



ACT Corrective Services

DISCIPLINE ADJUDICATIONS

JULY 2008

Report by the Acting Australian Capital Territory Ombudsman,
Dr Vivienne Thom, under the *Ombudsman Act 1989*

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EXECUTIVE SUMMARY

ACT Corrective Services (ACTCS), part of the Department of Justice and Community Safety (JACS), operates the Belconnen Remand Centre (BRC) and the Symonston Temporary Remand Centre (STRC). It will be responsible for operating the new prison in the ACT, the Alexander Maconochie Centre (AMC), which will commence operations in the second half of 2008.

Since 18 December 2007, the remand centres have been operated under the *Corrections Management Act 2007* (Corrections Management Act). Prior to that, the legislation governing the remand centres was the *Remand Centres Act 1976* (Remand Centres Act).

This office decided to carry out an own motion investigation of the adjudication of disciplinary charges at BRC and STRC based on observations made while investigating complaints that there may have been issues related to procedural fairness and strength of evidence in adjudications. We examined 101 charge reports for adjudications carried out between 1 January 2007 and 30 June 2007. These adjudications were conducted under the Remand Centres Act and associated Standing Orders.

This report draws lessons from the conduct of these adjudications to inform recommendations for improvements to the adjudication system under the Corrections Management Act.

Issues and recommendations

The investigation found four principal issues in the 101 charge reports examined:

- 21 did not have any or adequate particulars of the conduct recorded
- 42 listed multiple breaches where fewer charges would have covered the relevant conduct
- 27 showed issues of appearance of bias or other procedural fairness concerns
- 31 had findings that were not supported by the evidence relied upon.

Some of the issues identified have been addressed in the Corrections Management Act and the Corrections Management (Prisoner Discipline) Procedure 2007 (the Discipline Procedure). However, we make recommendations to improve the Discipline Procedure to address the issues of multiple charges, appearance of bias, and probity of evidence, and to address a detainee's right to silence.

The investigation found that there appears to have been problems with consistency of penalties in some cases. We recommend that the policy on proportionality of penalties required under the Corrections Management Act make the requirement for consistency explicit and take into account the flow-on effects of penalties for discipline breaches for detainees.

We also recommend that detainees should be given more information concerning the discipline process on induction and when they come into contact with the process.

Conclusion

The Corrections Management Act has instituted a number of important reforms of the discipline system for detainees. The recommendations in this report propose improving a number of aspects of the process in order to ensure that the system is fair and effective.

PART 1—INTRODUCTION

Background

ACT remand centres

1.1 ACT Corrective Services (ACTCS), part of the Department of Justice and Community Safety, operates the Belconnen Remand Centre and the Symonston Temporary Remand Centre. It will be responsible for operating the new prison in the ACT, the Alexander Maconochie Centre (the AMC), which will commence operations in the second half of 2008.

The need for an own motion investigation

1.2 Each year the ACT Ombudsman receives about 100 approaches concerning ACTCS, nearly all from detainees at BRC and STRC. In 2006–07, 45 of the 94 approaches received were investigated. Of those 45, seven were about the discipline process or punishments imposed through the discipline system. Investigation of those complaints required access to the records of some detainees' passage through the discipline system at the remand centres. Some of those records suggested (without being conclusive) there may be problems with procedural fairness in adjudications and the evidence relied on in some matters to establish discipline offences did not appear to be very strong.

1.3 A review of the literature concerning the operation of prisons showed that conduct of adjudications was also an issue in other jurisdictions. Studies show detainee dissatisfaction, or lack of confidence, in the discipline and grievance processes may arise from perceptions of unfairness.¹

1.4 A systematic look at the discipline process allowed us to examine the overall conduct of adjudications and to determine whether the concerns raised in individual matters reflected more systemic problems.

1.5 This investigation was also timely in the context of the opening of the AMC. It is hoped that the observations and recommendations in this report will assist ACTCS in establishing a fair and effective discipline system for the AMC.

Scope and conduct of investigation

1.6 The investigation was carried out by reviewing the adjudication of charges from 1 January 2007 to 30 June 2007. There was a total of 101 charge reports. These adjudications were conducted under the Remand Centres Act and the Standing Orders made under that Act. Examination of the adjudication records allowed us to consider the initial report of misconduct, the charge put forward and the procedure followed to resolve the matter. The observations made and issues raised by our examination of the records are set out in Part 3 of this report.

