETY

1. EARLY DAYS IN CUSTODY

This can be a time of confusion, disorientation and risk for detainees. There should be proper safeguards in place to reduce risks.

- 1.1 **Detainee transport** should be safe and humane.
- 1.2 Detainees have a right to make **contact with key persons**, including a lawyer or family member to notify them of their detention.
- 1.3 Detainees must receive a **comprehensive induction**, which includes the provision of **information** covering correctional centre rules, and detainees' rights and obligations. Careful attention should be paid to whether the detainee understands the information, and appropriate measures should be taken if it appears they do not (for example, provision of an interpreter).
- 1.4 Detainees must receive a **health assessment** upon arrival, with particular attention paid to identify health care needs, including an assessment of the risk of self-harm or suicide, signs of ill-treatment, signs of psychological or other stress, signs of withdrawal from alcohol and other drugs, and signs of contagious diseases and other risks.
- 1.5 **Foreign national detainees** have the right to contact their diplomatic or consular representative.

2. MANAGING BEHAVIOUR

Discipline and order should be maintained with no more restriction than necessary to ensure safety, security and good order.

- 2.1 The **daily regime** in a correctional centre should encourage and reward good behaviour.
- 2.2 **Disciplinary action** must be carried out in a manner that is proportionate, fair and transparent. Detainees have the right to natural justice in relation to disciplinary decisions that affect them.
- 2.3 **Use of force** must only be carried out in a legal manner, as a last resort where strictly necessary and with the minimum amount of force necessary, and should be reasonable and proportionate to the circumstances. Medical restraint, whereby a drug is used to restrict the movement or freedom of a patient, must not be used.
- 2.4 Staff must be appropriately **trained** in de-escalation techniques and appropriate use of force. All uses of force and restraint should be recorded and monitored for appropriate application.
- 2.5 **Practices that isolate detainees**, including separate confinement, should only be used for the shortest time that is proportionate to a legitimate objective. Separate confinement should be subject to safeguards including contact with the outside world and regular review.

3. SAFE AND SECURE ENVIRONMENT

All correctional centres must be a safe and secure environment where all persons are protected from harm and feel safe, and security is managed in the least restrictive way possible in the circumstances.

- 3.1 ACT Corrective Services should promote a safe environment in all correctional centres through **dynamic security**, which involves professional, positive and respectful engagement with detainees, to anticipate and prevent incidents and risks.
- 3.2 **Searches** must be conducted by trained staff, in accordance with clear guidelines which respect detainees' rights, and in a manner that is the least intrusive on a detainee's privacy and dignity as is reasonable and necessary in the circumstances.
- 3.3 **Strip and body searches**, other than upon entry to and release from a correctional centre, should only be conducted in response to a specific and pressing security need and based on reasonable grounds. Strip searches must be conducted by a staff member of the **same sex** as the detainee, unless the detainee is intersex or transgender, in which case the search may be conducted by a staff member of a sex nominated by the detainee. Body searches must only be conducted by a health professional.
- 3.4 **Records** must be kept of all strip and body searches.
- 3.5 Every effort should be taken to protect all persons within correctional centre from **harm by others**.

4. THE CLASSIFICATION SYSTEM

As far as possible, all correctional centres should facilitate the separation of specific categories of detainees, having particular regard to the safety, vulnerability and particular needs of the individual detainee.

- 4.1 **Women** must be detained separately from men.
- 4.2 **Remandees** must be treated in a manner appropriate to their status as unconvicted persons, including by affording them full opportunity to prepare their legal case, offering but not compelling them to participate in work, and being mindful of the importance of maintaining links with the community.
- 4.3 The placement of all detainees should be done **primarily on an individual risk and needs assessment** of the respective detainee.
- 4.4 **Separation of cohorts** of detainees may be justified to prevent the negative influence of particular detainees over others, to facilitate social rehabilitation, and to protect detainees that may be in a situation of vulnerability.

RESPECT & DIGNITY

5. RESPECT AND DIGNITY

*Staff and service providers should act with **integrity and professionalism** and treat everyone with respect and dignity.*

- 5.1 **Engagement** between detainees and management should be respectful and centred on building positive relationships.
- 5.2 Staff should take active steps **to prevent and address discrimination**, including on grounds of status as an Aboriginal or Torres Strait Islander, race, sex, religion, ethnicity, nationality, cultural and linguistically diverse backgrounds, gender identity, sexuality, intersex status, disability, health condition or age, political convictions, irrelevant criminal record and other grounds in the *Discrimination Act 1991* and relevant Commonwealth discrimination laws.
- 5.3 Staff should take active steps to prevent and address **sexual harassment and vilification**.
- 5.4 The distinct **cultural rights of Aboriginal and Torres Strait Islander detainees** should be respected, including the rights relating to cultural heritage and spiritual practices, language and kinship ties.
- 5.5 There should be **sufficient staff, with relevant professional training and skills** to meet operation needs. Staff should be **supported** in their work and their health, well-being and professional development needs.
- 5.6 Staff should receive **training** including in Aboriginal and Torres Strait Islander cultural awareness and cultural competency, psychosocial needs of detainees, mental health, needs of detainees with a disability, and needs of persons in a situation of vulnerability.
- 5.7 Reasonable adjustments should be made to ensure persons with a **disability** can enjoy and exercise their human rights on an equal basis with others, including appropriate measures to support persons with a disability in exercising their legal decision-making capacity.

