



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),
Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Corrections and Sentencing Legislation
Amendment Bills 2022

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ALS

Aboriginal Legal Service (NSW/ACT) Limited

1 February 2023

By email

Standing Committee on Justice and Community Safety
ACT Legislative Assembly
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**Submission to the Inquiry:
Corrections and Sentencing Legislation Amendment Bill 2022**

Dear Secretary,

I write to you on behalf of the Aboriginal Legal Service NSW/ACT Limited (ALS) and thank you for the opportunity to provide a submission to the ACT Legislative Assembly Standing Committee on Justice and Community Safety inquiry into the *Corrections and Sentencing Legislation Amendment Bill 2022*.

The ALS is a proud Aboriginal Community Controlled Organisation and the peak legal services provider to Aboriginal and Torres Strait Islander men, women and children in NSW and the ACT. The ALS currently undertakes legal work in criminal law, children's care and protection law and family law. We have 24 offices across NSW and the ACT, and we assist Aboriginal and Torres Strait Islander people through representation in court, advice and information, as well as providing broader support programs and undertaking policy and law reform work.

We provide the following submission in our capacity as an Aboriginal Community Controlled Organisation constantly fighting to improve access to justice for all Aboriginal and Torres Strait Islander people.

Adopt elements of a COVID-19 measure (section 102A) to provide community corrections officers with greater flexibility to deal with breaches of a good behaviour order

Support discretion

The ALS welcomes the introduction of discretion for corrections officers in relation to alleged breaches of good behaviour orders. Making a finding of a reportable breach against

vulnerable clients in response to minor matters, such as for a missed appointment, can undermine the therapeutic purpose of supervised orders. Discretion may also encourage corrections officers to consider cultural safety and the connection of Aboriginal and Torres Strait Islander clients to culturally safe services.

We understand that the discretion framework is still in the process of finalisation and ask that we are provided with the opportunity for further consultation regarding this. We submit the framework should require a corrections officer exercising their discretion in regard to an Aboriginal person to take into account any issues that arise due to the person's Aboriginality, including the impact of incarceration on the person's connection to family, community, culture and wellbeing.

Support a national system of interstate transfers for community-based sentences and associated community-based orders

The ALS supports, and welcomes, this amendment for the reasons outlined in the Explanatory Memorandum.

Confirm existing practice regarding search processes during admission to an ACT Correction centre.

The ALS opposes this amendment. Aboriginal and Torres Strait people who are incarcerated overwhelmingly have histories of trauma, including experiences of sexual victimisation¹. Strip searches conflict with culturally safe and trauma informed care, compounding existing trauma. It is appropriate that an individual risk assessment is conducted for each detainee, as the current legislation provides.

The Explanatory Memorandum refers to the circumstances of the detainee's admission, that is that the detainee has been outside of the control of a correctional centre, as warranting the strip search. However, it acknowledges that there "may be a small number of individual circumstances where a strip search for the purposes of section 67 is not warranted." We submit that even a 'small' number of inappropriate or unnecessary strip searches is abhorrent, and further that this number may not be 'small', noting for example that many detainees admitted to detention centres will have been under the control of police and already subjected to a strip search.

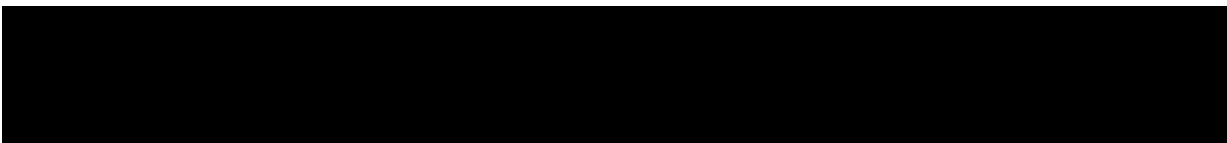
The Explanatory Memorandum notes that correction officers will retain their discretion to *not* strip search under the amendments, and "will exercise this discretion in line with their obligations under section 40B of the Human Rights Act 2004 and consistent with relevant ACTCS policies and procedures." We submit that the greater likelihood is strip searches on admission will occur as a matter of course without consideration being given to the individual circumstances of the detainee and in unnecessary and inappropriate circumstances.

¹ Queensland Centre for Domestic and Family Violence Research, *Prevention, Early intervention and support for Aboriginal and Torres Strait Islander people who have experienced sexual violence*, Practice Paper, February 2019, 4-5, <https://noviolence.org.au>.

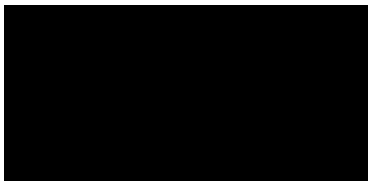
Clarify that the director-general can declare the entirety of an ACT correctional centre to be smoke free

The ALS opposes this amendment.

The overwhelming majority of Aboriginal and Torres Strait Islander prisoners are current smokers on entry to prison². Studies have shown that enforced smoking bans in prisons does not remove smoking but rather leads to the establishment and perpetuation of black markets in tobacco and other harmful smokable substances and an increase in violence.³ Removing a prisoner's ability to continue smoking if they choose to, exacerbates the punitive and harmful impact of incarceration, in the context where other measures could be put in place, such as restricting smoking to designated smoking areas, to address concerns regarding passive smoking.



Yours sincerely,



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² Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018*, 30 May 2019, 17. doi: 10.25816/5ec5c381ed17a.

³ See for example: Tony G Butler and Lorraine Yap, *Smoking bans in prison, time for breather?*, *The Medical Journal Australia* 2015; 203 (8): 313. doi: 10.5694/mja15.00688.