1.7 ACT Ombudsman staff interviewed a number of Corrective Services Officers about their experience of the adjudication system. We also had access to the records of the ACT Human Rights Commission interviews with detainees carried out as part of the 2007 Human Rights Audit on the Operation of ACT Corrections Facilities under Corrections Legislation.

1.8 This office is grateful to the staff of ACT Corrective Services who were open and helpful in our dealings with them in investigating these issues.

¹ For examples, see Ombudsman, Western Australia, *Own Motion Investigation into the Department of Corrective Services' Prisoner Grievance Process*, May 2006, pp. 28–29; and Bronwyn Naylor, *Prison Disciplinary Systems: Process and Proof*, paper delivered at the International Institute of Forensic Studies Conference, Prato, Italy, 2–5 July 2002.

PART 2—LEGISLATIVE AND POLICY FRAMEWORK

2.1 Since 18 December 2007, the remand centres have operated under the Corrections Management Act. Prior to that, the legislation governing the remand centres was the Remand Centres Act.

2.2 Before discussing the findings of the investigation and the issues it raised, it is necessary to explain the features and operation of the discipline system under the Remand Centres Act and associated Standing Orders and the system established under the Corrections Management Act. The recommendations of this report are intended to assist ACTCS in its implementation of the discipline system under the Corrections Management Act.

Adjudications under the *Remand Centres Act 1976*

2.3 The Remand Centres Act made provision for the Administrator (in practice, the Executive Director of ACTCS) to make Standing Orders for the day-to-day running of remand centres.² It was an offence for a detainee to act contrary to the provisions of the Standing Orders concerning good order, discipline and security of a remand centre.³ In practice, nearly all breaches of the Standing Orders were dealt with by charges under the adjudication system and not under the criminal law system. There was scope for serious matters (such as assault) to be referred to the police.

2.4 Section 21 of the Remand Centres Act empowered the Superintendent to confine a detainee to the detainee's sleeping quarters or remove a detainee's entitlements if the Superintendent believed on reasonable grounds that it was necessary for the maintenance of security, discipline and order in the remand centre. Standing Orders were made, which among other things set out the obligations of detainees. The details of detainees' obligations are set out in Attachment A.

2.5 The discipline process followed the following steps:

- incident/offence identified
- incident report, preparation of witness statements (that is, an investigation)
- decision to charge detainee with an offence
- adjudication of the charge
- review by the Superintendent.

2.6 Once a decision was made to charge a detainee, a charge sheet was prepared which contained a brief statement of the conduct (usually one line) followed by the full text of the Standing Orders setting out the detainee's obligations. The paragraphs of the obligations list that were not relevant to the incident were struck out.

2.7 Adjudications were generally held as soon as possible after the incident, usually the same day. During the adjudication process, the detainee was asked whether he or she wanted to plead guilty to the charge. If a guilty plea was entered, the adjudicating officer (usually the duty Deputy Superintendent) decided on a penalty. If the detainee pleaded not guilty, he or she was asked what they had to say about the matter. The adjudicator then

² Section 8 of the *Remand Centres Act 1976*.

³ Section 17(b) of the *Remand Centres Act 1976*.

made a decision on guilt. If the detainee was found guilty, the adjudicator decided on a penalty.

2.8 In either case, the matter was submitted to the Superintendent for review. Penalties imposed did not generally commence until the Superintendent had reviewed the matter. In some cases detainees were confined to their cells to maintain good order (because of the detainee's disruptive behaviour) which meant that 'confined to cells' penalties sometimes began immediately.

Adjudications under the *Corrections Management Act 2007*

2.9 The Corrections Management Act establishes a discipline system and sets out the steps to be followed in dealing with a breach of discipline.⁴ Discipline breaches are set out in s 152 of the Corrections Management Act (reproduced at Attachment B to this report).

2.10 Chapter 10 of the Corrections Management Act sets out a series of steps necessary for a breach to progress through the discipline process. The process is illustrated by the flowchart at Attachment C. The Discipline Procedure⁵ sets out the procedures to be followed in meeting the requirements of the Corrections Management Act. The officer noting the breach, the investigator and the administrator are all required to decide whether the matter should be dealt with formally or not.

2.11 Section 159 of the Corrections Management Act sets out the requirements for elements that must be included in the charge. These include a brief statement of the alleged conduct, the penalty proposed by the administrator and the detainee's option to have the matter dealt with by consent and accept the proposed penalty.

