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Chair
Standing Committee on Justice and Community Safety
Legislative Assembly of the ACT
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Submission to the Legislative Assembly of the ACT Inquiry into Sentencing

Dear Mr Doszpot MLA,

Thank you for the opportunity to make a submission to the Committee's Inquiry into Sentencing in the ACT.

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the peak body representing the non-government and government alcohol, tobacco and other drugs sector in the ACT. ATODA seeks to promote health through preventing and reducing alcohol, tobacco and other drug related harms.

Alcohol and other drugs (AOD) are intricately linked with, and are both a cause and consequence of, crime and violence. Many offenders have AOD problems, are intoxicated at the time of offending, and/or commit crimes for the purpose of obtaining AOD. However, we are fortunate that there is a strong evidence-base to support the ACT to make both cost-effective and meaningful justice system reforms for the community and offenders.

ATODA acknowledges that the ACT justice system is seeking to improve its responses to offending, support victims of crime, improve access to justice and social services and make our community safer. ATODA hopes that this submission is of value to the Committee and is prepared to provide further assistance upon request.

Yours sincerely,

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ATODA's Submission to the Legislative Assembly of the ACT Inquiry into Sentencing

ATODA's submission is broadly focussed on alcohol and other drug (AOD) issues, populations and programs related to sentencing.

ATODA is aware that the ACT Council of Social Service (ACTCOSS) is making submission to the Inquiry and we recognise their expertise related to the community sector and people living with disadvantage. We particularly note the sections in their submission related to periodic detention, remand, women and over-represented population groups.

This submission covers the following areas:

1. Context

- ACT justice system reform
- ACT Drug Diversion Program evaluation
- AOD treatment can reduce offending
- The ACT adult prison at capacity: the need for innovative justice responses

2. Population groups

- People with alcohol and other drug problems
- Children and young people
- Aboriginal and Torres Strait Islander people
- Affected community engagement and participation

3. Purpose, application and approaches to sentencing

- The purpose of sentencing
- Aboriginal and Torres Strait Islander focused reform to the *Crimes (Sentencing) Act 2005*
- The manner in which sentences should be applied
- Therapeutic jurisprudence
- Justice reinvestment

4. Sentencing options and prevention

- Alcohol and drug diversion
- Community Service Orders
- Periodic detention
- Interventions for people with AOD problems involved in low-level offending

1. Context

1.1 ACT justice system reform

ATODA acknowledges the context in which this Inquiry is taking place, with significant ACT justice system reform activities occurring, including:

- In the alcohol and other drug sector, including the evaluation of the ACT Drug Diversion Programs¹ and implementing and evaluating a new alcohol ignition interlocks program;²
- In the youth justice system through the *Blueprint for Youth Justice in the ACT 2012-2022*;

- In the social services system through the Vulnerable Families Project; and
- In the adult justice system through the Throughcare Program.

ATODA understands that:

“A fundamental focus of these initiatives is the shift away from an ACT justice and service system that deals largely with the consequences of crime towards a justice and service system that addresses the causes of crime. It is through this lens that our best gains can be made to help our high and complex needs citizens and make our community safer.”³

ATODA strongly supports this position.

1.1.1 ACT Drug Diversion Programs evaluation

ATODA notes that an evaluation of ACT Drug Diversion Programs was commissioned by ACT Health in 2012 and conducted by the Drug Policy Modelling Program, University of New South Wales.⁴ ATODA understand that the evaluation report has been completed, however it has not yet been publicly released. The findings of this evaluation may be of use to the Committee in its deliberations.

1.2 Alcohol and other drug treatment can reduce offending

Alcohol and other drug treatment can be effective at addressing AOD problems, reducing offending behaviour, and diverting offenders from the justice system. It has also been shown to be less expensive than incarceration for some populations, such as Aboriginal and Torres Strait Islander people.⁵

A 2006 meta-analysis of 28 evaluations of AOD treatment programs found that offending following treatment was significantly lower among people who had participated in treatment programs than among the comparison groups. Treatment programs included opioid maintenance therapy (e.g. methadone), therapeutic communities (e.g. residential rehabilitation), post-release supervision for offenders with AOD problems, and drug courts. We note that the results varied by type of program, type of evaluation methods used, and characteristics of service consumers.⁶

The ACT's alcohol, tobacco and other drug sector provides a range of programs to support offenders in custody and in the community.⁷ Of the programs listed in this section only an adult alcohol and drug court is not available in the ACT.

