



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Jeremy Hanson MLA (Chair), Dr Marisa Paterson (Deputy Chair), Ms Jo Clay MLA

Submission Cover Sheet

Inquiry into Community Corrections

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OUR BOORIS
our way

Parliamentary Inquiry into Community Corrections
LACommitteeJCS@parliament.act.gov.au

To whom it may concern,

The *Our Booris, Our Way* Implementation Oversight Committee would like to make a submission to the ACT Legislative Assembly Inquiry into Community Corrections.

The Implementation Oversight Committee recognises that Justice and Corrections are inherently intertwined with the health and wellbeing of our community, families and children.

We raise, and report on, both general and specific issues regarding the practice of community corrections in the ACT that have a negative impact on children who may be in contact with the child protection system, many of which may have a parent in custody.

It is imperative for the Aboriginal and Torres Strait Islander community that children stay connected to their parents and culture.

Yours faithfully,

Barb Causon
Chair
Our Booris, Our Way Implementation Oversight Committee
23 November 2021

Our Booris, Our Way

Submission
to the
Standing Committee on Justice and Community Safety
ACT Legislative Assembly Inquiry into Community
Corrections
October 2021

In 2017, the ACT Government announced a review into the over-representation of Aboriginal and Torres Strait Islander children in the child protection system in the ACT.

This was to be a systemic review into the child protection system and to provide a better understanding of how we – government and the community – can reduce the number of Aboriginal and Torres Strait Islander children in care and ensure children remain connected to community and culture, supporting parents and families to safely care for their children.

Most importantly, *Our Booris, Our Way* was a wholly Aboriginal and Torres Strait Islander co-designed and led review, and a national leading example of practical self-determination. The *Our Booris, Our Way* Review made 28 recommendations and eight (8) sub-recommendations (totalling 36 recommendations) to government, iteratively over a two-year period with the final report presented to government in December 2019

In June 2020, the *Our Booris, Our Way* Implementation Oversight Committee was established to monitor implementation and provide a cultural lens to guide the systemic reform necessary to meet the expectations set out in the review.

The Oversight Committee meets monthly to consider various elements of the work, with detailed quarterly updates provided by relevant Directorates.

The Oversight Committee members are:

- Barbara Causon – Chair

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Introduction

There are soaring numbers of Aboriginal people in detention in the ACT who have not been found guilty of any crime, and children end up in out of home care as a direct result. Many of our parents are on remand for long periods without charges, and their children are taken into care. The families are subjected to measures that are not conducive to recovery. Once our children become part of the out of home care system it becomes a vicious cycle that is hard for the family to recover from, and that creates lasting and compounding trauma. In this way, the system is creating further generations of institutionalised community members. The cost of which is far greater to the Government, and to the broader ACT community. All efforts should be made to support people to recover and keep our families together.

Key issues

Understanding correctional practice and how it operates is a fundamental concern for the ACT Aboriginal and Torres Strait Islander community, as many of our lives are intertwined with the impacts of the criminalisation of race and intersectionalism.

Members of our Committee directly and indirectly see that certain areas of ACT Corrections are significant contributors to the ongoing instability of many of our children's lives. Our general response to this Inquiry is that:

1. The system is failing us, failing our children and our future.
2. Policies of the ACT government, and actual implementation are misaligned.
3. Aboriginal and Torres Strait Islanders voices of lived experience must be heard.
4. Critical to real change is more Aboriginal and Torres Strait Islander leadership and employment across the entire justice and corrections sphere

Planning and Data

In the absence of any Aboriginal Corrections plan, or any monitoring of data or outcomes, how can there be any real expectation for the reduction of Aboriginal and Torres Strait Islander people, family members and parents, involved with corrections in the ACT, let alone improvement in the quality of their experiences?

In the absence of any means of assessing the progress towards the objective of reducing recidivism (other than the crude rate determined by a return to prison) how can the relative impact of any corrections policy or program be measured? Data gathering and management needs to extend measurement beyond re-imprisonment to include rearrest and reconviction, as well as care and protection involvement, and children and family matters captured.

We assert that programs should have embedded evaluation processes and that this needs to include our community voices, and that results should be accessible to the public without editing or exclusion.