2.12 Section 183 of the Corrections Management Act requires that the presiding officer at each stage in an inquiry must ensure that the penalty imposed is proportionate to the breach. That section further states that a policy and operating procedure must be made to enable matters to be considered when deciding whether action is proportionate to a disciplinary breach. At May 2008, the policy and procedure has not yet been established or published.

⁴ See Chapters 10 and 11 of the *Corrections Management Act 2007*.

⁵ Notifiable Instrument 2007–459 on the ACT Legislation Register (www.legislation.act.gov.au)

PART 3—ISSUES

Particularisation of charges

3.1 In 21 of the 101 charges examined, it was not possible to tell from the charge sheet what specific conduct was alleged to have taken place. In these cases, a very brief, generalised description of the conduct was given, followed by the provisions of the standing order that were said to have been breached. While it was possible to obtain an understanding of the alleged conduct from reading the yard officer reports and witness statements, it is difficult to see from the charge sheets how the detainees knew what it was they were alleged to have done. The matter may have been adequately explained by the officer conducting the adjudication, but the records do not show if this was the case.

3.2 The *Positive urine sample* and *Possession of a weapon* case studies illustrate the problem of lack of particularisation.

CASE STUDY: Positive urine sample

The pathology report for the detainee's urine sample reported cannabinoids. A charge sheet was prepared in response to that report. The sheet contained no details of the offending conduct of the detainee. That is, it did not set out that he had returned a positive drug test. It stated that the detainee had 'committed a breach of discipline to wit' and then struck out various discipline offences, leaving the following charges:

3.2.1 *A detainee shall:*

- (d) *not commit any act contrary to the provision of the Standing Orders concerning the good order, discipline and security of the Remand Centre*
- (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.*

Full particulars of a charge were not recorded. The sheet simply set out the text of the provision or provisions that the detainee is said to have breached.

CASE STUDY: Possession of a weapon

An officer observed a yellow toothbrush slip out of a detainee's shorts. On closer inspection the handle of the brush was seen to have been formed into a sharp point. A charge sheet was raised in response to the incident. The sheet did not contain details of the offending conduct of the detainee. Again, it stated that the detainee had 'committed a breach of discipline to wit' and then struck out various discipline offences, leaving the following charges:

3.2.1 *A detainee shall:*

- (d) *not commit any act contrary to the provision of the Standing Orders concerning the good order, discipline and security of the Remand Centre*
- (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.*

The defect in this matter was partially ameliorated by the detail in Standing Order 3.2.1(f). However, as for the positive urine sample case study, the specific offending conduct should have been described.

3.3 The *Hiding medication* case study is an example of good particularisation.

CASE STUDY: *Hiding medication*

The detainee attended the remand centre clinic to obtain medication. He attempted to conceal the medication in his shorts rather than take it immediately as required by the rules. His behaviour was observed by the nurse and reported. A charge sheet was raised in response to that incident. The sheet contained the full details of the offending conduct of the detainee. It stated that the detainee had:

'committed a breach of discipline to wit: You attempted to hide and divert a medication issued [sic] to you by the Clinic Nurse. This is contrary to Standing Order 3 which states: A detainee shall:

- (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;*
- (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;~~'*

The presentation of the charge against this detainee identified the actual offending behaviour and then related it to the Standing Order that the detainee had offended against. The sheet provided much clearer particularisation than in *Positive urine sample* and *Possession of a weapon* case studies set out above.

3.4 Future adjudications will take place under the Corrections Management Act, against the conduct standards set out in s 152 of that Act. Section 159 of the Corrections Management Act sets out the information required to be given to a detainee when they are being charged, which includes a brief statement of the conduct to which the charge applies. The Discipline Procedure does not set out the level of detail required. It would be helpful for it to make explicit the duty of the administrator to ensure that the charge being put to the detainee adequately records the particular conduct said to be a disciplinary breach.

Multiple charges

3.5 In 42 of the 101 charges examined, multiple breaches of the Standing Orders were alleged for the one instance of conduct. That is, when the charge sheet was prepared, a number of paragraphs of the detainee obligations were left in when the charge related to only one course of conduct by the detainee.

CASE STUDY: *Abusive language*

A detainee was alleged to have used abusive language in a telephone conversation. He was charged with breaching the following provisions of Standing Order 3.2.1, that detainees:

- (d) not commit an act contrary to the provisions of the Standing Orders concerning the good order, discipline and security of the Remand Centre*
- (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.*

A charge under 3.2.1(i) would have adequately covered the incident.

