



ACTCOSS 2020 ACT Election Issue Brief

A Just Canberra

For a just and fair Canberra, the next ACT Government must:

- **Raise the Minimum age of Criminal Responsibility from 10 to at least 14 years of age**
- **Improve access to justice by increasing funding to community legal centres, mediation and individual advocacy supports**
- **Resource the Disability Justice Strategy**
- **Resource the Justice Reinvestment Strategy: meet recidivism targets, significantly reduce Aboriginal and/or Torres Strait Islander incarceration, and introduce gender-specific rehabilitation and diversion programs**
- **Fix the prison: Focus the Alexander Maconochie Centre (AMC) on rehabilitation**
- **Implement and fund all ACT Inspector of Correctional Services Healthy Prison Review recommendations**
- **Address remand policies at the AMC: separate people on remand, including women's section**
- **Implement a needle and syringe program for the AMC**
- **Ensure equal access to gender-specific accommodation, services and support for women in the AMC**
- **Expand specialist drug and alcohol programs and fix legislative barriers to enable the diversion of Canberrans away from the justice system and towards support**
- **Amend the *Crimes Act 1900* (ACT) to include the concept of positive consent as recommended by the Inquiry into Crimes (Consent) Amendment Bill.**

The details

To ensure equal access to justice, **community legal centres and mediation need adequate funding** for criminal matters and civil matters including child protection, financial issues, housing and family law issues. People with disability are overrepresented as both victims/survivors and perpetrators in the justice system. **Individual advocacy** provides independent support to clients engaging with the justice system and bureaucracy and it can help prevent sustained systems contact. This is one element of the [Disability Justice Strategy](#), the whole of which must be properly resourced and implemented.

The ACT has some of the highest recidivism rates in the country, demonstrating the importance of **resourcing the Justice Reinvestment Strategy**. The Inspector of Correctional Services notes that 're-offending is a complex social issue involving an unknown number of variables (e.g. unemployment, drug use, laws, policing, homelessness, mental health issues, social supports). This requires a whole of government response.'¹ The ACT Government should also work with community and with women detainees to identify gender-specific justice reinvestment activities.

We need to fix the prison. AMC detainees are often unable to access **productive education/work or rehabilitative supports**. Programs must be culturally safe and supportive for Aboriginal and/or Torres Strait Islander detainees and gender-specific for women detainees. Improvements to the AMC must include the expansion of the Transitional Release Centre; ACT Government employment targets for former detainees; and comprehensive financial counselling, housing and social supports.

All the findings of the Inspector of Correctional Services' human rights-based reviews should be implemented including the 2019 [Healthy Prison Review](#). The ACT Government has agreed to all but 2 of the recommendations, but many are only agreed to '[subject to funding](#)'. The review includes highly critical findings on the AMC including:

- Limited recording of data on strip searching, use of force, separate confinement and segregation orders, time out of cells and other important incidents means that oversight bodies cannot fully interrogate and monitor detainee wellbeing and human rights
- Limited opportunities for women to access rehabilitation and preparation for release programs and no access to the Transitional Release Centre
- Only one psychologist for around 400-500 detainees.

The non-separation of sentenced people and people on remand in the AMC contradicts ACT Corrections legislation and international human rights law.

According to [ATODA](#), up to 700 people are accessing specialist alcohol and other drug services each day in the ACT. Waiting lists also prevent access to the ACT Drug and Alcohol

1 ACT Inspector of Correctional Services (ICS), *Report of a review of a correctional centre by the ACT Inspector of Correctional Services: Healthy Prison Review of the Alexander Maconochie Centre 2019*, ICS, p. 27, https://www.ics.act.gov.au/_data/assets/pdf_file/0011/1463681/10606R-ACT-ICS-Healthy-Prison-Review-Nov-2019_FA-TAGGED.pdf

Sentencing List, thereby **sending people to the AMC instead of delivering the treatment they need**. The ACT urgently needs investment in a range of appropriate alcohol and other drug supports to enable clients to access the right type of treatment service when they need it.

In 2018, the Standing Committee on Justice and Community Safety in its Inquiry into the Crimes (Consent) Amendment Bill 2018 agreed that a definition of consent based on a concept of free and voluntary agreement, and affirmative and communicative consent, be considered for enactment into ACT law. This was supported by the ACT Government. ACTCOSS calls for **the concept of positive consent to be enacted into ACT law**.

The evidence

- The ACT has a high rate of re-imprisonment. 2018 ABS data shows that 75% of all detainees had prior imprisonment. For Aboriginal and/or Torres Strait Islander detainees it is 90%.²
- In the ACT, First Nations kids are locked up in youth prisons at 8 times the rate of their non-Indigenous peers.³
- The ACT Criminal Statistical Profile shows that admissions of young people age 10-14 to Bimberi Youth Justice Centre ranges from 3 children in September 2013, to 35 children in December 2017. We can support this number of children through non-punitive measures.⁴
- Across Australia, the age of criminal responsibility – the age at which a child can be locked up in prison – is 10 years old, which is out of step with the global median of 14 years old.⁵
- Almost three in every four Australians (73%) think the age of criminal responsibility is greater than 10 years.⁶
- More than one in two Australians (51%) think the age of criminal responsibility is 14 years or greater. Only a very small minority of Australians (7%) correctly identify 10 years old as the age of criminal responsibility.⁷

2 ABS, 4517.0 - Prisoners in Australia, 2019, 2019, <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2019~Main%20Features~Australia%20Capital%20Territory~28>.

