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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Review of Community Corrections 2021

Standing Committee on Justice and Community Safety

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Canberra Mental Health Forum (CMHF) thanks the Standing Committee on Justice and Community Safety for the opportunity to provide support and comments on Community Corrections in the ACT. The Canberra Mental Health Forum is an independent community group with lived experience advocating for improved mental health services. We are an active group of carers, consumers, people with work experience in mental health services, justice services or policy development.

At the outset we support individuals who have been involved with the justice system and their rights to be recognised and realised, to have a productive and safe life while responding to charges, rehabilitating and serving the terms of their sentencing. Additionally, the community needs to be assured of a safe society for all, ensuring affected persons are secure.

Mental illness may impact on the capacity to form a criminal intent – the common law concept of *mens rea*. From our understanding, community corrections or diversion may be an option when someone has been found not guilty for an action because of mental impairment or, secondly the person has been judged to have been able to form a criminal intent, but was impacted by having mental health conditions – illness or disorder. From the perspective of carers and families of someone who has been charged for a crime (and having a mental illness/disorder), families' experiences of the interaction between the mental health and the justice systems repeatedly are described as traumatic for all family members. This is due to confusion, lack of information and support for families and detainees, with insufficient and overstretched services. With improved outcomes economically and for all society, there are personal and community advantages to Community Corrections, but such approaches require sufficient resources and programs to support those with a mental illness or mental disorder (refer Mental Health Act 2015).

Key recommendation
Expand services and support for those with mental illness or mental disorder

Across Australia, we note the disturbing findings that more than 50% of adults in prison have a history of mental illness and more than 80% of young people in custody have had a diagnosed psychological disorder (Justice Reform Initiative, 2020). This appears also to be the case in the ACT (JACS, RR25by25, 2020). Legal representatives request the need for updating the National Disability Strategy to highlight the systemic barriers and poor outcomes for those with a disability:

> *Within the criminal justice system, people with disability face worryingly disproportionate outcomes, as well as many systemic and structural barriers to accessing justice. Legislative reforms, better access to legal assistance services, as well as preventative and rehabilitative critical support services to address the underlying factors which cause many*

people with disability to become embroiled in the system in the first place, are all needed to overcome these barriers. (Law Council of Australia, 2020)

The ACT Government has committed to *Building communities, not prisons (ACT Government, 2019)*. One goal of this initiative includes *providing early support for people living with a mental illness or disability*. In the ACT this is listed as one of the pillars of action under the reducing recidivism in the *RR25By25* plan, however only limited concrete actions are described (JACS, 2020, p. 15). CMHF strongly supports the aims to provide additional support and diversion, and encourages broader inclusion and faster progress on this goal and on the 10 year *Disability Justice Strategy*. Therefore, in line with your Terms of Reference 8, any other relevant matter, we urge the Committee to consider the impact of mental illness – psycho-social disability in community corrections. Additionally, we respond to TOR 4: Alcohol and Drug Orders; TOR 5: Recidivism outcomes; TOR 6: Experiences of offenders and their families. We structure our submission into four components focusing on: Prevention, Diversion, Improved treatment, and Transitions.

A. Prevention

The first requirement is more holistic community support to prevent people with disability coming into contact with the justice system through mental illness or co-morbidity with drug and alcohol issues. Increased community supports such as Safe Haven cafes (now delayed), and Police, Ambulance and Clinician Early Response (ESA, 2019: PACER) are required to prevent escalation. Continuing reports (Canberra Times, 2021) alarm and highlight the inadequacies of the ACT and Canberra Health Services provisions. Coroner reports (Canberra Times, 2021; Canberra Times, 2020) similarly record grossly inadequate services, including for Aboriginal and Torres Strait Islander peoples, and complexities with ACT/NSW communications.

There is a need to increase capacity and provide extra experienced nursing support, and clinicians so that staff are not continuously overstretched. Incentives to work in mental health, and alcohol and drug services are required (ACIL Allen, 2021). Additional supports, such as supported housing (Martin et al, 2021), will ensure a reduction in those with a mental illness being charged and sometimes convicted before the courts in 2020/21. There needs to be broader provision for those up to age 25, or at least 21 to support young people in a more supportive home like environment to prevent movement into homelessness or the justice system. Riots at the Alexander Maconochie Centre suggest extreme stresses for those with mental illness.

