



---

**ACT Legislative Assembly  
Standing Committee on Legal  
Affairs Inquiry into  
Sentencing.**

---



**July 2005**

## **INTRODUCTION**

ACTCOSS acknowledges that modern day Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered since European settlement. ACTCOSS celebrates the Ngunnawal's living culture and valuable contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage, and low-income citizens of the Territory. ACTCOSS is a member of the nationwide COSS network, made up of each of the state Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS's objectives are representation of people living with disadvantage, the promotion of equitable social policy, and the development of a professional, cohesive and effective community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the Community Services Program (CSP) which is funded by the ACT Government.

### ***Contact Details***

Phone: 02 6202-7200  
Fax: 02 6247-7175  
Mail: PO Box 195 Civic Square ACT 2608  
E-mail: [actcoss@actcoss.org.au](mailto:actcoss@actcoss.org.au)  
WWW: <http://www.actcoss.org.au>  
Location: Jamieson House  
43 Constitution Avenue  
Reid ACT 2612

Director: Ms Ara Cresswell

Senior Policy Officer: Ms Karen Nicholson

July 2005

© Copyright ACT Council of Social Service Incorporated

This publication is copyright, apart from use by those agencies for which it has been produced. Non-profit associations and groups have permission to reproduce parts of this publication as long as the original meaning is retained and proper credit is given to the ACT Council of Social Service Inc (ACTCOSS). All other individuals and agencies seeking to reproduce material from this publication should obtain the permission of the Director of ACTCOSS.

---

ACTCOSS submission – ACTLA Legal Affairs Committee  
Inquiry into Sentencing – July 2005.

*TABLE OF CONTENTS*

<i>ACTCOSS' PRIOR COMMENTS ON SENTENCING.</i> .....	4
<i>WHO IS BEING SENTENCED, AND WHY?</i> .....	4
<i>GAOL AS THE LAST RESORT.</i> .....	6
<i>HUMAN RIGHTS AND ACT OFFENDERS.</i> .....	8
<i>THE OFFENDER AS A COMMUNITY MEMBER.</i> .....	8
<i>CONCLUSION</i> .....	10
<i>ATTACHMENT 1</i> .....	11
<i>ATTACHMENT 2</i> .....	15

## **ACTCOSS' PRIOR COMMENTS ON SENTENCING.**

When the Labor Government came into office in 2001, it announced a review of sentencing in the ACT. That review commenced in 2002 with the appointment of a Sentencing Review Group and the release of an issues paper. In response to that issues paper, ACTCOSS pressed the case for a rethinking of the purpose of sentencing and consideration of the impact that custodial and restrictive sentences have on offenders and their families. We had made the point in our 2001-02 Budget submission that the advent of a prison in the ACT could lead to reduced consideration of alternatives to custodial sentences. ACTCOSS' position then, as it is now, is that the best outcomes from the community are achieved through therapeutic interventions delivered within the community, not incarceration.

We attach a copy of that submission for your information.

The Committee, later in 2003, released a discussion paper on restorative justice, an approach that ACTCOSS believes holds great promise as a community-based option for dealing with crime. However, we had some concerns about the model put forward, and recommended that the Committee consider the high number of offenders who would not be able to comply with requirements to participate in any restorative justice programs without significant skills development and counselling.

## **WHO IS BEING SENTENCED, AND WHY?**

In our submission on restorative justice practices in October 2003, ACTCOSS drew on the following points:

*According to prison statistics for New South Wales on the CRC website: Approximately one third of male and half of female inmates have been assessed or treated for a mental illness by a psychiatrist or psychologist at some time. (Inmate Health Survey 1997, CHS Annual Report, 1999)*

*More than 13% of the adult prisoner population have been assessed as having some form of intellectual disability. (Disability Council of NSW, Women with a Psychiatric Disability in Prison, 1996)*

*Added to this are young males with Attention Deficit Hyperactivity Disorder (ADHD), who have a higher rate of incarceration, as well as the estimated 100,000 young people affected by autism or Asperger's syndrome, which can all affect empathy and ability to comply with social mores.*

**ACTCOSS submission – ACTLA Legal Affairs Committee  
Inquiry into Sentencing – July 2005.**

*ACTCOSS commends the Sentencing Review Committee for recognising the need for flexibility in Recommendation 8 of the issues paper:  
A flexible system be established in which processes are adaptable and take account of people's diversity in age, gender, disability, cultural or ethnic background, level of development and sexuality.*

*However, if accepting responsibility and relating to the victim are to be lynchpins for restorative justice, alternative ways of achieving these outcomes must be developed for people with disabilities that affect these emotional and intellectual functions. Unless this is achieved, the proportion of people in jails with intellectual or developmental disabilities will increase, rendering their punishment doubly unjust.*

This organisation has been pleased that the ACT Government and Liberal party have both recognised the need for more flexibility in sentencing options for offenders before the ACT courts in the Crimes (Sentencing) Bill 2004 (and its associated Acts) and Brendan Smyth's Corrections Reform Amendment Bill Act 2004.

However, given the high numbers of people appearing before the ACT's courts who have intellectual disabilities, drug and alcohol addiction, mental health problems, or are socially isolated and disadvantaged, it is imperative that the legal system addresses any underlying causes of offending behaviour before custodial sentences are imposed. The issue of intellectual disability or other predisposing factors for involvement with the criminal justice system have been the subject of a number of community forums interstate in the past 12 months. ACTCOSS also hosted a forum to discuss these issues in December 2004, and attaches its outline of that discussion for the committee's information. That report is being developed into an issues paper, which ACTCOSS will use to further develop its thinking on justice issues. What was apparent was that early interventions and better holistic care of vulnerable people is required before we start imposing restrictions on liberty.