ATODA notes that after about 10 years, the Ngunnawal Bush Healing Farm (an AOD residential rehabilitation service) remains unbuilt. We understand that there have been development challenges; however, this continues to leaves a significant and ongoing gap in culturally secure AOD treatment, support and sentencing options in the ACT.

1.3 The ACT adult prison at capacity: the need for innovative justice responses

The ACT is in a situation where the Territory's only adult prison, the Alexander Maconochie Centre (AMC), is over-capacity with approximately 317 detainees,⁸ and decisions need to be made to either reduce the growth of the prison population or to invest in the building of new facilities to cater for an increase in the prison population. ATODA understands that there are both short term and longer term plans to expand the bed numbers at the AMC. Some of this

expansion could potentially be prevented and save the ACT millions of dollars. An indication of the costs for this can be derived through the \$3million allocated in the 2013-14 ACT Budget for related planning work.⁹

Consequently, the ACT must engage with and benefit from initiatives that have been proven to reduce prison populations, and people involved in the justice system more broadly, and to promote more novel, evidence-based approaches to justice. Such initiatives may provide an opportunity to reduce future growth in prison expenditure by removing the need to build new facilities and reduce people's contact with the justice system.

ATODA recognises that there may be challenges that exist for a small jurisdiction like the ACT to employ novel justice strategies. Some contextual considerations include:

- A small population makes the transplanting of initiatives from the USA or the United Kingdom inappropriate, and novel and targeted measures will need to be employed.
- The ACT already has high rates of probation and parole meaning that reducing the prison population may require complex initiatives.
- The AMC already provides therapeutic and rehabilitative programs.
- An adult prison throughcare program has begun.
- The ACT has diversion programs, especially for alcohol and other drugs.
- A high proportion of the ACT's prisoners are incarcerated for violent offences.
- Much of the costs associated with incarceration relate to capital and fixed costs of the current (and / or building a new facility) and therefore substantial cost savings within the justice portfolio may be more difficult to obtain.
- Evaluating the effectiveness of novel criminal justice strategies in the ACT may prove more difficult than in other jurisdictions because of a small population, relatively low rates of crime, and poorer data collection and reporting systems than some jurisdictions. Consequently, many quantitative evaluation methods may not be appropriate and novel evaluation methodologies may need to be employed.

While the ACT has a range of programs in place (as listed above and throughout this submission) a question remains regarding how they might be strengthened. For example strengthening community based corrections and drug diversion programs.

In the development of any new initiative, the ATOD, community, justice and Aboriginal and Torres Strait Islander sectors would need to be engaged to identify appropriate and targeted measures that will be most effective within the existing context.

1.3.1 Average sentences in the adult prison

In the AMC, the average length of time spent on remand is 5.2 months and the average length of time spent as sentenced is 5.7 months.¹⁰ This short amount of time can make it difficult for detainees to access rehabilitation services within the prison setting. For example a male detainee can only access Solaris, the prison-based AOD therapeutic community, if their sentence is for at least six months.

2. Population groups

2.1 People with alcohol and other drug problems

Alcohol and other drug use is a major contributor to offending and re-offending, including amongst prisoners. Australian research indicates that a history of drug use is associated with an increased likelihood of being re-incarcerated within months of leaving prison.¹¹ In the ACT, approximately two-thirds (67%) of prisoners in the Alexander Maconochie Centre have a history of injecting drug use and 79% reported being under the influence of drugs at the time of committing their most recent offence.¹²

A recent report by the National Drug and Alcohol Research Centre, undertaken for the Australian National Council on Drugs (ANCD), has emphasised Australia's corrections system's overemphasis on supply reduction measures at the expense of demand and harm reduction measures.¹³ This means that many prisoners may not be receiving evidence-based treatments they need for their alcohol and other drug problems.

As a member of the Alexander Maconochie Centre Health Services and Policy Advisory Group, chaired by Dr Peggy Brown, Director-General, ACT Health, ATODA is aware of the significant developments that have taken place within the AMC regarding AOD, including the development of:

- The *Strategic Framework for the Management of Blood-Borne Viruses in the Alexander Maconochie Centre (AMC) 2013 – 2017*;
- The *Drug Policies and Services Framework for the AMC 2013 – 2015*; and
- Implementing the findings from the Burnet Report.