ACT Legal Aid is over-stretched and ill equipped to sufficiently defend charges, and some people will not have the insight into their condition to seek appropriate mental impairment defences. Additionally, the complex and confusing nature of the mental health and justice system exacerbates the impact of being a person with disability. The Disability Justice Strategy work needs to occur more urgently. The importance of legal aid for people with mental health disabilities was stressed by the *Productivity Commission* (PC) *Inquiry Report on Mental Health,* including representation at tribunals (PC, 2020, p. 41).

We recommend:

- **additional nursing, clinicians, and community mental health support to prevent escalation of mental ill-health, and where applicable alcohol and drug services**
- **additional housing options with wrap-around services for those with mental ill-health**
- **accelerate work on the Disability Justice Strategy**
- **improve understanding and addressing complex mental illness in justice services**
- **better integration of police and mental health services, including increased capacity of PACER**
- **additional resources for legal aid services**
- **additional support for family members and carers involved with the mental health and justice system**
- **improve understanding and addressing complex mental illness in the community and the impact on justice issues, especially for those with First Nation or multicultural backgrounds.**

B. Diversion needed: Jailing is failing

Jailing is failing people living with mental illness and cognitive disability. Once in custody, people with disabilities, have limited access to appropriate mental health or other critical support while they are in prison.

Offender and family response to incarceration rather than community detention:

> *Why are people with mental illness, and an offence directly caused by this diagnosis, being incarcerated for months in gaol, in the ACT in the Alexander Maconochie Centre. They are imprisoned in mainstream parts of the gaol, and are threatened with verbal and physical violence by other detainees. If in the Crisis Support Unit (which is essentially a seclusion unit), as a Prisoner at Risk, they are strip searched and detained for 23 hours a day with little exercise or social options – unless requested by family and raised with the Public Advocate. For women, this placement and strip searching has also been in front of male guards in view of male detainees as a mixed gender unit. The mental health treatment is insufficient and additional psychoses are experienced due to lack of staff and supervision.*
>
> *People with a mental illness should be accorded human rights and compassion associated with their disability. They should not be subject to the extreme stresses of prison, and should be supported and treated in a mental health facility, or community detention, with monitoring and treatment* (name withheld on request, 2021).

Research reports[i] (eg Igemenou et al, 2019) far better outcomes, including lower recidivism for those caught up with the justice system, where treated at a mental health unit rather than through prisons. Thereby, also reducing the likelihood of suicide and self-harm. Some detainees/offenders with serious mental illness do get moved to Dhulwa (secure mental health unit in Symonston). However, this facility has struggled to accommodate the need. There are some reports of a cycle where people at AMC are or become seriously mentally unwell, get admitted to Dhulwa – stabilise, then return to AMC with insufficient justice mental health support and a more stressful environment, then return to Dhulwa. Being confined to a mental health unit rather than sent to prison is preferable, but ACT Administrative and Civil Tribunal orders also have negative consequences, such as community and family isolation, and excessive focus on a biomedical model of treatment and rehabilitation. Reviews are currently underway to ensure 'least restrictive practices' are pursued under the ACT Mental Health ACT 2015 (ACT Health, 2021).

There needs to be additional supports in the community and in health facilities (Mezzina, 2014). This requires improved access to appropriate Step-Up Step-Down supports where offenders or those found Not Guilty by Mental Impairment with stable treatment and less risk can be managed better in more community like settings. Some family members have reported that the current justice health housing situation is insufficiently supported and monitored. A housing meeting once a week with a provider, or occasional telephone calls is inadequate to assist people through their transition to the community. Additionally, this is required to ensure adherence to orders and treatment, and to reassure the broader community.

