



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 Penalties for Minor Offences and Vulnerable People

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Dear Justice and Community Safety Committee,

Inquiry into Penalties for Minor Offences and Vulnerable People

As the peak body representing the needs of the community services sector and vulnerable community members in the ACT, the ACT Council of Social Service (ACTCOSS) welcomes the opportunity to provide a submission to the ACT Government's Inquiry into penalties for minor offences and vulnerable people.

ACTCOSS recognises that rapidly increasing cost of living pressures, the ACT housing crisis, the ongoing impacts of COVID-19 and local natural disasters have all disproportionately negatively impacted vulnerable people in our community. Supporting vulnerable Canberrans including low-income households and people experiencing homelessness is paramount to enabling human rights and justice centred policy. ACTCOSS is supportive of evidence-based early intervention and prevention measures focused on keeping the ACT community safe.

We are particularly cognizant of the heightened risk of vulnerability for Aboriginal and/or Torres Strait Islander Peoples encountering the justice system at all steps, including higher rates of prosecution, and receiving harsher penalties. Likewise, we would seek to ensure that this Inquiry consider the disproportionate vulnerability of people with disabilities in facing penalties for minor offences. Preventing further harm for people being disproportionately targeted by penalties is essential to improved community wellbeing outcomes, sustainable resource use, reduced recidivism, and long-term crime reduction.

Our recent [Submission to the Inquiry into Cost of Living Pressures in the ACT](#) highlights that there are currently an estimated 38,300 Canberrans living in poverty, including approximately 9,000 children. We also know that many low-income households faced with rising cost of living have had to make difficult decisions about which essentials they can and cannot afford. Increased financial pressures such as fines take a major toll on people in already vulnerable positions, forcing them to compromise on other financial pressures including housing, energy, food, medicine, and other essentials.¹

ACTCOSS recommends that the ACT Government take a justice reinvestment approach to penalties and prioritises community safety and wellbeing. We urge the Government to take an approach that focuses on addressing the underlying socioeconomic determinants of minor offences including vulnerabilities arising from

¹ ACTCOSS, [Factsheet: Poverty and Inequality in the ACT](#), ACTCOSS, 2022, accessed 14 April 2023.

mental health issues, disability, homelessness, financial disadvantage, and alcohol and other drug misuse, and avoid approaches that further entrench disadvantage.

Exacerbation of harm for vulnerable people unable to pay fines

Unaffordable fees and fines for minor offences can end up putting vulnerable people in contact with the criminal justice system, causing life-long harms. The adverse effects of fines for vulnerable people span from inability to afford other essential expenses, to exacerbation of mental ill health, to facing further exposure to the criminal justice system (and all the additional financial and time costs associated).

The Government's tough-on-crime approach in imposing harsh financial penalties for minor offences has no impact on addressing the socioeconomic determinants of unlawful behaviours, and instead simply reinforces systemic disadvantage. Levying severe fines on those who cannot afford the cost of living as it is, sends a message of prejudice rather than one of deterrence. Investment in supporting vulnerable people to access improved social and financial outcomes does far more for community safety than disproportionate and unfair penalties.

The [Partners in Crime Report 2020](#) highlights that material and systemic factors in the lives of vulnerable people make it near impossible to exit the 'conveyor belt' of the justice system. In the ACT, high rates of recidivism above the national average are coupled with stark socio-economic disadvantage.² Prosecution and increased fines for non-payment are inherently counterproductive to equity in the Territory and serve to widen and entrench the disadvantage gap for vulnerable people. Further fines are clearly inexpedient for people who cannot afford to pay the initial fines levied against them for minor offences. Additionally, prosecution as a response to non-payment leaves disadvantaged people in a position of increased vulnerability, subject to a criminal record which produces significant barriers to employment, housing and stability, or to incarceration with countless ongoing harms.

We are particularly concerned that prosecution and additional fines for non-payment of fines disproportionately impacts Aboriginal and Torres Strait Islander Peoples. Despite making up only 2% of the population, Aboriginal and Torres Strait Islander peoples make up more than a quarter of the prison population, with the percentage of Indigenous detainees in the Alexander Maconochie Centre (AMC) increasing from 15% in 2010 to 25.2% in 2022.³ The increased risk of adverse encounters with the justice system for Indigenous Peoples in the ACT feeds into an exacerbation of harms for those who cannot afford to pay fines and fees leading to over-incarceration and injustice.

Further, we would encourage the committee to adopt the recommendations made by the Alcohol Tobacco and Other Drug Association ACT (ATODA) to mitigate the harms of penalties for people with drug and alcohol

² Centre for Policy Development, [Partners in crime: the relationship between disadvantage and Australia's criminal justice systems](#), APO, 2020, accessed 12 April 2023.

³ Australian Bureau of Statistics, *Prisoners in Australia 2022*, Australian Government, 2023, accessed 12 April 2023.

dependence. Seeking improved outcomes for community members who use drugs relies on trauma-informed, community-based healthcare responses rather than harsh financially punitive and carceral responses.

