



Provision of Specific Consultancy Services to
Review ACT Corrective Services Governance including in relation
to Drug Testing
at the
Alexander Maconochie Centre

1st April 2011

Contents

1	Introduction.....	3
2	Executive summary	4
3	Summary of Findings and Recommendations	8
3.1	Summary of Findings	8
3.2	Summary of Recommendations.....	11
4	The scope of the Review.....	12
4.1	The manner in which procedures for urinalysis on admission to the AMC have or have not been implemented.....	12
4.1.1	The legislative base for urinalysis on admission to the AMC.....	12
4.1.2	The implementation of procedures for urinalysis of detainees on admission to the AMC	14
4.2	The reasons for any non-compliance with those procedures	20
4.2.1	Governance issues resulting in lack of responsiveness by management to concerns expressed by officers at the work face	20
4.2.2	Leadership issues.....	23
4.3	The extent to which the Government has been misinformed about drug testing practices at the AMC.....	25
4.4	Accountability, monitoring, review and evaluation systems and practices in ACT Corrective Services.....	28
4.5	AMC Drug Strategy	33
5	Conclusion.....	34
	Appendix 1	36

Disclaimer

This document has been prepared in good faith, exercising due care and attention and is based on:

- Information derived from interviews of staff of ACT Corrective Services
- Review of relevant documents
- Information derived from inspection of certain operational functions at the Alexander Maconochie Centre
- The professional knowledge, training and experience of the investigators.

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1 Introduction

During February 2011 information came to the attention of the ACT Government that urinalysis testing of detainees on admission to the Alexander Maconochie Centre (AMC) had not been carried out in accordance with stated policies and procedures applicable at the AMC. This information was contrary to previous advice to the Minister that the policies and procedures were being adhered to.

That is, the Government had been misinformed about drug testing practices at the AMC. In summary the issue of concern is:

- The AMC policy and procedure requires that all prisoners are tested for illicit drug use within 72 hours of admission to the AMC
- Advice was provided to the Minister on more than one occasion that this policy and procedure was being carried out resulting in Ministerial statements to the Assembly and the community via the media to this effect
- Subsequent to the above statements being made and following a request by a Member of the Legislative Assembly via a Question on Notice for detailed information relating to drug testing of prisoners, ACT Corrective Services advised the Minister that previous information they had provided was inaccurate and that the procedure requiring all prisoners to be tested for illicit drug use within 72 hours of admission to the AMC has not been adhered to

Knowledge Consulting was engaged to conduct a review in the form of a systemic analysis of the processes for accountability, monitoring, review and evaluation of the operational policies and procedures applicable at the AMC. Knowledge Consulting has significant background in the operation of the AMC and ACT Corrective Services.

The Terms of Reference (TOR) for this review is at **Appendix 1**. The scope of the Review is:

To investigate:

- The manner in which procedures for urinalysis on admission to the AMC have or have not been implemented
- The reasons for any non-compliance with those procedures, and
- The extent to which the Government has been misinformed about drug – testing practices at the AMC

To examine accountability, monitoring, review and evaluation systems and practices in ACT Corrective Services

The review commenced on Monday 28th February 2011.

2 Executive summary

The finding of this investigation is that the Minister and the ACT Government was totally misinformed by relevant public servants about the extent of drug testing of detainees taking place on admission at the AMC.

It is clear from the evidence that in various forms and at different times, the Minister and the Government was advised that all detainees on admission to the AMC were subjected to "baseline" drug urinalysis testing. For example:

- A speech prepared by the department for the Attorney-General in September 2010 refers to 'Drug testing of all prisoners on admission';
- A Question Time Brief dated 11th November 2010 notes that "ACTCS has a urinalysis testing regime whereby all prisoners are tested on admission". This comment was repeated in two other briefs provided to the Minister in 2010; and
- A media briefing dated 22nd September 2010 noted "... in NSW they do not as a matter of course conduct initial urinalysis testing of prisoners on entry, as has been a long standing practice within the ACT. We do this for all prisoners".

This advice was clearly contrary to what was occurring. There is evidence that the approved policy and operating procedure that requires all detainees to be drug tested within 72 hours of admission to the AMC was not implemented during the period from when detainees were first admitted to the AMC on 30th March 2009 through 8th May 2009. ACT Corrective Services cannot provide any documentation or other formal evidence as to why this occurred.

Further, records show that drug testing of detainees on admission to the AMC ceased on 28th November 2010 when a new drug-testing contract came into force with a new service provider.

The very poor data available on admission urinalysis testing at the AMC makes it impossible to be precise about how many detainees were drug tested on admission during the period 9th May 2009 through 28th November 2010. However, from the data available it is likely that the number tested each month never exceeded 50% and overall, probably only about 10% were tested on admission.

Given the 72 hour window for admissions testing and the fact that a small number of detainees will be discharged on bail within 72 hours of their admission, achieving 100% of detainees tested on admission will most likely never occur. Nevertheless the investigators' opinion is that the number actually tested on admission falls well short of what should have been achieved.

Enquiries by the Investigators to ascertain the reasons for "misinformation" being provided to the Minister and Government have resulted in the following information:

Ministerial Speeches

ACT Corrective Services advise that the Head Office Policy Unit received a request for two speeches for use in the Legislative Assembly (in response to a proposed Opposition motion) at approximately 2.00 pm on 21st September 2010 via emails sent by the

Departmental Liaison Officer in the Attorney General's office and the Head of the Ministerial Services Unit in the Department of Justice and Community Safety. One of the speeches was to be of a detailed nature and the other was to provide an overview of the matter and therefore contain less detail. The initial request was that these speeches be provided by close of business that day.

In relation to the detailed speech which referred to 'Drug testing of all prisoners on admission', the speech in draft form was sent by email at 6.53 pm on Tuesday 21st September 2010 to the Superintendent AMC for review/ comment as well as to three senior officers in Head Office. The Superintendent responded by email at 7.00 am on Wednesday 22nd September 2010 stating *"I have read the attached and agree with the content"*.

In fairness to the Superintendent who was appointed in May 2010 and has overseen many improvements in performance at the AMC, he has been playing "catch up" in a number of areas and unfortunately for reasons covered in this report and in Knowledge Consulting's Report of 12th March 2011 the shortcomings in performance in the area of drug testing had not come to his attention.

The three senior officers at Head Office also did not raise any contrary view to the statement that "Drug testing of all prisoners on admission" was occurring. These officers are not at the AMC work face and most likely assumed that as "drug testing of all detainees on admission" was an approved procedure it was therefore being carried out.

The foregoing raises issues in relation to governance within ACT Head Office and at the AMC which is commented on below.

Questions on Notice

On 8th December 2010 in preparing an answer to a Question on Notice in the Legislative Assembly a Policy Unit Officer in Head Office contacted an Intelligence Officer at the AMC to confirm whether prisoners on admission are subject to urinalysis testing for drugs. The investigators have been advised that the initial contact was by telephone with the response by email. The email response does not record that it is a reply to an email request which supports the advice that the initial approach was by telephone. The Intelligence Officer confirmed that admission testing was being carried out.

It is not possible now to be clear about how the enquirer phrased the question and what the responder's understanding of the question was. It is likely that the Intelligence officer would not have known whether admission testing was occurring and most probably simply repeated the procedural requirement. There is no evidence that advice was sought from the Superintendent AMC on this occasion.

There is no evidence that any ACT Corrective Services or any departmental officer knowingly provided false information to the Government about this matter.

However, there is evidence of governance failures that resulted in:

- Managers at the AMC who were aware of the fact that detainees were not being drug tested on admission to the AMC in accordance with the required procedure not taking any proactive action to rectify this situation; and

- Senior managers at Head Office who received daily reports from the AMC not detecting that the reports contained information showing detainees were not being drug tested on admission to the AMC in accordance with the required procedure.

This evidence is:

- A report from an officer working in the admissions centre advising that detainee drug testing on admission was not being carried out. This report did not result in any management action at AMC to resolve the concerns the officer was raising; and
- Managers at the AMC are required to submit to Head Office a daily "Superintendent's Journal" that provides a range of statistics and data relating to various activities and operations at the AMC.

It contains statistics relating to the number of daily admissions to the AMC, and since 8 June 2009, the number of drug tests by category undertaken each day. For example, the reports for each day in August 2010 showed that no (zero) admission tests were conducted during the month even though 49 detainees were admitted in the same period.

However, when the investigators drew this comparison to the attention of senior ACT Corrections staff it became clear that the daily "Superintendent's Journal" is not used as a performance management tool by Head Office as the comparison raised by the investigators had not been identified prior to the Minister being misinformed.

