



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet

Inquiry into the Administration of Bail

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ACT
Government

ACT Government Submission

Standing Committee on Justice and
Community Safety Inquiry into the
Administration of Bail in the ACT

1. Introduction

The ACT Government welcomes the opportunity to provide a submission to the Standing Committee on Justice and Community Safety's (the Committee) 'Inquiry into the Administration of Bail in the ACT' (the Inquiry).

In November 2023, the ACT Government made a referral to the ACT Law Reform and Sentencing Advisory Council (the Council) to review the *Bail Act 1992* (the Bail Act). The Terms of Reference¹ for the review request that the Council consider the Bail Act with particular reference to a range of issues including presumptions, compatibility with the *Human Rights Act 2004*, and mechanisms for responding to breaches of bail. The Council is authorised to consider and make recommendations for any procedural, administrative or legislative changes that could improve the Bail Act and the way in which it operates.

This submission does not propose to pre-empt the Council's review and so the scope is limited to providing the Committee with the context in which the ACT's bail laws operate, relevant data and information on the programs and services available to support bail for both adults and young people.

2. Bail

The bail decision

The grant of bail allows a person who is alleged to have committed a criminal offence to remain in the community between arrest and a verdict or sentencing.

In the ACT, the Bail Act provides the legislative framework for courts and authorised police officers to make bail decisions. It is the role of these decision-makers to apply the law to the case before them, using the information provided, including by the prosecution and defence, in an exercise that requires the balancing of the risks of releasing the alleged offender into the community with the rights of the accused. It is the role of the law makers to enact legislation which provides the appropriate framework for this decision-making process.

It is important to acknowledge that there are considerable challenges in making bail laws and bail decisions. The balancing exercises involved are complex and nuanced and decision-makers are being asked to assess the likelihood of future actions by the accused, within the parameters of the legislation. Those decisions are, of course, entirely a matter for the authorised police officers and judicial officers making the decision and this submission makes no comment on the application of the law to the circumstances of each case.

¹ <https://www.lrsac.act.gov.au/current-projects/bail#:~:text=On%2029%20November%202023%2C%20the,the%20Council's%20law%20reform%20functions.>

The Bail Act provides the authority to a court (meaning the Magistrates or Supreme Court) to grant bail or enlarge, vary or revoke bail². In the Magistrates Court, only magistrates exercise this jurisdiction³. In the Supreme Court, legal registrars are permitted to exercise a limited jurisdiction but only in relation to unopposed applications and continuation of bail and undertakings⁴. Different arrangements exist in other jurisdictions, such as Victoria which uses bail justices (volunteers who are not legally qualified) for out of hours hearings.

The task of the Bail Act is to provide bail decision-makers with the procedures relating to bail and directions as to how to approach the consideration of bail. The Bail Act has been amended on numerous occasions since its original introduction to improve its operation and it is important to understand that amendments may either increase or reduce access to bail. This is discussed further below.

Context – competing aims

Bail laws need to meet a number of competing aims and expectations.

Human rights

Bail operates in the context of international and ACT human rights laws.

The fundamental principle that everyone who is accused of a criminal offence has the right to be presumed innocent until proven guilty is contained in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR). This, together with the right to security of the person and freedom from arbitrary detention in Article 9 of the ICCPR underpins the law relating to bail. In particular, Article 9(3) states that detention should not be the general rule, but rather may be subject to guarantees. In relation to children and young people under 18 years of age, the *UN Convention on the rights of the Child* (CRC) requires the application of the principle of the best interests of the child. In addition, under Article 14(4) of the ICCPR, criminal proceedings involving children must take account of their ages and the desirability of promoting their rehabilitation, and arrest and detention should only be used as a measure of last resort.

The ACT's *Human Rights Act 2004* (the HRA) enshrines the rights in the ICCPR into ACT law and requires that a Territory law must be interpreted in a way that is compatible with human rights, so far as it is possible to do so consistently with its purpose (section 30 of the HRA).

As well as the rights of accused people, victims and other people in the community also have rights which need to be considered, including the right to recognition and equality before the law (section 8 of the HRA). Victims' rights are further supported through the rights contained in the *Victims of Crime Act 1994*. This includes the requirement for the police or prosecution to ask whether the victim has any concerns about the need for protection or harassment by the accused person and tell the decision maker about them.

² Section 19 of the *Bail Act 1992*.

³ While the *Court Procedure Rules 6251* provides this power to legal registrars, it is not exercised.

⁴ Pursuant to section 33 of the *Bail Act 1992*.

