



Submission on
Inquiry into Sentencing in the ACT

October 2013

About ACTCOSS

ACTCOSS acknowledges Canberra has been built on the land of the Ngunnawal people. We pay respects to their Elders and recognise the strength and resilience of Aboriginal and Torres Strait Islander peoples. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing 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 and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' vision is to live in a fair and equitable community that respects and values diversity and actively encourages collaborations that promote justice, equity and social inclusion.

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 ACT Government - Community Services Directorate.

ACTCOSS advises that this document may be publicly distributed, including by placing a copy on our website.

Contact Details

Phone: 02 6202 7200
Fax: 02 6288 0070
Address: Weston Community Hub, 1/6 Gritten St, Weston ACT 2611
Email: actcoss@actcoss.org.au
Web: www.actcoss.org.au

Director: Susan Helyar
Deputy Director: Wendy Prowse
Policy Officer: Nadia Osman

October 2013

ISBN 978-1-921651-73-1 (electronic version)

© 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.

Acronyms

ACT	Australian Capital Territory
ACTCOSS	ACT Council of Social Service Inc.
AMC	Alexander Maconochie Centre
AOD	Alcohol and Other Drug
CADAS	Court Alcohol and Drug Assessment Service

Introduction

ACTCOSS welcomes the opportunity to provide comment on the topics listed in the Terms of Reference for the Inquiry into Sentencing in the ACT ('the Inquiry') being undertaken by the Standing Committee on Justice and Community Safety ('the Committee').

ACTCOSS is aware other organisations such as the Alcohol, Tobacco and Other Drug Association are making submissions to the Inquiry and we recognise their expertise in the detail of particular areas. As the peak body for the community sector and people living with disadvantage, ACTCOSS will make comment on those areas of the Inquiry which it believes are pertinent to addressing the effects of sentencing practices on people living with disadvantage and the services that work with them.

For the development of this submission, ACTCOSS consulted with our members and other stakeholders. Our comments are informed by community organisations and government agencies who work with people who are engaged in the justice system; advocacy agencies; individuals who currently work, or have worked in the justice system; and individuals with lived experience of the justice system, including gaol.

Sentencing practices in the justice system are intended to address the multiple needs for deterrence, punishment and rehabilitation of offenders. More recently, the need for recognition of the impacts of crime on victims and the opportunity for restitution have also been incorporated into sentencing decisions.

The adequacy and effectiveness of current sentencing options should be assessed against the following criteria:

- Do sentencing options allow for community safety concerns to be taken into account in determining whether a custodial or non-custodial sentence is most appropriate?
- Do sentencing options allow for diverse and tailored approaches that maximise opportunities to reduce the social determinants of offending and re-offending – such as alcohol and other drug issues, mental health issues, lack of economic opportunities?
- Do sentencing options take into account both the costs and benefits for the community and for people involved in the criminal justice system, minimising unnecessary costs and maximising social and economic benefits?

ACTCOSS' main interest is that judicial officers in the ACT have the *right range of sentencing options available so that the social determinants of crime are addressed, offenders are given the opportunity to rehabilitate, and the risks of reoffending are reduced whilst community safety is maximised*. We encourage the Committee use this framework to assess any evidence which comes to it in the course of the Inquiry.

The ACT's only adult prison, the Alexander Maconochie Centre (AMC), is currently at capacity. The 2013-14 ACT Budget saw \$3 million directed towards

funding for a design for extra accommodation at the AMC which could potentially lead to the incarceration of more detainees. Given the high cost of keeping people in the prison ACTCOSS believes there is a sense of urgency in identifying and implementing alternative sentencing options, using the above framework.

Finally, ACTCOSS strongly believes that one of the most important points for consideration by this Inquiry is that none of the elements of current sentencing options in the ACT (bail, remand, custodial and non-custodial options etc.) can be changed in isolation. There are complex relationships between all of these elements, and changes to one can impact the others. For example, changes to eligibility criteria to make it harder to get bail may have a flow on to the number of remandees who are housed in gaol, which in turn lead to unsustainable cost increases related to growth in the number of detainees.