It may be useful in the Committee's deliberations to contact ACT Health regarding the status of these developments.

2.2 Children and young people

Research is demonstrating the severe adverse effects of juvenile detention on children and young people. This comes at the purposes of sentencing (see section 3.1), too frequently retribution and incapacitation take precedence over rehabilitation and the reduction of recidivism. This is destructive to the young person, their family and the community. Further it is not cost-effective. See, for example:

McGrath, A & Weatherburn, D 2012, 'The effect of custodial penalties on juvenile reoffending', *Australian & New Zealand Journal of Criminology*, vol. 45, no. 1, pp. 26-44.

The results of this study indicate that, over the time period examined, the imposition of a custodial sentence had no effect on the risk of reoffending. We note that AOD use is a factor in much juvenile offending and therefore should be taken into account in sentencing patterns with young people.

The number of young people in detention continues to grow¹⁴ although there is some indication that this trend is reversing.¹⁵ Additionally, the ACT's youth Aboriginal and Torres Strait Islander incarceration rate is the third highest in Australia.¹⁶

ATODA made a submission to the Review of the ACT Criminal Justice Statistical Profile that advocated improvements to the reporting of justice data, including youth justice.¹⁷

ATODA suggests establishing a health survey that can report on the health and wellbeing of children involved in the youth justice system. The survey could be modelled on the NSW Young People in Custody Health Survey.¹⁸ As health is a substantial contributor to offending, and should be the focus of rehabilitation and diversion efforts, it is vital to have an understanding of the needs of these young people so that appropriate sentences and health interventions can be applied.

2.3 Aboriginal and Torres Strait Islander people

Nationally, Aboriginal and Torres Strait Islander people make up 26% of the adult prison population¹⁹ and only 2.5% of the general population.²⁰ Aboriginal and Torres Strait Islander adults are therefore nearly 15 times more likely to be imprisoned than the rest of the population.²¹ In addition, across Australia, proportionally more Aboriginal and Torres Strait Islander sentenced prisoners have prior imprisonment experience (at 76%) than other detainees (at 48%).²² The Aboriginal and Torres Strait Islander incarceration rate at the Alexander Maconochie Centre is unfortunately consistent with this.

The National Indigenous Drug and Alcohol Committee (NIDAC), is the leading voice in Indigenous alcohol and other drug policy, whose role is to assist the ANCD in providing advice to the Australian Government on a range of issues that impact on Aboriginal and Torres Strait Islander communities and ways of addressing the serious drug and alcohol issues that exist for Aboriginal and Torres Strait Islander people and communities.

The factors, summarised by NIDAC, which are major contributors to Aboriginal and Torres Strait Islander over-representation in prisons that may be relevant in the ACT are:

- Overcrowded housing
- Family members from the Stolen Generations
- Alcohol and other drug misuse.²³

ATODA understands self-harm is a significant problem for Aboriginal and Torres Strait Islander people detained in the AMC and that culturally secure comorbid and mental health services should be strengthened (for further details see sections 2.4 & 3.2).

2.4 Affected community engagement and participation

Given the complexity of the social issues sometimes underlying the over representation of Aboriginal and Torres Strait Islander people in the justice system, any response needs to be done in conjunction with meaningful consultation with the individuals and communities involved, including front-line Aboriginal and Torres Strait Islander services, families, individuals and Elders. Any programs which have an focus Aboriginal and Torres Strait Islander focus need to include community leaders in their development, implementation, governance and evaluation, with adequate resources including access to the evidence-base, as they are the experts in what their communities need.

ATODA understands that several of the recommendations remain outstanding from the *Working Together* report, which was developed by AOD Aboriginal and Torres Strait Islander

workers and ACT Corrective Services. ATODA recommends that the Committee considers identifying the status of these recommendations from ACT Corrective Services:

Working Group (2010). *Working Together. A Report Prepared by the ACT Corrective Services Aboriginal and Torres Strait Islander Working Group to Identify Gaps in Service Delivery*, December 2010.²⁴

Additionally, other affected communities, such as people who have alcohol and drug problems and prison histories should be involved in policy and program development, implementation and evaluation.