6. LIVING CONDITIONS

Living conditions should be of reasonable standards, appropriate for the climatic conditions, humane and meet basic standards of hygiene and health.

- 6.1 Detainees must have access to **fresh air, good air circulation, natural light, and space**. Detainees should have access to open air and exercise for at least one hour each day.
- 6.2 Detainees' living environments should maintain a comfortable temperature year round.
- 6.3 Detainees must have access to **toiletries, materials and facilities** necessary to keep themselves, their clothing and accommodation clean.
- 6.4 Detainees should be provided with **clothing and bedding** that is suitable to climatic conditions, clean, and not humiliating or degrading.
- 6.5 The **food** in correctional centres should be nutritious, well prepared, of suitable variety and with choice, and served hygienically. All reasonable efforts should be taken to ensure menus cater to individual detainees' health, age, cultural, religious, spiritual or other needs.
- 6.6 Detainees should have **access to media** sources such as newspapers, radio, and television to stay informed of public affairs as is reasonable in the circumstances, and with the necessary limitations for the purposes of maintaining security and good order.

7. COMPLAINTS AND GRIEVANCES

Detainees have the right to raise concerns or make complaints.

- 7.1 Detainees have the right to **make requests, raise issues (including systemic issues) and make complaints** to staff and independent oversight entities, including the Ombudsman, the ACT Human Rights Commission or Official Visitors. In all cases, detainees must be protected against reprisals for making complaints.
- 7.2 Staff should deal with requests made and issues and complaints raised by detainees in a **timely and professional** manner.

- 7.3 There should be a **simple and confidential process** for detainees to make complaints to independent oversight entities.
- 7.4 Any interested parties, including detainees and oversight agencies, can raise **systemic issues** with the Inspector of Correctional Services.
- 7.5 Staff should appropriately engage and communicate with detainees about **decisions that affect them**.

8. ACCESS TO A LAWYER AND OVERSIGHT ENTITIES

Detainees have the right to access a lawyer and oversight entities.

- 8.1 Detainees have the right to **meet, speak and correspond with their lawyer and oversight entities in private**. This includes written correspondence with lawyers and oversight entities, which must not be opened by staff.

9. FREEDOM OF THOUGHT, CONSCIENCE, BELIEF AND RELIGION

Detainees have the right to freedom of thought, conscience, belief and religion.

- 9.1 Detainees should, as far as practicable, be enabled to **practice a recognised religion or belief** of their choosing, including through the provision of access to religious materials, spaces for prayer or contemplation, and access to qualified religious representatives.

10. HEALTH CARE

Detainees should be provided with quality health care to a standard equivalent to that available in the ACT community.

- 10.1 **Health needs** must be actively identified and supported through cooperation between ACT Corrective Services and health agencies providing services to correctional centres.
- 10.2 Detainees should have **access to an interdisciplinary health team** acting with full clinical independence and encompassing sufficient expertise in mental health. Appropriate arrangements must be in place to facilitate timely access to required specialist or emergency medical care that cannot be provided in correctional centres.
- 10.3 Health professionals providing services in a correctional centre are governed by the **same ethical and professional standards as those applicable to professionals treating patients in the community**. This includes in relation to health professionals' duty to patients, the requirement for informed consent, processes for contacting the authorised Enduring Power of Attorney or Guardian and Financial Manager, and general confidentiality of health information (subject to information sharing required to ensure the health and safety of the detainee or others).
- 10.4 Health services provided in a correctional centre should adopt both a **therapeutic and health promotion focus**, tailored to specific detainee needs.
- 10.5 To the extent possible, a **harm minimisation** approach should be taken in relation to the use of alcohol, tobacco and other drugs. Detainees should have access to assessment for the **management of drug withdrawal**, as well as access to a range of appropriate treatments and programs to address rehabilitation needs.
- 10.6 The **prevention of suicide and self-harm** must be a priority. All ACT correctional centres should provide a positive, responsive and supportive environment for addressing suicide and self-harm prevention.
- 10.7 Aboriginal and Torres Strait Islander detainees have the right to receive **Indigenous-specific health services**.
- 10.8 Appropriate health care services must be available to meet the particular health needs of **all** detainees, including those who are female, transgender or intersex.

11. MENTAL HEALTH

ACT Corrective Services must make appropriate and adequate provision to meet the mental health care needs of detainees in a correctional centre.

- 11.1 Persons found not criminally responsible due to mental impairment or those assessed as requiring inpatient mental health care should be **transferred to mental health facilities**, where available, where appropriate mental health supports and responses can be provided.
- 11.2 Community equivalent mental health care is provided within a correctional centre by Canberra Health Services. If **inpatient mental health care** is required, Canberra Health Services must provide treatment, care or support in the most appropriate facility based on the clinical assessment, requirements of the person and operational demands.

