

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY –
REPORT 27 - INQUIRY INTO ANNUAL AND FINANCIAL REPORTS 2022-23**

GOVERNMENT RESPONSE

**Presented by
Andrew Barr MLA
Chief Minister
August 2024**

Introduction

On 11 February 2021, the Legislative Assembly passed an amendment to the 2 December 2020 Resolution of Establishment (clause 3) referring the Annual and Financial Reports to the relevant Standing Committee for inquiry and report by 9 April of the year after the presentation of the report to the Assembly pursuant to the *Annual Reports (Government Agencies) Act 2004*.

The 2022-2023 Annual and Financial Reports were reviewed by the relevant Standing Committees, and each Committee held hearings and reported separately. The below Government Response addresses the recommendations within the report from the Standing Committee on Justice and Community Safety.

The following Annual and Financial Reports or sections of annual reports, were referred to the Standing Committee on Justice and Community Safety:

- ACT Electoral Commission
- ACT Inspector of Correctional Services
- ACT Integrity Commission
- ACT Ombudsman
- ACT Policing
- Director of Public Prosecutions
- Gambling and Racing Commission
- ACT Human Rights Commission
- Justice and Community Safety Directorate
- Official Visitor Scheme
- Legal Aid Commission
- Public Trustee and Guardian for the ACT
- Inspector of the ACT Integrity Commission
- Sentence Administration Board (as part of the Justice and Community Safety Directorate Report)

Standing Committee on Justice and Community Safety – Report 27 - Inquiry into Annual and Financial Reports 2022-23

RECOMMENDATION	GOVERNMENT RESPONSE
<p>Recommendation 1</p> <p>The Committee recommends that the ACT the Human Rights Commission should publish records of the number and status of received human rights complaints, including the number and status of those subject to conciliation.</p>	<p>EXISTING GOVERNMENT POLICY</p> <p>The ACT Human Rights Commission publishes data in its annual report of the numbers of complaints received and closed each year by complaint jurisdiction, including most common outcomes by jurisdiction. Whilst the Commission is not able to publish a status of complaints subject to conciliation at any point in time, as that information is dynamic and so not collected, outcome data and case summaries published in the annual report provide insight into the types of matters being handled by the Commission and the outcomes achieved through the complaint process.</p>
<p>Recommendation 2</p> <p>The Committee recommends that the ACT Government support the recommendations of the review of the <i>Integrity Commission Act 2018</i> undertaken by Mr Ian Govey AM in respect of the bestowal of telecommunications interception powers upon the ACT Integrity Commission to improve its capabilities and effectiveness.</p>	<p>NOTED</p> <p>As outlined in the Government Response to the review, the Government notes Mr Ian Govey AM’s review of the Integrity Commission Act 2018 recommendations in respect of bestowal of telecommunication interception powers to the Commission. Further consideration of Mr Govey’s recommendations regarding telecommunication interception will be undertaken during the eleventh Legislative Assembly to ensure due consideration is given to the proportionality, budgetary and human rights impacts of the proposal.</p>
<p>Recommendation 3</p> <p>The Committee recommends that the ACT Integrity Commission should observe and conform to each of the recommendations made by the Inspector of the Integrity Commission’s <i>Investigation into the dismissal of corruption reports by the ACT Integrity Commission</i>.</p>	<p>NOTED</p> <p>The Government notes that this is a matter for the Integrity Commission to consider. The Commission has complete discretion in the exercise of the Commission’s functions. The ACT Government notes, and welcomes, that the Commission since 1 July 2022 has published on its website six-monthly statistical updates on corruption complaints. Further, as the relevant Standing Committee with oversight of the Commission, the Committee may also request such updates during periodical hearings as appropriate.</p>