Sentencing practice in the ACT, its effects and implications

Timeliness in handing-down decisions and sentences

ACTCOSS is aware of the 'backlog' in the ACT courts and the efforts currently being undertaken to clear this, including through funding provided in the ACT 2012-13 Budget.¹ However, there remains a concern about the delays in handing down decisions and sentences and the impact this has on people who are waiting for a judicial decision, especially when it is in relation to a criminal matter.

From speaking to people with lived experience of the justice system, a lack of timeliness of decisions and sentences impacts on their employment, rehabilitation chances and families. As an example, one person spoke of their dilemma about starting a new job while they were waiting for their sentence, as they were unsure if they would then have to tell their new boss they would be imprisoned for a time, or not.

Remandees in particular can be negatively impacted on by delays in handing-down of sentences, as will be discussed further in this submission.

A lack of timeliness in handing-down decisions also has an impact on organisations who work with people in the justice system, such as alcohol and other drug (AOD) treatment service providers. Delays in handing-down sentences can have an effect on the development and implementation of treatment and care plans, and on the time it takes to establish a relationship with care providers. One AOD organisation noted that they sometimes have to 'hold beds' for people in their rehabilitation centre while they wait to hear their sentence, which can impact on the availability of spaces for other clients.

¹ ACT Budget 2012-13, Budget Paper No. 4: Budget Estimates, p.261

The practice and effectiveness of current arrangements in the ACT for:

Periodic detention

Periodic detention is defined as where detainees are in custody for two consecutive days per week and remain in the community for the rest of the week. Currently the ACT is the only jurisdiction in Australia that uses periodic detention as a sentencing option.² Periodic detention is served on a weekend (beginning on Friday at 7pm and ending on Sunday at 4:30pm) in the Symonston Correctional Centre.

The historical rationale for periodic detention was that it assisted in overcoming some of the social determinants of offending (isolation, lack of employment, disconnection from family) while still imposing a sentence of imprisonment.³

ACTCOSS understands that detainees serving periodic detention in the Symonston Correctional Centre have access to several programs during their time there, including programs on cognitive skills, family violence and alcohol and other drug programs. However access to these programs is at the discretion of the service providers and is often very limited due to resourcing (for example services needing to pay their staff overtime as it is on a weekend). In addition, there are no education (numeracy or literacy) programs provided in periodic detention.

ACTCOSS notes that with the abolition of periodic detention in NSW, there has been an increase in full-time custodial sentences,⁴ particularly where offenders are not found to be suitable for Intensive Correction Orders (ICOs, discussed in more detail further in this submission). The Law Society of NSW has advocated that periodic detention be reconsidered as a sentencing option where ICOs aren't appropriate as they believe it is imperative that as many sentencing options as possible are available to the courts, to allow them to make decisions that are in the best interest of the offender and the community.⁵

Our understanding is that full-time custodial sentences are the most expensive in terms of economic cost to government and social cost to individuals (through

² Periodic detention was abolished as a sentencing option in NSW in 2010, however there are a small number of detainees completing their order still.

³ NSW Sentencing Council, *Review of Periodic Detention*, Sydney, 2007. Accessed on 16 September 2013 at http://www.sentencingcouncil.lawlink.nsw.gov.au/agdbasev7wr/sentencing/documents/pdf/periodic_detention_report.pdf

⁴ NSW Law Society, response to the NSW Law Reform Commission Sentencing Review – Questions Paper 5-7, Sydney, 2012, accessed 2 October at <https://www.lawsociety.com.au/cs/groups/public/documents/internetpolicysubmissions/644851.pdf>

⁵ NSW Law Society, Intensive Correction Orders, Sydney, 2012, viewed 2 October 2013, <<https://www.lawsociety.com.au/cs/groups/public/documents/internetpolicysubmissions/582675.pdf>>

isolation from their family and their community, a lack of employment). We think there should be maximum flexibility available in sentencing to minimise the unnecessary use of custodial sentencing, including the option of periodic detention. Having said that, we would recommend the conditions during periodic detention be examined to ensure opportunities for rehabilitation and reducing social determinants of crime are maximised.