Further, managers at the AMC who prepared or signed off on the daily "Superintendent's Journal" should have been aware from the statistics in the Journal that, contrary to the approved procedure, detainee drug testing on admission was either being carried out to a limited degree or not being carried out at all. However, there is no evidence of proactive action by AMC management to rectify this situation.

Further governance failures covered in this Report relate to matters surrounding the letting of a new detainee drug testing contract including a protracted tender process, the failure to ensure continuity of detainee drug testing during the contract change over and an inordinate delay in developing new procedures and training of staff.

In addition this Report, in the context of what has happened in this matter under investigation, draws attention to issues covered in Knowledge Consulting's Report of 12th March 2011 of its independent review of operations at the AMC relating to:

- Problems with the allocation of responsibilities and accountabilities between the AMC and the Head Office of ACT Corrective Services
- The lack of continuity and experience in the AMC leadership team during the first 18 months of the centre's operation which undoubtedly has been a significant

contributor to the failure to effectively carry out the procedure for drug testing of detainees on admission to the AMC

- Shortcomings in proactive monitoring of day to day performance in the AMC work place, including regular operational audits
- Poor performance management systems and lack of quality recording and reporting systems for key performance data essential for decision making
- The need for enhancements to the AMC's illicit drug strategy and
- The need for the inclusion of someone with quality assurance, risk management and operational audit skills in the AMC's leadership team.

As found in Knowledge Consulting's report of 12th March 2011 of its review of operations at the AMC, accountability, monitoring, review and evaluation systems and practices in ACT Corrective Services are in urgent need of enhancement to avoid the disastrous outcome of the Minister and Government being misinformed in relation to matters within the corrective services arm of the portfolio.

Public servants providing misinformation to Ministers and or governments is a very serious matter in our Westminster system of parliamentary democracy. It is not within the scope of this investigation to comment on potential actions that may be taken as a result of what has occurred. However, having regard to the Findings and Recommendations in this report, the following summary information from the investigators' perspective is provided to assist in placing in context the actions of public servants involved for those charged with the responsibility in determining the next steps in this matter:

- There is no evidence of public servants wilfully or knowingly providing misleading information to the Minister or Government
- There is evidence that public servants at all levels in the agency are remorseful and apologetic concerning the professional failing that has occurred that has resulted in embarrassment for themselves, the Minister and the Government that they serve
- This unfortunate experience has been a significant learning experience for all involved
- There has been no attempt by any public servant to impede this investigation and all involved have been open and forthright about what has occurred
- Public servants at all levels in the agency have been working under extreme pressure over the past 2 years in commissioning a highly sophisticated correctional centre, many working above the normal hours of duty over significant periods. While there have been failings, many good outcomes have been achieved
- When considering the actions of public servants in this matter in a holistic context, the Findings and Recommendations in Knowledge Consulting's Report of

12th March 2011 concerning its review of operations of the AMC should be taken into account. In particular matters relating to:

- the lack of continuity of leadership at the AMC during its first 12 months of operation
- the need for quality assurance, risk management and operational audit skills in the AMC leadership team and
- The need for changes in the role relationship between ACT Corrective Services Head Office and the AMC including the allocation of responsibilities and accountabilities between these two areas

3 Summary of Findings and Recommendations

3.1 Summary of Findings

Finding: 1 – Page 12

That the Corrections Management (Urinalysis) Policy 2009 (Notifiable Instrument NI2009-165) is silent on admission drug testing of detainees. Notwithstanding this omission, admissions drug testing is included in the AMC Urinalysis Procedure that flows from the policy;

Finding: 2 – Page 15

That the approved policy and operating procedure that requires all detainees to be drug tested within 72 hours of admission to the AMC was not implemented during the period from when detainees were first admitted to the AMC on 30th March 2009 through 8th May 2009. ACT Corrective Services cannot provide any documentation or other formal evidence as to why this occurred;

Finding: 3 – Page 16

That the manual record keeping in relation to drug testing of detainees at the AMC has been inadequate making it impossible to ascertain with accuracy the number of tests carried out under the approved categories of admission, random and targeted testing;

Finding: 4 – Page 16

That the investigators' assessment from the limited data available is that the number of detainees drug tested on admission to the AMC is most likely to fall somewhere in the range of between 10% to 50% of admissions. Given the 72 hour window for admissions testing and the fact that a small number of detainees will be discharged within 72 hours of their admission, achieving 100% of detainees tested on admission will most likely never occur. Nevertheless the investigators' opinion is that the number actually tested on admission falls well short of what should have been achieved;

Finding: 5 - Page 17

That drug testing of detainees on admission to the AMC ceased on or about 28th November 2010 shortly after a new contract for drug testing of detainees was let;

Finding: 6 - Page 17

That ACT Corrective Services cannot produce any evidence of a written instruction to staff to stop admissions drug testing. ACT Corrective Services does not believe that any written instruction was given but cannot ascertain whether or not a verbal instruction was given by a supervisor to staff;

Finding: 7 – Page 17

That the facts as ascertained by the investigators are:

- *Staff at all levels were aware that drug testing of detainees on admission to the AMC was required by approved procedure; and*
- *Implementation of this procedure was ceased and no one in the chain of command from management through to the work face can provide evidence as to the authority for this*

Finding: 8 - Page 17

That even though there was ample foreknowledge of a pending change of the drug testing contractor and awareness of the policy and procedure relating to the requirement for drug testing of all detainees on admission to the AMC, ACT Corrective Services Head Office Management and AMC Management failed to put in place procedures, training for admissions staff and or interim arrangements to ensure continuity of testing during and beyond the drug testing contractor change over;

Finding: 9 – Page 18

That separate discussions involving the investigators with ACT Corrective Services Head Office Senior Officers and the AMC Senior Management Team concerning the reasons for failure to ensure continuity of drug testing at the AMC during the drug testing contract changeover revealed a rift in the relationship between both management teams. Evidence from the discussions is that a "them and us" culture exists between the two arms of the agency, rather than a mutually respectful, cooperative and professional relationship culture which is essential for effective service delivery;

Finding: 10 – Page 18

That there has been an inordinate delay in finalising a new urinalysis procedure. The main reason for this appears to relate to lack of clear accountability and ownership within the AMC / ACT Corrective Services Head Office chain of command to ensure timely development, approval and implementation of operational procedures;

Finding: 11 – Page 19

A Superintendent's Instruction was issued on 4th February 2011 for admissions testing to recommence using the new test kits. Two AMC staff have been trained and certified to sign collection paperwork. One of these officers has been designated to supervise drug testing until further staff training has been conducted. The Superintendent has also issued an instruction relating to how positive test results are to be dealt with;

Finding: 12 – Page 20

That ACT Corrective Services took from July 2009 to November 2010 to complete the process for retendering of the urine drug testing contract. This occurred even though the

Procurement Plan for the project specified the project as urgent and set an indicative project time line commencing 29th June 2009 and an end date of 1st September 2009;

Finding: 13 – Page 20

That project outcomes were compromised through a Project Manager not being appointed and an ineffective risk management process. This is symptomatic of the governance issues dealt with in Knowledge Consulting's 12th March 2011 report of its independent review of operations at the AMC;

Finding: 14 – Page 23

That, as covered in Knowledge Consulting's report of the independent review of operations at the AMC and further evidenced by issues identified in this review, since commissioning of the AMC there have existed systemic problems with governance in ACT Corrective Services that have resulted in management and supervision practices not being effective. This has led to various disconnections between ACT Corrective Services Head Office, the Management Team at the AMC and AMC staff at the workforce in relation to performance management;

Finding: 15 – Page 25

That lack of continuity and experience in the AMC leadership team during the first 18 months of the centre's operation has undoubtedly been a significant contributor to the failure to effectively carry out the procedure for drug testing of detainees on admission to the AMC.

Finding: 16 – Page 25

That the effectiveness of the AMC management team would be enhanced by the inclusion of someone with quality assurance, risk management and operational audit skills;

Finding: 17 – Page 27

That the Minister and ACT Government was totally misinformed about the extent of drug testing of detainees taking place on admission at the AMC. There is evidence that in various forms and at different times, the Minister and Government was lead to believe that all detainees on admission to the AMC were subjected to "baseline" drug urinalysis testing. This advice was clearly contrary to what was occurring. As covered in this report, for significant periods of time no drug testing of detainees on admission to the AMC was being carried out and at other times only a proportion of the detainees were being tested on admission.