**ACTCOSS wishes to again state that the ACT justice system needs to recognise social disadvantage as a precursor to some forms of offending behaviour and to ensure that all those who end up facing legal proceedings are able to understand the charges they face and to participate in the justice processes, and that community services are made available to them to help address any drug and alcohol, mental health, or other factors that have brought them into opposition with the legal system.**

A related area of concern is the high number of women offenders who have been victims of sexual assault or other forms of abuse, either as children or as adults. While ACTCOSS has its own views on women and sentencing, this organisation would like to ask that the

## ACTCOSS submission – ACTLA Legal Affairs Committee

### Inquiry into Sentencing – July 2005.

Committee seek out those organisations that provide services for women and victims of sexual abuse in order to gain an in-depth understanding of the complex issues arising from such abuse for victims.

**ACTCOSS believes that sentencing options for women who end up in the corrections system need to be informed by the experience and expertise of the survivors of sexual assault and childhood abuse, either directly or through appropriate service providers.**

Similarly, ACTCOSS believes that the experience of Indigenous people who come into conflict with the legal system should inform policy on issues of sentencing. The ACT Government has established the Aboriginal Justice Centre, which is looking at engaging with a wide range of stakeholders to determine what is good practice in diverting young Indigenous people away from crime, as well as ways to address recidivism and offending behaviour in Indigenous communities. ACTCOSS believes that Aboriginal and Torres Strait Islander people and their representative groups should also be approached by the Committee to discuss the impact of sentencing on their communities.

**ACTCOSS believes that sentencing options for Indigenous offenders are also an area of specialist expertise, where the communities most affected will hold the most knowledge on good practice and ways to ensure people are not becoming caught up in the justice system because of social disadvantage.**

## **GAOL AS THE LAST RESORT.**

The ACT has a long record of providing alternatives to custodial sentences, allowing offenders to participate in alternate sentencing options such as drug rehabilitation, anger management and other skills development programs on their initial appearances before the courts. Research is also showing that this emphasis on community sentencing options, coupled with excellence in staff training and prisoner autonomy, provide the best outcomes in terms of recidivism. Joe Graffam, Alison Shinkfield, Barbara Lavelle and Lesley Hardcastle found that:

*The research evidence seems to suggest that, in terms of the likely success of program delivery, there is a descending order of desirable environments: i) in the community; ii) in a prison that is exclusively therapeutic; iii) within a therapeutic community in a conventional*

**ACTCOSS submission – ACTLA Legal Affairs Committee  
Inquiry into Sentencing – July 2005.**

*prison; iv) in a conventional prison which encourages inmate participation and self-reliance (no deep freeze) and is safe for inmates; v) in a conventional prison which is neither safe nor encourages prisoners to participate in activities.*

*Overriding this order and crucially influencing it is the manner and quality of staff-prisoner relationships.<sup>1</sup>*

Similar results were observed in Western Australia:

*The seminal work of Schneider (1990) lends lateral support to this observation. Her work with juveniles involved randomly assigning matched samples of offenders to detention, probation or 'programmatic restitution' (roughly akin to intensive community-based orders). The findings strongly suggested that positive self-image was the single most potent factor predicting lower recidivism rates, and that this in turn was related to the perceptual impact of the sanction and the setting in which it was imposed. Specifically, a custodial sanction tended to emphasize the fear/remorse end of the penal continuum whereas 'programmatic restitution' (community work programs supported by therapeutic guidance) emphasized the 'good citizen' aspects of the state-imposed sanction and the offender's self-image.<sup>2</sup>*

**ACTCOSS wishes to again place on the public record its support for increased use of community-based sentences and restorative justice processes for offenders, complemented by an ACT prison that is based on the provision of therapeutic interventions and programs, with a fully supported, community-based range of early interventions and post-release supports to allow people caught up in the justice system to retain links with their community and support networks.**

---

<sup>1</sup> "Attitudes of employers, corrective services workers, employment support workers, and prisoners and offenders towards employing ex-prisoners and ex-offenders". Report to the Criminology Research Council Grant 26/02–03, April 2004. Accessed at: <http://www.aic.gov.au/crc/reports/200203-26.html>

<sup>2</sup> "The psycho-social environment of prisons and its relationship to recidivism" Professor Richard Harding, Crime Research Centre University of Western Australia. Accessed at: <http://www.aic.gov.au/crc/reports/2000-Harding.pdf>

## **HUMAN RIGHTS AND ACT OFFENDERS.**

ACTCOSS has been an advocate for human rights as a way of addressing poverty. We were pleased that the ACT Government took up the challenge to introduce the country's first Human Rights Act in 2004 and will be enthusiastic participants in the review of that Act, now getting underway.

The joint Poverty Task Group's final report of December 2000 concluded that a charter of rights was necessary to address the fundamental systemic causes of poverty and disadvantage. The research quoted earlier in this document demonstrates that disadvantage, violence and poverty are common factors in the backgrounds of most offenders. ACTCOSS therefore believes that the best protection for the community lies in ensuring that systemic poverty, violence and disadvantage are addressed through a rights-based framework.

ACTCOSS will be looking to support the stated objective of the Chief Minister, Jon Stanhope in his many speeches before and after the passing of the Human Rights Act that the next step will be to incorporate economic, social and cultural rights into the Act. We believe this will provide a legislative basis for the rights that already exist under International Covenants, and which should apply to people held in custody for breaches of law.

**ACTCOSS will be working to support the ACT Corrections model of a new prison complex based on human rights, with an emphasis on humane treatment, therapeutic interventions and supports to assist offenders overcome their offending behaviour to eventually connect with their community.**

## **THE OFFENDER AS A COMMUNITY MEMBER**

ACTCOSS worked in some detail in 2003 on a submission to the then ACT Legislative Assembly Standing Committee on Community Services and Social Equity on Services for Families of People in Custody. That submission was jointly authored by the Youth Coalition of the ACT.