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<p>Recommendation 4 The Committee recommends that the ACT Integrity Commission should provide six-monthly updates to the Assembly on the status of all investigations including expected timeframe for completion.</p>	<p>NOTED The Government notes that this is a matter for the Integrity Commission to consider. The Commission has complete discretion in the exercise of the Commission’s functions. Nonetheless, the Government would welcome any information the Commission could provide in the timeliness of matters it is investigating, and notes that Mr Govey made recommendations about this topic in his report on the review of the <i>Integrity Commission Act 2018</i>.</p>
<p>Recommendation 5 The Committee recommends that the ACT Government should explore in-depth a specialist sexual offences court.</p>	<p>EXISTING GOVERNMENT POLICY The Government agrees to explore a specialist sexual offences court in the ACT and is engaging with the ACT Courts and Tribunal to progress this.</p> <p>This recommendation aligns with recommendation 9 of the Listen. Take Action to Prevent Believe and Heal Report (SAPR Report) delivered on 13 December 2021 which asks the ACT Government to undertake a review and investigation of the NSW specialist court program for sexual violence matters. The ACT Government agreed to this recommendation.</p> <p>It also aligns with Dr Marisa Paterson’s motion on 20 November 2023 which calls on the ACT Government to identify an appropriate model for ACT to adopt in managing sexual assault proceedings. The ACT Government will respond to this motion in the Assembly.</p>
<p>Recommendation 6 The Committee recommends that the ACT Government improve its data and transparency on court statistics on the criminal justice system.</p>	<p>AGREED IN-PRINCIPLE The Government agrees that the availability of accurate information relating to the criminal justice system is essential to enhance community awareness and for the effective management of the criminal justice system.</p> <p>The JACS Strategic Plan 2024-2027 has committed to developing a digital strategy which will look to create efficiencies, improve the identification, collection and management of data as well as leveraging the government’s digital by design approach to the introduction of new ICT systems.</p>

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<p>Recommendation 7</p> <p>The Committee recommends that the ACT Government publish a plan outlining actions to improve publicly available statistical information provided to the community across the entire criminal justice system.</p>	<p>AGREED IN-PRINCIPLE</p> <p>The Government agrees that the availability of accurate information relating to the criminal justice system is essential to enhance community awareness and for the effective management of the criminal justice system.</p> <p>The JACS Strategic Plan 2024-2027 has committed to developing a digital strategy which will look to create efficiencies, improve the identification, collection and management of data as well as leveraging the government’s digital by design approach to the introduction of new ICT systems.</p>
<p>Recommendation 8</p> <p>The Committee recommends that the ACT Government increase in Parliamentary Counsel Office resourcing to meet non-executive members’ drafting requirements.</p>	<p>NOTED</p> <p>Any increased resourcing requirements would be subject to a future budget process and be taken in the context of the government’s competing priorities in a constrained fiscal environment.</p>
<p>Recommendation 9</p> <p>The Committee recommends that the ACT Government continue to advocate for health warnings on gas appliances and woodfired heaters.</p>	<p>AGREED</p> <p>The ACT Minister for Consumer Affairs has written to the Commonwealth, state and territory Consumer Affairs Ministers indicating his intention to raise in discussion at the next Consumer Ministers Network (CMN) meeting the possibility of point-of-sale health warnings on new indoor gas appliances and woodfire heaters. The next CMN meeting is expected in late 2024.</p>
<p>Recommendation 10</p> <p>The Committee recommends that the ACT Government explore bail programs in other jurisdictions to ensure there are enough bail staff for number of people on bail, and that the ACT is offering best practice in bail implementation.</p>	<p>AGREED IN-PRINCIPLE</p> <p>The ACT Government continuously strives to strengthen the Territory’s approach to supporting people subject to bail supervision.</p> <p>ACT Corrective Services (ACTCS) completed a review of its bail operations as part of its review of the ACTCS <i>Bail Supervision and Support Policy</i>, which was authorised in August 2023. The review included consideration of resource allocation and contemporary offender management practice and led to several changes to the management and supervision processes for accused persons, including the creation of a third Bail Officer position in September 2023.</p> <p>Other recent changes to improve bail supervision include:</p>