Finding: 18 – Page 28

That there is no evidence that any ACT Corrective Services officer or any departmental officer knowingly provided misinformation to the Government about this matter. However, there is evidence of governance failures that resulted in:

- *Managers at the AMC who were aware of the fact that detainees were not being drug tested on admission to the AMC in accordance with the required procedure not taking any proactive action to rectify this situation and*

- *Senior managers at Head Office who received daily reports from the AMC not detecting that the reports contained information showing detainees were not being drug tested on admission to the AMC in accordance with the required procedure;*

Finding: 19 – Page 32

That as found in Knowledge Consulting's report of 12th March 2011 of its review of operations at the AMC, accountability, monitoring, review and evaluation systems and practices in ACT Corrective Services are in urgent need of enhancement to avoid the disastrous outcome of the Minister and Government being misinformed in relation to matters within the corrective services arm of the portfolio;

3.2 Summary of Recommendations

Recommendation: 1 – Page 13

That Corrections Management (Urinalysis) Policy 2009 (Notifiable Instrument NI2009-165) is amended to make reference to admission drug testing of detainees;

Recommendation: 2 – Page 14

That the AMC urinalysis policy and procedure is enhanced by inclusion of a brief explanation of the purpose and importance of admission, random and targeted drug testing of detainees and that this importance is highlighted in the training of staff;

Recommendation: 3 – Page 16

That ACT Corrective Services should consider implementing a computerised system to record information relating to detainee drug testing that is capable of interrogation for management information;

Recommendation: 4 – Page 32

That recommendations in Knowledge Consulting's report of 12th March 2011 relating to the need to clarify role relationships and the allocation of responsibilities and accountabilities is given high priority in action planning arising out of that Report. The purpose and form of the Superintendent's Journal needs to be considered in implementing these recommendations;

Recommendation: 5 – Page 34

That Recommendation 10 of Knowledge Consulting's report of 12th March 2011 relating to a review of all elements of AMC's illicit drug policies and procedures in the context of an effective drug strategy is given high priority in action planning arising out of that Report;

4 The scope of the Review

4.1 *The manner in which procedures for urinalysis on admission to the AMC have or have not been implemented*

4.1.1 The legislative base for urinalysis on admission to the AMC

The power to conduct urinalysis testing of detainees on admission to the AMC derives from Sections 67 and 69 of *Corrections Management Act 2007* ('the Act') as follows:

Section 67:

- (1) *The Chief Executive must ensure that:*
 - (a) *each detainee admitted to a correctional centre is assessed as soon as practicable to identify any immediate physical or mental health, or safety or security, risks and needs; and*
 - (b) *any risks and needs identified by the assessment are addressed.*
- (2) *In particular, the Chief Executive must ensure that any ongoing risks and needs are addressed in the detainee's case management plan.'*

Section 69:

- (1) *For an assessment under section 67, the Chief Executive may direct the detainee, orally or in writing, to provide a test sample.*
- (2) *Division 9.6.2 (Alcohol and drug testing—detainees) applies in relation to the direction and any sample given under the direction.*

It is clear that the drug testing of detainees on admission (s.69) was intended to form part of an initial risks/needs assessment (s.67) rather than as an instrument for possible disciplinary action.

ACT Corrective Services has developed policies and procedures to give operational effect to the requirements of the Corrections Management Act. Concerning urinalysis, the AMC is required to comply with the Corrections Management (Urinalysis) Policy 2009 (Notifiable Instrument NI2009-165) dated 25th March 2009. However, while the policy makes specific reference to targeted and random testing there is no mention of admission testing (silent).

ACT Corrective Services management advise that this is an oversight and that notwithstanding this omission, admissions drug testing is included in the AMC Urinalysis Procedure that flows from the policy.

Finding: 1

That the Corrections Management (Urinalysis) Policy 2009 (Notifiable Instrument NI2009-165) is silent on admission drug testing of detainees. Notwithstanding this omission, admissions drug testing is included in the AMC Urinalysis Procedure that flows from the policy;

Recommendation: 1

That Corrections Management (Urinalysis) Policy 2009 (Notifiable Instrument NI2009-165) is amended to make reference to admission drug testing of detainees;

ACT Corrective Services advise that the urinalysis procedure has been in place since commissioning of the AMC.

The AMC *Urinalysis Procedure* for the AMC requires that:

"All Prisoners (sic) will be given a 'base line' urinalysis test within 72 hours of their induction into ACTCS custody. Prisoners (sic) will not be disciplined where their 'base line' test indicates that the person has taken a drug".

The investigators were advised that the 72 hour window was set to allow for situations when detainees arrive after normal working hours when the admissions unit is closed. In the event that a detainee has not been tested on admission, he/she is to be escorted back to the admissions unit for testing at the earliest opportunity, but no later than 72 hours post admission.

The results of admission testing of detainees for drugs will always understate the number of substance abusers among detainees due to the fact that for many drugs their presence can only be detected within a relatively short time from the last time they were ingested.

In this regard it is noted that the procedure does not provide any context for staff as to why drug testing of detainees, including admission testing, is required. In a correctional environment whether or not detainees are drug users is important information to be gained as part of the admission process for:

- Management and mitigation of any risks to the detainee associated with substance abuse
- Case management of detainees in relation to whether or not they need to be referred to drug treatment programs
- Security purposes to identify those detainees who potentially may engage in behaviour that could adversely impact on the good order of the correctional centre for a variety of reasons relating to their prior drug use and or their propensity to use mind altering substances and
- Criminological study purposes

Ongoing random and targeted detainee drug testing post admission is also critically important to:

- Support initiatives in relation to the duty of care for detainees
- Support procedures for security and safety of the AMC, including the safety of staff, visitors and detainees
- Underpin the development of mitigation strategies in relation to risks associated with illegal substances entering and or being used within the AMC

- Provide information in relation to individual detainees that can enhance decision making in relation to whether or not the detainee is making positive progress with addressing the underlying causes of their offending behaviour where behaviour is impacted by substance abuse
- Provide information for law enforcement agencies to assist in apprehending people in the community who supply and or attempt to supply detainees with illegal substances

In discussions between the investigators and staff at management level through to those required to administer the tests there was strong agreement and understanding of the purpose for ongoing random and targeted drug testing of detainees post admission. However, the investigators detected a lack of common understanding of the reasons for and or the importance of admission drug testing of detainees.

It is important to ensure effective implementation of a key procedure such as drug testing of detainees that staff at all levels have a high awareness of the reason for the procedure and of its importance.

Recommendation: 2

That the AMC urinalysis policy and procedure is enhanced by inclusion of a brief explanation of the purpose and importance of admission, random and targeted drug testing of detainees and that this importance is highlighted in the training of staff;

4.1.2 The implementation of procedures for urinalysis of detainees on admission to the AMC

Admission drug testing of all detainees new to ACT Correctional Services custody is required to occur in the admissions unit where two correctional officers are stationed as part of the overall process of admitting a new detainee to the AMC. In addition to drug testing the admissions process involves a number of actions including:

- Checking of legal documentation (warrants, etc)
- Establishing immediate health needs including any risk factors pointing to potential self harm
- Creating detainee records
- Taking of photographs
- Searching
- Issue of clothing and
- Securing of detainee valuables and excess property.

In most correctional centres, the admissions process can take hours to complete.

The AMC urinalysis procedure requires that two officers must be involved in each test with one officer conducting the test and the second officer as a witness. Both officers must be of the same gender as the detainee.

The AMC received its first intake of detainees on 30th March 2009. Manual records (Urinalysis Log Book) accessed by the investigators show that the first urinalysis of detainees occurred on 9th May 2009. ACT Corrective Services have not been able to produce any evidence of a formal decision covering the foregoing period to override the approved policy and operating procedure that requires all detainees to be drug tested within 72 hours of admission to the AMC.

While ACT Corrective Services cannot provide any documented explanation for this gap in testing, current AMC staff suggest that it may have been due to the fact that the first groups of detainees received at AMC came from the Belconnen Remand Centre, and were, by implication, "clean".

Finding: 2

That the approved policy and operating procedure that requires all detainees to be drug tested within 72 hours of admission to the AMC was not implemented during the period from when detainees were first admitted to the AMC on 30th March 2009 through 8th May 2009. ACT Corrective Services cannot provide any documentation or other formal evidence as to why this occurred;

The Urinalysis Log Book covers the period 9th May 2009 through 28th November 2010. For the period 9th May 2009 through to 22nd September 2010 the Log Book does not indicate whether this testing was on "admission", "targeted" or "random". On 23rd September 2010 the Log Book commenced recording tests under the headings "random", "target" and "reception". During the period 23rd September 2010 through 28th November 2010 114 tests were recorded in the Log Book, none of which were recorded as "reception" testing.

