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

**TENTH ASSEMBLY**

**STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY - REPORT 14 - INQUIRY  
INTO THE CORRECTIONS AND SENTENCING LEGISLATION AMENDMENT BILL 2022 -  
GOVERNMENT RESPONSE**

**Presented by  
Mick Gentleman MLA  
Minister for Corrections  
June 2023**



## **Introduction**

The ACT Government welcomes the Standing Committee on Justice and Community Safety's (the Committee) Report on the Inquiry into the Corrections and Sentencing Legislation Amendment Bill 2022 (the Inquiry).

The Corrections and Sentencing Legislation Amendment Bill 2022 (the Bill) will amend the Territory's corrections management and sentencing laws to improve the administration of corrective services, and community-based sentences. Amendments made by the Bill include giving authorisation to the Director-General of the Justice and Community Services Directorate to declare the entirety of correctional centres to be smoke free. The Bill will address how searches will be undertaken on visitors and detainees. The amendments in this Bill will also provide a structured framework to allow interstate community-based sentences to be transferred to the ACT and to ensure minor infractions of Good Behaviour Orders do not result in potential court sanctions. Amendments will also strengthen laws to combat the potential use of drones to deliver prohibited items to correctional centres.

The Bill was introduced into the Legislative Assembly on 30 November 2022. It was referred to the Committee as required by clause 5 of the establishing resolution. On 7 December 2022, the Committee announced it would inquire into the Bill and invited submissions by 31 January 2023. Nine submissions were received and no public hearings were conducted. The Committee released Report 14 on the Inquiry on 23 February 2023. On 15 March 2023, the Committee released an Addendum to the Inquiry Report attaching a letter received on 3 March 2023 from the Sentence Administration Board providing some corrections to the Report and seeking consultation relating to a recommendation. This letter has been referred to me for further consideration.

The Committee made seven recommendations relating to the Bill which the ACT Government has responded to below. The ACT Government thanks the Committee for its consideration of the views expressed through public submissions and its careful reflection of the Bill. The ACT Government also thanks those individuals and organisations who shared their views on the Bill through public submissions.

# ACT Government Response to Recommendations

## Recommendation 1

*The Committee recommends that the ACT Government consult with stakeholders (including the Aboriginal Legal Service, Domestic Violence Crisis Centre and the Victims of Crime Commissioner in addition to representatives from the legal sector) on the development of the guidelines to corrections officers applying the new discretion to not report breaches of a good behaviour bond to the sentencing court.*

### Government Response:

*Agreed*

ACT Corrective Services has already consulted a range of stakeholders including ACT Courts and Tribunals, the ACT Director of Public Prosecutions, the Victims of Crime Commissioner and the Office of the Coordinator General for Family Safety on the new discretion to not report breaches of a good behaviour order to the sentencing court. ACT Corrective Services will continue consultation with these stakeholders on the development of guidelines to corrections officers on this new discretion to not report breaches of a good behaviour order to the sentencing court. Furthermore, the ACT Government will consult specifically with the Aboriginal Legal Service, Legal Aid, Sentence Administration Board, and the Domestic Violence Crisis Centre on the guidelines.

## Recommendation 2

*The Committee recommends that the ACT Government ensure that ACT corrections facilities are adequately resourced and provide training to corrections officers in the application of the proposed guidelines for the new discretion to not report breaches of a good behaviour bond to the sentencing court.*

### Government Response:

*Agreed in principle*

In line with the submission by the Victims of Crime Commissioner and the comments from the Committee, ACT Corrective Services will ensure that appropriate resources and training are provided to support the application of the proposed guidelines for the new discretion to not report breaches of a good behaviour order to the sentencing court. Specific training in the new guidelines will be provided to all staff utilising these procedures and the guidelines will be available to all staff for ongoing reference. Breach reports and discretion warning templates will be updated to align with these new guidelines. Additionally, as proposed in the draft guidelines, Team Leaders (Managers) will be required to approve all discretionary decisions and Team Leaders regularly engage in case reviews with their staff which will include consideration of this issue.

However, whilst it is agreed in-principle that ACT corrections facilities be adequately resourced, any commitment to resourcing requirements past that needed for the implementation of the proposed guidelines for the new discretion is outside the scope of the proposed amendments and this response.

### Recommendation 3

*The Committee recommends that the ACT Government consult with stakeholders on the development of the notifiable instrument outlining the assessment process that will be the framework for corrections officers to determine if the person will be suitable for the community-based sentence transfer.*

#### Government Response:

*Agreed*

As noted in the Explanatory Statement to the Bill, the ACT Government acknowledges the concerns from stakeholders on the implications for victim survivors of domestic and family violence relating to proposed amendments that support a national system of interstate transfer for community-based sentences and associated community-based orders.