3 <https://twitter.com/ACTCOSS/status/1283944377669128192?s=20>

4 ACT Criminal Justice Statistical Profile, <https://www.data.act.gov.au/Justice-Safety-and-Emergency/Criminal-Justice-Statistical-Profiles/ni3q-as6y>.

5 National Justice Coalition, *Kids do not belong in prison*, Change the Record website, 2015, <https://changetherecord.org.au/RaiseTheAge>.

6 *ibid*.

7 *ibid*.

- More than one in two Australians (51%) support raising the age of criminal responsibility to 14 years, which is twice as many as those who oppose raising the age to 14 years (26% oppose).⁸
- A key finding of the 2018 ACT Disability Justice Strategy highlighted the lack of data on people with disability, their legal needs and interactions with the justice system.
- In 2018-19 in the ACT, of people arrested as offenders 13% were Aboriginal and/or Torres Strait Islander despite making up less than 2% of the ACT population.⁹
- The high rate of incarceration of Aboriginal and/or Torres Strait Islander people can only be reduced by challenging decisions at every step of the justice system, for example, overpolicing; unconscious bias; mandatory sentencing; and punitive (rather than public health) approaches to drug and alcohol issues.
- 33% of Aboriginal and/or Torres Strait Islander offenders in the ACT were aged under 25.¹⁰
- According to the last Commonwealth Productivity Commission Report of Government Services, for the period 2018-19:
 - The ACT's prison was at 110% capacity
 - 22.7% of the AMC population was Aboriginal and/or Torres Strait Islander
 - There were 3.31 assaults per 100 prisoners
 - Only 70.8% of eligible prisoners participated in training programs
 - Detainees are locked in cells for 15 hours each day
 - Women and Aboriginal and/or Torres Strait Islander people have the lowest completion of community corrections orders.
- The Inspector of Correctional Services' report on the review of the care and management of remandees at the Alexander Maconochie Centre 2018 said that only 37% of remandees feel they are 'treated as a human being and a person of value at the AMC'.¹¹
- 1 in 7 people in the ACT used an illicit drug in the past 12 months. The three-year AIHW survey puts ACT recent illicit drug use at 14.6%, an increase from 12.9% in 2016.¹²

8 *ibid.*

9 ABS, 4517.0 - Prisoners in Australia, 2019, 2019, <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2019~Main%20Features~Australia%20Capital%20Territory~28>.

10 ABS, 4517.0 - Prisoners in Australia, 2019, 2019, <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2019~Main%20Features~Australia%20Capital%20Territory~28>.

11 ACT Inspector of Correctional Services, *The care and management of remandees at the Alexander Maconochie Centre 2018*, 2019, <https://www.ics.act.gov.au/reports-and-publications/thematic-reviews/thematic-reviews/2018-remand-review>.

12 AIHW, *National Drug Strategy Household Survey 2019*, July 2020, <https://www.aihw.gov.au/reports/illicit-use-of-drugs/national-drug-strategy-household-survey-2019/contents/table-of-contents>.

Testimonials

“The rate of women detainees in the AMC has grown in the 10 years since opening, especially numbers of women on remand, and a very high number (78.3%) of women have had prior imprisonment episodes. And yet women at the AMC still lack equal access to facilities, programs and services. These women are disadvantaged by being housed in a men’s prison. The next ACT Government must implement all the findings of the Inspector of Correctional Services’ human rights-based review, which noted that there are limited opportunities for women to access rehabilitation programs and they have no access to the Transitional Release Centre. Many of these women are mothers, and many are Aboriginal, and there will be a significant flow-on effect to their families due to their incarceration and high levels of recidivism, in part due to the struggle of obtaining secure housing when they leave the AMC.” – Marcia Williams, CEO Women’s Centre for Health Matters

“You don’t get any feedback from complaints and there is usually no record of the complaint. If you want to complain about an officer that’s on [duty], it’s usually them that you have to give the form back to. [There is] poor handling, poor investigation, and inadequate record keeping and communication regarding any complaints.” – Submission from female detainee – Inspector of Correctional Services Healthy Prison Review, 2019

“Doctors agree that children do not have the cognitive capacity to be held criminally responsible at 10 years old. Moreover, they have found that sending children to prison can cause them lifelong harm, increase rates of mental illness, trauma, and even lead to early death. Of the extremely young children (under 14 years old) in detention nationally, 65% are Aboriginal and Torres Strait Islander children. In many ways, this drives the extraordinary and tragic over-representation of Aboriginal and Torres Strait Islander people in the criminal legal system as adults.” – ACT community, health and legal services [open letter](#) to the ACT Government and Opposition on #RaisetheAge, 2020.