ATODA notes that the Alexander Maconochie Centre Health Services and Policy Advisory Group rightly includes consumer representatives as does the three governance structures within the ATOD sector – the ACT Alcohol, Tobacco and Other Drug Strategy Evaluation Group; the ACT Specialist ATOD Executive Group; and the ACT ATOD Workers Group. However we also note that engagement and participation needs to be significantly strengthened across government and non-government services.

3. Purpose, application and approaches to sentencing

3.1 The purpose of sentencing

Section 7(1) of the *Crimes (Sentencing) Act 2005* of the Act provides the purpose of sentencing in the ACT:

- (a) to ensure that the offender is adequately punished for the offence in a way that is just and appropriate;
- (b) to prevent crime by deterring the offender and other people from committing the same or similar offences;
- (c) to protect the community from the offender;
- (d) to promote the rehabilitation of the offender;
- (e) to make the offender accountable for his or her actions;
- (f) to denounce the conduct of the offender;
- (g) to recognise the harm done to the victim of the crime and the community²⁵

In our view, all of those are valid. However, the Act goes on to state that all purposes are provided equal weight at section 7(2):

To remove any doubt, nothing about the order in which the purposes appear in subsection (1) implies that any purpose must be given greater weight than any other purpose.²⁶

Based on contemporary societal values and research evidence about cost effectiveness in achieving good outcomes for the community and offenders, ATODA recommends that the provisions be changed to give the courts power to give priority to rehabilitation with the aim of reducing recidivism, much along the lines that section 133C does for juvenile offenders.

That section states:

Despite section 7(2), in sentencing a young offender, a court must consider the purpose of promoting the rehabilitation of the young offender and may give more weight to that purpose than it gives to any of the other purposes stated in section (1).²⁷

3.2 Aboriginal and Torres Strait Islander focused reform to the *Crimes (Sentencing) Act 2005*

The over-representation of Aboriginal and Torres Strait Islander people in the justice system generally, and in prison and juvenile detention in particular, warrants significant attention in the Inquiry. Although the ACT has made worthwhile advances in some respects relating to Aboriginal and Torres Strait Islander offenders, far more needs to be done.

The *Crimes (Sentencing) Act 2005* is silent in this regard. ATODA considers that this is a significant omission; we suggest that separate provisions relating to Indigenous offenders be included, paralleling those relating specifically to juvenile offenders. In this era of moving increasingly towards practical reconciliation, rather than just talking about it, it would seem apposite for sentencing legislation to provide guidance, if not directions, to judicial officers when they are dealing with Indigenous offenders.

Such an approach would give due weight not just to the individual life circumstances of the offender but also to key features of Australian history and culture that helped to explain, and underpin, much Indigenous offending. Part of such a reconsideration would be a review of the appropriateness or otherwise of the current practice of placing much emphasis on Indigenous peoples prior offences.

This means that they are not sentenced on the offence for which they are appearing before the court but, instead, the courts are taking into account prior offences without sufficient understanding that many of these relate to societal problems rather than to deficiencies in the individual offender. We also have the situation, that ATODA feels is totally unjust, of many Indigenous offenders receiving heavy penalties simply because they have had a significant number of minor offences in the past. We urge that this approach be reviewed. See for example the recent High Court decision in *Bugmy v The Queen*.²⁸

Evidence exists that it is the cumulative amount of time imprisoned that has the deleterious effect upon people. Offenders given longer sentences are more likely to return to crime.²⁹ And for many people, short prison sentences (see section 2.1) have become a regular life activity, and the constant coming and going between community and prison interrupts the ability to deal with drug and alcohol issues, strengthen family relationships, and participate in community, education, training and employment.³⁰

3.3 The manner in which sentences should be applied

ATODA recommends that the underpinning theoretical basis for sentencing should be explicit in terms of *how* sentences are most likely to achieve the purposes of sentencing set out in the Act. A core component of such an approach is to apply a theory within penology that demonstrates that, to be most effective, sentences should be swift, sure but not severe. This applies explicitly in the context of drink-driving and drug-driving offences. However could also apply to all summary offences or minor offences and breaches of orders.