To address this, ACT Corrective Services is committed to the development of an assessment process that will provide a formalised framework for corrections officers to determine whether a person will be suitable to be transferred to the ACT. ACT Corrective Services has already consulted with a range of stakeholders in the development of the assessment process guidelines that will guide corrections officers to determine suitability for community-based sentence transfer and will continue to consult with stakeholders on the development of the notifiable instrument which outlines this assessment process.

### Recommendation 4

*The Committee recommends that the ACT government should amend the Bill to exclude searches of papers or laptops belonging to professionals such as lawyers and statutory officers, which are for the purpose of providing confidential legal or professional advice, providing safety and security risks can be managed.*

#### Government Response:

*Not agreed*

The ACT Government is satisfied that there are strong existing safeguards that protect against the review and use of legal-privileged and confidential material.

ACT Corrective Services specifies in several policy documents that corrections officers and staff are not to read legally privileged or other confidential materials. All possessions being brought into an ACT correctional centre are scanned, such as through an x-ray baggage scanner, without the need to read the material.

ACT Corrective Services have a range of existing policies which protect against the reading of confidential material. Section 4.2 of the [Entry Searching Operating Procedure](#) notes that “documents can be seized by searching officers unless the officer reasonably suspects that the document is legally privileged”. While not specifically relevant to entry searches, more extensive direction is provided to officers in the [Searching – Cells Operating Procedure](#) (section 6) regarding legally privileged materials, including that officers may, in the presence of the detainee, examine legally privileged material but not read it without the express permission of the detainee. Similarly, there are processes documented in the Entry

Searching Operating Procedure regarding medical exemptions and the requirement to offer alternate searches to people with an exemption.

Clear direction is provided to staff regarding the protection of legally privileged material in the [Visits Policy](#). The Visits Policy states at 1.7 that “legal visitors will be permitted to bring legal documentation into the visit as long as it is in direct reference to the detainee’s case (criminal or civil). Those documents will be inspected during the searching process but may not be read.” It also provides that visitors (including staff) must request approval to bring in any prohibited item, such as electronic devices including laptops. Approval may be granted if the laptop includes information directly relevant to a detainee’s legal representation. In policy and practice the papers, laptops and legal material of professional visitors and statutory officer holders are not read or examined by correctional officers upon entry to a correctional centre. The search is conducted via the x-ray baggage scanner with the owner of the material placing it into the machine and retrieving it on the other side.

The ACT Government is satisfied that the amendment to clearly authorise routine scanning and ordinary searches of non-detainees, as a condition of entry to an ACT correctional centre and the existing protections detailed above sufficiently balance the need for detainees to have confidential meetings with professional visitors with the need to reduce opportunities for persons to bring contraband into the correctional centre. Subject to the passage of the Bill, policy documents will be updated to guard against unreasonable examination of legally privileged material. The ACT Government acknowledges the recommendation and is satisfied that further amendments to the Bill are not required at this time.

## Recommendation 5

*The Committee recommends that the ACT Government should make it clear in the Bill that search of non-detainees should be conducted in a way that seeks consent to the search and minimises intrusions on the privacy of the person being searched. In addition, the Bill should provide that consent should be obtained where there is a further search by a corrections officer of a different sex.*

### Government Response:

#### *Existing Government Policy*

A visitor intending to enter the Alexander Maconochie Centre (AMC) must undergo a search as a condition of that entry in accordance with the [Searching Policy](#). Visitors are able to choose to decline a search and leave the centre without undergoing a search.

There are sufficient protections within existing section 108 of the *Corrections Management Act 2007* and the new section 112B(4) to protect the privacy of non-detainees relating to searches.

The existing section 108 provides protections by requiring, as far as practicable, that a search is the least intrusive kind of search that is reasonable and necessary in the circumstances, and the search is conducted in the least intrusive way that is reasonable and necessary in the circumstances. Under the amendments proposed in the Bill, only searches that do not require the visitor to be touched can be undertaken by an officer of the opposite sex. Any further search would be required to be conducted by an officer of the same sex.

The new section 112B(4) proposed in the Bill states that a corrections officer or visitor, or articles in the officer's or visitor's possession, must not be searched without the officer's or visitor's consent.

Further guidance on these provisions will be provided through updates to policy and procedure documents.