ACT Corrective Services advise that during the period end of November 2010 through early February 2011 a small number of targeted tests of detainees was conducted by an officer from the Intelligence Unit using the new contract kits to familiarise himself with the process after training undertaken in late October 2010.

The AMC Intelligence Unit now keeps a detailed database in spread sheet form (Microsoft Excel) on all urinalysis tests conducted at the centre. This database represents a significant improvement on the old Urinalysis Logbook but AMC management must ensure that it is maintained rigorously and accurately. ACT Corrective Services should consider implementing a computerised system to record information relating to detainee drug testing (e.g. Microsoft Access).

The very poor data available on admission urinalysis testing at the AMC makes it impossible to be precise about how many detainees were drug tested on admission during the period 9th May 2009 through 28th November 2010. However, from the data available it is likely that the number tested each month never exceeded 50% and overall, probably only about 10% were tested on admission.

Given the 72 hour window for admissions testing and the fact that a small number of detainees will be discharged on bail within 72 hours of their admission, achieving 100% of detainees tested on admission will most likely never occur. Nevertheless the

investigators' opinion is that the number actually tested on admission falls well short of what should have been achieved.

Finding: 3

That the manual record keeping in relation to drug testing of detainees at the AMC has been inadequate making it impossible to ascertain with accuracy the number of tests carried out under the approved categories of admission, random and targeted testing;

Finding: 4

That the investigators' assessment from the limited data available is that the number of detainees drug tested on admission to the AMC is most likely to fall somewhere in the range of between 10% to 50% of admissions. Given the 72 hour window for admissions testing and the fact that a small number of detainees will be discharged within 72 hours of their admission, achieving 100% of detainees tested on admission will most likely never occur. Nevertheless the investigators' opinion is that the number actually tested on admission falls well short of what should have been achieved;

Recommendation: 3

That ACT Corrective Services should consider implementing a computerised system (e.g. Microsoft Access) to record information relating to detainee drug testing that is capable of interrogation for management information;

Interviews with ACT Corrective Services staff indicate that staff at the AMC ceased taking test samples of detainees on admission on or about 28th November 2010 shortly after the new contract for drug testing of detainees was let. The investigators were unable to determine who decided to cease admission testing at AMC in November 2010 or how that decision was communicated to staff. The following advice was received from ACT Corrective Services about this issue:

"Admissions staff appear to have ceased conducting any admission tests soon after training for the new process had occurred for the two AMC officers (the Intelligence officers remain the only AMC-based certified collectors at this time). Further training of 20 officers is scheduled for 22 March 2011.

As part of the training, the AMC-based officers had become aware of the new contract agreement for the current provider (APAC Security). A new procedure was required to operate under the new contract because of the differences in process under that contract. Staff appear to have ceased using the previous procedure in the belief that Symbion/Laverty pathology (the previous provider) would not facilitate the analysis. The Superintendent has advised that Admissions staff have also recently advised that the Symbion courier would not pick up urine samples from the AMC.

The Superintendent has advised that he considers it was logical for staff to assume that once a new contract had been finalised, the previous provider would not facilitate urinalysis.

He is, however, unable to confirm the existence of any formal or informal advice from managers to staff in regard to this matter."

Even though there was ample foreknowledge of a pending change of the drug testing contractor and awareness of the policy and procedure relating to the requirement for drug testing of all detainees on admission to the AMC, ACT Corrective Services Head Office Management and AMC Management failed to either:

- Ensure that a revised procedure was in place with admissions staff trained in its application in time for commencement of the new drug testing contract; or
- Implement interim arrangements with the previous contractor pending development of a revised procedure relating to the new contractor's testing equipment.

Finding: 5

That drug testing of detainees on admission to the AMC ceased on or about 28th November 2010 shortly after a new contract for drug testing of detainees was let;

Finding: 6

That ACT Corrective Services cannot produce any evidence of a written instruction to staff to stop admissions drug testing. ACT Corrective Services does not believe that any written instruction was given but cannot ascertain whether or not a verbal instruction was given by a supervisor to staff;

Finding: 7

That the facts as ascertained by the investigators are:

- *Staff at all levels were aware that drug testing of detainees on admission to the AMC was required by approved procedure and*
- *Implementation of this procedure was ceased and no one in the chain of command from management through to the work face can provide evidence as to the authority for this*

There is supposition that testing ceased due to the change in drug testing contractor and the lack of a new procedure for officers to follow to meet the new contractor's requirements.

The foregoing supports the Findings in Knowledge Consulting's report of 12th March 2011 concerning shortcomings in the AMC's governance.

Finding: 8

That even though there was ample foreknowledge of a pending change of the drug testing contractor and awareness of the policy and procedure relating to the requirement for drug testing of all detainees on admission to the AMC, ACT Corrective Services Head Office Management and AMC Management failed to put in place procedures, training for admissions staff and or interim arrangements to ensure continuity of testing during and beyond the drug testing contractor change over;

Separate discussions were held with ACT Corrective Services Head Office Senior Officers and the AMC Senior Management Team concerning the reasons for failure to ensure continuity of drug testing at the AMC during the drug testing contract changeover. It

became clear from these discussions that a rift has developed in the relationship between both management teams. That is, the evidence from the discussions is that a "them and us" culture exists between the two arms of the agency, rather than a mutually respectful, cooperative and professional relationship culture which is essential for effective service delivery.

While both management teams accept that a serious failure has occurred in relation to non-performance of an important AMC procedure, each has expressed criticism of the other's role in the events that led to this non-performance.

At the time of writing this report, the new procedure is still in draft form and not yet approved and implemented some three months after the new contract was let. The main reason for this inordinate delay appears to relate to lack of clear accountability and ownership within the AMC / ACT Corrective Services Head Office chain of command to ensure timely development, approval and implementation of operational procedures.

Finding: 9

That separate discussions involving the investigators with ACT Corrective Services Head Office Senior Officers and the AMC Senior Management Team concerning the reasons for failure to ensure continuity of drug testing at the AMC during the drug testing contract changeover revealed a rift in the relationship between both management teams. Evidence from the discussions is that a "them and us" culture exists between the two arms of the agency, rather than a mutually respectful, cooperative and professional relationship culture which is essential for effective service delivery;

Finding: 10

That there has been an inordinate delay in finalising a new urinalysis procedure. The main reason for this appears to relate to lack of clear accountability and ownership within the AMC / ACT Corrective Services Head Office chain of command to ensure timely development, approval and implementation of operational procedures;

A Superintendent's Instruction was issued on 4th February 2011 for admissions testing to recommence using the new test kits. Two AMC staff have been trained and certified to sign collection paperwork. One of these officers has been designated to supervise drug testing until further staff training has been conducted.

On 4th March 2011, the Superintendent issued a further instruction on drug testing which noted that:

"New admission test samples do not need to be sent for further testing unless the indicative urine test shows a positive result for cannabinoids (where obtaining a level is important to assist with future tests).

All positive results for indicative urine tests for targeted and random testing must be sent for further testing.

The data for all test results must be recorded in CIS".

Finding: 11

A Superintendent's Instruction was issued on 4th February 2011 for admissions testing to recommence using the new test kits. Two AMC staff have been trained and certified to sign collection paperwork. One of these officers has been designated to supervise drug testing until further staff training has been conducted. The Superintendent has also issued an instruction relating to how positive test results are to be dealt with;

During this investigation it has been established that the decision to undertake "a public tender for the provision of services of chain of custody urine drug screening" was taken on 17th July 2009. This in effect was the process for retendering of the urine drug testing contract. This process was not completed until 15th November 2010 when the new contract was signed, a period of 16 months.

ACT Corrective Services advise in relation to this lengthy period to achieve finalisation of this project, "this process was delayed for a significant period of time due to unavoidable reasons including panel members going on extended leave". ACT corrective Services advise that the tendering process was not oversighted by a Project Manager with defined performance criteria.

ACT Corrective Services was requested to provide documentation relating to the above process to allow the investigators to test the governance of the project. The investigators were provided with a Procurement Plan Minute – T09418 which was approved by the Executive Director on 17th July 2009. Under the Heading - Timing/urgency – the following statement is included:

"URGENT: The current contract for the provision of these services expired on 31 August 2007 and the services have continued to be delivered by Symbion Pathology Pty Ltd. To ensure that the services are being provided within a Territory Agreement and for the best value for money, the Department seeks to undertake a Public Tender. Please refer to the Indicative Timelines at Attachment B."