What became evident through the development of that submission was that there is an artificial divide between the offenders and the community. The law and order rhetoric demonises offenders as being foreign to the ACT community and its ordered way of life, rather than

**ACTCOSS submission – ACTLA Legal Affairs Committee  
Inquiry into Sentencing – July 2005.**

them being the sons, brothers, daughters, partners, sisters, mothers and fathers that they are. The removal of offenders sentenced to serve a term of prison seems to have created an impression that the problem is “fixed” once the accused is found guilty and jailed –that the “intruder” is somehow neutralised.

What the community does not seem to engage with, or fully understand, is that people who serve custodial sentences are members of this community. Their temporary removal from local social networks only exacerbates social isolation and family disintegration, providing no long term basis to help address recidivism.

It also became apparent during the Community Services and Social Equity Committee’s public hearings that the ACT, like other jurisdictions, still struggles with remedies for some of the more repulsive crimes in our community, such as family violence, sexual assault, child abuse and violent assault. It was queried whether the families of people who carry out such crimes should be kept safe from the offender, along with the broader community, through longer sentences and more onerous protection orders. While ACTCOSS strongly supports the rights of victims to be safe, to not address the underlying causes of such behaviour in offenders only increases the risk to the community.

ACTCOSS believes that there is a need for wider engagement in the discussion on the new prison and how all people subject to court orders, circle sentencing orders or other forms of sentence imposed by the justice system are connected to the community. While some offenders may need the support of organisations because of family breakdown, or loss of contact, most offenders will have friendship, family and support networks that will assist them in re-entering the community following their sentence.

**ACTCOSS believes that the wider community must be engaged, informed and consulted on the way that the post-ACT prison corrections system will manage offenders in a way that connects them positively with the community and provides greater safety for the community.**

## CONCLUSION

ACTCOSS has made its position on sentencing clear over many years, including its comments to the recent reviews of sentencing during the time of the 5<sup>th</sup> Assembly. In addition, ACTCOSS has enlarged its areas of concern, and has started looking at the wider issues of how

and why people get caught up in the legal system, and how they are affected by that contact. This has additional impact on the community as a whole, as people who have been subject to court-imposed legal sanction struggle to re-establish their life post-sentence.

In addition to the comments made in previous submissions, ACTCOSS wishes to conclude by summarising the points made in this submission. These are that:

- ⇒ Every alleged offender appearing before courts and participating in restorative justice processes must be assessed as to their understanding of the procedures, and be provided with the skills to participate in these processes and to address their offending behaviour;
- ⇒ Women charged with offences against the law have particular complicating factors that must be addressed, and these can only be understood through consultation with survivors of sexual assault and service providers who work in the area of sexual assault and abuse;
- ⇒ The discrete and distinct needs of people from Indigenous backgrounds in the legal system must be addressed through consultation with Indigenous communities;
- ⇒ Community-based sentence and restorative justice processes hold the best chance of integrating offenders back into the community and preventing recidivism, but these must be complemented with adequate early intervention services and social supports;
- ⇒ The Alexander Maconaghie Centre's emphases on human rights and a therapeutic community are important in bringing about change in corrections; and
- ⇒ The level of community debate on law and order issues needs to be wider and better informed about the real outcomes of NOT treating offenders with dignity and supporting them to establish themselves in the community post-release.



Sentencing Review Working Group  
C/- Policy and Regulatory Division  
Department of Justice and Community Safety  
GPO Box 158  
CANBERRA ACT 2601

Dear Working Group members,

### **ACT Review of Sentencing**

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, as well as disadvantaged and low-income citizens of the Australian Capital Territory. ACTCOSS is a member of the nationwide COSS network, made up of each of the State Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS has the twin roles of representation and advocacy. The Council's objectives are the representation of people living with disadvantage, the promotion of equitable social policy and the development of a professional, cohesive and effective community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

As part of this commitment ACTCOSS convenes the ACT Community Coalition on Corrective Services, which is a multi-faceted group representing organisations that assist people who become involved in the justice system. The Coalition was established in 2000 to examine and discuss corrective service issues in the ACT, including the establishment of an ACT prison and the existing remand system. Its members come from a wide cross-section of the community, including church groups, the health sector, alcohol and other drug services, union representatives, prisoner's support groups, youth representatives and other stakeholders.

The objective of the ACT Community Coalition on Corrective Services is to ensure broad-based community involvement in the development of the ACT corrective services system, with

Jamieson House  
43 Constitution Ave  
Reid ACT 2612

PO Box 195  
Civic Square ACT 2608

ph 02 6248 7566  
fax 02 6247 7175

[actcoss@actcoss.org.au](mailto:actcoss@actcoss.org.au)  
[www.actcoss.org.au](http://www.actcoss.org.au)

## Attachment 1 – ACTCOSS Comment on Sentencing Review 2003...

particular reference to the development of good practice restorative models; transparency of those contractual arrangements in the corrections system that involve public funds; rigour and efficacy of the regulatory regime governing corrections; advocacy of the rights, needs and interests of prisoners, remandees and their significant others; and the development of new and emerging corrective services functions.

ACTCOSS and the ACT Community Coalition on Corrections are pleased that the Government, through the Department of Justice and Community Safety, has undertaken this Sentencing Review. ACTCOSS, in its budget submission of March 2001, recommended that a review of alternatives to prison sentences be conducted, reflecting the belief of the Council at the time that the proposed construction of a prison in the ACT would lead to escalating incarceration rates if alternatives were not promoted and widely accepted in the community.

ACTCOSS still believes that sentencing should be targeted at rehabilitation above all else. The Council therefore asks that the Sentencing Review Working Group considers redefining the purposes for which sentences can be imposed, as outlined in the Issues Paper at page 2.