Voices of lived experience

Both correctional practice experience and the growing body of research on recidivism suggest that assuming a position where the voices and experience of the offenders are devalued, is counter-productive to reducing recidivism and restoration of community inclusion. This is not to suggest that assuming this single response will change the unwanted upward trajectory for

our community that is already so highly over-represented in this space. The ACT government is making some progress in other areas by prioritising the voices of lived experiences and there is no reason why this model cannot be applied to organisational improvement of ACT Corrections.

We assert that the Parliamentary Inquiry would be best served by hearing the voices of those with lived experience first-hand. There are community organisations and advocacy groups that could have assisted ex-offenders to provide their stories to you. We recommend that this be pursued in future and across all matters of inquiry. By our collective position in ACT society, the very voices you need to hear are being denied access to such forums. The lack of attention, consideration, and effort that the ACT Government gives to hearing the voices of our community is reflected in the negative outcomes that our people are experiencing as its citizens.

Acknowledging the lack of voices of those with lived experience in this Inquiry, we will report to you some issues that we know of, that are raised by community to our members, that are experienced by our families, our relatives, and others we know. We still assert that this can never replace the voices of those who are living right now with the consequences of the current corrections system in the ACT.

Justice Reinvestment

Whilst we thankfully acknowledge that some offenders will never return to corrections for a new offence, we also recognise that, among those who do, there are a range of opportunities for their trajectory to change. This was recognised by Minister Rattenbury when he launched the Justice Reinvestment Strategy “Building Communities not Prisons” in 2018-19. Lauded as the first time an Australian Jurisdiction has committed to reinvesting in programs focussed on rehabilitation, using strengths-based supports and inclusive pathways, a smarter approach to our justice system that keeps families together, reducing crime and building a safer community.

There was great hope in the community, and several programs had already been launched that helped families stay together and even to restore families on release from prison (Yarrabi Bammir and the Ngurambai Bail Support Program), however further development and implementation of the initiatives stalled shortly afterwards, and any community building under this strategy has not had any real or measurable impact on corrections practice for our community. This shows the great disparity between government intent and the real and actual implementations.

Policy v implementation

Members of the *Our Booris Our Way* Implementation Committee have witnessed, as well as experienced, the vast differences between the intent of government policies and the actual implementation of those policies and associated programs. The differences apply to those delivered by Directorates themselves as well as through various contractual arrangements. We assert that there are major gaps between what the Ministers’ policy intentions are and the implementation processes. This is not unfamiliar to the work of the *Our Booris Our Way* Implementation Oversight Committee.

Parole

There are a range of issues with parole that are having a real impact on our children and their time in the out of home care system. There is no clear system so people can know when they will be eligible for Parole, and the process is complex and takes a long time, so there is a lot of uncertainty for families and children who need to have proven plans and arrangements in place to satisfy care and protection and be able to be reunited with their children. Many people have extended time in AMC because of this, which means children are in care longer.

We recommend that certain parole matters, such as those serving short sentences, should have automatic court ordered paroles.

The two primary directorates responsible for supporting parole justice and housing – JACS and CSD – do not work effectively together meaning prisoners are released on parole, but don't have accessible and secure housing to enter. This has a subsequent effect of child protection, not allowing children to return to the care of their parents as they do not have secure housing. This traps our people into a cycle of separation and crime.

Whilst we understand that some housing options have been funded, we must point out that they are not accessible to our community members as they are culturally unsafe. Any options that are funded need to be inclusive by design and funded to organisations with a proven record of success working with our people and staffed by our people. Any contracts awarded should have these measures embedded into the contract itself. Too many providers are awarded contracts by the ACT government when they do not have the ability nor the capacity to work with us at all.

For example, we are aware of a family where a parent has been released from AMC for over six months, and yet is still unable to see their children due to a lack of housing, or have their children restored to their care and so are still in placements.

We are also aware of primary caregivers being on remand for extended periods of time and losing their children into out of home care because of this. In one example, it took over a year for the person to have their matter heard in court, and the final decision was that there was no time to be served. That parent had their little babies taken away while they were held at AMC on remand for suspected involvement in a minor property crime. They were also a domestic violence victim and were given no support for this from Corrections during the time on remand or upon release. They lost their housing due to being on remand for an extended period. They were released from court into homelessness. They then had to fight for their children without a chance because they had nowhere to live which is naturally a condition for children being returned. This family were separated for years, and the foster family then argued that the children should stay with them due to attachment theory. Many years of lasting trauma when the mother was needlessly detained. Discretionary powers are used differently that make this a more common experience for our community.