In July 2013, Professor Beau Kilmer from RAND gave a public lecture at the ACT Legislative Assembly, sponsored by the Minister for Corrections, on how these principles have been applied in real-world scenarios in the USA and their effectiveness. The lecture, and subsequent policy roundtable, had a particular focus on drink-driving.³¹

3.4 Therapeutic jurisprudence

Therapeutic jurisprudence is a philosophy of law which takes into account offenders' well-being and social needs rather than only applying the rules of law and legal procedure. At the core of therapeutic jurisprudence is an approach of the court as an interdisciplinary, problem-solving, community institution.

Judge Peggy Hora (Retired) is credited with being instrumental in building the problem-solving courts movement and contributing to the creation of this new type of justice. In November 2012, she visited the ACT, upon the invitation of the Justice and Community Safety Directorate, following her time as Adelaide's 17th 'Thinker in Residence'. Within that role she explored the alternative and innovative options to the 'traditional courtroom' as a means to improve access to justice, reduce criminal offending, resolve civil disputes more efficiently and effectively, improve the safety and wellbeing of South Australians and increase public trust and confidence in the judiciary.

ATODA recommends that the Inquiry focuses specifically on therapeutic jurisprudence as providing one of the underpinnings for all decisions about sentencing.

Already in the ACT there are structures to support this approach through the use of drug diversion programs such as Court Alcohol and Drug Service³² and treatment orders.

The ACT does not have an adult alcohol and drug court.

3.5 Justice reinvestment

One method through which the justice system can potentially result in improved outcomes for offenders and the ACT community is through the introduction of justice reinvestment strategies.

Justice reinvestment is a data-driven approach to reduce spending on corrections and reinvest identified savings in evidence-based strategies designed to increase public safety, promote accountability and improve offender and community outcomes.³³

Justice reinvestment is increasingly being proposed as a model to assist the ACT to slow the growth in the ACT's prison population. This has coincided with movement nationally to investigate the potential usefulness to Australia of introducing justice reinvestment strategies to help reduce growth in the prison population, especially amongst Aboriginal and Torres Strait Islander people.

ATODA recognises the potential benefits justice reinvestment can bring to the ACT's justice system, the community, families and individuals.

Substantial work has already been undertaken in the ACT to progress justice reinvestment, including:

- *Exploring the feasibility of Justice Reinvestment in the ACT* workshop and associated report (November 2011)³⁴
- *Justice Reinvestment Forum - Is Justice Reinvestment needed in Australia?* and associated report (August 2012)³⁵
- Inclusion of justice reinvestment in a number of youth justice policy documents, including:
 - 2011 Discussion Paper: *Toward a diversionary framework in the ACT*³⁶
 - *Blueprint for Youth Justice in the ACT 2012 – 2022*³⁷

In March 2013 ATODA, the ACT Council of Social Service and the Mental Health Community Coalition made a Joint Submission on the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia.³⁸

Increasing sentencing options and changing and improving sentencing practices will necessarily form part of any justice reinvestment initiatives in the ACT and ATODA recommends that the Committee consider this through the Inquiry process.

4. Sentencing options and prevention

4.1 Alcohol and drug diversion

Drug diversion programs are 'alternatives to imprisonment as effective as demand reduction (e.g. drug treatment) strategies that promote public health and public safety'.³⁹ Further, they are the most widely used drug related offending intervention in Australia.⁴⁰

The National Drug and Alcohol Research Centre, in a recent Federal Parliament submission, summarised the following about diversion programs in Australia:⁴¹

Reduced offending, time to first re-offence and likelihood of imprisonment: For example a national review of 12 police diversion programs in Australia found that the majority of offenders did not reoffend following diversion.⁴² Moreover, compared to a match sample NSW drug court participants have been found to be 17 per cent less likely to be reconvicted for any offence, 30 per cent less likely to be reconvicted for a violent offence and 38 per cent less likely to be reconvicted for a drug offence at any point during the follow-up period.⁴³

Reduced drug use, frequency of drug use and/or harmful use: For example the proportion of offenders who self reported as regular cannabis users decreased from 95% to 74% pre and post undertaking the Queensland Police Drug Diversion Program⁴⁴ and participants in the Western Australian Pre-sentence Opportunity Program also reported significant reductions in self-reported drug use and self reported frequency of desire to use.⁴⁵

