



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
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Submission Cover Sheet

Inquiry into Penalties for Minor Offences and Vulnerable People

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Inquiry into Penalties for Minor Offences and Vulnerable People Submission by Civil Liberties Australia

Due on 14 April 2023

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Civil Liberties Australia thanks the Committee for an opportunity to make a submission.

This inquiry is very limited in its scope and focus, and begs the question of the larger issue of the effectiveness of jailing people in general.

Numerous research reports have questioned the value to offenders and to taxpayers of continuing to pursue high rates of incarceration.

The primary recommendation that Civil Liberties Australia makes to JACS is that the Committee members read the report by the Australian Productivity Commission Research paper October 2021.

This excellent, well researched report succinctly and persuasively questions whether present policies deliver desired outcomes at least cost to taxpayers, and to society more broadly. *That is the focus of this paper: given the growing direct and indirect costs of prisons, do current policies reduce the harm from crime and provide just and fair punishment at least cost? Are there alternative policies that could reduce costs without compromising community safety, confidence, justice or fairness?*

JACS must recommend to the ACT Government that it considers the proposals of this report in full (see attachment 1).

Addressing these questions, a long serving parole officer drew attention to her clients “chaotic lives”. As the Productivity Commission research paper clearly identifies:

“The prison population comes from disproportionately disadvantaged backgrounds compared to the general population. Factors such as unemployment, lower educational attainment, intergenerational incarceration, previous imprisonment, substance abuse and mental illness are considered to be risk factors correlated with imprisonment”.

P 20 Australian Productivity Commission Research paper October 2021

The need to change the justice system in regard penalties for minor offences is glaringly obvious. An experienced ACT judicial officer and barrister noted:

*The usual burdens are two fold. Firstly, financial penalties put them further back and can lead to worse crime as they struggle to make ends meet. Secondly, many vulnerable people often lead chaotic and disorganised lives so if they are given appointments to attend – such as with community corrections – they often miss them and get breached so the circle begins again. The solution begins with employing the types of liaison officers that the Aboriginal Legal Service employ. They tend to organise their clients and transport them around so they don't miss important things like community service!
We need to look for other solutions.*

While CLA recognises the appeal of law and order political campaigns which exploit the community's desire to punish offenders, finding alternative pathways for some lower-risk offenders would deliver better outcomes for offenders, victims and the community and be much cheaper for the tax payers.

The Government must resist the temptation to knee jerk reaction to introduce severe *law and order* legislation which affects everyone to solve a problem raised by sensational media reports of an individual criminal atrocity. The onus is on governments to act responsibly, in terms of both longer term beneficial outcomes for prisoners and the use of taxpayers money.

Neil McAllister, the ACT's first independent Inspector of Correctional Services, completed his five-year term recently and was replaced by Rebecca Minty.

Mr McAllister's office has delivered two exhaustive investigations - *Healthy Prisons Reviews* - into conditions, procedures and issues at Canberra's one-size-fits-all minimum-to-maximum jail, the second and most recent 2022 report **finding some of the recommendations from three years previously remained unaddressed.**

He said that all the basic life skills people on the "outside" take for granted, like how to use the internet banking or interpret a rental contract, are poorly understood by those serving lengthy terms in prison so they "flounder" when they leave, often with no place to stay, no job and the temptation to reoffend.

"There's no continuum for detainees, no proper preparation for them when they leave. The Transitional Release Centre was meant to do that but to get in there, the bar is set so high to qualify that it's almost impossible to achieve". Canberra Times: 15 March 2023.

In an allied issue, Civil Liberties Australia endorses the recommendations of Poccum's Law to reform the bail system for Victoria, and we believe the same principles should be applied in the ACT bail laws (see attachment 2).

Finally, a current report by the Justice Reform Initiative again reinforces the need for changing the way we do prisons.

"We need to embrace a criminal justice model that genuinely relegates prisons to a position of last resort, and instead centres on community-led interventions that work to break cycles of disadvantage, reduce reoffending, and build safer communities," the report said.