Sentence Administration Board

The SAB, while having a singular Aboriginal and Torres Strait Islander representative, is not a culturally safe place to be able to apply for parole. The application process is daunting and faces extensive delays – it does not support trauma informed practices nor a journey of healing.

A key issue affecting children in out of home care is that women don't have access to legal aid for SAB matters. Most of the Aboriginal and Torres Strait Islander woman in custody in the ACT are mothers, and families can be large, such as 8 children. The Parole and SAB processes have a direct link to the time our children are spending in out of home care.

The SAB sets the conditions of parole and often the conditions are onerous and unnecessary to the specific requirements of parole. It is like people are set up to fail their parole conditions and end up back in custody. Similarly, we see the same approach in the child protection space, where parents are often given so many unreasonable conditions that they are not able to get their children returned.

The programs that are available, do not specifically meet the needs of the Aboriginal and Torres Strait Islander community. To access culturally appropriate treatment for alcohol and other drugs, many ACT prisoners end up attending programs interstate, dislocating them from their community and cultural support. Again, we see these issues having a huge impact in the children protection space too.

The option of having automatic parole in certain situations such as for those with short sentences would help reduce the numbers of community members in custody and therefore influence the outcomes for the children and families.

Intensive Correction Orders

Although we recognise that ICO's are preferable to prison time, we assert that the conditions are often not fully understood and little effort is taken to translate the condition of the orders to a format that would work for the person and their family to support them to keep the conditions. There have been previous programs internal to JACS to ensure that Orders that were given were communicated clearly, in a one A4 sheet, laminated and able to be shared with family. This was part of the Ngurambai Bail Support Program and the 'Building Communities not Prisons' plan. It should have been extended to every person. It is not labour intensive, it is very well regarded in the community, yet has not been properly implemented,

We are aware of people signing Intensive Correction Orders simply as a way to exit AMC . The conditions of the orders are punitive and not restorative. Criteria include excessive urinalysis without any supports to enable attendance, and high frequency check-ins with police. This is especially difficult for those who are given short notice to be tested, those who have caring responsibilities, and those with health issues. Coupled with a lack of housing, lack of transport to attend specific medical or justice appointments, no wrap around supports for engagement in work or community life – it makes it difficult to comply with all conditions. Many have asked for an Aboriginal service for urinalysis due to the racism experienced at this service and the lack of cultural understanding such as men supervising women. This is the same experience we see in the child protection system where parents are asked to jump through hoops without any consideration of what supports they might need to achieve this when they are often living in poverty and quite vulnerable.

Given the punitive nature of the conditions, and the ways in which discretionary powers are exerted, breaches are frequent which sets off a cycle between AMC and parole that is difficult to break. We are aware of one young mother who was almost finished parole, yet her bus was running late to get her to the Civic police station. Even though she messaged the station to let

them know, she was still breached even though by the time she walked to the station she was only a few minutes late. Most of her income went on meeting her parole conditions, she had to go without food to attend her appointments. She was locked back up because the bus was late. Her baby went back into care.

Drug and Alcohol Issues

For those wanting to heal from their addictions there is little support, and the lack of support means they end up back in prison, and children spend longer in out of home care. To access culturally appropriate treatment, it is usually necessary for people to leave the ACT and their family and community support. There are several day programs, without any cultural component to the healing or recovery. Treatment programs appear to be linear with little understanding of relapse or the difficult process of physical, mental, and cultural healing.

We need a local drug and alcohol treatment centre that is designed and run by Aboriginal and Torres Strait Islander community-controlled organisations that understand the need for a culturally strong drug and alcohol program. One client who was part of a recidivist cohort and had only ever been charged with minor crimes or breaches of their orders, left the ACT for treatment. Their two babies went into care when they first went to AMC, and during the treatment period. The only treatment option involved an 8-hour drive, and whilst there, they were sexually assaulted.

In the absence of an ACT treatment option, we recommend that funding is allocated for people to attend private rehabilitation options. The costs of private rehabilitation are less than the cost of added jail time and out of home care costs. It also contributes to reducing recidivism.