Community expectations

People in the ACT want to feel safe, and a key role of government is to ensure community safety in as far as it is possible. The criminal justice system, including who is released into the community on bail and who is kept in custody, support the aim of achieving and maintaining a safe community. It must be acknowledged, however, that bail laws are not able to provide a completely fail-safe mechanism. It is a fact that people can, and do, breach their bail conditions, or commit new offences while on bail. Table 1 below provides the number of apprehensions by ACT Policing with a breach of bail charge over the last 5 years.

Table 1: Apprehensions by ACT Policing with a breach of bail charge⁵

Age	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24*
Under 18 years	144	167	124	106	157	171
Over 18 years	1069	1181	1067	819	929	815
Total	1213	1348	1191	925	1086	986

*1 July 2023 - 30 April 2024

While this data provides insights into the number of times people on bail are apprehended by ACT Policing, consideration should be given to the nature and seriousness of the original offence for which bail was granted and the information that was available to the court when the initial bail decision was made, however this data is not readily available.

Victims of crime and witnesses are members of the community who have a direct involvement in criminal proceedings against the accused. These people require specific consideration in terms of protecting their safety and preventing any actions by an accused to interfere with the evidence that they may give.

Access to bail – the legislative balance

The Bail Act is designed to balance the primary and sometimes competing principles that an accused is innocent until proven guilty with the need to keep the community safe, including by ensuring evidence and witnesses are protected. To do this, it requires a range of factors to be assessed, including presumptions against bail for certain offences, any conditions which may reduce the risk of an accused's failure to attend court, interference with witnesses and evidence or reoffending, the interests of the accused person and conditions which may increase the safety of complainants and the community. The decision maker also has the discretion to consider any relevant matter in deciding bail, including the type and seriousness of the offence, the accused's personal circumstances and compliance with bail and other court orders previously. When making a decision about young people, the decision maker must also consider the youth justice principles in the *Children and Young People Act 2008*.

The ACT Magistrates Court hears a high volume of bail applications. Between March 2023 and February 2024, 5,026 bail applications were heard. 2,008 (just under 40%) applications were granted, while the remainder were refused. Multiple applications for bail may be made by the same defendant.

⁵ Source: ACT Policing, PROMIS as at 30 April 2024

The majority of people produced to the court by police (whether on fresh charges or breach of bail) are bailed (approximately 75%). Those defendants already remanded in custody are less likely to be granted bail (approximately 11%).

Getting the balance in the legislative framework right is challenging and jurisdictions in Australia have often responded to single serious events or a series of events by amending bail laws, with the intention of improving community safety, which result in reduced access to bail for accused people.

In *'Changing the Rules on Bail: An Analysis of Recent Legislative Reforms in Three Australian Jurisdictions'*⁶, the authors examine the impact of changes to bail laws in NSW, Victoria and Queensland. They conclude that bail reform in Australia is dominated by an approach that prioritises harm-risk mitigation over fundamental rights, and results in decreased access to bail. They point to the tendency of jurisdictions to make significant changes to bail laws in response to high-profile cases or to target specific groups, both of which are at odds with considered, consultative and evidence-based approaches.

The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment undertook a visit to Australia in October 2023. The report published after that visit noted the extraordinary number of persons deprived of their liberty on remand in Australia, constituting up to 70 per cent of the prison population in some locations visited. The Subcommittee drew a link between the elevated numbers of persons detained on remand and the reversal of the presumption of bail for certain offences and observed that the cost and conditions of bail may disproportionately affect Aboriginal and Torres Strait Islander peoples, as well as other marginalised and vulnerable groups.

In their report, the Subcommittee recalled that detention in custody of persons awaiting trial should be the exception rather than the rule, in conformity with the presumption of innocence and the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). The Subcommittee recommended that the State party [Australia] take measures, including legislative measures, to ensure that recourse to pretrial detention is always a measure of last resort⁷.

Impact on custody rates

It is notable that all Australian jurisdictions have experienced an increase in detainees who are remanded in custody. Although there is no specific analysis of the drivers of this trend for the ACT, the Productivity Commission's *'Australia's prison dilemma – research paper'*, released in October 2021, comments that "an increase in the number of prisoners on remand due to changing bail laws and length of court cases could be an important driver of rising imprisonment rates"⁸.

