Letter to Committee re Inquiry Corrective Services

Supplementary information and responses to questions on notice.

Use of electronic monitoring (EM) in community corrections

The issue of the use of EM in community corrections was raised with the Chair of the Sentence Administration Board (the Board) at the hearing on 17/2/2022 following a submission by Professor Bartels (Submission 022). EM is used in other states and territories to assist monitor offenders in the community. I note that Professor Bartels' submission is mainly focused on its possible use in ACT bail matters. The submission suggests that any change to introduce EM requires careful consideration of many issues, including how it can be used effectively and ethically, which the Board agrees with.

For the information of the committee, currently the Board imposes conditions that limit an offender's access to a certain locality (e.g. the victim's residence or the site of the offending), or it imposes a curfew, after considering the victims views, human rights and the practicality of the offender complying with such conditions in each case. Where any such conditions are imposed, in the Board's experience ACT CS and the police are quite effective at monitoring these given the ACT is very small in area.

In the Board's experience the highest priority gap to be filled in community corrections is support and treatment for persons with complex needs including those with deeply entrenched drug addiction, which requires expansion of therapeutic not monitoring services. The report by the Australian Law Reform Commission (ALRC) that the Chair referred the committee to, while focused on how to reduce Indigenous incarceration, has relevance to reducing recidivism of many offenders in the ACT. An important theme in its recommendations is building more effective, tailored and larger scale services for those with complex needs (not increased monitoring) - see especially recommendation 7.1 about "making community-based sentencing options accessible to offenders with complex needs, to reduce reoffending" ("Pathways to Justice", ALRC 2018 at https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/)

Time for Board to hear parole matters

The Board's 2021 Annual Report identified as set out below that the time for parole matters to be heard had become an issue in 2020-2021 due to reduced resources while demands had increased (see https://justice.act.gov.au/annual-report-2020-21/annexure-sentence-administration-board#:~:text=Contributing%20to%20higher-level%20outcomes%20such%20as%20reducing%20recidivism,how%20its%20work%20has%20contributed%20to%20higher-level%20outcomes):

"During the year, the Board instituted a new modest reporting system that monitors timeliness. As at 30 June 2021, parole breach matters were taking on average 25.8 days [down to 23.2 days on average at 31/12/2021] and ICO breaches were taking on average 32.4 days [down to 25.4 days on average at 31/12/2021] to be first considered by the Board unless a warrant was issued earlier….Due to the pressures of meeting time frames for breach matters which are prioritised in the interests of community safety, time frames for parole application matters were less than ideal. At 30 June 2021, parole application matters

were taking 91.7 days on average [down to 86 days at 31/12/2021], from receipt of an application to the Board's initial paper-based inquiry. This time is in part required to allow ACT CS [8 weeks] to prepare a pre-release report including an assessment of the suitability of proposed community accommodation. The Board is required by the CSA Act to finalise its decision about the parole application within 60 days of opening a hearing. The Board met this time frame in all cases. As at 30 June 2021, parole applications were taking 170 days on average from receipt of the application to be finalised [down to 149 days average at 31/12/2021]. Applications for re-instatement of an Intensive Correction Order (ICO) have no statutory time frames relating to finalisation, but the Board aims to hold the initial inquiry within 30-days of receipt of the application, given certain requirements of the CSA Act. As at 30 June 2021, ICO re-instatements were taking 75 days on average to be finalised [down to 71.5 days average at 31/12/2021]. The Board aims to reduce these time frames in 2021-22 through a number of initiatives…"

The Board's timeframes for parole matters to be initially heard and finalised at 31/1/2021 have improved and are shown in square brackets in the extract above. This has been achieved while still achieving a decrease in time to initially hear a breach matter as set out in square brackets in the extract above. These improvements in timeframes are expected to continue given the ACT government has committed to extra administrative staff who are in the process of being recruited to support multiple Board sittings/week.

Unfortunately the Board is not able to provide data about the proportion of applications for parole matters that were finalised after an offender's non-parole date (NPP) had expired. The Board encourage offenders to submit their parole applications as early as possible to enable it to be finalised by their NPP date - the Board writes to each offender who is becoming eligible for parole seven months prior to their NPP date to advise them about parole and how to apply. An offender's NPP date is a key circumstance that the Board considers when determining hearing dates for any matter.

A return to in-person hearings at the ACT Courts Complex would reduce timeframes for hearing matters – the current necessity for the Board to conduct hearings by phone is not more efficient due to the technological and other challenges it brings. A long-term project is under discussion, which involves transitioning the Board's system from paper-based to a paperless system and developing a monitoring and reporting capacity as part of this, which would offer efficiencies.