ACTCOSS believes that the principle aim of sentencing should be that expressed in the Crimes Act at section 341(d): “to make it clear that the community, through the court, denounces the type of conduct in which the offender engaged”. The ideas of rehabilitation, protection and deterrence would then become a sub-set of this primary principle.

ACTCOSS would like to see a rewriting of section 341 of the Crimes Act to better reflect modern corrections policy. This would include the removal of the term “punish” from the reasons for imposing a sentence. Punishment is a concept that ACTCOSS believes is anachronistic, given that modern corrections policy is aimed at rehabilitation and reintegration of the offender into the community.

Following on from this ACTCOSS also believes the sentencing regime in the ACT needs to acknowledge that many people who come before the courts and who are found guilty of criminal behaviour have substance abuse, mental health or dual diagnosis problems. Sentencing these offenders is a very complicated and anxious consideration, and ACTCOSS understands that imprisonment is only considered as a last resort in such cases. It is also understood that where the crime committed involves violence, there are few options.

ACTCOSS, in other forums, has recommended that persons found to be suffering significant mental health, drug or dual diagnosis problems while in custody be immediately transferred to a secure mental health facility. There is very limited access to such facilities in the ACT. However, ACTCOSS believes that the opportunity exists to advocate that the current Government expand its stated policy of constructing a programs-driven prison to include a range of specialist facilities that meet the needs of people in the corrections system. This would include specific facilities to cater for people with the aforementioned problems.

The acceptance of such a model could then lead on to the adoption of the principles, espoused in the Children and Young People Act 1999 (Issues Paper, page 2), being applied to all offenders. The principles may need some re-wording to cover the situation of older offenders, but the spirit of development, growth and opportunity to return to the community should be adopted.

ACTCOSS understands that the Review Working Group cannot make recommendations about sentencing options that have not yet been developed.

## Attachment 1 – ACTCOSS Comment on Sentencing Review 2003...

However the Council would urge the Working Group to look at increasing the support available to the courts to be easily kept aware of developments in rehabilitation of offenders. In recent years the Federal Parliamentary Library Service has developed the capacity to undertake research and conduct seminars for politicians on areas of importance to policy makers. If such a service does not already exist to support the law courts, perhaps a similar research facility that provides information and seminars on developments in corrections could be coordinated by the various court libraries.

Several studies have now been completed on alternatives to prison, such as restorative justice, drug courts and abolition of short sentences. While not producing radically improved results, all alternatives to incarceration appear to provide some higher degree of improvement in recidivism than jail sentences. However, in a climate where the very announcement of this review has been attacked by the Opposition (see Stefaniak press release: "Stanhope's Sentencing Review Missing the Point", Friday 27 September 2002) and state elections are generating promises of even tougher sentences, it is almost impossible to foster community acceptance of alternatives to prison. The logical and evidence-based arguments in favour of alternatives does not address the increasingly deep-seated fears of the ACT community. This was evidenced some years ago by surveys that showed the fear of crime in Canberra was higher than the actual risk (apologies: reference missing).

ACTCOSS would hope that there is scope for the Sentencing Working Group to recommend some form of information flow and education about offenders and sentencing that could better inform community opinions. This would allow the fostering of a more restorative model of justice.

However the Council does not believe that all prison sentences can be abolished and replaced with community-based options. Several crimes, including violence and child abuse, call for society's harshest sanctions, but they also demand society's most concerted efforts to ensure that people found guilty of such crimes do not re-offend once they are released from custody. Without resorting to "never to be released" orders for a range of crimes, ACTCOSS believes that providing adequate interventions to assist these people to control their behaviour is a necessity.

ACTCOSS recommends that the Sentencing Review Committee take into account that some criminal behaviour develops when there is a lack of positive social support for people at critical times in their lives. ACTCOSS would therefore urge the courts and criminal justice system to work more closely with Departments and community agencies to foster early intervention strategies. The officers of the court and the corrections system have experience not available to most people who are involved in early intervention. There may also be scope for involving these Departments, and perhaps community services, in providing a wider support network for people caught up in the corrections system to help in diverting them from further criminal behaviour. Such cooperation could also forge networks that would assist in changing community perceptions of the need for increasingly harsh prison sentences as the only way to meet crime rate increases.

Finally, ACTCOSS has noted the reference to the Victim Impact Statement and agrees that more codification of such statements' role in the sentencing regime needs to be discussed. The Council is sure that VOCAL, the Victims of Crime Assistance League, will be able to provide a substantial response on this issue. But the idea of a "victim" of crime should not be confined to those who were impacted by the illegal and direct actions of an offender. The families and dependents of offenders are also affected by sentencing practices.

**Attachment 1 -**  
**ACTCOSS Comment on Sentencing Review 2003...**

ACTCOSS accepts that the court cannot release a convicted offender purely because they have obligations. However, as is the case expressed in R v. Zamagias (Issues Paper p.4), the subjective circumstances of the offender must be taken into account and prison must be the last alternative. This needs to include their roles as carer, parent and support for others. ACTCOSS recommends that the Sentencing Review Committee take into consideration the need for families and dependents to be heard in the justice system.

ACTCOSS is aware that several papers have been written, or are in the process of being written, on the detrimental and life-changing effects of prison sentences on children and partners. Please contact Karen Nicholson, ACTCOSS policy officer, if you require further information on 6248 7566 ext 222.

Thank you for this opportunity to comment on the Sentencing Review Issues Paper. ACTCOSS looks forward to providing further input once the discussion paper is developed.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Stubbs', written over a horizontal line.

Daniel Stubbs  
Director

---

4 February 2003

**Attachment 2–Notes from the  
ACTCOSS Forum on offending behaviours, December 2004..  
*Report on the Community Coalition on Corrections  
and Gambling Reference Group forum on offending  
behaviours: “Who gets to go to gaol?”***

The forum was held on Wednesday, December 16 at the CIT function rooms in Reid.