Increased cost-effectiveness of responses: For example studies of the NSW Magistrates Early Referral Into Treatment court diversion program revealed that drug diversion offered savings equivalent to \$2.98 for every \$1 invested.⁴⁶ This was attributed to reductions in the costs of police investigation, hospitalisation, criminal activity and prison and probation supervision costs. Moreover, an evaluation of the cost-effectiveness of the Victorian drug court showed that for every dollar invested, the community benefited to the value of \$5.81.⁴⁷

The ACT can be proud of its leadership in its alcohol and drug diversion programs. There are five diversion programs in the ACT the Court Alcohol and Drug Assessment Service (CADAS), Simple Cannabis Offence Notice (SCON), Police Early Intervention and Diversion (PED), the Early Intervention Program (EIP, formerly the Early Intervention Pilot Program) and the Youth Drug and Alcohol Court (YDAC). These programs were evaluated in 2012 (see section 1.1).

ATODA understands that the ACT's drug diversion programs have dual objectives, depending on the program, to either:

- Divert offenders into AOD assessment, education and treatment (e.g. CADAS)
- Divert offenders away from the justice system (e.g. SCON)

ATODA participated in the 2012 evaluation roundtables for the ACT Drug Diversion Programs. A key issue raised was the need to develop a comprehensive AOD Diversion Strategy and ATODA suggests that the Committee consider this within its recommendations.

ATODA understands that CADAS will again have a permanent office in the courts so as to provide more immediate reports and support to workers in the court and offenders. This is an important development and relates to strengthening sentencing practices. However CADAS needs to be included in discussions and planning the new Court precinct to ensure appropriate workplace is developed for both clients and staff. This will also support Drug Diversion Services being recognised as important entities within the judicial system.

4.2 Community Service Orders

ATODA wishes to draw the Committee's attention to research that demonstrates community service orders are more effective than bonds when it comes to reducing recidivism. We suggest that this be taken into account in reviewing sentencing in the ACT. See, for example:

Snowball, L & Bartels, L (2013). *Community service orders and bonds: a comparison of reoffending*, Crime and Justice Bulletin no. 171.

That study demonstrated that adults given a community service order are less likely to reoffend than offenders given a bond, after controlling for other relevant and available characteristics.

Introducing novel and evidence-based approaches may require reform to the way community supervision functions in the ACT. Specifically, ATODA believes it could be helpful to streamline the process and merge a variety of different community orders into a single order where courts have discretion to apply certain requirements. The rationale for this includes:

- It could permit the introduction of specific requirements needed to implement novel approaches as outlined throughout this submission

- It could increase court discretion, something that can help to tailor orders to the specific characteristics and risks of each offender
- Can potentially reduce court costs and resources expended in managing offenders in the community

Guidance can come from Victoria where a number of community corrections orders have been merged into a single order where courts have discretion and capacity to apply a variety of conditions.

"The new Community Correction Order (CCO) is a flexible order that can have different conditions applied based on the circumstances of the offence, the offender's needs and situation, and the direction of the court. A CCO must have at least one condition, based on the risk and needs of the offender and the severity of the offence, including:

- supervision
- unpaid community work
- treatment and rehabilitation
- curfews
- bans on entering specified areas or places
- bans on entering many licensed premises and bans on drinking alcohol in other licensed premises
- bans on contacting or associating with specific people or groups
- residential restrictions or exclusions relating to the offender's accommodation."⁴⁸

No evaluation has been undertaken into the implementation of effectiveness of CCOs in Victoria, and although a number of issues have been identified,⁴⁹ ATODA believes that this can provide a platform for strengthening community based corrections reforms in the ACT.

Victoria is also introducing the use of GPS bracelets to keep track of offenders on community orders, which could be a requirement and used in the ACT. While electronic monitoring may not prevent offending among high risk offenders,⁵⁰ it is believed to act as a deterrent for other lower risk offenders⁵¹ and provides other benefits at multiple stages of involvement with the justice system.⁵² A review of electronic monitoring in the UK by the National Audit Office found:

Electronic monitoring represents value for money, providing a cost-effective alternative to custody for offenders who do not pose a risk to the public.⁵³

4.3 Periodic detention

Periodic detention involves a detainee being placed in custody for two consecutive days per week, which is served in the Symonston Correctional Centre on the weekends. ATODA understands that there were approximately 52 people sentenced to periodic detention in 2012-2013 with a small minority of these for drink driving offences.⁵⁴

ATODA understands that there is potential to run various programs are run within the centre, including alcohol and other drug programs.