⁶ Lachlan Auld and Julia Quilter, *UNSW Law Journal*, Volume 43(2), page 642

⁷ United Nations CAT/OP/AUS/ROSP/1

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsmAk1%2F9LowRfd%2FyyuSe3GA%2B92auQmUwJbLIFKVYAa6TG7RArfZ6%2BHoLjZoU%2BSiI0HzGgbIHltSKOHKfdzUebbupoMbFb8yCuxQKM%2FPhnd3>

⁸ Page 4, <https://www.pc.gov.au/research/completed/prison-dilemma/prison-dilemma.pdf>

The most recent data from the Australian Bureau of Statistics (ABS) supports this, reporting that as of 30 June 2023, 46.4% of adult detainees in the ACT were unsentenced⁹. This means that they have been remanded in custody as opposed to having been bailed prior to any conviction and/or sentence. Table 2 provides the total number of prisoners and the percentage of unsentenced prisoners over the last 5 years. This shows that the ACT has a higher proportion of unsentenced prisoners, however the increases in the proportion of unsentenced prisoners is consistent with increases in the Australian rate.

Table 2: Adult unsentenced detainees¹⁰			
	Total prisoners in the ACT	Unsentenced prisoners in the ACT	Unsentenced prisoners in Australia
	no.	%	%
2019	474	40.1	33.0
2020	449	37.0	31.9
2021	379	34.0	35.3
2022	381	40.9	36.6
2023	375	46.4	38.0

Similarly, data from the Australian Institute of Health and Welfare (AIHW) shows that in 2022-23, the total number of young people in detention in the ACT on an average day was 18.7, with 13.8 of those on remand (73.8%)¹¹.

The data indicates the volume of people granted bail in the ACT has a significant impact on the number of people detained in custody in the ACT.

Table 3 below outlines the demographics of the unsentenced adult detainee population in the ACT.

Table 3: Demographics of unsentenced prisoners in the ACT at 30 June 2023¹²					
	Total Unsentenced	Aboriginal and Torres Strait Islander	Non-Indigenous	Total Men	Total Women
Number	174	49	113	157	16
Proportion	100%	28%	65%	90%	9%

⁹ ABS Prisoners in Australia 2023, Table 30 <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2023>

¹⁰ ABS Prisoners in Australia 2023, Table 15 <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2023>

¹¹ Australian Institute of Health and Welfare, Youth Justice in Australia 2022-23. Legal status, Table S108.

¹² ABS, Prisoners in Australia, 2023, Table 30 <https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/2023#data-downloads>

Outcomes for Aboriginal and Torres Strait Islander people

The ACT Government is a signatory to the *National Agreement on Closing the Gap* (the CTG Agreement), which aims to overcome the inequality experienced by Aboriginal and Torres Strait Islander people. The CTG Agreement includes socio-economic targets, including to reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 percent by 2031 and to reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent by 2031. Under the ACT's Aboriginal and Torres Strait Islander Agreement 2019-18, the Government has committed to a more ambitious target of parity for adults.

The Productivity Commission's data release on 15 June 2023 indicates that the national adult target is not on track to be met and that imprisonment rates for First Nations adults are worsening. The target for young people is on track but more needs to be done to ensure the target is achieved¹³.

The issue of bail impacts incarceration rates for Aboriginal and Torres Strait Islander people, noting that changes to bail laws can disproportionately affect vulnerable groups including Aboriginal and Torres Strait Islander people because they are overrepresented in the justice system. The Victorian 2021 Parliamentary Inquiry found that reforms to Victoria's Bail Act in 2013 and 2017-18 disproportionately impacted vulnerable groups, including Aboriginal and Torres Strait Islander people¹⁴. This means that there is a particular need to consider the impact of any reforms to bail on this cohort.

The Australian Law Reform Commission's Report 133 *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (2018) (the ALRC report) also noted that stakeholders raised concerns about the effect that remand rates had on Aboriginal and Torres Strait Islander incarceration rates and that the upsurge in remand populations nationwide had been especially pronounced for the Aboriginal and Torres Strait Islander prisoner population. Recommendation 5.1 recommended that state and territory bail laws should be amended to consider any issues that arise due to a person's Aboriginality and recommendation 5.2 recommended that state and territory governments should work with relevant Aboriginal and Torres Strait Islander organisations to develop guidelines for bail authorities and develop culturally appropriate bail support programs and diversion options.

The Terms of Reference to the Law Reform and Sentencing Advisory Council for the review of the Bail Act state¹⁵ that the Council will review whether the Bail Act has appropriate mechanisms to consider the systemic, cultural and personal issues confronting First Nations people and should consider the First Independent Review into Overrepresentation of First Nations people in the ACT criminal justice system. In turn, the review will focus on the recommendations from the ALRC report¹⁶.

