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MEMBER FOR MOLONGLO

Mr Steve Doszpot
Chair
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
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	A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE
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Dear Mr Doszpot

I am writing with respect to the Standing Committee on Justice and Community Safety Inquiry into sentencing, announced in the Legislative Assembly on 7 May 2013 (the Inquiry).

Sentencing represents one of the most important roles performed by our courts.

A number of measures are currently underway to improve the availability of sentencing information to the courts, the legal profession, Government and the community as a whole. I take this opportunity to provide the Committee with details on these measures.

Efforts to improve sentencing information through ICT

ACT Sentencing database

As a result of identifying a need to capture further data around sentencing, the ACT Government allocated \$2.2 million over four years in the 2012/2013 Budget for the development and ongoing maintenance of an ACT Sentencing Database (ACT SD) to be hosted by the NSW Judicial Commission.

The ACT SD will allow reliable and accessible sentencing data to be generated. This data will improve capacity for law reform in a number of areas including, most clearly, sentencing law reform. The database is expected to be operational later this year.

The ACT SD will capture information about sentences handed down by the court, offences, sentencing remarks, practice directions, judgments and links to relevant legislation.

By the end of the 2013/2014 financial year the ACT SD will have two year's worth of data. In a small jurisdiction such as the ACT, a sample of data over a 2 year period is likely to be insufficient to draw reliable conclusions.

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A sample of data over a 5 year period, for example, in relation to a high volume offence, would allow more reliable conclusions to be drawn.

From late 2013 the ACT SD will also include information about a range of characteristics of offenders and victims and the circumstances of an offence. 39 characteristics have been agreed for inclusion by the ACT Judiciary. A full list will be provided to the Committee when finalised. This data will support and enhance consistency in sentencing by the judiciary and increase transparency of decision making.

This is also likely to lead to a related reduction in the number of appeals against sentence as trends emerge in the sentences awarded. While it is not possible to estimate the number of appeals averted as there are a number of factors that drive decisions to appeal a sentence, this benefit should not be under stated. Appeals against sentence to the ACT Supreme Court and the ACT Court of Appeal represent a small but significant portion of the work of these courts. The ACT Government will closely consider trends with these appeals as the benefits of the ACT SD are felt through the criminal justice system.

New ACT Court Case Management System

In 2012 a review was undertaken by the ACT Government together with key justice stakeholders, resulting in a commitment to develop a new Courts and Tribunal ICT Case Management System to facilitate the efficient operation of the Courts. The ACT Government allocated \$9.507 million over four years in the 2012/2013 Budget for the new case management system.

The new system is currently under development and once implemented will provide more efficient operations and improved statistical reporting. There are also important flow-on benefits from the new system for other justice stakeholders such as ACT Policing, ACT Corrective Services, Youth Justice and the Director of Public Prosecutions relating to the transfer of information including on remand in custody, status of a matter, criminal history and sentencing outcomes.

New ACT Corrective Services Database

ACT Corrective Services (ACT CS) holds data for both community and custodial correctional sentencing options including parole, periodic detention, good behaviour orders and community service orders. ACTCS also holds information around the monitoring of offender/detainee compliance including details of breaches of orders, revoked parole and completion of orders. ACTCS holds data in relation to the average length of stay for remandees and details around the exit reason, for example acquittal. ACTCS is currently not able to provide this data readily but is in the process of upgrading its database to improve accessibility and reliability of data.

The Inquiry

Timeframe

I note that the terms of reference proposed by the Standing Committee on Justice and Community Safety (the Committee) are very broad. A meaningful review of all the issues would be time consuming as it would require careful consideration and analysis. While data and information relevant to the terms of reference would support this analysis, in many cases this data is either not available or would require significant resources to produce. In the longer term, the initiatives discussed above will help to overcome this limitation.

Even if reliable and readily available sentencing data were available the timeframe set by the Committee for submissions and final reporting would not allow for necessary analysis and consideration of the many issues outlined by the terms of reference. This view is supported by the

fact that other jurisdictions such as NSW have conducted more limited sentencing reviews over similar periods, despite having greater resources to do so.

Previous review

Between 2002 and 2005 the ACT Government undertook an extensive review of sentencing legislation in the ACT which resulted in the *Crimes (Sentencing) Act 2005* and the *Crimes (Sentence Administration) Act 2005*. These Acts reflect significant reform to modernise sentencing law, resulting in new sentencing options, greater flexibility in existing sentencing options and consolidated provisions.

In undertaking this reform, comprehensive consultation occurred with stakeholders and the community over a 3 year period. Stakeholders included the ACT Courts, ACT Corrective Services and a consultative committee made up of the Director of Public Prosecutions, the Victims of Crime Coordinator, a senior member of Legal Aid ACT and a Directorate human rights lawyer. Eleven written submissions were provided in response to an issues paper and a number of oral submissions were received.