**Keynote speaker:**

Jim Simpson- Solicitor and advocate with the Council for Intellectual Disability

**Panel Members:**

Jacqui Pearce- Toora Women Inc

Ara Cresswell ACTCOSS

Lynne Magor-Blatch -Director Client Services -Alcohol & Drug Foundation ACT (ADFACT)

Dr Mark Doverty- Southern Area Health Service director – drug & alcohol and Indigenous services

Richard Windsor - Canberra and Queanbeyan ADD Support Group

Meredith Hunter- Youth Coalition of the ACT

Mohammed Omari- Multicultural Council of Canberra

**Keynote speech.**

Jim started with the example of a young man from whom he acts as a community crisis advocate. This young person had been in institutional care, had a borderline intellectual disability, and had been placed in a difficult foster placement. He came into contact with the law, and without adequate supports is likely to re-offend.

The supports Jim spoke of were things like a mentor or a support worker who could connect with this young man every day or second day, help him find appropriate work, take up activities and undertake skills development.

The meeting was then provided with some statistics from the 2001 NSW Prisoner Health Survey:

- ⇒ 11% women and 20% men had pathological gambling problems
- ⇒ 1/3 women and 1/5 men had been in the state's care system
- ⇒ 90 % women and 78% men had chronic health problems
- ⇒ 10% had a borderline intellectual disability
- ⇒ half had hazardous levels of alcohol consumption
- ⇒ 60% women and 37% men had been sexually abused before the age of 16.

## Attachment 2–Notes from the ACTCOSS Forum on offending behaviours, December 2004..

In 2003 further data were published.

- ⇒ 74% of prisoners had a psychiatric disorder
- ⇒ This is three times greater than the level of psychiatric illness in the general community
- ⇒ The prevalence of psychosis is 30 times higher among prisoners than in the general community.

In juvenile detention the figures are worse:

- ⇒ 43% had a parent go to prison
- ⇒ 28% had been in state care
- ⇒ 66% reported abuse of negligence
- ⇒ 13% had clear-cut intellectual disabilities
- ⇒ 40% were functioning in the range of a borderline intellectual disability
- ⇒ 80% had a psychiatric disorder, including:
  - 56% had a conduct disorder
  - 52% had substance abuse problems
  - 28% had ADHD
  - 20% had schizophrenia

One of the major problems preventing appropriately dealing with offenders is the shock jocks. The wider community is being supported in the notion that people who end up before the courts are people with “normal” behaviours and abilities who make conscious decisions to commit crimes – “bad people”. This is a conundrum.

Jim then posed the question “Why do some communities have higher rates of incarceration?”

He posited that through the 20<sup>th</sup> century several studies had looked at prevalence of incarceration, and had come up with several theories.

First there was the idea that “delinquent peers” got people into trouble. Then there was an emphasis on poverty and disadvantage as precursors, which moved on to the idea that crime was driven by opportunity: there are so many consumer goods available that the opportunity and incentive to commit property crime is overwhelming. These theories have gone in and out of favour but have no robust basis.

Jim quoted the NSW Bureau of Crime Statistics and Research head, Don Weatherburn, who he quotes as saying that the biggest cause of offending behaviour is the interplay between a history of child abuse and neglect and negative peer influence. The history of neglect and child abuse flows from a history of parents living with poverty and disadvantage.

## Attachment 2–Notes from the ACTCOSS Forum on offending behaviours, December 2004..

Jim spoke of the lack of appropriate social supports leading people to come to the notice of the legal system. He also spoke of his role as a citizen advocate, which is a scheme where a member of the community can advocate on behalf of a person with an intellectual disability. Jim is a citizen advocate for the young man he spoke of at the beginning of the forum, and while much good has flowed from this arrangement, the young man in question needs more support. He would benefit from daily contact with a mentor or a community worker who could become a role model or a “touchstone”. Unfortunately volunteer mentors are hard to find.

Jim pointed out that some people with intellectual disabilities have much higher needs, which are more expensive to meet. These people have entrenched patterns of violent behaviours and require 24 hour a day supervision and support. However there are positive effects from providing such people with a positive lifestyle through support.

Jim also commented that an increasing number of people are getting into trouble with the law because of boredom. They carry out a prank, come to the attention of the legal system, without having formed a notion of the severity of their prank for the victims. They get a record but have no insight into their actions, so are at risk of re-offending.

There is also the well –known overrepresentation of Indigenous people in the justice system. In the Northern Territory, 85% of prisoners are Indigenous. In NSW that figure is 16%, however it is still disproportionate to Indigenous representation in the general community. In juvenile detention in NSW, 42% of incarcerated young people are from an Indigenous background. This has several explanations, particularly 2 centuries of social dislocation. It is also true that in some communities, going to jail is seen as almost a rite of passage. If a person is Indigenous and has an intellectual disability there is a tripling of the effect.

There is a populist rationale for the current law and order debate. Jim put the 50% increase in prisoner populations in NSW between 1988 and 1998 down to a moral panic steered by the media. The generalisation of criminal incidents allows people to feel personally threatened, and demand populist solutions.

Populist solutions have been proven ineffective by all research – recidivism is on the increase. Ken Buttrum – former chief of juvenile corrections in NSW is one who has stated this view publicly. Jim again quoted Don Weatherburn as stating that the solutions lie in:

⇒ Diffusing public housing to avoid ghetto-ising

## **Attachment 2–Notes from the ACTCOSS Forum on offending behaviours, December 2004..**

- ⇒ Providing high quality, affordable child care, and
- ⇒ Providing early intervention assistance for parents (Jim quoted a US study over 20 years that showed positive outcomes from low key interventions)

He also discussed the lower level, earlier interventions in the corrections system such as police warnings, cautions and youth justice conferences (introduced by Ken Buttram) proved very successful. What is needed is more intensive services for high risk young people that focus on skills development, including developing empathy for victims and providing mentors.