The indicative time lines at Attachment B include a starting date of 29th June 2009 for finalisation of RFO and Procurement Plan and an end date of 1st September 2009 for Contract Date Commencement. Notwithstanding the urgency of this project given that the original contract had expired on 31st August 2007, this time line was not adhered to.

Procurement Plan Minute – T09418 contains a heading – Procurement Plan Risk. Under this heading there is a notation – *Low. Please refer to the Risk Management Plan at Attachment C.*

The Risk Plan at Attachment C is deficient in that:

- The preamble to the "Risk Register" provides guidance as the type of risks that should be identified which could affect the successful outcome of the project. In this preamble Point No 1 is – "**Procurement Risks:** e.g. delays, process runs over time, no suitable tenders received, statement of requirements inadequately defined".

In spite of this guidance the completed Risk Register does not address procurement risks. As covered in this report the procurement risk of the process

not being effectively managed resulting in time lines not being met emerged and remained untreated and

- Many of the risks specified in the Risk Register are in fact not *risks*. They are actually *consequences* of risks that have not been specified and consequently the proposed risk management strategies are deficient and poorly specified. Risks 3 and 6 through 12 in Attachment C are examples of *consequences* being specified as *risks* and poorly defined risk mitigations.

The fact that a Project manager was not appointed to manage the project for retendering of the urine drug testing contract and the considerable time over run on this project would suggest it is likely the Risk Register was not used proactively to assist in ensuring effective outcomes.

Without further investigation of all the circumstances surrounding conduct of the tender process it would be unfair to be critical of individuals involved. For example, it is known that during this period key officers were carrying considerable workloads associated with a range of AMC commissioning issues compounded by the lack of continuity in senior management positions at the AMC.

However, it is reasonable to assert from the issues cited above that the 16 months taken to finalise a relatively straight forward contract process is symptomatic of the governance issues dealt with in Knowledge Consulting's 12th March 2011 report of its independent review of operations at the AMC. ACT Corrective Services governance is dealt with further in Section 4.2.1 below.

Finding: 12

That ACT Corrective Services took from July 2009 to November 2010 to complete the process for retendering of the urine drug testing contract. This occurred even though the Procurement Plan for the project specified the project as urgent and set an indicative project time line commencing 29th June 2009 and an end date of 1st September 2009;

Finding: 13

That project outcomes were compromised through a Project Manager not being appointed and an ineffective risk management process. This is symptomatic of the governance issues dealt with in Knowledge Consulting's 12th March 2011 report of its independent review of operations at the AMC;

4.2 The reasons for any non-compliance with those procedures

The investigators' view is that the fundamental reasons for non-compliance with the urinalysis procedure relate to:

4.2.1 Governance issues resulting in lack of responsiveness by management to concerns expressed by officers at the work face

Evidence of poor governance exists in a formal "Officer's Report Form" of 18th April 2010 wherein the officer stated:

"Sir – I'm submitting this report because I have serious concerns of facing disciplinary proceedings for failing to complete and conduct my work duties as directed in compliance with the Admissions work place post duties, policies and procedures.

Due to the current short staffing i.e. no rovers/escort officers, Remand, Sentenced and Women's running with skeleton staff and unable to provide escorts, re-occurring problems with the RFID system, CO2. Admissions consistently being stripped off post and reassigned to other duties the Admissions staff are finding that we are consistently unable to conduct our duties as required.

Due to the fact that Admissions has always been a busy post anyway and add to that the above problems, I find that we are failing to comply with our post duties in a number of areas. These are as follows:

- 1. RFID system is constantly in alarm despite our best efforts to keep up with the replacement of low battery alarms in a timely fashion, some of the RFID tags are failing within 7 days and we are finding that to keep up we're having to replace 60 RFID's per day.*
- 2. There have been no urinalysis tests conducted in approximately 3 weeks, in direct breach of the Urinalysis Procedure which states that we're obliged to conduct a base level test on all new receptions within 72 hours of admission to the AMC.*
- 3. The 10% per month property audits are not being conducted as often as they are required.*
- 4. Prisoners are getting into the Accommodation areas with property that has not been issued to them, creating various requests for compensation for 'lost' property, due to an inability to supervise them suitably during change periods.*
- 5. Requests are unable to be actioned in a timely fashion, therefore creating the possibility of Ombudsman's enquiries.*

All the staff that have been rostered at Admissions over the last 12 months of operation have diligently worked to overcome these problems, unsuccessfully due to operational problems outside of our control. Often working up to 3 hours per night over and above our rostered 12 hours. We all find ourselves increasingly frustrated by the inability to complete our duties, in accordance with the legislation, due to issues outside our control and would just like to be able to conduct our duties as required of us by the Department.

Submitted for your information and consideration".

Two of the officer's supervisors concurred with his concerns by making comments on the Report Form with one suggesting "a review of duties and operations of admissions" and stating "However, am aware of current staffing levels of area will not change".

The Report Form contains the following comment dated 3rd May 2010 by an officer who the investigators understand was the Acting Superintendent AMC at the time:

"Noted, RFID issues should resolve in 2-3 weeks. New batteries are due from USA shortly"

ACT Corrective Services have not been able to locate any evidence of any further action in relation to the concerns raised by the officer in the report.

Not related in any way to the above, ACT Corrective Services advise that shortly after the above report was generated the system for dealing with officers' reports was changed. As a consequence of some serious incidents Head Office became concerned that intelligence in officers' reports was not being given appropriate attention by AMC management. It instigated action for all officers' reports to be referred to Head Office for checking to ensure that follow up action was occurring, including officers' reports being passed to intelligence officers.

This decision highlights a problem in the allocation of responsibilities and accountabilities between the AMC and ACT Corrective Services Head office which is covered in Section 4.4 of this Report.

To be fair to the Acting Superintendent, the action taken, or in effect the decision to take no action, in relation to the officer's report as covered by the notation above needs to be viewed in the context of the circumstances existing at the AMC at that time. Knowledge Consulting's report on the "Independent Review of Operations at the Alexander Maconochie Centre ACT Corrective Services" recorded significant challenges for management and staff at the AMC which were known to ACT Corrective Services arising out of:

- Lack of continuity in AMC leadership. Through the 18 month period 4th December 2008 through 30th May 2010 the duties of Superintendent were carried out by 3 officers involving 6 different periods
- Significant operating problems with the RFID system that, as reported by the officer above, have seriously impacted on correctional officers' work loads
- A range of governance problems including:
 - The systemic problems relating to record keeping, performance reporting and supervision in the work place
 - The disconnect between risk management and operational practice at the work face
 - Lack of appropriate role definition between ACT Corrective Services Head office and the AMC resulting in a level of micro management by ACT Corrective Services Head Office with resultant lack of ownership for issues at the work face

Also, in relation to the Acting Superintendent's "notation" – "*RFID issues should resolve in 2-3 weeks*", ACT Corrective Services had received regular advice from the supplier that problems with the RFID system would be rectified "shortly". While there is no evidence that the officer's report was referred to ACT Corrective Services Head Office for action, there is evidence that senior staff in Head Office were well aware of the problems with the RFID system and the impact it was having on AMC managers and officers workloads.

The investigators have not discussed with the Acting Superintendent issues surrounding the reason for the note recorded on the officer's report - *"Noted, RFID issues should resolve in 2-3 weeks. New batteries are due from USA shortly"*. However, in the light of the foregoing it would be reasonable to assume that in making the notation the Acting Superintendent was of the view that resolution of the RFID issue in the near future would allow officers time to undertake all of their required duties in the admissions centre.

Following noting of the officer's report on 3rd May 2010 the Acting Superintendent only continued in this role until 29th May 2010. The problems with the RFID have continued beyond the predicted 2-3 weeks noted by the Acting Superintendent on 3rd May 2010 and have still not been resolved.

There is no evidence available to the investigators that the officer's report was drawn to the attention of the permanent Superintendent who took up duty on 30th May 2010. This Superintendent advised the investigators that in the period following him taking up duty he was not aware of the requirement for "base line" drug testing of detainees on admission to the AMC. He says that this practice was not followed in the jurisdiction (NSW) where he had previously worked.

Finding: 14

That, as covered in Knowledge Consulting's report of the independent review of operations at the AMC and further evidenced by issues identified in this review, since commissioning of the AMC there have existed systemic problems with governance in ACT Corrective Services that have resulted in management and supervision practices not being effective. This has led to various disconnections between ACT Corrective Services Head Office, the Management Team at the AMC and AMC staff at the workplace in relation to performance management;

4.2.2 Leadership issues

Knowledge Consulting's report of the independent review of operations at the AMC dealt with the question of leadership at the AMC. Following is a relevant extract from that report:

'From the evidence summarised above and detailed throughout this Report, while many good things have been achieved, it is clear that the organisational culture of the AMC created during its first year of operation was not characterised by efficiency and effectiveness in the delivery of services. As found above, 'the AMC suffered a range of operational deficiencies during the first 12 months of operation that resulted in less effective service outcomes and loss of reputation for ACT Corrective Services'.

