

30 November 2021

Ms Brianna McGill, Secretary
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601
LACommitteeJCS@parliament.act.gov.au

Dear Ms McGill,

Re. ACT Inquiry into Community Corrections

Thank you for the opportunity to provide a submission to the above Inquiry.

The Foundation for Alcohol Research and Education (FARE) is the leading not-for-profit organisation working towards an Australia free from alcohol harms. We approach this through developing evidence-informed policy, enabling people-powered advocacy and delivering health promotion programs. FARE has been working with communities across the country to improve the health and wellbeing of Australians for 20 years.

This submission focuses on some of the challenges for Community Corrections within the ACT Criminal Justice System. These include the criminalisation and inadequate support for people with problematic Alcohol and Other Drug (AOD) use, Fetal Alcohol Spectrum Disorder (FASD), Raising the Minimum Age of Criminal Responsibility (MACR) and Electronic Monitoring (EM). In doing so, the submission briefly touches on some of the points in the Inquiry's Terms of Reference, namely the parole system, Intensive Correction Orders (ICOs), Drug and Alcohol Treatment Orders (DATOs) and recidivism outcomes.

ACT crime rates are going down, but incarceration levels continue to rise. The ACT criminal justice system has experienced an increase in prison population, costs and recidivism.¹ The criminalisation of AOD problems is a contributing factor in increasing incarceration.

Problematic AOD use has often been found to be strongly associated with contact with criminal justice systems, and a large proportion of crime in the ACT is associated with AOD use.² However, public health issues such as high risk AOD use, poor mental health and disabilities such as Fetal Alcohol Spectrum Disorder (FASD), must be treated as health and human rights issues, not stigmatised or criminalised.

Punitive responses to health and social issues are expensive and ineffective. Taking an evidence-informed, public health and human rights approach can both reduce the harm from alcohol and other drugs in the community, and reduce prison populations, costs and recidivism.

Evidence Briefs on FASD and Electronic Monitoring

The two evidence briefs attached along with this letter form part of this submission; they address:

- Fetal Alcohol Spectrum Disorder (FASD), criminal justice and government responses (Attachment 1)
- Electronic Monitoring (including for Alcohol-Related Offences) (Attachment 2)

Recommendations

FARE has made 8 recommendations to this Inquiry. These are outlined below and elaborated on further in this submission.

Recommendation 1. Implement evidence-based, public health and human rights approach to reducing alcohol harm, both in the criminal justice system and in the wider community. This is to reduce the risk of recidivism and of the risk of people coming into contact with the criminal justice system in the first place.

Recommendation 2. Implement Recommendation 4 of the 2019 ‘ACT Auditor-General’s Report ‘Recognition and Implementation of Obligations under the Human Rights Act 2004’. This requires explicit consideration and documentation of human rights in decisions by the ACT Justice and Community Safety Directorate.

Recommendation 3. Significantly increase investment in trauma-informed mental health and alcohol and other drug (AOD) treatment in the ACT criminal justice system and in the wider community.

Recommendation 4. Implement recommendations 12, 23, 24 and 27 of the Senate Inquiry into *Effective approaches to prevention, diagnosis and support for FASD*, that reported to Federal Parliament in March 2021.

Recommendation 5. Implement Fetal Alcohol Spectrum Disorder (FASD) screening, assessment and support in paediatric, youth justice and adult criminal justice.

Recommendation 6. Work with the federal government to address the gaps left by barriers to access and difficult eligibility with both the National Disability Insurance Scheme (NDIS) and Disability Support Pension (DSP). Address the gaps in service and support by the ineligibility of people in detention for NDIS, DSP, Pharmaceutical Benefits Scheme (PBS) and Medicare.

Recommendation 7. Develop FASD professional understanding and capacity. Educate relevant justice professionals about children with disabilities and cognitive impairment. Invest in professional workforce development to establish capacity for FASD screening, diagnosis and support.

Recommendation 8. Delay any plans for implementation of the electronic monitoring in community corrections. Re-assess the purpose, lived experience impact, human rights implications, costs and effectiveness of any trials and planned implementations of Electronic Monitoring (EM) programs including for alcohol-related offences.