Jim pointed out that people with intellectual disabilities needed generic human services to lift their capacity to participate in their community, government services, and specific specialist skills to deal with their particular issues. There is also a need for cooperation across agencies to ensure that these services are delivered appropriately and in an informed manner.

Jim then outlined the development of the lobby group, the Coalition on Intellectual Disability and Criminal Justice. Judges have always been reluctant to send people with intellectual disabilities to gaol. Over two decades the number of people with intellectual disabilities going to gaol rose. Studies were carried out in 1985 and 1996.

The community sector decided to take the lead and got funding from the NSW Government and the Law and Justice Foundation to look at the framework of services needed to keep people with an intellectual disability out of gaol.

They went for the practical solutions, researching and networking for two years. After this amount of time the problem, and the need for action, had become accepted, but they needed to keep going.

Interdepartmental cooperation (seen as crucial in achieving the goal) was not happening. They held a seminar 12 months after the release of the findings, inviting government officials, academics, etc. The government announced a senior officers group would be formed to sort out the issues.

After another 12 months, there had been pullbacks in services and the senior officers group had gone off track. NSW Council for Intellectual Disability issued a widely endorsed position statement and sought mainstream support. In November 2004, the NSW Law Society held a forum "Gaol as community housing".

## **Attachment 2–Notes from the ACTCOSS Forum on offending behaviours, December 2004..**

Their strategy has been to keep rolling campaigns to ensure the issue is not pushed to the backburner. Disability Services have now improved the clarity of their commitment to keeping people with intellectual disabilities out of gaol and the senior officers group is being refocussed following an adverse report from the Ombudsman.

The panel members then outlined what is happening in their area of specialisation.

### **Dr Mark Doverty – Addictive Behaviours.**

Dr Doverty also works in Southern Area Health as a specialist in the areas of Indigenous health, and drug and alcohol abuse.

He commented that drug and alcohol comorbidities and Indigenous people are both over represented in offender populations.

He also raised a more mundane health effect – undiagnosed otitis media in children, which leads to hearing difficulties and corresponding failure in such things as communications and education, both problems observed in high proportions among offenders. Dr Doverty stated that, at present, there was no screening for otitis media in ACT, but that it was better in NSW.

Dr Doverty outlined some of the major pluses and minuses in the NSW system. These included:

- ⇒ There are some court services, such as MERIT (Magistrates Early Referral Into Treatment) and CREDIT to support offenders with addictive BEHAVIOURS
- ⇒ Drug courts and diversionary services were now operating in NSW
- ⇒ There is a gap in alcohol related services: drug courts can't take people with alcohol problems
- ⇒ Early intervention is demonstrating promise when it has family support – parents, grandparents and carers involved
- ⇒ Early intervention has to happen at all major developmental stages, not just early childhood
- ⇒ There is a need for more "inreach" to assist people already in "systems" such as public housing, education, etcetera, on drug and alcohol problems.

### **Mohamed Omari – Multicultural Council of Canberra.**

Mr Omari comes to the forum with several hats – all to do with the local multicultural community. There are 200 local ethnic communities in Canberra and the Council also has 180 individual members.

## **Attachment 2–Notes from the ACTCOSS Forum on offending behaviours, December 2004..**

He cited the MCC's greatest concerns as:

- ⇒ Transcultural mental health services – an area already acknowledged by the Community Crime Prevention committee
- ⇒ Since 1970's he has been trying to get recognition of issues of cultural identity for young people from CALD backgrounds.
- ⇒ There are particular difficulties in some communities with first generation young people.
- ⇒ MCC has been attempting to get a specific drug and alcohol program up and running with the AFP, and Mr Omari is hopeful that this will be up and running soon
- ⇒ His other area of concern in CALD communities is the issue of elder abuse
- ⇒ He feels that Government recognises the urgent need for funds to address these problems
- ⇒ Mr Omari says there is also a problem of cultural and social isolation compounded by divorce among immigrant families. He believes that the divorce and legal proceedings can compound existing feelings of confusion from adapting from one cultural system to another.

### **Lynne Magor-Blatch**

**Director, Client Services, Alcohol and Drug Foundation of the ACT. ADFACT runs the Karralika centre.**

The continuing theme of drug and alcohol misuse was commented upon. Ms Magor-Blatch outlined some of the observations of her service and the raw statistics:

- ⇒ 50% of people in Karralika have drug and alcohol comorbidity with mental health problems
- ⇒ The problems are often quite complex
- ⇒ There has been an increased use of illicit drugs and an increased use of law enforcement as a remedy
- ⇒ The gaol population is skewed: 1/3 of Australians report use of illicit drugs – most common is cannabis – 3% use amphetamines and less than 1% use heroin
- ⇒ Its estimated that 74,000 people in Australia are dependent on illicit drugs – with 13-hundred to 2,000 in ACT.
- ⇒ In gaol population 80% of inmates were regular illicit drug users before incarceration – 50% have a high dependency
  - 86% use cannabis
  - 23% are regular heroin users
  - 34% are regular amphetamine users
- ⇒ These dependencies lead to other problems – HIV, Hepatitis C
- ⇒ Less than 1/3 of people in prison are there for the first time