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- the Establishment of a second ACTCS Court Duty Officer position based at the ACT Magistrates Court to support intake processes for persons released to bail or those newly sentenced.
- Expansion of the mandatory training program for Bail Officers to encompass a broad range of topics relevant to the role.
- Expansion of current alternative reporting sites at Yeddung Mura Aboriginal Corporation, Winnunga Nimmityjah Aboriginal Health and Community Services and Canberra Alliance for Harm Minimisation and Advocacy for Aboriginal and Torres Strait Islander to include persons subject to bail.

A key bail support program in the ACT is the Ngurrambai Bail Support Program (Ngurrambai). Ngurrambai provides a culturally appropriate operational model of bail support for First Nations people including court-based bail support, outreach bail support, Alexander Maconochie Centre support and after-hours bail support.

The program is delivered by the Aboriginal Legal Service NSW/ACT. In 2022-2023, 140 people participated in Ngurrambai, and of these 86 per cent were granted bail with a bail support plan supported by the program.

The ACT Government is commencing a commissioning process in relation to justice programs for First Nations people in the ACT. This process will provide structured consultation and engagement process to improve service delivery and increase sector sustainability. Bail supports are being considered as part of this process, and the commissioning process includes consideration of programs available in other jurisdictions.

On 20 November 2023, the Attorney-General referred a review of the *Bail Act 1992* to the Law Reform and Sentencing Advisory Council (the Council). The Terms of Reference of the referral specify that the Council consider and make recommendations for any procedural, administrative or legislative changes that could improve the Bail Act and the way in which it operates. The Council is due to report on this review by 30 November 2024. The Government does not wish to pre-empt the LRSAC review, and therefore implementation of this recommendation will be considered in light of the Council’s findings once available.

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<p>Recommendation 11</p> <p>The Committee recommends the ACT Government ask the Law and Sentencing Council to do a review of bail (given the issue of recidivist dangerous driving), with a focus on those that breach bail – the reasons why and what could be done to improve the system to see people meet their bail conditions.</p>	<p>EXISTING GOVERNMENT POLICY</p> <p>On 20 November 2023, the Attorney-General referred a review of the <i>Bail Act 1992</i> to the Law Reform and Sentencing Advisory Council (the Council). The Terms of Reference of the review include exploring whether the Bail Act has appropriate mechanisms for managing breaches of bail. The Council will consider and make recommendations for any procedural, administrative or legislative changes that could improve the Bail Act and the way in which it operates. Under the Terms of Reference, the Council is required to consult with experts in First Nations justice, including people with lived experience relevant to the referral, and victims of crime and their families.</p> <p>The Council is due to report on the referral by 30 November 2024. The Terms of Reference are available on the Council’s website (https://www.lrsac.act.gov.au/current-projects/bail).</p>
<p>Recommendation 12</p> <p>The Committee recommends that the ACT Government ensure that any examination of electronic monitoring technology incorporates consideration of the technology’s ability to identify excessive speeding.</p>	<p>AGREED</p> <p>The Government agrees to the Electronic Monitoring Feasibility Study considering the potential use of electronic monitoring technology to identify excessive speeding.</p> <p>This recommendation aligns with recommendation 18 of the <i>Inquiry into Dangerous Driving</i> which asked the ACT Government to provide an update on the electronic monitoring feasibility work and include consideration of using electronic monitoring to observe and check speeding drivers. The ACT Government agreed to this recommendation.</p>
<p>Recommendation 13</p> <p>The Committee recommends that the ACT Government write to each of the judges and magistrates of the ACT to formally invite them to tour the Alexander Maconochie Centre.</p>	<p>AGREED</p> <p>The ACT Government agrees to write to each of the ACT judges and magistrates and formally offer to facilitate a tour of the Alexander Maconochie Centre (AMC), at their request.</p>