The audit Team Leader asserts that a key cause of this outcome was lack of continuity of clear, committed and effective leadership at the AMC during this critical first year of operation. Referring again to Knowledge Consulting's January 2007 Report wherein it was stated:

'Experience has shown that it is absolutely essential in the lead up to opening and in the six months post opening for the correctional centre Superintendent and the management team to be totally focussed on leading and mentoring their staff and on monitoring

operational performance and its impact on prisoners. If they are distracted from this role the risk of serious incidents occurring increases significantly’.

The evidence relating to leadership at the AMC during the first year of operation is:

- A Superintendent was appointed well prior to Commissioning to work with the Prison Project Team on planning, development of policies, procedures, recruitment issues and a range of other commissioning matters. This was a sound action;*
- For a variety of reasons this appointee was unavailable to carry out the role of Superintendent post AMC commissioning. During the period 4th December 2008 through 30th May 2010 (18 months) the duties of Superintendent were carried out by three (3) officers involving six (6) different periods;*
- Therefore, in this critical first year of operation the AMC did not have continuity of leadership in the key role of Superintendent. Instead the position was filled by a series of officers for short terms. The opportunity to drive efficiency and effectiveness through a Superintendent with continuity in the role who would lead by example and would mentor and monitor the performance of the leadership team was lost;*
- Advice from the Executive Management Team in ACT Corrective Services is that, "with the wisdom of hindsight", there was also inexperience at the middle management level in the AMC staffing structure. This is not a criticism of these staff as relatively few correctional managers and staff have the opportunity to experience the commissioning of a new correctional centre. However, this situation highlights the necessity to have an experienced Superintendent in place providing continuity of leadership;*
- The above lack of continuity and experience in the AMC leadership team created a potential risk to the safety, security and efficient operation of the centre given the significant number of new inexperienced staff. On 31st May 2010 ACT Corrective Services arranged with another jurisdiction to second a highly experienced officer to fulfil the role of Superintendent. Such an arrangement provides the opportunity for continuity of appropriately experienced leadership in the role";*

The lack of continuity and experience in the AMC leadership team during the first 18 months of the centre's operation has undoubtedly been a significant contributor to the failure to effectively carry out the procedure for drug testing of detainees on admission to the AMC.

The appointment of a highly experienced Superintendent in May 2010 has seen many improvements in performance at the AMC. However, this officer has been playing "catch up" in a number of areas and unfortunately for reasons previously covered the shortcomings in performance in the area of drug testing did not come to his attention.

The audit team for the independent review of operations at the AMC had concerns as to whether the combined experience of the AMC leadership team was adequate to deliver a culture of effectiveness and efficiency at the AMC. Accordingly the following recommendation was made:

Recommendation 2 – Page 107 of Knowledge Consulting’s report of 12th March 2011

That ACT Corrective Services satisfy itself that the combined experience and expertise of the AMC leadership team now in place provides the capacity for effective leadership to develop the desired culture for the AMC and to deliver services efficiently and effectively;

The above recommendation was not intended as a criticism of individual performance by members of the AMC management team but rather was posing the question relating to the mix of skills available. For example, there appears to be a need for quality assurance, risk management and operational audit skills that are not currently reflected in the skill set or role descriptions for the current management team.

Finding: 15

That lack of continuity and experience in the AMC leadership team during the first 18 months of the centre’s operation has undoubtedly been a significant contributor to the failure to effectively carry out the procedure for drug testing of detainees on admission to the AMC.

Finding: 16

That the effectiveness of the AMC management team would be enhanced by the inclusion of someone with quality assurance, risk management and operational audit skills;

4.3 The extent to which the Government has been misinformed about drug testing practices at the AMC

Senior ACT Corrective Services officers acknowledged to the investigators that the ACT Government was misinformed about the extent of drug testing of detainees taking place on admission at the AMC. It is clear from the evidence that in various forms and at different times the Government was advised that all detainees on admission to the AMC were subjected to “baseline” drug urinalysis testing. For example:

- A speech prepared by the department for the Attorney-General in September 2010 refers to ‘Drug testing of all prisoners on admission’
- A Question Time Brief dated 11th November 2010 notes that “ACTCS has a urinalysis testing regime whereby all prisoners are tested on admission”. This comment was repeated in two other briefs provided to the Minister in 2010 and
- A media briefing dated 22nd September 2010 noted “... in NSW they do not as a matter of course conduct initial urinalysis testing of prisoners on entry, as has been a long standing practice within the ACT. We do this for all prisoners”.

This advice was clearly contrary to what was occurring. As covered in this report, for significant periods of time no drug testing of detainees on admission to the AMC was being carried out and at other times only a proportion of the detainees were being tested on admission.

Enquiries by the Investigators to ascertain the reasons for "misinformation" being provided to the Minister and Government have resulted in the following information:

Ministerial Speeches

ACT Corrective Services advise that the Head Office Policy Unit received a request for two speeches for use in the Legislative Assembly (in response to a proposed Opposition motion) at approximately 2.00 pm on 21st September 2010 via emails sent by the Departmental Liaison Officer in the Attorney General's office and the Head of the Ministerial Services Unit in the Department of Justice and Community Safety. One of the speeches was to be of a detailed nature and the other was to provide an overview of the matter and therefore contain less detail. The initial request was that these speeches be provided by close of business that day.

In relation to the detailed speech which referred to 'Drug testing of all prisoners on admission', the speech in draft form was sent by email at 6.53 pm on Tuesday 21st September 2010 to the Superintendent AMC for review/ comment as well as to three senior officers in Head Office. The Superintendent responded by email at 7.00 am on Wednesday 22nd September 2010 stating *"I have read the attached and agree with the content"*.

In fairness to the Superintendent who was appointed in May 2010 he has been playing "catch up" in a number of areas and unfortunately for reasons covered in this report and in Knowledge Consulting's Report of 12th March 2011 the shortcomings in performance in the area of drug testing had not come to his attention.

The three senior officers at Head Office also did not raise any contrary view to the statement that 'Drug testing of all prisoners on admission' was occurring. These officers are not at the AMC work face and most likely assumed that as "drug testing of all detainees on admission" was an approved procedure it was therefore being carried out.

The foregoing raises issues in relation to governance within ACT Head Office and at the AMC which is commented on below.

Questions on Notice

On 8th December 2010 in preparing an answer to a Question on Notice in the Legislative Assembly a Policy Unit Officer in Head Office contacted an Intelligence Officer at the AMC to confirm whether prisoners on admission are subject to urinalysis testing for drugs. The investigators have been advised that the initial contact was by telephone with the response by email. The email response does not record that it is a reply to an email request which supports the advice that the initial approach was by telephone. The Intelligence Officer confirmed that admission testing was being carried out.

It is not possible now to be clear about how the enquirer phrased the question and what the responder's understanding of the question was. It is likely that the Intelligence officer would not have known whether admission testing was occurring and most probably simply repeated the procedural requirement. There is no evidence that advice was sought from the Superintendent AMC on this occasion.

There is no evidence that any ACT Corrective Services or any departmental officer knowingly provided misinformation to the Government about this matter.

However, there is evidence of governance failures that resulted in:

- Managers at the AMC who were aware of the fact that detainees were not being drug tested on admission to the AMC in accordance with the required procedure not taking any proactive action to rectify this situation and
- Senior managers at Head Office who received daily reports from the AMC not detecting that the reports contained information showing detainees were not being drug tested on admission to the AMC in accordance with the required procedure.

This evidence is:

- The report previously dealt with from the officer working in the admissions centre advising that detainee drug testing on admission was not being carried out. This report did not result in any management action at AMC to resolve the concerns the officer was raising and
- Managers at the AMC are required to submit to Head Office a daily "Superintendent's Journal" that provides a range of statistics and data relating to various activities and operations at the AMC.

It contains statistics relating to the number of daily admissions to the AMC, and since 8th June 2009, the number of drug tests by category undertaken each day. For example, the reports for each day in August 2010 showed that no (zero) admission tests were conducted during the month even though 49 detainees were admitted in the same period.

However, when the investigators drew this comparison to the attention of senior ACT Corrections staff it became clear that the daily "Superintendent's Journal" is not used as a performance management tool by Head Office as the comparison raised by the investigators had not been identified prior to the Minister being misinformed.