¹³ <https://www.pc.gov.au/closing-the-gap-data/dashboard>

¹⁴ <https://www.parliament.vic.gov.au/498aca/contentassets/6961bccea1ac41dd812811ab0312170d/lclsic-59-10-vic-criminal-justice-system.pdf>

¹⁵ <https://www.lrsac.act.gov.au/current-projects/bail>

¹⁶ <https://www.justice.act.gov.au/aboriginal-and-torres-strait-islander-justice-affairs/independent-review-to-reduce-first-nations-over-representation-in-act-justice-system#:~:text=Given%20that%20First%20Nations%20people,to%20reduce%20over%2Drepresentation%20rates.>

This approach demonstrates that the Government is ensuring there is an appropriate focus on the impact of bail laws on Aboriginal and Torres Strait Islander people.

3. Programs and Services

Justice Housing Program

The Justice Housing Program (JHP) commenced in May 2020 and provides a transitional accommodation option for adults who would otherwise be incarcerated due to a lack of suitable accommodation in the community. This includes detainees who are remanded in custody instead of receiving bail because they do not have a suitable address. The accommodation is intended to be a stepping-stone to longer-term permanent accommodation in public housing, community housing, the private rental market and/or with family and the contracted service provider works with residents to support this transition.

Access to the JHP occurs through prospective clients being referred to the JHP, and if they meet the eligibility criteria (including having no other suitable accommodation available to them), they undergo an assessment interview. In 2023, the JHP supported 89 participants of which 33 were on bail.

The Australian National University undertook an evaluation of the program in 2023 and found that it is filling an important housing gap for people exiting from prison, including those on bail. In addition, clients of the program were positive about the ongoing support provided by the program.

Reintegration services for adults

The Reintegration Unit offers both material and outreach support to people who have spent time at the Alexander Maconochie Centre (AMC) whether they are sentenced or remanded in custody (except for people who entered the AMC due to section 30 of the *Corrections Management Act 2007*)¹⁷.

The Reintegration Unit provides material support for up to 12 months post-release in the form of (but not limited to): a release pack of essentials including a \$50 grocery voucher; concession MyWay bus ticket booklets and/or foodbank vouchers as required; and a mobile phone with an initial 30 days credit. In addition, assistance with brokerage can be provided such as a set of work clothes/boots when they commence work, construction industry tickets and driving courses. Help with referrals to support agencies, accommodation and other services is also available.

¹⁷ Section 30 of the *Corrections Management Act 2007* – detention in police cells – provides for the transfer of people in police custody to the custody of the director-general after specified times.

Accommodation support for young people

The Community Services Directorate (CSD) has two houses which may accommodate young people exiting from custody or otherwise on youth justice supervised orders (including bail) and who require and would benefit from supported accommodation.

As with the adult program, this accommodation is not intended to be long term and is intended to provide a stepping stone for young people to transition back to family or to other longer-term accommodation.

In relation to bail, there is an option for Community Services Directorate to provide overnight accommodation for a young person who is in police custody at one of these houses, if natural support options are not able to be identified. This strategy is intended to reduce remands in custody to Bimberi Youth Justice Centre by police, that may be related to inability to locate family or others to support the young person.

Bail supervision

Both ACT Corrective Services (ACTCS) and the CSD have functions relating to supervising adults and young people respectively, but only where this is a condition of bail.

ACT Corrective Services

Bail supervision services help to support a person to remain in the community and reduce the need to for the person to be remanded in custody, provided the court is satisfied that conditions can address the risks relating to that accused. By remaining in the community, the accused person can maintain connections with protective factors such as positive family and community relationships and employment which can reduce the risk of re-offending and so support improved outcomes for both the individual and the broader community.

If that the accused person does not comply with their bail conditions, then ACTCS will notify the court through a breach report.

Management of the supervision condition is undertaken by ACTCS, including the method and frequency of bail supervision appointments which will be informed by a range of factors including, but not limited to:

- Previous demonstrated compliance with bail undertakings and/or other orders;
- The nature of the alleged offences;
- And specific bail conditions; and
- Any other factors that may affect the accused's intention to appear at their next court date.

Circumstances where face to face contact is required include:

- The person must undertake drug and or alcohol testing;
- Where there is a need to ensure a person remains present in the ACT;
- Where there is a condition for the person to present in person;

- Where phone reporting may not be appropriate for the accused's circumstances or conducive to their needs for example, the person has additional needs or communication limitations requiring an interpreter; and
- Where the Bail Officer has assessed face to face contact as being necessary to support compliance with the undertaking.