Challenges for the ACT Criminal Justice System

The ACT Government’s ‘*Reducing Recidivism in the ACT by 25% by 2025*’ (RR25BY25) document, outlines some of the challenges facing the ACT Criminal Justice System:³

- **Increase in prison population.** There has been a significant growth in the number of people detained at the Alexander Maconochie Centre (AMC) in recent years. Numbers have risen from 268 detainees in 2012, to 429 detainees in 2019, an increase of 60 per cent.
- **Increase in recidivism.** Re-offending rates, (within two years of release), have increased in the ACT from 38.7 per cent in 2014–15 to 42.4 per cent in 2018–19. When including those returning to Community Corrections, the ACT has the highest recidivism rate of any Australian State or Territory of 71.3 per cent.⁴
- **Increase in costs.** The ACT justice system costs \$270 million annually, and is estimated to increase to \$337 million by 2025. In a significant Australian first, the ACT government is redirecting \$132 million over four years, that would have otherwise been spent expanding prisons, towards programs focused on rehabilitation and reintegration.

Legislative changes, problematic AOD use and other social determinants are significant contributors to increasing contact with the ACT criminal justice system.⁵

- **Changes in justice legislation and practices.** More awareness of domestic, family and sexual assault, more effective policing strategies, and the reduced rates of bail are contributing to higher rates of incarceration.
- **Social disadvantage.** Social issues like housing, unemployment, poverty and family trauma, particularly among young people, also have an impact on increasing risk of contact with the ACT criminal justice system. (Pillar 2, *'Responding to justice housing needs'* in the RR25BY25 plan addresses one of these aspects.⁶)
- **Alcohol harm.** In 2016, more than one third (36%) of people entering detention in ACT are reported as engaging in harmful or likely dependent alcohol use in the 12 months prior to their current incarceration.⁷ In 2018, almost one third (31%) were reported to be at high risk of alcohol harm.⁸

We know that alternative approaches are effective. Evaluations of preventative public health and diversion programs confirm their positive impact both on recidivism and on costs.⁹

Criminalisation and inadequate support for people with problematic AOD use

AOD problems are prevalent in prison populations and are often a direct cause of offending and recidivism, as well as the source of physical and mental health problems. People in contact with the criminal justice system are more likely to have experienced mental illness and problematic AOD use.¹⁰

There is a continued stigmatisation and criminalisation of people living with mental illness and problematic AOD use. They are already physically isolated by their sentences (even when not carceral), but ongoing stigmatisation further isolates them, inflicting further punishment beyond sentencing.¹¹ The National Alcohol Strategy (2019-2028)¹² and the ACT Auditor-General's report¹³ both call for a human rights approach. This means that reducing alcohol harm involves decreasing the stigmatisation and criminalisation of people with mental illness and problematic AOD use.

The provision of effective mental health and AOD programs is therefore a key component in criminal justice settings. However, there are long waiting lists for AOD programs and transitional support services for people in detention with substance abuse issues are inadequate and community-based support services for people who were formerly in detention, are limited.

In its submission to the current Inquiry into the *'Drugs of Dependence (Personal Use) Amendment Bill 2021'*, the Alcohol, Tobacco and Other Drug Association ACT (ATODA) says there is a AOD funding crisis in the ACT. ATODA says that the chronic underfunding of AOD services means that current capacity needs to at least double, so appropriate treatment is available to people who need it.

The ACT Government has implemented some significant AOD justice reforms that were recommended by the Standing Committee on Justice and Community Safety 2015 Inquiry into Sentencing.¹⁴ These reforms included the establishment of the drug and alcohol court with the *'Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Bill'* in 2019¹⁵. It also involved the establishment of intensive corrections orders (ICOs), a drug diversion program, and an expanded community and work order programme. Unfortunately, the Drug and Alcohol Court is not currently accepting referrals during COVID-19, and the *'Disability Justice Strategy – ACT Corrections Disability Framework'* has also been delayed by COVID-19.¹⁶

The ACT Government is to be further congratulated in planning to significantly reduce recidivism by implementing the *'Reducing Recidivism in the ACT by 25% by 2025'*¹⁷ plan within the *'Build Communities Not Prisons'* initiative¹⁸. This plan includes:

- Pillar 3. Supporting people with substance use disorders in the justice system
- Pillar 4. Supporting people living with a mental illness or disability in the justice system

The ACT Government is taking a justice reinvestment approach to redirect funding away from building new prisons to invest in prevention and early intervention, and provide adequately funded supports and services. This approach is restorative, human rights-based and evidence-, culturally-, trauma- and gender-informed.