Further, managers at the AMC who prepared or signed off on the daily "Superintendent's Journal" should have been aware from the statistics in the Journal that, contrary to the approved procedure, detainee drug testing on admission was either being carried out to a limited degree or not being carried out at all. However, there is no evidence of proactive action by AMC management to rectify this situation.

Finding: 17

That the Minister and ACT Government was totally misinformed about the extent of drug testing of detainees taking place on admission at the AMC. There is evidence that in various forms and at different times, the Minister and Government was lead to believe that all detainees on admission to the AMC were subjected to "baseline" drug urinalysis testing. This advice was clearly contrary to what was occurring. As covered in this report, for significant periods of time no drug testing of detainees on admission to the AMC was being carried out and at other times only a proportion of the detainees were being tested on admission.

Finding: 18

That there is no evidence that any ACT Corrective Services officer or any departmental officer knowingly provided misinformation to the Government about this matter. However, there is evidence of governance failures that resulted in:

- *Managers at the AMC who were aware of the fact that detainees were not being drug tested on admission to the AMC in accordance with the required procedure not taking any proactive action to rectify this situation and*
- *Senior managers at Head Office who received daily reports from the AMC not detecting that the reports contained information showing detainees were not being drug tested on admission to the AMC in accordance with the required procedure;*

4.4 Accountability, monitoring, review and evaluation systems and practices in ACT Corrective Services

This issue has been covered extensively in Knowledge Consulting's Report of its "Independent Review of Operations at the Alexander Maconochie Centre of 12th March 2011. Following are some relevant extracts, Findings and Recommendations from that Report:

"Section 31.5 Robust performance measurement – Page 311

During the first year of the AMC's operation the audit team believes it is fair to say that performance measurement was less than robust. This is evidenced by:

- Lack of continuity of leadership
- Inexperience in the middle management team
- Incidents resulting in a significant number of disciplinary actions against staff
- The manner of recording of incident data that makes it difficult to conduct trend analysis
- Evidence of a disconnect between review of incidents, review of the centres risk management plan and attention to risk mitigation
- A range of operational issues identified in this report that point to issues with supervision in the work place

Finding: 7

That it is fair to say that performance measurement was less than robust during the first year of the AMC's operation"; and

"Finding: 8

That during the first year of operations of the AMC the number of operational Audits was 50% less than at the Belconnen Remand Centre over a 12 month period due to resourcing issues. This has denied AMC management access to information crucial to

supporting significant numbers of new staff in complying with changed operating procedures in a new environment;

Finding: 9

That a range of operational shortcomings identified elsewhere in this Report indicates a level of failure in relation to proactive monitoring of day to day performance in the AMC work place. A greater focus on operational audit may have averted some of these shortcomings;

ACT Corrective Services in conjunction with the AMC management team needs to address the issue of performance management through a system that encompasses amongst other things:

- Clear specification of work place objectives through to individual post orders
- The expected leadership and supervisory responsibilities of the AMC management team to ensure their regular visibility in the centre providing mentoring and supervision of staff and oversight of detainee services
- Key performance benchmarks for all areas of operations that can be readily reported against
- Robust reporting systems and collection of data in a manner that facilitates linkage to the risk management plan and development of risk mitigation strategies and
- An agreed operational audit plan for the AMC driven by the centres risk management plan.

Recommendation: 2

That ACT Corrective Services in conjunction with the AMC management team address the issue of performance management through a system that encompasses amongst other things:

- *Clear specification of work place objectives through to individual "Post Duties";*
- *The expected leadership and supervisory responsibilities of the AMC management team to ensure their regular visibility in the centre providing mentoring and supervision of staff and oversight of prisoner services;*
- *Key performance benchmarks for all area of operations that can be readily reported against;*
- *Robust reporting systems and collection of data in a manner that facilitates linkage to the risk management plan and development of risk mitigation strategies; and*
- *An agreed operational audit plan for the AMC driven by the centres risk management plan;"*

And from Section 31.9 – A focus on continuous improvement - Page 317

“Finding: 19

That for the future success of the AMC it will be essential that all members of the AMC Leadership Team not only understand the principles and strategies underpinning culture change and continuous improvement within a modern correctional environment but have the capacity to deliver on it;

Recommendation: 5

That within ACT Corrective Services’ continuous improvement framework a culture enhancement strategy is put in place for the next 12 months to move the AMC from its current reality of performance (how things are done around here) to an identified desired level of performance (how things should be done around here);

This strategy should have an emphasis upon culture measurement, identification of culture drivers, benchmarking and staff development founded in cognitive change psychology that provides staff with the tools to deal with change in a difficult human service delivery environment;

Recommendation 6

That comments in this Section of the Report relating to the desired attributes for the AMC Leadership Team are taken into account in implementing Recommendation 2 Section 5.2.4) concerning the capacity of the current AMC Leadership Team”;

In Section 27 of Knowledge Consulting’s Report of its Independent Review of Operations at the Alexander Maconochie Centre – *Detainee complaints and concerns are dealt with effectively* – Page 294, the issue of the delineation of responsibilities between ACT Corrective Services Head Office and the AMC was dealt with. The Report contains a suggested delineation of responsibilities between ACT Corrective Services Head Office and the AMC. The following Findings and Recommendations were made:

“Finding: 4

That the current delineation of responsibilities between ACT Corrective Services Head Office and the AMC may be working against achieving a more responsible and accountable work place culture at the AMC;

Finding: 5

That following experience with operation of the AMC to date and in consideration of matters raised in this report it may be timely to review the process for dealing with enquiries from external agencies of scrutiny with the aim of achieving an outcome that:

- *Is efficient in the use of resources;*
- *Meets the needs of the agencies of scrutiny; and*
- *Encourages development of a more responsible and accountable work place culture at the AMC;*

Recommendation: 2

That in the light of discussion in this Section of the Report, the role relationship between ACT Corrective Services Head Office and the AMC be reviewed to achieve functional responsibility and accountability broadly along the lines suggested in the Report content leading to this Recommendation;

Recommendation: 3

That an independently facilitated discussion/ workshop be held involving ACT Corrective Services and representatives of the independent agencies of scrutiny to identify areas where enhancements could be made in the working relationships and to reach agreement on system and process changes that would lead to ongoing effective and efficient outcomes for the benefit of all agencies and clients of those agencies;"

This particular investigation has again highlighted shortcomings in the role relationship and the allocation of responsibilities and accountabilities between ACT Corrective Services Head Office and the AMC. An example that has come to light during this investigation is that around the middle of 2010 ACTCS head office required that all Officer Reports be faxed to its Policy Unit. It is understood that this requirement arose out of concern that the centre was not responding appropriately and/or promptly to issues being raised by officers.

Because of the requirement to report these matters to Head Office, the Superintendent now signs-off on all officer reports as do a number other subordinate staff even though the Superintendent agrees that some of the reports should be dealt with and finalised at CO2, CO3 or CO4 level as appropriate. For example, on 23rd February 2011 an Officer's Report was raised concerning the need to replace a number of toasters. It was subsequently faxed to head office.

While the issue may have warranted attention, the 'solution' has resulted in a time consuming and ineffectual process of reports on quite trivial matters being forwarded to ACT Corrective Services Head Office for attention.

Furthermore, as previously mentioned, the AMC Superintendent is required to provide a daily report (*Superintendent's Journal*) to the Executive Director on a number of data items and other information, including admission numbers and baseline urinalysis testing. The report is compiled by a number of staff over both shifts, and according to the AMC management, is a time consuming exercise.

ACT Corrective Services advise that this Journal "*is not formally used for performance management. It is the case that the information in it is used to inform of activity and can therefore be used to measure changes in activity levels.*" The Journal contains a considerable level of detailed information including:

- Detainees admitted by name;
- Detainees discharged by name;
- Court list by name;
- Staff attendance by name and location;
- Cell searches by cell number;
- Detainee visits by category of visit;
- A complete list by name (and other data) of all detainees in custody; and
- A detailed list of all detainees under medical observations.

The purpose and form of the Superintendent's Journal needs to be reviewed in the context of the role relationship and the allocation of responsibilities and accountabilities between ACT Corrective Services Head Office and the AMC.