The impetus for the Committee's Inquiry into sentencing at this time is unclear. It is important to ask how the 'appropriateness of sentencing' in the mind of the community is determined. It may be that media reports and complaints about select cases have prompted questions to be asked about sentencing in the ACT. Where sentencing in select cases is in issue, ACT legislation provides power for the Supreme Court to review sentences that are manifestly inadequate or excessive.

NSW Law Reform Commission Review into Sentencing

A NSW Law Reform Commission (NSWLRC) review of NSW sentencing legislation, commenced in 2011, was sent to Attorney-General the Hon Greg Smith SC MP on 19 July 2013. The report will be made public when tabled by the NSW Government. Many of the question papers published by the NSWLRC to inform the review consider ACT legislation and sentencing practices. It would be useful for the Committee and those wishing to make submissions to the ACT sentencing Inquiry to have the benefit of the analysis and recommendations of the NSWLRC.

Purposes of sentencing should guide Inquiry

The Committee resolves at term of reference 2(a) – (g) to inquire into 'ways in which contemporary sentencing practice in the ACT affects other parts of the justice system, including: the Courts; Corrective Services; ACT Policing; the legal profession; victims of crime; offenders; and community support organisations'. While sentences imposed by the ACT Courts on offenders may have impacts on other parts of the justice system, such ACT Policing and ACT Corrective Services, these impacts should not inform policy as to what the judiciary should take into account when sentencing an offender as they are not relevant to any of the long-standing and widely accepted purposes of sentencing, as set out in section 7 of the Crimes (Sentencing) Act.

Targeted and robust consideration of sentencing issues

The ACT Government values careful consideration and analysis of sentencing issues. The Government already takes steps as part of its ongoing work to address sentencing issues as and when they arise. This targeted approach allows for careful, well-informed and robust consideration of relevant issues. It also allows for resources to be directed toward aspects of sentencing where they are most needed.

Law Reform Advisory Council

The ACT Law Reform Advisory Council (LRAC) was established in 2009 to provide expert advice and recommendations to the Attorney-General on terms of reference dealing with law reform matters referred to it by the Attorney-General. In 2010 the Government undertook a review into suspended sentences and their operation in the territory through the LRAC. Further references relating to sentencing can potentially be made to the LRAC as necessary.

Support for sentencing study

In June 2013, the Australian Research Council (ARC) funded a research project (\$252,000 over 4 years) that will include the surveying of jurors in the ACT.

The project entitled *Gauging informed public opinion on sentencing sex offenders: a national study* is led by Professor Kate Warner of the University of Tasmania and a number of academics around the Australia including Dr Lorana Bartels.

The ACT Victims of Crime Commissioner and the Canberra Rape Crisis Centre are the ACT industry partners for the research.

Researchers will undertake two broad activities in relation to jury trials over a 12-month period. As a control group, all jurors will be surveyed about their views on the appropriateness of sentencing. Secondly, and as the core research activity, jurors who have served in a sexual offence trial resulting in a conviction will be surveyed about their views on the outcome of the sentence imposed by the court.

I recently authorised Prof Warner and her research team to access identifying information about jurors under section 42C of the *Juries Act 1967*.

Access to current data

The ACT sentencing data that is reasonably capable of being provided to the Committee has already been made public, consistent with the Government's commitment to openness. The Committee may be interested to access current data in relation to sentencing in the ACT, noting that the capture of data will be significantly improved in the future via the ACT sentencing database.

The ACT criminal justice statistical profile measures a range of criminal justice outcomes and includes sentencing, restorative justice and corrective services data. It is available at:

http://www.justice.act.gov.au/criminal_and_civil_justice/criminal_justice_statistical_profiles

The Australian Bureau of Statistics website provides a range of data relevant to sentencing for all jurisdictions.

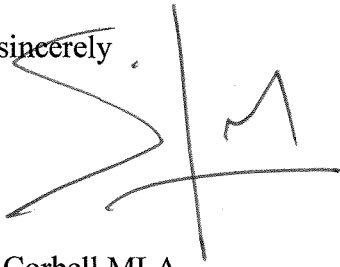
The Report on Government Services produced by the Australian Productivity Commission reports on police services, court administration and corrective services and is available at:

<http://www.pc.gov.au/gsp/rogs>.

The Justice and Community Safety Directorate Annual Report also provides some information about recidivism in the ACT: <http://www.justice.act.gov.au/page/view/3353/title/annual-report-2011-12>.

The Committee may also find statistics and publications provided by the Australian Institute of Criminology are relevant to its inquiries: <http://www.aic.gov.au/statistics.html>.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a vertical line and a small 'M'.

Simon Corbell MLA
Attorney-General

22.10.17