**Attachment 2–Notes from the  
ACTCOSS Forum on offending behaviours, December 2004..**

- ⇒ The known risk factors for alcohol and drug abuse leading to incarceration are;
  - Past childhood abuse
  - Mental health problems
  - Intellectual disability
  - Domestic violence
- ⇒ There is not necessarily a direct link, but these factors put people more at risk of being caught up in the criminal justice system
- ⇒ Educational opportunities and background often provide good indicators for risk behaviour
- ⇒ High prevalence of mental illness in prisons – 39% males and 49% of females have diagnosed personality disorders
- ⇒ The closure of mental health institutions in the 1980s had a huge effect in terms of services with NSW gaols becoming pseudo-mental health institutions
- ⇒ For those at risk, including people with mental health problems who come before the courts facing homelessness, unemployment and poverty, magistrates and judges have few options
- ⇒ Drug diversions available at present:
  - SCON
  - Police early diversion
  - CADAS
  - Treatment Referral Panel
- ⇒ Still lacking treatment and resources for people with mental health/drug misuse comorbidity
- ⇒ Departure planning is an issue – Karralika had two people diverted through the Mental Health Tribunal – required detailed and extensive conferencing and an exit plan
- ⇒ The lack of adequate funding for mental health supports and lack of a dedicated mental health facility are problems
- ⇒ In drug crimes, people are sent to prison – 50% of drug users have a comorbidity of mental health problems
- ⇒ There is a cost argument to be made for better funding – it costs \$241 per day to keep someone in gaol – much cheaper to treat them within the community in an appropriate community facility
- ⇒ A certain number of people will still end up in gaol – need that system to work well
- ⇒ Opportunities need to be identified – Bendigo Prison works as a therapeutic community
- ⇒ We need to look at the gaps in services before we fill the new gaol

**Jacqui Pearce**  
**Director of Toora Women Inc, and on the ACT Government's  
Joint Advisory Committee**

Ms Pearce started her presentation by asking the audience to consider crime as a theory, and that determining who is targeted and

## Attachment 2–Notes from the ACTCOSS Forum on offending behaviours, December 2004..

who isn't, who benefits, etcetera, is important in arriving at a 21<sup>st</sup> century idea of corrections.

She outlined that drug and alcohol misuse, comorbidity, mental health and childhood abuse all were common factors for people in prison, but went on to discuss particular issues for women:

- ⇒ Canadian research has shown that, as the rate of services (community services?) diminishes, the rate of incarceration increases.
- ⇒ At the Sisters Inside conference in 2003, it was emphasised that social supports are important for women
- ⇒ She found it ironic that the ACT Government report on homelessness came out at the same time the Government announced it was to build the prison – (homelessness is a common circumstance that puts people at risk of offending)
- ⇒ Ms Pearce fears that the proportion of women in gaol may increase if an ACT prison is built, based on research that shows that sentencing patterns show increases in the use of incarceration where there is capacity
- ⇒ A lot of research on prison populations doesn't include women, but there is enough around all saying the same thing: gaol does not help with recidivism rates, pre-sentencing social position is an important indicator of disadvantage, and there are few post prison options, although these are very important for people leaving gaol to re-establish themselves in the community

Ms Pearce then made the following points about deaths during and after custody:

- ⇒ 32% of women who die in custody are from an Indigenous background – they often die in police custody and not prison: proportionally a higher number of women die in custody than men.
- ⇒ Statistics of women dying post-release is significant
- ⇒ The primary reason is drug overdose, particularly poly-drug use, but there is a high incidence of suicide and domestic violence.
- ⇒ In a 62 person sample of deaths among women, only 2 died of natural causes.
- ⇒ There is a need for supported accommodation post-release – homelessness is a good indicator of risk
- ⇒ Debt is an issue, as is employment
- ⇒ There are differences in incarceration for males and females – BRC and Quamby are examples of poor practice, so based on current practice she is not hopeful that there will be a real move to meet the needs of women who are incarcerated, including special consideration for:
  - women survivors of sexual assault – strip searches, etc
  - women with children

**Attachment 2–Notes from the  
ACTCOSS Forum on offending behaviours, December 2004..**

- drug and alcohol dependency and the particular issues for women in these areas
- ⇒ There is a lack of appropriate detox facilities and the mental health issues of women are not being addressed
- ⇒ Sisters Inside have identified problems with some women being overmedicated while in prison
- ⇒ Also problems with withdrawal of drugs as a control strategy
- ⇒ These strategies by prison officials lead to increased incidence of self harm and suicide.
- ⇒ Overarching problem is that social issues are not resourced, helping people before they get caught up in the corrections system.

**Ara Cresswell**  
**Director, ACTCOSS. Former Director of the Australian Federation of Homelessness Organisations**

Ara believed that many of the issues around poverty had been dealt with by other speakers: social problems, mental health, drugs, homelessness. So she shared a story of one friend who had been to prison and was getting back into the community. Unable to find work this person had become a volunteer, and was then offered paid work. That offer was rescinded when the organisation involved learnt of their prison record. This person's mental health and reintegration into the community were at risk because of that withdrawal of support from an organisation they had worked for in a voluntary capacity.

Ara spoke of the need to address homelessness, including post-release accommodation support for people at risk. She also lamented the fact that we speak of rehabilitation but don't change the systems that lead to offending. She also expressed dismay at the "popular" media and its preoccupation with vilifying people who had become involved in the corrections system.

**Meredith Hunter**  
**Executive Officer, Youth Coalition of the ACT.**

Meredith agreed with past speakers on issues around drug and alcohol misuse, mental health problems, disability and a lack of community-based services as prevalent among young people who are incarcerated. She stressed several factors:

- ⇒ It is important for services to work together – an instance was cited where this didn't happen between Family Services and Quamby with adverse outcomes.
- ⇒ Issues with young people need to be passed on – for examples where there has been abuse

## **Attachment 2–Notes from the ACTCOSS Forum on offending behaviours, December 2004..**

- ⇒ Concerns where issues have been discussed between service providers and Quamby then that issue has not been addressed
- ⇒ The Turnaround program was one to look at as a model – this is still undergoing evaluation and the measures are to be further developed – this program set up 30 high level interventions – nine young people have been put into programs to date – about half end up back in gaol
- ⇒ Need to enable courts use their powers under the Children and Young People’s Act – there are powers to use therapeutic orders, but none have been made – no facilities
- ⇒ Homelessness is a problem for young people: 320 of 340 admissions were for overnight stays – shows a lack of suitable housing options for young people. The system needs to change, including the long-awaited night-shelter (although there may need to be a change of language to describe this service)
- ⇒ Young people who are parents need particular attention – Ontario study of incarceration of prisoners and children – need child-friendly visiting area, etc.
- ⇒ Office of the Community Advocate (OCA) – STUDY ON WEBSITE
- ⇒ Reasons for recidivism: boredom, lack of connectedness, lack of employment
- ⇒ Exit planning for young people in care must start from Day 1.
- ⇒ Blacklisting of some young people by government schools is concerning.