3.6 Our examination of the charge sheets and penalties imposed did not indicate that the practice of alleging multiple breaches arising out of one course of conduct resulted in heavier penalties being imposed on detainees. The practice of alleging multiple breaches from one course of conduct is undesirable. The Discipline Procedure should require that the minimum number of breaches should be alleged to address the conduct of the detainee.

3.7 The Corrections Management Act partially addresses the issue. Section 186 provides that when a detainee is charged with multiple breaches arising from the one course of conduct, the total penalty may not exceed the maximum penalty that may be imposed for any one of those breaches. The Discipline Procedure is intended to provide guidance on penalties. Step 2 of the disciplinary charge process⁶ refers to the penalty schedule, although this part of the document had not yet been prepared (as at May 2008). It would assist corrections officers when laying charges and imposing penalties if the policy referred to the requirement in s 186 of the Corrections Management Act.

Appearance of bias

3.8 The *Victim conducting adjudication* case study illustrates the issue of appearance of bias.

CASE STUDY: Victim conducting adjudication

The detainee was charged with throwing orange juice. The juice also hit Officer X who provided a witness statement. The same Officer X was the Duty Chief Custodial Officer with authority to conduct adjudications. Officer X proceeded to hear the matter.

The detainee refused to enter a plea and the guilty procedure was then followed. Officer X made a finding of guilty and the detainee was awarded 72 hours confinement. The Superintendent reviewed the matter and confirmed the decision without comment.

The rule against bias requires that a decision maker stand aside if a reasonable person would be concerned that the decision maker could not bring an impartial and unprejudiced mind to the proceedings. The fact that Officer X was hit by the orange juice would raise this concern. Officer X should have stood aside from the adjudication.

3.9 The Corrections Management Act allows for officers who are not custodial officers to be appointed to the roles of investigator, administrator, presiding officer and review officer. Section 19 allows the Chief Executive to appoint any person as a corrections officer provided they have relevant qualifications. Section 152 allows any person with relevant qualifications to be appointed as an investigator. Any corrections officer can be appointed as an administrator (s 151) or a presiding officer (s 166).

3.10 The flexibility in the Corrections Management Act allowing these appointments makes it possible to ensure that victims of alleged disciplinary breaches need not be involved in the discipline process, no matter how senior they might be. Other, appropriately senior staff of ACTCS could be appointed if required. The Discipline Procedure does make reference to the Superintendent allocating a person other than a custodial officer to investigate a matter, but does not refer to the circumstances in which this might happen.

3.11 The Corrections Management Act also contains provisions intended to ensure that each stage of the process is carried out by a person who has not been involved in earlier stages (see ss 157(5), 158(4), 170(3) and 174(2)). The Discipline Procedure refers to these requirements, but only in relation to the presiding officer and the review officer.

Probity of evidence

3.12 The relevant standard of proof for the discipline offences managed under the Remand Centres Act was 'on the balance of probabilities'. That standard of proof is also required in discipline proceedings under the Corrections Management Act⁷ That is, the

⁶ See page 8 of the Discipline Procedure.

⁷ Section 171 of the Corrections Management Act.

adjudicator had to be satisfied that it was more likely than not that the incident had taken place and that it amounted to a breach of the relevant Standing Order. In a number of cases, the material before the adjudicator did not appear to support the conclusions reached.

CASE STUDY: *Alleged dilution of urine sample*

A detainee was charged with supplying 'a sample of urine for analysis which appears to have been diluted'. He had provided a sample as part of routine procedures for detecting drug use. The pathology report indicated traces of drugs consistent with the detainee's medication and also that he had low levels of creatinine. The creatinine levels were outside the normal range, but only by a small amount. The pathology report noted that low levels of creatinine 'may indicate sample dilution in some individuals'. It did not state that the level tested indicated dilution in that case.

The detainee pleaded not guilty to the charge and argued that the pathology report did not say his sample was diluted, it merely indicated that dilution was one possible explanation for the low level of creatinine. He was found guilty and awarded four weeks no contact visits.

There was no direct evidence that the sample had been diluted. The report does not allow a conclusion to be drawn that it was more likely than not that the sample had been diluted, as it simply stated that the low creatinine *may* indicate dilution in *some* individuals (emphasis added). It is difficult to see how the adjudicator and the Superintendent could have been satisfied on the balance of probabilities that the sample had been diluted.