Alternative approaches to sentencing practice in the ACT

Intensive Correction Orders (ICOs)

ICOs are a custodial sentence of less than two years serviced in the community under supervision of that state or territory's Corrective Services, rather than in full-time custody in a correctional centre. People are eligible for an ICO when the court is considering a sentence of imprisonment of two years or less, and if the offence is not a sexual offence.⁶ Conditions of ICOs include the offender being required to

- complete a minimum number of community service hours per month
- participate in programs to address the offending behaviour as directed by the court
- undertake drug testing.

In NSW, there is no minimum length for an ICO, and the maximum length is two years; there is also no parole period so offenders must serve the full term of the ICO. Offenders are progressed, or regressed, through four levels of supervision under the ICO based on their behaviour (such as attending programs or counselling as directed, or results of their drug tests) throughout the term of their sentence.

Flexibility in sentencing and having as many options 'on the table' is vital, as it allows courts to take into account individual's specific circumstances. ICOs fill the gap between community-based orders and custodial sentences for eligible offenders. As a sentencing option, they allow people to remain in the community, maintain employment, and maintain contact with family. ICOs balance the need to have sentencing options that maximise rehabilitation and decrease social determinants of offending, while maintain a deterrent and punishment element.

ACTCOSS fully supports having as many sentencing options as possible, particularly those which have the potential to address underlying causes of offending and therefore reduce the risk of future offending.

⁶ NSW Corrective Services, viewed 27 September 2013, <<http://www.correctiveservices.nsw.gov.au/information/legislation/intensive-correction-order>>

Diversion programs

The effectiveness of drug diversion programs (where offenders are not sentenced to time in prison but are 'diverted' to education or rehabilitation programs that are shown to reduce future offending) in Australia in reducing re-offending and reducing drug use has been demonstrated through research evidence. For example, the National Drug and Alcohol Research Centre found that participants in a NSW drug and alcohol diversionary program were 38 per cent less likely to be reconvicted for a drug offence at any point during the follow-up period.⁷ Moreover, diversionary programs have also been found to be cost-effective, with studies of the NSW Magistrates *Early Referral Into Treatment Court Diversion Program* showing that the program offered savings of close to \$3 for every \$1 invested.⁸

In the ACT, offenders who are deemed suitable for a diversionary program are assessed by the Court Alcohol and Drug Assessment Service (CADAS); a scheme to engage clients in treatment plans during court proceedings and as part of their orders on sentence. Clients are case managed and referred to treatment services or particular programs in organisations such as Karralika Programs or Directions. CADAS workers then monitor attendance and report back to the court.⁹ Consultations with our members reveal CADAS and the use of diversionary programs are highly valued, well-utilised and work well, and we encourage maximise use of them as a sentencing option.

Any other relevant matter

There are two additional areas relating to sentencing in the ACT where ACTCOSS believes the Committee should direct its attention:

Remand

Although the ACT has recorded a decrease in the proportion of its prisoner population on remand since 30 June 2011 (by 11 percentage points), as at 30 June 2012, the ACT has the second highest median number of months spent on remand by un-sentenced prisoners in custody.¹⁰ In addition, percentage-wise, the ACT had the highest number of people on remand for between 6-12 months, at 20.9 per cent.¹¹ This may be linked with the delays in handing down decisions and sentences.

⁷ Weatherburn D, Jones C, Snowball L, Hua J. The NSW Drug Court: A re-evaluation of its effectiveness. Sydney: NSW Bureau of Crime Statistics and Research. 2008. Contemporary Issues in Crime and Justice No. 121.

⁸ Northern Rivers University Department of Rural Health. Evaluation of the Lismore MERIT Pilot Program Final Report. Lismore: NSW Attorney General's Department. 2003.

⁹ <http://health.act.gov.au/health-services/mental-health-justice-health-alcohol-drug-services/programs/alcohol-other-drugs/diversion-services>

¹⁰ Australian Bureau of Statistics, 2012, op. cit.

¹¹ Ibid

Consultations reveal that there are numerous challenges for access to programs and services faced by remandees in the AMC. For example, male remandees are unable to access the Solaris Therapeutic Community program (a voluntary program for male detainees who have alcohol and other drug dependencies), though they can access an AOD counsellor if they request one. Consultations with individuals who have been male remandees also note a lack of access to basic services such as the library and phones while they were on remand.