12. RESPONSIBILITIES TOWARDS STAFF

ACT Corrective Services must have in place effective measures to ensure the rights of staff are respected.

- 12.1 **ACT Corrective Services staff** have the right to feel safe at work, the right not to be the subject of discrimination or harassment, and the right to be appropriately trained and supported in their work, amongst other rights.
- 12.2 Detainees and staff must **treat each other with mutual respect** and in a manner consistent with human rights.
- 12.3 **Staff complaints** should be handled appropriately and in a timely manner.

13. MAINTAINING FAMILY CONNECTIONS

Detainees have the right to maintain and develop relationships with family and friends.

- 13.1 A detainee's **right to family and private life** must be protected to the maximum extent possible by enabling detainee contact with family and friends through visits, telephone calls, letters and emails.
- 13.2 **Visits** should be conducted in a manner and environment which is least restrictive in the circumstances and conducive for a positive visiting experience for all concerned. Restrictions placed on engaging with the outside world (for example, searches or non-contact visits, censorship of mail or email) should have a rational basis, such as a clear threat to security and order, and be the least restrictive possible. Visitors must not be subject to strip searches by ACT Corrective Services staff.
- 13.3 Unless contrary to the best interest of the child, measures should be taken to ensure the child of a detainee can **maximise meaningful contact with that parent**. The environment provided for these interactions to occur should be as 'normal' and child-friendly as possible, acknowledging the limitations that a custodial centre imposes.
- 13.4 Unless the best interest of the child require otherwise (with a crucial consideration being the safety of the child), a mother who is a detainee has the **opportunity for her baby or young child to remain with her**, and if not, full supports should be provided for breastfeeding and open contact.

PURPOSEFUL ACTIVITY

14. PURPOSEFUL ACTIVITY

Programs and activities must be provided that meet the diverse needs and interests of the detainee population, including women, minority groups, Aboriginal and Torres Strait Islander detainees, detainees with a disability and others.

- 14.1 Detainees should be **afforded as much time out of their cell as possible**, and be able to access and engage in purposeful activity, including recreation with others.
- 14.2 Detainees should have **access to a library** stocked with a wide range of resources and technology including education materials to enable detainees to educate themselves.
- 14.3 Detainees should be encouraged and have the opportunity to **access work of a useful nature** (preferably developing skills that can be used upon release) that is fairly remunerated.
- 14.4 Detainees should have **access to educational programs**, which as far as possible meet individual needs, take into account reasonable aspirations, are varied, and are culturally appropriate. Detainees should be **supported and encouraged** to undertake educational programs.
- 14.5 Programs and services provided to detainees, especially women, Aboriginal and Torres Strait Islander detainees, and detainees from non-English speaking backgrounds, should be established in **consultation with the appropriate community groups and experts**.

REHABILITATION & RELEASE PLANNING

15. REHABILITATION

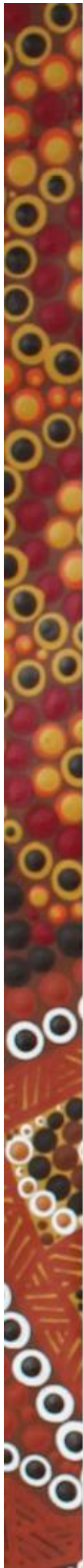
Detention must be focused on rehabilitation and taking measures to maximise a detainee's ability to integrate in the community upon release.

- 15.1 All programs, services and activities should be delivered in line with the **individual needs** of detainees, and mindful of rehabilitation and reintegration needs and required supports.
- 15.2 Where **criminogenic needs** are identified these should be included in case management planning that includes the provision of appropriate programs and services to meet assessed needs as far as possible.

16. RELEASE PLANNING

Release planning is commenced soon after admission, and must involve an individualised management plan, regular reviews and the involvement of outside services and agencies.

- 16.1 **Individualised risks assessments, sentence management plans, and release plans** should consider particular detainee vulnerabilities, for example, intersex or transgender status, disability or previous experiences of physical, mental or sexual abuse.
- 16.2 Detainees should have access to **interventions designed to promote successful rehabilitation**, including, where appropriate, specialist units such as therapeutic communities. These programs should provide a safe, respectful and purposeful environment which allows detainees to address their offending behaviour.
- 16.3 **Gradual return to the community** should be promoted using transitional release accommodation, parole, or other supervised community-based orders.
- 16.4 The **Extended Throughcare Program** provides support to eligible detainees returning to the community including ensuring appropriate documentation, clothing, and assisting with finding appropriate accommodation and work opportunities, access to health care (including any prescribed medication), meeting immediate transport requirements and assisting with access to income sources (i.e. Centrelink, employment) for the immediate period after release.



Further information

These Human Rights Principles for ACT Correctional Centres were produced by the Justice and Community Safety Directorate.

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