3.13 There were 31 other matters identified in our investigation where issues with evidentiary value of the evidence were noted. In each of these cases a decision was made by an investigator to lay the charge and a decision was made by the adjudicator to find the detainee guilty despite the problems with the evidence.

3.14 The provisions set out in the Corrections Management Act regarding reporting, investigation and laying charges concerning disciplinary breaches make it clear that at each stage the decision maker has the option to take no further action.⁸ It is essential that decision makers critically evaluate the weight of the evidence before proceeding to the next step in the process. The Discipline Procedure does refer to the option available to investigators and administrators to take no further action but does not set out the matters to which the investigator and the administrator should have regard in making the decision. In each case the Procedure simply refers to whether the breach 'warrants further action' or 'warrants the imposition of a disciplinary charge'. In light of the significant number of cases where the probative value of evidence has been a concern, it would be appropriate for the Discipline Procedure to refer to the need for evidence sufficient to support the charge laid.

3.15 There is some indication from the review of the charge reports that adjudicators did not look further into matters raised by detainees. The *Possible provocation* case study is an example of this.

CASE STUDY: *Possible provocation*

A detainee had been charged with assault but claimed that he had been provoked. The charge report has no indication that this claim was considered or investigated. Consideration of the detainee's claim would have been relevant to the penalty to be imposed and may have led to the conclusion that no penalty should be imposed.

⁸ See s 156 concerning reporting, s 157 concerning investigation and s 158 concerning laying charges.

3.16 If issues raised by detainees are not investigated or considered, the proceedings become unfair. The failure of the relevant corrections officers to look into the matters raised means that the detainee is left to organise his or her own evidence and defence. Detainees are typically not able to organise and articulate a defence to charges.

3.17 It would therefore be appropriate for the investigation of a report by a corrections officer to be comprehensive and to investigate matters raised by the detainee or suggested by the circumstances. The onus should not be on a detainee to obtain relevant information for the proceedings other than his or her own evidence.

Consistency of penalties

3.18 The Human Rights Commission carried out a human rights audit of remand facilities in the ACT. The audit process included interviews with detainees. This office had the opportunity to review a summary of the interviews (the interview records themselves are confidential to the Human Rights Commission). The records noted the detainees' perceptions about the discipline process as follows:

- penalties from returning a positive urine test or a failure to provide a sample are unfair
- detainees are not being awarded penalties on an even-handed basis
- officers play psychological games on detainees
- detainees cannot win if charged, and consequently it is not worth challenging a charge or decision.

3.19 The analysis of charge reports showed that there were some variations in penalties where the circumstances of the disciplinary breach appeared to be similar. It was difficult to ascertain from the information in those reports why different penalties were imposed.

3.20 In the *Variations in penalty* case studies, quite different penalties were given for breaches that appear quite similar.

CASE STUDIES: Variations in penalty

Detainee Mr A was found to have a pill, which was prescribed medication, in his possession. He was charged, pleaded guilty and was awarded seven days suspended loss of privileges.

Detainee Mr B was charged with possession of a valium tablet issued to him for immediate consumption. He pleaded guilty, was found guilty and awarded 24 hours confinement and one week's limited loss of privileges.

Detainee Mr C kept his medication instead of taking it when it was issued. The medication was found in a cell search and the detainee was charged with possession of contraband. He explained that he had not taken his medication when it was issued to him as the medication made him sleepy and he did not want to go to bed too early. Mr C was awarded 48 hours confinement, two weeks loss of privileges (suspended) and two weeks of non-contact visits.

3.21 It is unclear to us why these offences were treated differently. There may have been factors such as prior behaviour and/or disciplinary breaches that affected the decisions, but if any such information was taken into account by the adjudicator and the Superintendent, it was not recorded.

3.22 Section 183(3) of the Corrections Management Act obliges the Chief Executive of JACS to make a policy providing for matters to be considered when deciding whether disciplinary action is proportionate to a disciplinary breach. At May 2008, that policy is being

developed. Once made, the policy should ensure that similar breaches are dealt with by imposition of similar penalties, although individual circumstances and discipline history would clearly need to be taken into account. The policy should make this explicit that this is an intended effect of the policy.