In addition, men on remand do not have access to the Throughcare initiative (although female remandees do), which can reduce their access to support services in the community once they are released. Appropriate support to access mainstream social services in the first few months after release from gaol can significantly reduce re-offending, and increase the opportunity to get and keep a job.

ACTCOSS recommends the Committee pay particular attention during the Inquiry into the ways in which current sentencing practices in the ACT impact on people on remand both during and after release from remand.

Women

Female offenders have different, and often more complex, needs than their male counterparts, many of which centre on their being the primary care giver to children.¹² Conversations with women who have served time in gaol reveal that the single most important thing for many women who are incarcerated is who is looking after their children 'on the outside'. A wide body of literature has been devoted to showing the negative impact of separating mothers and their children can have, particularly in the early years of a child's life.¹³ Research also indicates young people who have a parent incarcerated are up to six times more likely to be involved in the criminal justice system when compared to other young people.

We would value the Committee paying specific attention to the sentencing options available for women who are the primary carers of their children with the view of reducing the inter-generational transfer of social determinants of crime. We also believe that given the majority of women in the prison system in the ACT will serve at most a sentence of three months, a cost-analysis framework would be most beneficial, to determine whether the money spent on maintain the women in prison for such a short time could be better spent in non-custodial settings.

¹² ACTCOSS, *Submission on The Human Rights Audit of Conditions of Detention of Women at the Alexander Maconochie Centre*, June 2013.

¹³ K Howard, A Martin, L J Berlin, and J Brooks-Gunn, 'Early Mother-Child Separation Parenting, and Child Well-Being in Early Head Start Families', *Attachment & Human Development*, Vol. 13, Issue 1, 2011.

Over-represented groups

There are a number of groups who are over-represented in the justice system in the ACT and on whom ACTCOSS believes the Committee should focus when inquiring into sentencing practices:

- Aboriginal and/or Torres Strait Islander peoples: Nationally Aboriginal and Torres Strait Islander peoples are over 14 times more likely to be imprisoned than the rest of the population, and have higher rates of prior imprisonment experience than other detainees.¹⁴ In 2012, the Aboriginal and Torres Strait Islander population in the AMC was 14.7 per cent,¹⁵ The ACT also has the third highest incarceration rate of Aboriginal and Torres Strait Islander young people.¹⁶
- People with alcohol and other drug problems: in Australia illicit drug use and alcohol issues is strongly linked with crime. In the 2010 AIHW report on the health of Australia's prisoners, the ACT had the highest proportion of prison entrants who reported illicit drug use in the previous 12 months (at 92 per cent).¹⁷
- People with mental health issues: Research suggests that there is a higher incidence of mental health issues in the Australian prison population than in the general population.¹⁸ In the ACT, 70 per cent of participants in the 2010 ACT Inmate Health Survey reported having had a formal psychiatric assessment at some point in their life, and 40 per cent had suicidal thoughts.¹⁹
- People with disability (neurocognitive disorders): people with Acquired Brain Injuries (ABI) are over-represented in the prison system in Australia – research puts figures at 65 per cent of people in Australian gaols reporting a traumatic brain injury.²⁰ In the 2010 ACT Inmate Health Survey, 62 per cent of participants reported experiencing a head injury which resulted in unconsciousness.²¹

¹⁴ Australian Bureau of Statistics, 4517.0 – Prisoners in Australia, 2012, viewed 20 September 2013, <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4517.02012?OpenDocument>>

¹⁵ Ibid.

¹⁶ Youth Justice Implementation Taskforce, *Blueprint for Youth Justice in the ACT 2012-2022*, Canberra, 2012.

¹⁷ Australian Institute of Health and Welfare, *The health of Australia's prisoners 2010*, cat. No. PHE 149, Canberra, 2011.

¹⁸ Australian Institute of Health and Welfare, *The health of Australia's prisoners 2012*, cat. no. PHE 170, 2013.

¹⁹ ACT Health, *2010 ACT Inmate Health Survey: Summary results*, Health Series Number 55, ACT, 2011.

²⁰ <http://synapse.org.au/get-the-facts/acquired-brain-injury-neurocognitive-disorders-fact-sheet.aspx>

²¹ ACT Health, 2011, op cit.