Each of the above reforms address issues after a person has already come into contact with the criminal justice system. Prevention also means addressing underlying social disadvantage (housing, unemployment, poverty and trauma).

Recommendation 1. Implement evidence-based, public health and human rights approach to reducing alcohol harm, both in the criminal justice system and in the wider community. This is to reduce the risk of recidivism and of the risk of people coming into contact with the criminal justice system in the first place.

Recommendation 2. Implement Recommendation 4 of the 2019 'ACT Auditor-General's Report 'Recognition and Implementation of Obligations under the Human Rights Act 2004'. This requires explicit consideration and documentation of human rights in decisions by the ACT Justice and Community Safety Directorate.

Recommendation 3. Significantly increase investment in trauma-informed mental health and alcohol and other drug (AOD) treatment in the ACT criminal justice system and in the wider community.

Fetal Alcohol Spectrum Disorder (FASD) and the Criminal Justice System

FASD is the leading preventable developmental disability in Australia and there is a high prevalence of FASD in people detained in the criminal justice system. Research at the Banksia Hill Youth Detention Centre in Western Australia identified that more than a third of the young people screened in detention were diagnosed with FASD. Researchers suggested this may be an under-estimate due to, for example, the lack of confirmation of prenatal alcohol exposure, suspecting that almost half of these young people may have FASD.¹⁹

The final report of the independent review into raising the Minimum Age of Criminal Responsibility (MACR) in the ACT noted that children in the justice system experience a range of disabilities, including FASD. It also noted that these issues often go unnoticed and unassessed or are inadequately responded or before entry into the youth justice system.²⁰

People in the criminal justice system are excluded from the National Disability Insurance Scheme (NDIS), Disability Support Pension (DSP), Pharmaceutical Benefits Scheme (PBS) and Medicare. The exclusion of people in prison who have a cognitive disability from the NDIS represents a substantial barrier to people with cognitive and mental health impairments getting adequate support, care and protection for their disability-related complex support needs. Screening, diagnosis and treatment should be targeted towards those in the criminal justice system.²¹

See the FARE evidence brief on FASD, criminal justice and government responses as Attachment 1. Also see FARE's submission to the ACT Review of ACT Health programs for children and young people.²²

Recommendation 4. Implement recommendations 12, 23, 24 and 27 of the Senate Inquiry into *Effective approaches to prevention, diagnosis and support for FASD*, that reported to Federal Parliament in March 2021.

Recommendation 5. Implement Fetal Alcohol Spectrum Disorder (FASD) screening, assessment and support in paediatric, youth justice and adult criminal justice.

Recommendation 6. Work with the federal government to address the gaps left by barriers to access and difficult eligibility with both the National Disability Insurance Scheme (NDIS) and Disability Support Pension (DSP). Address the gaps in service and support by the ineligibility of people in detention for NDIS, DSP, Pharmaceutical Benefits Scheme (PBS) and Medicare.

Recommendation 7. Develop FASD professional understanding and capacity. Educate relevant justice professionals about children with disabilities and cognitive impairment. Invest in professional workforce development to establish capacity for FASD screening, diagnosis and support.

Electronic Monitoring (including for Alcohol-Related Offences)

Current evidence suggests that Electronic Monitoring (including for Alcohol-Related Offences) in the criminal justice system is stigmatising, breaches human rights, is expensive and ineffective. The technology is unreliable, it does not reduce re-offending, does not reduce prison populations, it increases incarceration and does not treat problematic alcohol use. Electronic monitoring contributes to the criminalisation of children, First Nations peoples, people on low incomes and people with problematic alcohol and other drug use.

An ACT Auditor-General's report recommended that the ACT Justice and Community Safety Directorate include explicit consideration and documentation of human rights in decision-making.²³ This must include considering the serious human rights breaches regarding electronic monitoring outlined by the Queensland Human Rights Commission (QHRC).²⁴

See the FARE evidence brief on Electronic Monitoring as Attachment 3.

Recommendation 8. Delay any plans for implementation of the electronic monitoring in community corrections. Re-assess the purpose, lived experience impact, human rights implications, costs and effectiveness of any trials and planned implementations of Electronic Monitoring (EM) programs including for alcohol-related offences.

Thank you for the opportunity to provide a submission to this Inquiry.