3.23 The results of the discipline process can have effects on detainees beyond the immediate penalties. We understand that the discipline record of a detainee in remand is considered in the production of pre-sentence reports for use by judges and magistrates in the sentencing process and by the Parole Board when considering applications for parole. It would be appropriate for such flow on effects from discipline breaches to be considered in the preparation of the policy on consistency of penalties.

Information for detainees

3.24 As noted in paragraph 3.22 on the consistency of penalties, information gathered by the HRC indicates that detainees are concerned about the overall fairness of the system. This is corroborated by some of the remarks made by detainees when asked to speak in discipline proceedings, which were to the effect that there was no point in making any comment. Some corrections officers observed in discussions with this office that it often seemed that detainees did not understand the discipline process.

3.25 These issues could be addressed, to some degree, by providing information to detainees about the system, both on induction⁹ and when they come into contact with the discipline system. The induction information should include information about actions that constitute a discipline breach and the range of penalties possible if a breach is established. When a discipline charge is being laid, the information provided should describe the processes to be followed from that point, the rules on perceived bias and the opportunities for the detainee to be heard in the process.

Detainee's right to silence

3.26 In one matter the detainee was asked whether he pleaded guilty or not guilty to the charge, but he refused to respond. The adjudicator proceeded to treat the matter as if a plea of guilty had been made. That decision was not appropriate.

3.27 The Corrections Management Act addresses a refusal to plead guilty or not guilty by providing that a detainee can only be treated as having pleaded guilty if he or she does so in writing in response to the charge being laid (s 167). However, there is still a risk that corrections officers will respond inappropriately to a detainee refusing to answer questions in an investigation or refusing to participate in an adjudication process. The right to silence is a well-established common law principle.

3.28 The Discipline Procedure does not address the issue. It sets out a series of actions and decisions for an investigator once he or she receives a discipline report. No guidance or standards are provided for the conduct of an investigation. The procedure does not indicate how an investigator should approach a detainee to investigate a matter. If investigators are interviewing detainees as part of their investigation, it would be appropriate for investigators to inform detainees of their right to silence. The right to silence extends beyond the investigation. It would also be appropriate for administrators and presiding officers to be instructed to draw no inferences from a detainee's silence on a matter.

⁹ The current induction information for detainees simply notes that there is a discipline system. No further information is provided.

PART 4—CONCLUSION AND RECOMMENDATIONS

4.1 This own motion investigation considered the adjudication of discipline charges under the Remand Centres Act and the Standing Orders in the first half of 2007. Analysis of the charge reports has highlighted issues about particulars, multiple charges, appearance of bias, probity of evidence and consistency of penalties.

4.2 Our investigation found issues relating to consistency of penalties which should be addressed by the policy and procedure on proportionality of penalties when it is prepared.

4.3 Our investigation also found that detainees have expressed dissatisfaction about the overall discipline process and do not receive substantial information about the discipline process.

4.4 The suggested amendments to the Discipline Procedure build on the changes already made to the adjudication system by the Corrections Management Act to ensure that the system is fair and effective.

4.5 As the discipline system under the Corrections Management Act is now in operation at the remand centres, these changes should be implemented without delay, and ideally by the time the AMC is operational.

RECOMMENDATION 1

That the Discipline Procedure be amended to:

- a) make explicit the duty of the administrator to ensure that the charge being put to the detainee adequately records the particular conduct said to be a disciplinary breach as required under section 159 of the Corrections Management Act
- b) require that the minimum number of breaches be alleged to cover the conduct of the detainee
- c) include a reminder for corrections officers laying charges and determining penalties that s 186 of the Corrections Management Act requires that the penalty imposed for one course of conduct not exceed the maximum penalty for any one of the breaches of which a detainee is found guilty
- d) require that officers who are victims of alleged conduct (or were otherwise involved in the incident in question) not be assigned to make decisions in respect of the discipline process concerning the incident
- e) reflect the requirement of the Corrections Management Act that officers in the role of investigator and administrator may not have those roles if the individuals were involved in a prior step in the process
- f) require investigators and administrators to be satisfied that the evidence of the disciplinary breach could support a finding that the alleged conduct had been established on the balance of probabilities before proceeding with the matter
- g) require an investigator to seek all relevant evidence and information to inform his or her own decision concerning the matter and to put before the administrator
- h) set out guidance and standards for investigators about the conduct of investigations—this should include a requirement for investigators to respect a detainee's right to silence
- i) instruct administrators and presiding officers not to draw any inferences from a detainee's silence on the allegations being considered.