Bail Officers in ACTCS are responsible for managing people on bail, unless the accused is also subject to a community-based sentence which is being supervised by ACTCS. In that case, the accused's bail will be managed alongside the community -based sentence by a Community Corrections Officer (CCO). In that case, the nature and frequency of bail supervision will be informed by assessment and supervision contact levels relating to the sentencing order, noting any additional conditions of bail, the nature of the new alleged offences and any other circumstances that may impact of the existing frequency of supervision appointments.

As at 30 April 2024, ACTCS were supervising 182 accused people on bail with no other concurrent orders and a further 52 accused people on bail who were also subject to a community-based order or had entered a guilty plea.

A review of bail operations was undertaken by ACTCS following the concerns raised in the Coronial Inquest into the death of Ms Bronte Haskins. Resulting from this, ACTCS has made several changes to the management and supervision processes for accused persons and in September 2023 instated a third Bail Officer position.

The commencement of a third Bail Officer position aligned with the implementation of the updated *Bail Supervision and Support Policy (2023)* and associated *Bail Supervision Community Instruction*. The reviewed processes for management of bailees aim to provide a greater degree of case management and support for accused persons through the introduction of individualised, person-centric Bail Support Plans for those subject to a supervised Bail Order for a period of greater than four weeks. Other changes to improve bail supervision include:

- Establishment of a second Court Duty Officer position based at the ACT Magistrates Court. The second officer supports intake processes for persons released to bail or those newly sentenced. The intake process aims to identify and resolve issues with bailee contact details, preliminary assessment, immediate welfare needs and understanding of compliance requirements. The position commenced on 5 February 2024.
- Inclusion of Mental Health First Aid Training, Family and Domestic Violence Training, Situational Awareness Training, Drug Awareness and Testing, Managing People who Sexually Offend Training, Managing Non-Compliance and Case Management and Motivational Interviewing in mandatory training for Bail Officers.
- Expansion of current alternative reporting sites at Yedding Mura (Good Pathways) Aboriginal Corporation, Winnunga Nimmitjiah Aboriginal Health and Community Services and Canberra Alliance for Harm Minimisation and Advocacy for Aboriginal and Torres Strait Islander offenders to include bailees. The alternative reporting sites provide a more culturally supportive reporting environment and increase connectivity to other support services and programs.

From 16 January 2024, the eligibility criteria was expanded to include supervision reporting for Aboriginal and Torres Strait Islander persons subject to bail, which has commenced. Further changes are underway to expand this service to Aboriginal and Torres Strait Islander people subject to bail with requirements to report to ACT police stations multiple times per week, to allow them to report to an external reporting site on at least one occasion per week. One of the functions of the alternative reporting sites is to connect Aboriginal and Torres Strait Islanders to other services and programs which aim to motivate clients to change their behaviour. These services include, but are not limited to, the Empowerment Yarning Circles and the Yarrabi Bamirr programs both of which target people engaged with the criminal justice system, including those on bail. The Yarning Circles aim to break the cycle of offending, including through re-establishing links to community and building positive relationships, while Yarrabi Bamirr provides an intensive family-centric support model.

ACTCS is currently considering the feasibility of 48 hour turn-around bail assessment reports for those applying for bail or bail variations, as recommended by Coroner Stewart, following the coronial inquest into the death of Ms Haskins.

Bail Support Plans (BSP) are completed for those on a supervised bail order for longer than four weeks. The BSP guides the individual bail support, voluntarily entered by the accused person. The BSP assists to identify basic non-criminogenic needs and sets out the steps for engaging in specific support strategies. The BSP can provide an opportunity for early intervention and may assist the accused person to maintain compliance with bail conditions. With the accused person's consent, the allocated supervising officer will assist with referrals to non-criminogenic interventions and support services that address any immediate, basic social and welfare needs that may hinder an individual's compliance with their Bail Order.

Where a bail condition specifies that the accused person engages with a specific program or service, the allocated supervising officer must assist the accused person to make contact with the listed service. The allocated supervising officer must support and encourage participation and undertake collateral checks with the relevant agency to monitor compliance with the condition.