In the Board's view, the immediate priority for ensuring that parole application matters are finalised before the NPP date is to implement the recommendations of the ACT Ombudsman in its report "Parole Processes at the AMC" (2020) (at https://www.ombudsman.act.gov.au/__data/assets/pdf_file/0014/112073/ACTCS-administration-of-parole-processes.pdf -). In essence, the report emphasises that an offender's rehabilitation and release should be the focus of ACT CS case-management and an offender's program participation within the prison from the day they enter prison, offenders should be well supported to provide a sound parole application six months before their NPP date, and also supported by ACT CS through the parole proceedings to deal with any issues that arise for e.g. finding approved accommodation and a place in a facility.

While auto-parole has been adopted in some states and territories, it is largely an economic measure rather than a measure that reduces recidivism. The Board's view is that the focus

should be on measures that reduce recidivism such as places in facilities and programs for those with complex needs. Indeed, auto-parole would present new risks of recidivism, and new risks for victim and the community safety. Under an auto-parole system, an offender would have a right to be released regardless of circumstances that currently are identified and considered by the Board before granting release: an offender has made concerning calls to a victim from prison, victim's views about release and conditions for release, offender has exhibited concerning behaviour in custody, offender has not undertaken rehabilitation programs while in custody, offender has no suitable accommodation upon release and indeed has unsuitable accommodation upon release (e.g. a child sex offender intends to reside next to a school), and the offender has a high risk of re-offending.

Breach rates of Intensive Corrections Orders (ICOs)

The Board does not deal with all breaches of ICOs. As explained in our submission, breaches of ICOs imposed for federal offences are dealt with by ACT CS referring these to the relevant Commonwealth entity, and also ACT CS staff have the power to deal with any breach for any offender subject to an ICO for ACT offences under a COVID-measure (which the Board does not support).Therefore the Board cannot report on the breach rate of ICOs. The "Intensive Correction Orders Review Report" (2020) did not report a breach rate for ICOs, but stated as follows (page 21 at https://www.parliament.act.gov.au/__data/assets/pdf_file/0010/1483381/List_-Intensive-Correction-Orders-Review-Report.pdf):

"The indicative data suggests that the ICO has a relatively low re-offending rate with only 6% of offenders returning to custody in the ACT on either new offences or on remand and 24.7% returning on a community corrections order or another ICO. 3.7% of offenders are currently on a supervised bail order.

Of the offenders that completed their ICO, 61.5% did not return to ACTCS. However, there may be small proportion of the 61.5% that have been or are currently before the court on further offences."

The Board reports annually on the outcomes of ICO breaches that were submitted to it. The Board's Annual Report 2021 set out the outcomes (extracted below), and this trend for increasing numbers of ICO breach matters with a low cancellation rate is expected to continue in 2021-2022 as ICOs become more widely used by sentencing courts:

"ICO breach notifications significantly increased by 17.1% (130), compared to the prior year (111).The majority of the ICO breach notifications resulted in a formal warning (54.6%; 71), similar to the prior year. A quarter of ICO breaches resulted in cancellation of the ICO (25.4%; 33) and 6.9% (9) resulted in either a three- or seven-day sanction in prison, similar to the prior year."

Victims involvement in Board proceedings

As set out in the Board's submission, with the assistance of the Victim's Liaison Officer, ACT CS (soon to be transferred to the Victims of Crime Commissioner's office), the Board invites victims to provide their views about relevant issues in many matters before the Board, particularly those where an offender will be released from prison and certain breach of order matters. Victims may provide their views by making written submissions, making oral

submissions, and/or relying on prior material provided to the Board or the sentencing court. Increasingly victims are choosing to make oral submissions to the Board. In its Annual Report 2021 the Board reported as set out below, and this trend for increasing numbers of submissions, especially oral, from victims is expected to continue in 2021-2022 as the Charter of Victims Rights and related initiatives is implemented:

"During the reporting period [2020-2021] there were 13 written submissions by victims and 8 hearings were conducted to hear evidence from victims. There were 48 new victims who registered and there are now 166 registered victims who have actively notified the Board they wish to be involved in its proceedings. The Board will engage with unregistered eligible victims if practicable."

In almost all cases where the offender is subject to sentence for a violent crime or has been convicted of such crimes in the past, the Board has access to victim's submissions, and these include submissions made to the sentencing court (i.e. victim impact statements) and/or to the Board.