RECOMMENDATION 2

That the policy on proportionality of penalties should:

- a) state it is intended that similar discipline breaches receive similar penalties (taking into account individual circumstances and discipline history)
- b) take into account the effects of the discipline breach on pre-sentence and parole procedures for detainees.

RECOMMENDATION 3

That detainees be provided with information about the discipline process on induction and when charged with a breach of discipline.

PART 5—RESPONSE BY ACT CORRECTIVE SERVICES

5.1 The Chief Executive of the Department of Justice and Community Safety provided the following observations on the Ombudsman’s draft report.

The recommendations raised in the draft report provide ACT Corrective Services (ACTCS) with a timely opportunity to review present discipline practices and procedures in the ACT Remand Centres under the new legislation.

I note that the investigation included examination of charge reports prior to the commencement of the *Corrections Management Act 2007* (Corrections Management Act). Unlike the provisions in the *Remand Centres Act 1977*, the Corrections Management Act provides a clear framework in applying administrative law principles to prisoner disciplinary proceedings. Many of the principles of procedural fairness as envisaged by the Corrections Management Act have translated into prisoner discipline procedures and will form the basis of training of all correctional officers as part of the transition training in readiness for the commissioning of the Alexander Maconochie Centre.

...

The recommendations regarding the provision of information to detainees as relates to the discipline process and the development of a schedule of penalties are noted. ACTCS staff are currently exploring ways to ensure that detainees are provided with sufficient information regarding discipline including a detainee handout and displaying information on television screens in cells through an audiovisual broadcast technology.

In relation to the schedule of penalties, work is underway within ACTCS to finalise the schedule. The schedule is intended to provide guidance to correctional officers when imposing discipline penalties, as well as constituting a useful training tool. It is anticipate that a draft schedule will be ready by mid July 2008.

ATTACHMENT A—DISCIPLINARY BREACHES UNDER THE *REMAND CENTRES ACT 1976*

Disciplinary breaches under paragraph 3.2 of the Standing Orders made under the *Remand Centres Act 1976* set out the obligations of detainees as follows:

- 3.2.1 A detainee shall:
- (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 wilfully and without lawful excuse destroy or damage any property belonging to the Centre, or another detainee.