It would be useful if there was a fuller picture of the periodic detention program in the ACT, including the types of offences, numbers of people detained annually, length of sentence and sentencing breaches.

ATODA refers the Committee to section of the ACTCOSS submission to this Inquiry related to further information about ACT period detention.

4.4 Interventions for people with AOD problems involved in low-level offending

4.4.1 Diminishing deterrence effect of drink driving countermeasures

Drink driving countermeasures have been one of the major public health success stories of the twentieth century, but it appears their deterrence effect is diminishing. With over 100 people caught drink driving on Canberra roads most months,⁵⁵ we need to look critically at the ACT's approach.

Unfortunately Australian studies indicate that drink driving is common. Drink driving is most common among men, who are middle aged, and who are employed.⁵⁶ However, there are some indications of increasing prevalence among young women.⁵⁷ More than half of respondents to one national survey indicated that they drink drive and even more reported that they might or are likely to do so in the future.⁵⁸

National Drug Law Enforcement Research Fund research indicates that the deterrent effect of many drink driving initiatives may be weakening.⁵⁹ Acting Superintendent of Traffic Operations Rod Anderson has recently stated "It's alarming that despite our best efforts, people continue to choose to drink and drive. Our message is simply not getting across, there are some people out there still not getting it."⁶⁰ As a result, we need to look at strengthening our current practices and adding to them, to maintain the high level of effectiveness they have shown to date.

Addressing impaired driving is a road safety priority for the ACT Government, law enforcement, public health and alcohol and drug treatment services. Current responses include driver licence disqualification, fines, detention and imprisonment, and a soon to begin alcohol ignition interlock program which includes a therapeutic component to seek to address any underlying alcohol problems of the offender.

In addition, the ACT Government has made significant drink driving reforms including the introduction of mandatory alcohol awareness courses for all drink drivers, zero alcohol concentration limits for a wider range of licence categories, immediate licence suspension for drivers exceeding the prescribed concentration and narrowing the availability of restricted licences to first time low range drink driving offenders.

Despite these important initiatives the problem remains and the data is particularly concerning for some drink drivers. In 2010-2011, 33% of drink drivers in the ACT had been previously caught for drink driving, and more than 890 drivers were caught with a mid to high range blood alcohol concentration of 0.08 or more. Importantly, 53% of those caught with a blood alcohol concentration of 0.15 (3 times the prescribed legal limit) had been caught drink driving previously and 10% were unlicensed.⁶¹ This indicates that the current approaches are not preventing drink driving among a portion of the ACT population.

There are tried and tested overseas initiatives that could complement the ACT's current approach, particularly for those caught breaking the law.

ATODA suggests that the Committee consider a specific recommendation related to drink driving including expanding evidence-based sentencing options and related reforms (see also section 3.3).

4.4.2 Comprehensive infringement scheme reform

ATODA believes that it is important to intervene early in the offending careers of people with AOD problems. While for many, offending precedes serious AOD problems, these problems are known to be a cause and exacerbate offending behaviour.

Following advocacy and work from several stakeholders, including ATODA, we note the recent reforms to the ACT infringement system, limited to traffic infringements, however includes the long needed establishment of an ACT Community and Work Order Program.

ATODA believes this reform should be expanded to encompass all infringements, including the following infringements made for ATOD-related behaviours:

- Drink driving offences⁶²
- Drug driving offences⁶³
- Smoking in cars with children⁶⁴
- Smoking in a no smoking areas⁶⁵
- Individual offences under the Liquor Act⁶⁶
- Simple Cannabis Offence Notice Scheme (SCONs)⁶⁷

People who receive such infringements or fines are likely to have ATOD problems. Many are also likely to be disadvantaged. Providing means whereby these infringements and fines can be paid without placing relatively excessive financial difficulties on those individuals while promoting access to treatment may help to prevent the deterioration in financial, social, and health, which are known to contribute to crime and offending behaviour. ATODA believes that this is a potential point of contact whereby assessment and treatment can be provided to populations who may otherwise not receive attention until after serious offending occurs.¹

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