Yours sincerely,



CATERINA GIORGI
CHIEF EXECUTIVE OFFICER

¹ ACT Government (2020) *Reducing Recidivism in the ACT by 25% by 2025*
https://justice.act.gov.au/sites/default/files/2020-08/Plan%20-%20RR25by25%20-%20Plan%20for%20printing%20-%20web-%20%20Final_0.PDF

² ACT Government (2020) *Reducing Recidivism in the ACT by 25% by 2025*
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³ ACT Government (2020) *Reducing Recidivism in the ACT by 25% by 2025*
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⁴ Productivity Commission (2020) *Report on Government Services 2020*, Table C4.4
<https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/justice>

⁵ ACT Government (2020) *Reducing Recidivism in the ACT by 25% by 2025*
https://justice.act.gov.au/sites/default/files/2020-08/Plan%20-%20RR25by25%20-%20Plan%20for%20printing%20-%20web-%20%20Final_0.PDF

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- ⁶ ACT Government (2020) *Reducing Recidivism in the ACT by 25% by 2025*
https://justice.act.gov.au/sites/default/files/2020-08/Plan%20-%20RR25by25%20-%20Plan%20for%20printing%20-%20web-%20%20Final_0.PDF
- ⁷ ACT Government (2017) *ACT Detainee Health and Wellbeing Survey 2016 – Summary Results*
https://www.ics.act.gov.au/_data/assets/pdf_file/0009/1325997/2016-ACT-Detainee-Health-and-Wellbeing-Survey-Report.pdf
- ⁸ AIHW (2021) *Alcohol, tobacco & other drugs in Australia - People in contact with the criminal justice system* (Table S3.57). <https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations/people-in-contact-with-the-criminal-justice-system>
- ⁹ Victorian Ombudsman (2015) *Investigation into the rehabilitation and reintegration of prisoners in Victoria*. September 2015 <https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Investigation-into-the-rehabilitation-and-reintegration-of-prisoners-in-Victoria.pdf>
- ¹⁰ AIHW (2021) *Alcohol, tobacco & other drugs in Australia - People in contact with the criminal justice system*
<https://www.aihw.gov.au/reports/alcohol/alcohol-tobacco-other-drugs-australia/contents/priority-populations/people-in-contact-with-the-criminal-justice-system>
- ¹¹ Commonwealth of Australia (2006) *A national approach to mental health – from crisis to community First Report. Chapter 13 - Mental health and the criminal justice system.*
https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/mentalhealth/report/c13
- ¹² Commonwealth of Australia Department of Health (2019) *National Alcohol Strategy 2019–2028*
<https://www.health.gov.au/sites/default/files/documents/2020/11/national-alcohol-strategy-2019-2028.pdf>
- ¹³ ACT Auditor–General (2019) *Recognition and Implementation of Obligations under The Human Rights Act 2004*
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- ¹⁴ ACT Standing Committee on Justice and Community Safety (2015) *Inquiry into Sentencing*, March 2015.
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- ¹⁵ ACT Government (2019) *Sentencing (Drug and Alcohol Treatment Orders) Legislation Amendment Bill 2019*
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- ¹⁶ ACT Government (2020) *Reducing Recidivism in the ACT by 25% by 2025*
https://justice.act.gov.au/sites/default/files/2020-08/Plan%20-%20RR25by25%20-%20Plan%20for%20printing%20-%20web-%20%20Final_0.PDF
- ¹⁷ ACT Government (2020) *Reducing Recidivism in the ACT by 25% by 2025*
https://justice.act.gov.au/sites/default/files/2020-08/Plan%20-%20RR25by25%20-%20Plan%20for%20printing%20-%20web-%20%20Final_0.PDF
- ¹⁸ ACT Government (2019) *Building Communities Not Prisons* <https://justice.act.gov.au/justice-programs-and-initiatives/reducing-recidivism/building-communities-not-prisons>
- ¹⁹ Bower C, Watkins RE, Mutch RC, et al (2018) *Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia.*
<https://bmjopen.bmj.com/content/bmjopen/8/2/e019605.full.pdf>
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- ²⁴ QHRC (2021) *Submission to Legal Affairs and Safety Committee on Youth Justice and Other Legislation Amendment Bill*
<https://www.parliament.qld.gov.au/documents/committees/LASC/2021/YJandOLAB2021/submissions/048.pdf>