Strip searches and Urine testing

Urine testing both inside prison and as part of community corrections and care and protection conditions are traumatic and degrading. The process of having to urinate in a container in full view of authorities is questionable in its purpose when there are other options such as breath analysis. Women are especially traumatised by this and there are no measures in place to ensure that the supervision will be done by a female.

Strip searching and any invasive practices are part of the inherent imbalance of power in corrections and only serve to compound trauma and impede people's ability to recover and heal. We are all aware of the recent case regarding strip-searching of a vulnerable Aboriginal woman in AMC and we are well aware of many more women in this position who were not empowered to pursue any recourse.

Throughcare

Committee members understand there are longstanding issues with absence of cultural safety of the Throughcare program. This applies to both clients as well as the small number of Aboriginal staff that have worked with Throughcare. The Throughcare evaluation did not consider the voices of Aboriginal and Torres Strait Islander people and was not a valid review of the program. The program should be more comprehensively re-evaluated.

We recommend that the ACT government should fund and support Aboriginal, and Torres Strait Islander designed and led programs at all stages of the justice system, particularly early intervention, and diversion services. However, this does not excuse mainstream service such as Throughcare from their responsibility to provide services to all members of the ACT community. Failing to do this amounts to discrimination.

Chronic Health and Disabilities

So many of our people are incarcerated due to issues directly related to their health, especially mental health. Without an accepted model of disability for many Aboriginal families, we are seeing that people who are unwell and unable to access or afford appropriate assessments, diagnosis, and treatment, are being criminalised, ending up in jail as a result of their unrecognised and unsupported disability – this is especially so for Psychological and Cognitive impairments. The cultural determinants of health, such as culture, empowerment, and racism also have important connections to the health and wellbeing of Aboriginal and Torres Strait Islander people. This link is critical to prevent contact with the justice system.

Data from the ACT Detainee Health and Wellbeing Survey 2016 (Young et al 2017) reveal that the mean age at which ACT detainees left school was 15 and 28% of respondents screened positive for an intellectual disability. These statistics would be much worse for Aboriginal and Torres Strait Islander detainees.

Community members tell us that it is very difficult to have any health issues taken seriously whilst in AMC. This needs to change. Access for NDIS matters should be another initiative that is undertaken within a cultural framework. There is movement within our community to explore the governments notions of disability so that Corrections is able to ensure that NDIS applications can be processed and supports can be in place upon exiting prison. We support this movement and can see the benefit this can provide to families and children when more supports are in place that are chosen by the individuals themselves.

We recommend that people who are ill should be treated for their illness rather than being incarcerated. People with psycho-social disabilities should receive treatment in mental health facilities.

Proposal

The number of Aboriginal and Torres Strait Islanders that form a core group of serial recidivists in the ACT is a relatively small. Those Aboriginal staff working in corrections and at the prison can identify them readily, the fact that there are children connected to them, as well as the types of supports that could turn their lives around. It is in this group where you meet people and it is clear to see that current corrections practice simply isn't working, but adjustments that can have an impact are reasonable and achievable. Whilst some of these may be considered a risk to society, others are in this position due to factors relating to illiteracy, health issues including undiagnosed cognitive disabilities, poverty, homelessness, and a general lack of life and loving supports that are embedded into many families but were broken down in many of ours. Children are being denied a place in their own family and culture such issues are criminalised. There is strong evidence in Australian criminological study and practice that recidivism propensity can be extinguished with the right supports over time addressing underlying aspects of parolees unique offending characteristics. We have community members on the ground here in the ACT now that can give you the same information purely by their trusted and culturally respectful client relationships and

knowledge of ACT systems strengths and weaknesses. Efforts could be made to explicitly work with a sample of this core group of recidivists, in the true sense of Justice Reinvestment as it is espoused by Minister Rattenbury and quoted earlier in this paper. If Corrections is not already doing this type of work, how can it be said that we are Building Communities not Prisons and reducing recidivism 25% by 2025?

We recommend that the Inquiry would greatly benefit from an Implementation Oversight Body that includes Aboriginal and Torres Strait Islander members chosen by our community, to assist with the outcomes of this inquiry making real life improvements.