### **Richard Windsor**

#### **President, Canberra and Queanbeyan ADD Support Group**

Mr Windsor lamented the fact that this discussion has been going on since the 1930’s, and we’re still talking about the fact that some groups within society tend to be locked up at greater rates than others.

He then moved on to general points about mental health, disability and the need for early interventions:

- ⇒ Addressing psychological and physical health helps prevent “revolving door” syndrome
- ⇒ The popular press presses reactionary buttons in the wider community – not supportive of rehabilitative justice.
- ⇒ Political figures also use what he believed were morally unjust rhetoric (Laura Norder arguments during elections, for example) to vilify offenders without justification

Mr Windsor then discussed the specifics of Attention Deficit Hyperactivity Disorder (ADHD):

- ⇒ The concept of ADHD came from the point of immune dysfunction – ADHD replicates this function

**Attachment 2–Notes from the  
ACTCOSS Forum on offending behaviours, December 2004..**

- ⇒ Attention Deficit Disorder (ADD – generic of the attention deficit disorders) most publicised issue in academic literature – it is dimensional and not categorical, and goes from hidden to apparent, including multi-factoral
- ⇒ DSM4 – the diagnostic standard manual – outlines behavioural expression of neurological deficits – this leads to learned behaviours, including oppositional defiance and conduct disorder (ODCD) – not all people with ODCD have ADD
- ⇒ Intervening with appropriate programs early in life of children displaying ADD would assist with modifying some of this ODCD behaviour
- ⇒ There is a significant relationship between juvenile diagnosis of ADD and personality disorders – suggestion is that early intervention with ADD prevents onset of bipolar disorder and schizophrenia
- ⇒ There are significant neurological relationships with reading, visual and auditory processing, manipulative skills, impulse control and judgement skills
- ⇒ There are inherited and environmental factors that contribute to ADD – need to understand the nature of the disorder to assist young people to overcome these issues.
- ⇒ Often need to use a different environment to teach ADD students – current school environment not conducive to learning for children with ADD.
- ⇒ Families need early and ongoing support
- ⇒ “Families First” program – good program, but when people get into trouble there need to be opportunities for early intervention at that stage.
- ⇒ Need flexible support services
- ⇒ NSW – system of court liaison nurses – provides opportunity for early diversion to community mental health services. Service also has to have “muscle” to take people because of demarcation disputes (Eds. Note: perhaps this could be overcome with more person-centred, multi-factoral services?)
- ⇒ There are still gaps, particularly in the crucial area of early interventions

Mr Windsor then gave a wish list for the new prison complex:

- ⇒ The provision of diagnostic and treatment facilities within the complex for a wide range of disorders and problems
- ⇒ Research facilities and space for academics and teaching professionals.

**Attachment 2–Notes from the  
ACTCOSS Forum on offending behaviours, December 2004..**

**SO WHAT DID THE DAY PROVIDE?**

In the end there was a long discussion on issues that have to be addressed if the ACT is not to replicate other states and territories and continue to lock up people who have health and social problems that lead them into offending behaviours. The points that were considered important were:

- ⇒ Restorative Justice needs to be given emphasis – from the ground up (that is, for all offences, including first offences, right through to major crimes)
- ⇒ Community attitudes need to change – this will require quite a lot of “getting the message out” that simply locking people up and treating them worse than animals does not improve our society
- ⇒ Early intervention is a key to diverting people away from risk – this has to happen with families, soon after identification of a problem and through early education. Early intervention is not a “one size fits all three year olds” remedy – it is about getting the problem early)
- ⇒ Schools are very important – they are common ground for all people in the community.
- ⇒ There needs to be an interagency approach to assisting people in need
- ⇒ Systems need to be flexible to meet complex needs, and a complex array of issues
- ⇒ Mental Health – at present the response is minimal – there needs to be more services catering for ADHD, personality disorders and dual diagnosis, and more early intervention, community based services
- ⇒ Families First – NSW – SUCH PROGRAMS ARE VERY IMPORTANT – Marymead is to run something similar here
- ⇒ Motivation for interventions with people in the corrections system is very important.
- ⇒ Targeted interventions at the time of identification of need seem to give the best results – eg the court nurse system in NSW.
- ⇒ Important to involve external agencies – separate gaolers from health interventions
- ⇒ Programs have to address offenders at their skill level
- ⇒ Government interventions are necessary – its not ALL the community sector
- ⇒ There needs to be strong advocacy around how we treat each other in society (perhaps we can leverage off the Human Rights education campaign???)
- ⇒ The mental health system needs education around offending behaviours and risk
- ⇒ Human Rights Education needs to start at a young age

**Attachment 2–Notes from the  
ACTCOSS Forum on offending behaviours, December 2004..**

- ⇒ Services (government and NGOs) need to deal with the whole family, where possible, to address offending behaviour or its underlying causes
- ⇒ Strengthening Families Program: good example – joint case management, family contact person appointed, operates as an active partnership
- ⇒ There need to be better services to ensure continuity for people at risk
- ⇒ Transitions are important – all critical stages producing opportunities to support the consumer. Particularly important is the transition from the institution back to being an individual in the community.