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<p>Recommendation 14</p> <p>The Committee recommends that the ACT Government look to improve activities and programs to prevent of sexual coercion and sexual violence at the Alexander Maconochie Centre.</p>	<p>AGREED</p> <p>ACT Corrective Services is developing a strategy (the Strategy) addressing the prevention of, response to and monitoring of sexual coercion and sexual violence at the AMC.</p> <p>The Strategy describes actions and future priorities, including improving activities and programs aimed at prevention. The Strategy is expected to be completed around the middle of 2024 and will be published on the ACT Corrective Services website.</p>
<p>Recommendation 15</p> <p>The Committee recommends that the ACT Government does not commit to an ACT-wide central monitoring system before fully exploring cashless gaming options.</p>	<p>NOTED</p> <p>The government is already exploring cashless gaming options and monitoring developments in technology across Australia. Cashless gaming is itself not a gambling harm reduction measure but instead can form part of a solution that includes measures such as gambling pre-commitment. Jurisdiction-wide cashless gaming and associated harm reduction measures requires some form of underpinning common platform or trunk infrastructure, which a central monitoring system can provide.</p>
<p>Recommendation 16</p> <p>The Committee recommends that the ACT Government work with the community club sector to implement a standardised system for reporting on the gambling incidents register.</p>	<p>AGREED</p> <p>The Gaming and Racing Commission will continue to work with community clubs on their incident reporting obligations with the aim of improving consistency across the industry in the way that incidents of gambling harm are reported in the ACT Gambling Exclusion Database. The Commission will continue to work with gambling licensee staff and licensee management to provide training, support and advice on the use of the online gambling incident register. The provision of Gambling Contact Officer training provides key staff in gambling venues the skills needed to identify, respond to, and report incidents of gambling harm. The training supports venue staff to make a considered assessment and decision about the nature of a potential sign of harm, and to respond and record appropriately based on the circumstances in keeping with their legal requirements.</p>

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<p>Recommendation 17 The Committee recommends the ACT Government include the breakdown of different categories of gambling harm reported in the incident register in its Annual Reporting data.</p>	<p>AGREED The Commission’s Annual Report will include the categories of gambling harm as reported in incident data.</p>
<p>Recommendation 18 The Committee recommends the ACT Government make a tangible investment and improvement to the current self-exclusion scheme.</p>	<p>NOTED The Government is exploring improvements to the self-exclusion scheme as part of its consideration and analysis of player card gaming options and its monitoring of developments in gaming technology across Australia. A player card gaming solution that operates across all venues on a jurisdiction-wide basis, which requires an underpinning trunk infrastructure such as a central monitoring system, forms part of that consideration. ACT-wide player card gaming would offer a platform on which an improved and automated self-exclusion solution may be implemented.</p>
<p>Recommendation 19 The Committee recommends that the ACT Government urgently explore the implementation of the use of facial recognition technology in community clubs with effectiveness and human rights implications at the forefront.</p>	<p>NOT AGREED Exploring facial recognition technology for gambling exclusion is not a priority for the Government.</p> <p>While this technology might assist in detecting people excluded from gambling, its use in this context usually means a person has already experienced gambling harm. The Government’s priority, in line with a public health approach to gambling harm reduction, is to pursue measures that can prevent gambling harm before its consequences arise.</p> <p>Additionally, there are a range of ethical, privacy, human rights, and consumer protection risks, as well as technical and operational issues, with the use of facial recognition technology for gambling exclusion. These issues include:</p> <ul style="list-style-type: none"> • protection of the right to privacy • protection of recognition and equality before the law due to the risk of inbuilt biases that may lead to inaccurate identification • use of biometric data for purposes not permitted or intended when introducing facial recognition technology, for example, use to recognise regular patrons and induce patrons to spend more time and money gambling