## Recommendation 6

*The Committee recommends that the ACT Government ensure that policies and procedures that are developed to support corrections officers in their limited discretion in whether or not to conduct a strip search provide guidance on:*

- *how to prioritise less intrusive searches, including using no touch scanning technology;*
- *consulting within the AMC to avoid a detainee being strip searched more than once if necessary.*

### Government Response:

*Agreed - completed*

ACT Corrective Services already provides guidance to corrections officers to use the least intrusive kind of search that is reasonable and necessary in the circumstances and to conduct searches in the least intrusive way. The ACT Government agrees that the policies and procedures which provide guidance to corrections officers on the use of strip searches will be updated to reflect the amendments proposed in the Bill. The proposed amendment in the Bill applies only to strip searches on admission, as strip searches are undertaken for the security and good order of the correctional centre and to ensure the health of the detainee. There are no changes proposed in the Bill to the requirements to undertake strip searches at any other time, which are always based on individual circumstances and the requirement for suspicion or prudence as described in the Act.

The existing section 108 in the Act already provides protections relating to the least intrusive search by requiring, as far as practicable, that a search is the least intrusive kind of search that is reasonable and necessary in the circumstances, and the search is conducted in the least intrusive way that is reasonable and necessary in the circumstances. The current Searching Policy also currently requires strip searches to only be undertaken based on suspicion and prudence and with proper authority. Section 8.12 of the Searching Policy requires that: *Strip searches are not to be conducted as part of routine searches and must only be conducted where there is suspicion or reasonable belief that it is prudent to conduct the search.* Section 8.15 requires that: *Detainees must not be strip-searched in succession when escorted between ACT correctional centres, unless there is reasonable suspicion that justifies the search.* Suspicion and prudence both require a reasonable basis, usually including conditions such as the person has been out of line of sight of officers and the person has been liaising with third parties.

X-ray body scanners will be introduced into the AMC this year with the expectation that they become the search form of choice in many instances that at present require a strip search, except in relation to admission. However, the use of x-ray body scanners do not and cannot at this time completely replace the objectives of a strip search on admission.

## Recommendation 7

*The Committee recommends that the ACT Government provide the Legislative Assembly with more information about the strategic plan for therapeutic supports to be provided to assist detainees with the smoking ban at ACT correction centres, including the type of evidence-based nicotine replacement options, the availability of specialist counselling services, how individual cultural, ability and health needs will be met and who has been consulted in the development of the program of therapeutic supports.*

### Government Response:

*Agreed*

The ACT Government is committed to ensuring the transition to a smoke-free AMC is successful. The amendments proposed in the Bill allow a declaration to be made by the Justice and Community Safety Director-General to make the whole of a correctional centre smoke-free and, if such a declaration is made, require the Director-General to be reasonably satisfied that there are appropriate therapeutic supports available to help detainees at the correctional centre stop smoking. This means the provisions in the Bill will operate to ensure that the declaration will not be made unless therapeutic supports are in place.

### Transition plan

A staged approach to the AMC becoming smoke-free has been developed and incorporated into a living Smoke-Free AMC Transition Plan. This plan outlines key stages, timeframes and activities. This information is being relayed to staff and detainees to keep people aware of information and allow for preparations such as the gradual reduction of tobacco in the AMC and the increase of access to non-smoking supports.

The Transition Plan was developed in consultation with other operational services such as Justice Health and Winnunga Nimmityjah Aboriginal Health and Community Services (Winnunga Health Services) as well as representatives from the Community and Public Sector Union.

### Therapeutic supports

A range of existing and new therapeutic supports will support detainees and staff in the move to a smoke-free AMC.

Nicotine Replacement Therapies (NRT) are already offered to detainees and can be continued to be accessed throughout the transition to a smoke-free facility. Approximately 170 detainees have accessed NRT. A specific 12-week funded NRT program which consists of both nicotine patches and lozenges will also be available to detainees once the centre is declared smoke-free.

Cancer Council ACT is providing intervention training to support the transition of the AMC to a smoke-free environment. The training provides staff and detainees with the skills to support smoking cessation, an understanding of the types of NRT being used, withdrawal advice, and includes peer support and encouragement to those quitting.

QUIT resources including the website and Quitline are already accessible for detainees in custody and will continue to be available throughout the transition. QUIT also has Aboriginal and Torres Strait Islander specific resources.

Additional activities are currently being planned to provide detainees with alternative activities to smoking throughout the transition to a smoke-free facility.

Standard access to case managers, programs, education, and employment will continue throughout the transition. Standard access to Justice Health Services and Winnunga Health Services will also remain available.

Work is progressing in relation to NRT access for detainees exiting the AMC and available community supports. NRT and the outlined supports will also be available to new receptions once the AMC has become smoke-free.

The Justice and Community Safety Directorate, the ACT Cancer Council, Justice Health Services and Winnunga Health Services have worked closely together to ensure appropriate supports are in place for both staff and detainees to transition to a smoke free AMC.

## **Conclusion**

The ACT Government looks forward to working with stakeholders on updated policies and procedures to support the effective implementation of measures in the Bill. Thank you again to the Standing Committee on Justice and Community Safety's for its Report on the Inquiry into the Corrections and Sentencing Legislation Amendment Bill 2022.