In terms of compliance with bail, ACTCS data is available in relation to adult accused people who have a condition of bail that they are supervised by ACTCS. Not all adults on bail are subject to such a condition, which is generally used where there is some concern about the accused's ability to comply with bail without additional support. ACTCS data shows that from July 2022 to March 2024, there was an average of 223.33 people on supervised bail. The average rate at which bail orders were breached through breach proceedings brought by ACTCS over the same period was 8.24% in relation to Aboriginal and Torres Strait Islander accused and 5.86% for non-Indigenous accused. It should be noted that this data does not reflect instances of where a person has been arrested for a new offence while on bail or fails to attend court.

Community Services Directorate

CSD provides supervision and support to young people who are on bail with a supervision condition, and in some circumstances to young adults, in relation to an alleged youth offence.

The level and type of support provided to a young person is guided by consideration of their unique characteristics and circumstances. For young people on bail supervision, this often includes weekly face to face contact by the case manager with the young person, and may include convening case conferences with the young person, their parents and other services such as education and mental health services, so that information can be shared about the young person's needs and strategies to support them. CSD develops a case plan with input from the young person, their parents and services that outlines how the young person will be supported.

When a young person is on bail, prior to a finding of guilt, CSD is careful to respect the young person's entitlement to a presumption of innocence. However, this does not prevent CSD from supporting the young person to access services that would improve the young person's wellbeing, and which may also be related to risk of reoffending. An example is a referral of the young person to an alcohol and other drug treatment provider. When required and appropriate, CSD may also support the young person to address other needs that may not be directly related to criminogenic risk.

AIHW data for 2022-23 shows that 20.9 unsentenced young people were under youth justice community-based supervision on an average day in 2022-23. Some of these young people may have been supervised on a community-based sentence at the same time, and/or been subject to a number of supervised bail orders¹⁸.

Health issues

Canberra Health Services (CHS) operates the Court Alcohol and Drug Advisory Service (CADAS) which assesses people for alcohol and other drug use concerns and recommends treatment plans. The CADAS case managers support defendants to access treatment during their court proceedings, including as part of the persons' bail. Where a person's mental health is a concern, the Mental Health Court Assessment and Liaison Service (MHCALS) are able to make clinical assessments, recommendations and referrals for ongoing care (either in hospital or the community). However, it is important to note that MHCALS do not have a role in relation to the bail decision.

For people exiting custody on bail, Custodial Mental Health will provide a handover to the community based mental health teams for ongoing care. In terms of the person's primary healthcare, the detainee will be discharged to their nominated General Practitioner and be provided with a short supply of medications on discharge.

Ngurrumbai Bail Support Program

The Ngurrumbai Bail Support program is a culturally appropriate operational model for adults which is funded by the ACT Government and delivered by the Aboriginal Legal Service (ALS) NSW/ACT. It is designed to reduce the number of First Nations people on remand. It includes court-based bail support, outreach bail support, Alexander Maconochie Centre support and after-hours bail support.

¹⁸ Australian Institute for Health and Welfare, Youth Justice in Australia 2022-23 Table S64A.

Ngurrumbai Bail Support staff work with ALS and Legal Aid lawyers to develop bail plans for their clients with a focus on supporting the successful completion of bail orders through support, treatment and monitoring and supervision. Participation in the program can either be voluntary or mandated as a condition of bail.

In 2022-23 the ALS reported that 271 bail plans were developed for clients through the Ngurrumbai Bail Support program and 229 of these were granted bail, which is an 85% success rate. This indicates that where a bail plan has been put in place through the Ngurrumbai Bail Support program, a client is highly likely to receive bail, thereby reducing the number of people and/or custody days for those on remand.

Electronic Monitoring

The Electronic Monitoring (EM) Feasibility Study will deliver a plan on how to implement EM in the ACT. This study will consider if and how EM could be used to monitor those on bail.

Phase 1 of the Electronic Monitoring Feasibility Study focuses on the touchpoints in the ACT's justice system where EM could be utilised, the legislative and human rights considerations, a review of EM in other jurisdictions and technical opportunities and limitations of EM.

Phases 2 and 3 of the study focus on consulting with both Government and non-Government stakeholders to gain further insight into the impacts and resourcing implications for the implementation of EM in the ACT. This includes specific considerations for vulnerable populations and recommendations on priority areas based on risk, impacts, benefits and limitations.

EM presents an opportunity to keep the community safer and reduce reoffending. However, the experiences of other jurisdictions tell us that EM by itself is not the whole answer and appropriate wraparound supports are key to having the most positive impact.

4. Conclusion

The Government recognises that bail is a part of the criminal justice system that has a significant impact on accused people, victims, witnesses and the wider community and looks forward to seeing and responding to the insights of the Committee.