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	<ul style="list-style-type: none"> • questions about ownership of data and intellectual property, and • the need for robust governance and security measures. <p>As with fingerprints, voiceprints and iris scans, the data created for a facial signature is biometric data, which is considered 'sensitive information' under privacy law. The current legal and regulatory framework would require significant changes to properly address these risks and issues.</p>
<p>Recommendation 20</p> <p>The Committee recommends that the ACT Government not approve an increase in poker machine bet limits above \$2 for the Canberra Casino.</p>	<p>NOTED</p> <p>The Government has not made a decision about increasing the \$2 bet limit for gaming machines at Casino Canberra. The Government notes the Committee's concern that an increased limit could increase the risk of gambling harm. However this concern overlooks evidence about the typical bet size adopted by people gambling on gaming machines and the requirement that a mandatory pre-commitment system correspond with gaming machines operated at the Casino. The Government will consider any request by the Casino about this issue on its merits.</p>
<p>Recommendation 21</p> <p>The Committee recommends that the ACT Government increase its compliance program with a focus on electronic gaming machines and a goal to check 10% of the ACT's machines each year.</p>	<p>AGREED IN-PRINCIPLE</p> <p>Access Canberra agrees that its compliance program should focus on electronic gaming machines. The current compliance approach is focused on a risk-based assessment of the compliance activities that deal with aspects of regulation where risk of harm is greatest. Regulatory compliance activities are informed by intelligence from previous compliance activities, risk assessment and complaints information.</p> <p>Access Canberra administers a range of regulatory compliance activities on behalf of the Gambling and Racing Commission. A specific focus on the operation of electronic gaming machines will be considered by Access Canberra as part of its regulatory functions described in the Gambling and Racing Commission's statement of expectations and the Access Canberra Accountability Commitment.</p> <p>Any increase in the current levels of regulatory compliance activities would need to be adequately resourced and may require budget consideration. One advantage of a central monitoring system is its capacity to automate some regulatory oversight requirements and thereby may allow Access Canberra to focus its human effort on higher-order regulatory compliance activities.</p>

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<p>Recommendation 22</p> <p>The Committee recommends that the ACT Government advocate the needs of Legal Aid ACT when considering the recommendations of the independent review of the National Legal Assistance Partnership.</p>	<p>AGREED</p> <p>The ACT Government acknowledges the vital role legal assistance plays in ensuring equitable access to the justice system, which is fundamental to our democratic society and the rule of law. Not only does legal assistance facilitate improved outcomes for individuals, it also generates broader benefits to society.</p> <p>The ACT Government, through the ACT Legal Assistance Sector Strategy 2023-25, has committed to working with the sector to support them to pursue appropriate arrangements with the ACT Government and Commonwealth Governments. In line with the ACT Government’s submission to the National Legal Assistance Partnership (NLAP) Review, the ACT continues to foster a productive partnership between the Commonwealth, jurisdictions, and service providers to advance the legal, social and wellbeing outcomes for people in Australia and the ACT through the NLAP. This work includes advocating for Legal Aid ACT, and all ACT legal assistance sector providers, when engaging with the Commonwealth on the NLAP Review and NLAP discussions on the next iteration of the NLAP.</p>
<p>Recommendation 23</p> <p>The Committee recommends that the Director of Public Prosecutions revise its organisational Key Performance Indicator of an average cost per matter in light of failing to meet this target for two consecutive years.</p>	<p>NOTED</p> <p>The Office of the Director of Public Prosecutions will revise its target for Accountability Indicator (a): <u>Average cost per matter finalised</u>, as part of the 2024-25 budget process. The ODPP has been unable to meet the previous target of \$3,000, due to a significant increase in the amount of serious and indictable crimes committed for trial, higher witness expenses and increased employee expenses. The total budgeted cost and overheads for the 202425 FY, as well as the average number of actual completed matters across the past 2.5 years, were utilised to develop the new target cost per matter.</p>