Recommendation: 4

That recommendations in Knowledge Consulting's report of 12th March 2011 relating to the need to clarify role relationships and the allocation of responsibilities and accountabilities is given high priority in action planning arising out of that Report. The purpose and form of the Superintendent's Journal needs to be considered in implementing these recommendations;

In the context of accountability and monitoring of performance, Knowledge Consulting's report of 12th March 2011 of its review of operations at the AMC, Section 5.2.3 AMC operating problems in the year post commissioning, Page 98 made the following Finding and Recommendation:

"Finding: 13

That ACT Corrective Services does not have quality recording and reporting systems in place for key performance data. This shortcoming will, if not addressed quickly, result in ongoing flawed decision-making and accountability problems;

Recommendation: 1

That ACT Corrective Services take urgent action to implement quality recording and reporting systems for key performance data. If ACT Corrective Services does not have the in-house expertise to deal with this issue it should seek assistance from other jurisdictions or independent experts in this field;"

This investigation has highlighted that the system of record keeping in relation to drug testing of prisoners at the AMC has been inadequate since commissioning of the centre in that:

- Records are manually compiled and hand written after the event
- The process is time consuming and prone to inaccuracy
- There are unexplained gaps in the records
- The manually recorded data is not capable of being readily interrogated to provide management information

Further that inadequate record keeping in relation to drug testing could persist for 2 years without being questioned indicates that management was not monitoring this performance information for the purposes of risk mitigation, planning and performance enhancement in the area of the AMC's drug strategy;

Finding: 19

That as found in Knowledge Consulting's report of 12th March 2011 of its review of operations at the AMC, accountability, monitoring, review and evaluation systems and practices in ACT Corrective Services are in urgent need of enhancement to avoid the disastrous outcome of the Minister and Government being misinformed in relation to matters within the corrective services arm of the portfolio;

4.5 AMC Drug Strategy

Admission drug testing of detainees needs to be viewed in the context of what is its purpose as a part of the AMC's overall drug strategy. In Knowledge Consulting's report of 12th March 2011 of its review of operations at the AMC – Section 25.12 - *Ensure that contraband deterrent and detection systems are effective* – the following comments, Finding and Recommendation were made:

"Staff stated that the amounts of contraband that they were finding in cells had diminished considerably over recent months. AMC management advise that this reduction in contraband being located is due to enhanced security procedures. However, as also covered previously, based on reports by staff to the audit team potential does exist for detainees to secrete contraband behind fittings where it would be impractical to search on a regular basis.

AMC has a variety of contraband detection technology, procedures for searching and well trained staff. However, the issue of illicit drugs in the AMC requires comment. As noted elsewhere in this report:

- There is evidence that detainees are attempting to subvert the urine testing regime*
- An auditor received feedback from a number of detainees concerned at the pressure they were under to engage in illicit drug taking and one detainee showed visible evidence of and admitted to drug use just prior to an interview with the auditor and*
- A number of external stakeholders have raised this issue with the audit team as a concern.*

Also as covered elsewhere, it has been difficult for the audit team to obtain reliable incident figures, including drug related incidents from ACT Corrective Services' current incident record keeping system.

It would be unfair on the basis of the above mostly anecdotal evidence to make negative findings in relation to the extent of illicit drug use. However, use of illicit drugs in prisons is a very serious problem that destroys attempts to create a "healthy living environment" and can lead to horrendous outcomes in terms of safety and security.

An effective correctional centre drug strategy has the following elements:

- Deterrence*
- Prevention of entry of illicit drugs into the correctional centre*
- Detection of illicit drugs and prevention of dealing of illicit drugs within the correctional centre*
- Sound processes for reporting, recording and analysis of all drug related incidents*
- Sound intelligence systems and close relationship with law enforcement agencies*

- *Well trained and vigilant staff*
- *Quality treatment programs for detainees with substance abuse problems*
- *Education programs for detainees generally in relation to the problems associated with substance abuse and*
- *Regular audit and review of the systems aimed at deterring, detecting and dealing with illicit drugs.*

It would be prudent at this stage of AMC's development for ACT Corrective Services and AMC management to review all elements of the centres illicit drug policies and procedures.

Finding: 17

That it is an appropriate time for ACT Corrective Services and AMC management to review all elements of the centres illicit drug policies and procedures;

Recommendation: 10

That ACT Corrective Services and AMC management review all elements of AMC's illicit drug policies and procedures having regard to the elements of an effective drug strategy as outlined in this Report;"

In discussion with AMC management and staff during this investigation it appears that prior to it coming to attention that admission drug testing of detainees was not being carried out there was no system in place to make use of information provided from admissions drug testing to provide support or treatment programs to detainees who return positive test results.

ACT Corrective Services advise that positive drug test results for new receptions are now recorded in the prisoner's file on the CIS database. These results can now be accessed by case management staff.

Recommendation: 5

That Recommendation 10 of Knowledge Consulting's report of 12th March 2011 relating to a review of all elements of AMC's illicit drug policies and procedures in the context of an effective drug strategy is given high priority in action planning arising out of that Report;

5 Conclusion

Public servants providing misinformation to Ministers and or governments is a very serious matter in our Westminster system of parliamentary democracy. It is not within the scope of this investigation to comment on potential actions that may be taken as a result of what has occurred. However, having regard to the Findings and Recommendations in this report, the following summary information from the investigators' perspective is provided to assist in placing in context the actions of public servants involved for those charged with the responsibility in determining the next steps in this matter:

- There is no evidence of public servants wilfully or knowingly providing misleading information to the Minister or Government
- There is evidence that public servants at all levels in the agency are remorseful and apologetic concerning the professional failing that has occurred that has resulted in embarrassment for themselves, the Minister and the Government that they serve
- This unfortunate experience has been a significant learning experience for all involved
- There has been no attempt by any public servant to impede this investigation and all involved have been open and forthright about what has occurred
- Public servants at all levels in the agency have been working under extreme pressure over the past 2 years in commissioning a highly sophisticated correctional centre, many working above the normal hours of duty over significant periods. While there have been failings, many good outcomes have been achieved
- To consider the actions of public servants in this matter in a holistic context, the Findings and Recommendations in Knowledge Consulting's Report of 12th March 2011 concerning its review of operations of the AMC should be taken into account. In particular matters relating to:
 - the lack of continuity of leadership at the AMC during its first 12 months of operation
 - the need for quality assurance, risk management and operational audit skills in the AMC leadership team and
 - The need for changes in the role relationship between ACT Corrective Services Head Office and the AMC including the allocation of responsibilities and accountabilities between these two areas

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Appendix 1

Provision of Specific Consultancy Services to Review ACT Corrective Services Governance including in relation to Drug Testing at the Alexander Maconochie Centre

TERMS OF REFERENCE

Knowledge Consulting is appointed to conduct a review of ACT Corrective Services (ACTCS) Governance.

Background

The Government commissioned Knowledge Consulting to undertake a review of operations of the Alexander Maconochie Centre (AMC) following one year of operation.

Knowledge Consulting has significant background in the operation of the AMC and ACT Corrective Services.

It has recently come to the attention of the Government that urinalysis testing of prisoners on admission to the AMC has not been carried out in accordance with stated policies and procedures applicable at the AMC.

The Review

The review is to take the form of a systemic analysis of the processes for accountability, monitoring, review and evaluation of the operational policies and procedures applicable at the AMC. It is not intended to make findings on individual misconduct or disciplinary issues. Those matters will be dealt with under a separate appropriate public service process if required.

Scope

- Investigate:
 - The manner in which procedures for urinalysis on admission to the AMC have or have not been implemented
 - The reasons for any non-compliance with those procedures, and
 - The extent to which the Government may have been misinformed about drug-testing practices at the AMC.
- Examine accountability, monitoring, review and evaluation systems and practices in ACT Corrective Services.

Methodology

- Review written policies, procedures and superintendent's guidelines at the AMC and related documents
- Review plans and reports in relation to governance
- Conduct interviews
- Conduct site testing at AMC, Eclipse House and at other locations relevant to the business of ACTCS.

Interviewing, site testing and other work carried out at ACTCS premises are to be undertaken with the assistance of a nominated employee representative.

In accordance with usual practices, ensure the obligations of procedural fairness are followed to the extent necessary or appropriate.

The reviewer is not required to repeat review activity that may have been conducted as part of the review of the first 12 month's operation of the AMC.

Report

Provide a written report to the Attorney General on:

- Findings in relation to any non-compliance with the ACT Corrective Services Urinalysis Procedure
- Findings on the apparent reasons for any such non-compliance
- Findings as to the extent to which the Government may have been misinformed about drug-testing practices at the AMC
- Recommendations for improving compliance with the Urinalysis Procedure, and
- Recommended measures to be taken to ensure appropriate systems and procedures are implemented for proper accountability, monitoring, review and evaluation of the operation of ACT Corrective Services.

Timing

- Report by 11 April 2011.