Income-based fines

ACTCOSS has consistently called for the ACT Government to introduce an income-based approach to fines, fees and other charges. Doing so would ensure that penalties are not regressive and do not impose a disproportionate penalty on people living on low incomes. Without an income-based approach, fines pose a serious risk of deepening and widening socioeconomic disadvantage. The current system of flat rate fines consistently disadvantages people on low incomes and sends a strong message that the ACT prioritises high income earners whilst neglecting and more harshly punishing those in financial distress.

The 2022-23 ACT Budget forecasted an estimated \$43 million in revenue from traffic infringement fines as well as major increases in forecasted parking fines from \$9,556 in 2021-22 more than doubling to \$20,266 in 2022-23 and even further to \$23,413 in 2025-26.⁴ Without reform to the high cost of fees and fines for vulnerable and disadvantaged Canberrans, we are concerned that this revenue will come disproportionately at the expense of those on low-incomes.

ACTCOSS strongly recommends that the ACT Government review the current system of penalties for minor offences to reflect principles of progressivity and equity. The ACT Government's Tax Reform Program defines the core principle of equity with reference to horizontal equity (taxes applied equally to people in similar financial circumstances) and vertical equity (taxes that increase with income).⁵ Seeing the enablement of fair and equitable fees and fines would tie directly into the commitment to principles of equity. ACTCOSS strongly recommends that the ACT Government take an income-based approach to fees and fines as part of a broader, progressive approach to revenue collection and justice reform.

Availability of community service programs

The Magistrates Court (Infringement Notices) Amendment Act 2020 was a positive step towards mitigating harms, with options for the establishment of infringement notice management plans, instalment payments and alternate community activities. However, this process relies on the availability of community service programs, which have been extremely scarce since the COVID-19 pandemic began.

Without options for community service programs available, vulnerable people are being redirected and the ACT's principles of restorative practice are being neglected. Information around community service alternatives to fines

⁴ ACT Chief Minister, Treasurer and Economic Development Directory, [ACT Budget 2022-23](#), ACT Government, 2022, accessed 12 April 2023.

⁵ ACT Tax Office, [Tax reform | ACT Revenue Office](#), ACT Tax Office, 2023, accessed 14 April 2023.

are also incredibly difficult to access online, making it an invisible process for those in positions of financial distress requiring alternative pathways.

ACTCOSS urges the ACT Government to reinstate community service programs that provide a clear alternative to fines and fees as penalties, and to establish clear and widespread communication about the accessibility of this option to all recipients of penalties for minor offences (alongside communication around the ability to apply for a waiver of infringement).

Accessibility of information

The online processes necessary to seek accommodations for vulnerable people facing penalties for minor offences are complicated to navigate and find, and the available options for vulnerable people are not made clear on the Access Canberra website. In order to access a waiver for financial hardship on a traffic or parking infringement, applicants must meet the criteria that 'enforcement action has not resulted in, or is unlikely to result in, the payment of the infringement notice (for example previous sanctions did not result in payment)' – demonstrating that the process is one of increasing pressure to pay and sanctions until an applicant is deemed incapable of payment.

Further, the process as set out in the Road Transport (General) Waiver of Infringement Notice Penalties Guidelines 2019, demonstrate that the process of waiving a fine is highly involved including initial application, necessary documentation (sometimes including a medical clearance report), internal review processes, and potentially subsequent application to the ACT Civil and Administrative Tribunal (ACAT). The time pressures involved in this process are highly likely to have financial impacts on people who are unable to pay, including time away from work and caring responsibilities.

The guidelines also make clear that financial inability to pay does not apply to those capable of making \$10 instalments weekly. Having such a severe threshold for eligibility indicates a clear misunderstanding of the financial disadvantage experienced by Canberrans on low-incomes. Example budgets prepared for Disability Support Pension (DSP) recipients in the ACT demonstrate that there is little to no financial flexibility. Likewise, an example budget for a low income family renting in the ACT produces a very small surplus of just \$18 in a week.⁶ As such, the likelihood of Canberrans on low-incomes accumulating savings for out-of-pocket costs is miniscule. Whilst the ACT Government may deem an individual capable of a \$10 weekly payment, this does not account for the fact that they would be sacrificing another essential expenditure, and if not then they would be spending their minute savings – feeding a cycle of poverty.

⁶ ACTCOSS, [Factsheet: Poverty and Inequality in the ACT](#), ACTCOSS, 2022, accessed 14 April 2023.



By ensuring fair and equitable fines, the ACT Government would not only reduce interactions with the justice system, but also reduce the significant personal and social costs associated with those interactions. By using harsh financial penalties and the justice system to respond to disadvantage, we are only entrenching poverty for our most vulnerable community members. We encourage the Government to investigate alternative options wherever possible. We would be happy to discuss this submission further as necessary.

Yours sincerely

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