"The key issue highlighted in this report is that incarceration is not only expensive but it is also ineffective," the group said. "There is a need for government expenditure to be redirected to community-led programs, services and supports that are using evidence-based practices to reduce incarceration".

See <https://www.canberratimes.com.au/story/8135253/justice-system-overhaul-needed-to-break-prisons-cycle-of-harm-in-act/>

Addressing the specific terms of reference

1. Impacts of fines on vulnerable people - obviously disproportionate
2. Suitability of existing guidelines... practitioners should answer this
3. Impacts of prosecution... re fines - see 1
4. Alternatives to prosecution - use existing non-custodial pilot model
5. How to maximise compliance - more assistance from social and parole officers

It is frustrating to NGOs who are routinely asked for their submissions when successive reports all recommend alternatives to prison, which are ignored by governments.

Civil Liberties Australia urges JACS to strongly recommend to the ACT government that it implement the extended thoroughfare pilot program to reduce incarceration and recidivism.



Attachment !

Australia's Prison Dilemma research paper:

Australian Productivity Commission October 2021

<https://www.pc.gov.au/research/completed/prison-dilemma>

Table 4.1 – Case studies of key initiatives aimed at reducing imprisonment and recidivism P 72



Table 4.2 – Summary of program case study benefits. P 73- 74

4.7 Drawing the threads together

Some lessons can be drawn out of the case studies discussed in this chapter.

- There are many avenues that can be explored to reduce costs and improve outcomes from sentencing and prison arrangements.
 - Alternatives that effectively deal with the underlying causes of offending (and can be pursued without undermining community safety) can result in better long-term recidivism outcomes, lowering the cost of crime to the community, and producing better outcomes for the offender.
 - Alternative pathways can involve more short-term risk and this needs to be carefully managed — by monitoring offenders actively at an individual level and making effective use of available technologies such as electronic monitoring; and by monitoring outcomes to ensure that longer-term gains in reduced reoffending compensate for any increase in the short-term offending risk.
 - There are potential programs that can result in more effective reintegration and rehabilitation

after offenders have served their time. Increased investment in the short term may be justified by lower costs due to reduced reoffending. The case studies suggest there is potential for better individual and social outcomes, with lower long-run risks compensating society for accepting higher short-term risks, and achieved at a lower overall cost.

- Taking advantage of these options requires criminal justice systems that can experiment successfully. Setting clear goals, measuring and monitoring outcomes, adjusting delivery mechanisms and evaluating programs to promote continuous improvement can all underpin behavioural change and innovation in corrections.

There are no guarantees that taking any of the case studies described in this chapter and implementing them in a different jurisdiction would be successful, at least at first. Programs need to be selected and tailored for local conditions and offenders.

However, adopting the types of programs examined in this chapter would move Australian prison systems towards a stronger emphasis on rehabilitation and have the potential for better long-term outcomes. This is a journey that has been taken by a number of European countries, notably Finland and Germany from the 1960s (Mauer 2017), Norway in the 1990s and early 2000s (Evans 2020) and the Netherlands since the 1998 Penitentiary Principles Act was enacted (Subramanian and Shames 2013). Adopting some or all of these programs is ultimately a decision for each jurisdiction in concert with evolving community expectations about the role of prisons in punishing, deterring, incapacitating and rehabilitating offenders.

P 93-4

Attachment 2:

Victoria call for urgent introduction of Poccum's Law to reform the bail system.

<https://www.vals.org.au/wp-content/uploads/2023/03/Poccums-Law.pdf>

Reform to Victoria's bail laws must:

- 1. Remove the presumption against bail.**
- 2. Grant access to bail unless the prosecution shows that there is a specific and immediate risk to the safety of another person; a serious risk of interfering with a witness; or a demonstrable risk that the person will flee the jurisdiction.**
- 3. Explicitly require that a person must not be remanded for an offence that is unlikely to result in a sentence of imprisonment.**
- 4. Remove all bail offences (committing an indictable offence while on bail, breaching bail conditions and failure to answer bail).**

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