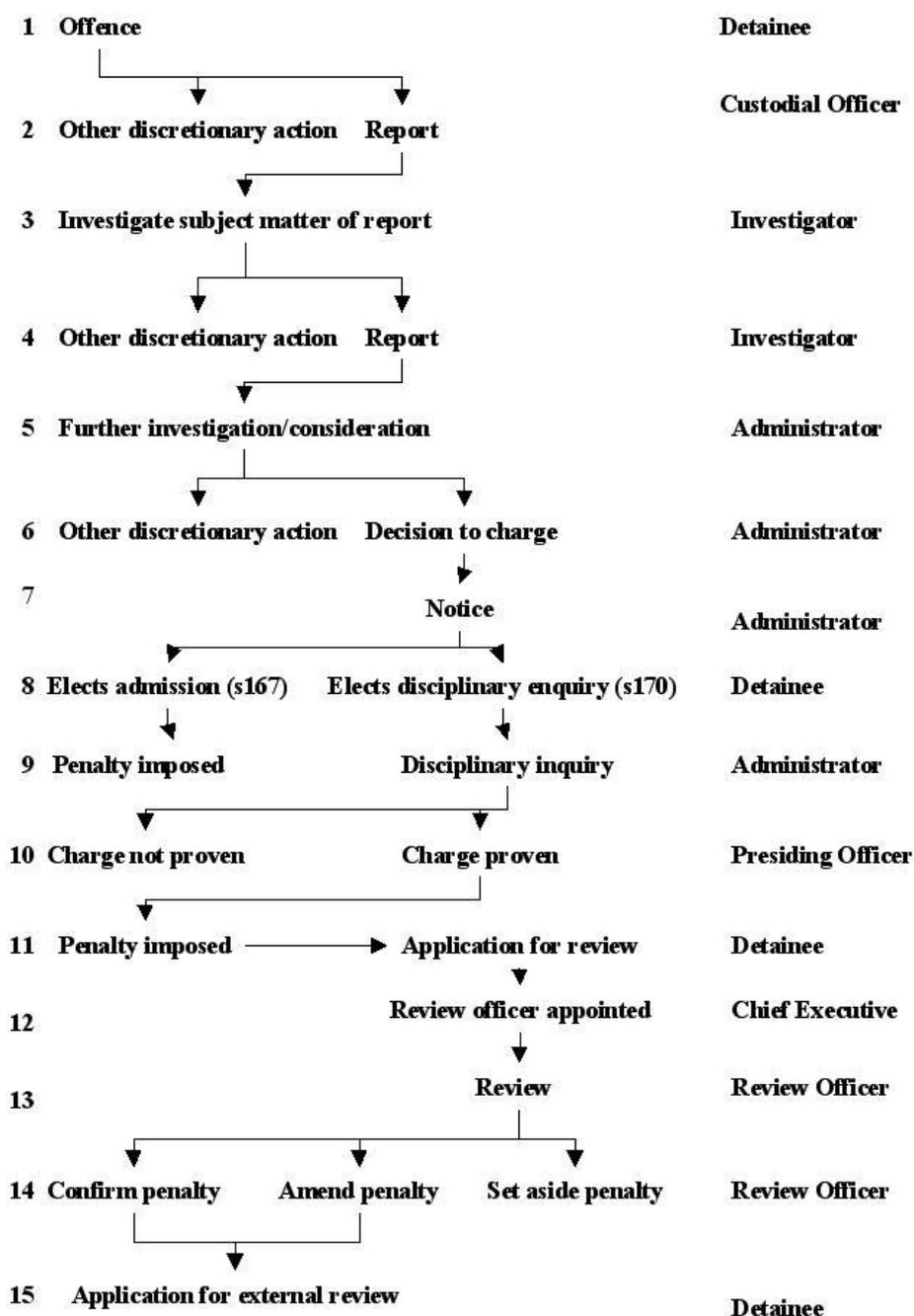
ATTACHMENT B—DISCIPLINARY BREACHES UNDER THE *CORRECTIONS MANAGEMENT ACT 2007*

Section 152—Meaning of *disciplinary breach*

For a detainee, each of the following is a ***disciplinary breach***:

- (a) contravening a direction given to the detainee by the chief executive or a corrections officer under this Act or the *Crimes (Sentence Administration) Act 2005*;
- (b) being in a prohibited area, without the chief executive's approval;
- (c) smoking in a non-smoking area at a correctional centre;
- (d) taking (in any way) alcohol or a drug into the detainee's body;
- (e) providing a positive test sample for alcohol or a drug when directed, under this Act or the *Crimes (Sentence Administration) Act 2005*, to provide a test sample;
- (f) making, possessing, concealing, knowingly consuming or dealing with a prohibited thing, without the chief executive's approval;
- (g) gambling;
- (h) being disrespectful or abusive towards a corrections officer in a way that undermines the officer's authority;
- (i) being disrespectful or abusive towards someone in a way that is likely to provoke a person to be violent;
- (j) intentionally or recklessly engaging in conduct that endangers, or may endanger, the health or safety of the detainee or anyone else;
- (k) fighting;
- (l) assaulting someone else;
- (m) theft;
- (n) possessing stolen property;
- (o) possessing or dealing in things without the chief executive's approval;
- (p) intentionally or recklessly damaging or destroying property belonging to someone else;
- (q) interfering with property belonging to someone else, without approval by the owner of the property;
- (r) interfering with anyone's personal monitoring device without the chief executive's approval;
- (s) creating or participating in a disturbance, or other activity, likely to endanger security or good order at a correctional centre;
- (t) contravening a condition of any of the following:
 - (i) a direction under section 204 (Local leave directions);
 - (ii) a local leave permit;
 - (iii) an interstate leave permit;
- (u) doing anything for the purpose of escaping, or assisting a detainee to escape, from detention;
- (v) offering, giving or taking a bribe;
- (w) attempting, or assisting anyone else attempting, to commit another disciplinary breach;
- (x) threatening to do anything mentioned in paragraphs (j), (k), (l), (p) or (s);
- (y) anything else prescribed by regulation.

ATTACHMENT C—ADJUDICATION PROCESS UNDER THE *CORRECTIONS MANAGEMENT ACT 2007*



ACRONYMS AND ABBREVIATIONS

ACTCS	ACT Corrective Services
AMC	Alexander Maconochie Centre
BRC	Belconnen Remand Centre
Corrections Management Act	<i>Corrections Management Act 2007</i>
JACS	Department of Justice and Community Safety
Remand Centres Act	<i>Remand Centres Act 1976</i>
STRC	Symonston Temporary Remand Centre