The ACT Justice Health system struggles to recruit and retain staff and hence outcomes are flawed from the outset, even with good intent. Many offenders are released back into the community in a relatively short period of time but still lacking strong enough supports to build a new life and prevent reoffending. We support diverting more people away from detention and into community-based support wherever possible, and providing better therapeutic responses for those who cannot be diverted. Working in community corrections may be a preferable option for some staff who would find working at the AMC or Bimberi too challenging. This option may go some way to alleviating shortages. Staff working in any of these areas need to be adequately supported.

Where offenders also have drug and alcohol issues, including under court orders, then improved cooperative treatment and consideration of both Alcohol and Drug Orders and potentially Psychiatric Treatment Orders is required (PC, 2020: Refer Recommendation 14 — improve outcomes for people with comorbidities). To prevent institutionalisation and further trauma, resource dedicated day/residential mental health units, especially for those under 25 involved with the justice system to divert young people from custodial harm. The impact of COVID has disadvantaged participants that want to access alcohol and drug (AOD) residential rehabilitation programs as wait times have increased, interstate programs are subject to lock down restrictions and the ACT has limited opportunities.

We recommend:

- **increased use of more intensive mental health supports and residential units as part of community corrections**
- **increase alcohol and drug treatment services, and increase residential places**
- **consider expanding access to community-based corrections with those under intensive corrections orders, with improved support and oversight**
- **improve understanding and address complex mental illness in justice and corrections services better integrate correction services, AOD and mental health services**
- **increase housing options, and supports.**

C. Improved rehabilitation and treatment

Incarceration is failing in terms of rehabilitation (Justice Reform Initiative, 2020). The most recent Productivity Commission data showed almost 40 per cent of ACT adults released from prison returned to jail with a new sentence within two years (Productivity Commission, 2020). Greater support is needed for those with mental illness within the community and where required on release. Currently there is poor access to meaningful education and employment within the AMC (Inspector of Correctional Services Reports, 2019).

Programs such as those currently offered as transitions to release for those with a cognitive or mental illness disability, including parole (eg Wellways, 2021 - see Section D.) could be offered as part of community Intensive Corrections Orders to provide additional options to improve outcomes. Such a program would be based on ensuring compliance with orders, and the effectiveness of moderately intensive psychosocial support and community reintegration programs for at risk individuals involved with the justice system. This includes integrating people safely within the ACT community with a program mix of individual and group interventions and support to create healthy sustainable living arrangements (housing, finances, health, relationships), life-skills, personal identity, and pro-social roles.

A challenge for many with psycho-social disability is the use of alcohol and drugs. We note the higher prevalence of use of illicit drug use for those with mental health conditions (Australian Institute of Health and Welfare, 2021).

We refer the Committee to evidence presented to the Select Committee on Drug of Dependence (Personal Use) Amendment Bill 2021 for more in depth discussion of prevention, treatment, the Drug court outcomes and the effect of orders. We note the submission to that Inquiry of the Families and Friends for Drug Law Reform (No. 38, pp 91-94). There are numerous recommendations highlighting the need for greater resourcing and treatment options, with better integrated care.

We recommend:

- **increased resourcing in AOD and justice health**
- **improve pathways and cooperation between drug and alcohol and mental health treatment**
- **provide additional bail and parole options for those with a disability, such as Wellways programs, or as part of community Intensive Corrections Orders.**

D. Transition back and within the community.

It is in the interests of the community that repeat offending be radically reduced by community programs which improve pathways for people within the justice system, including through access to education, training, genuine work opportunities and by addressing homelessness. Across Australia, including the ACT, these critical community and support programs are not sufficiently supported. These are challenging roles and need to be more proactively resourced, refer to other mental health workforce development strategies being developed (ACIL Allen, 2021).

For those exiting the justice system, there needs to be more intensive mental health support and enablers back into the community. Where detainees /offenders are returning to the community, mental health discharge plans need to ensure they are connected to community mental health teams and monitoring as part of parole or bail conditions, especially where a detainee/offender has been identified as a Prisoner at Risk. For some detainees, their orders only had conditions pertaining to drug use, not mental illness issues. This is a perfect example of the silo syndrome, where co-morbidity issues are not comprehensively addressed.

If exiting from Dhulwa – a secure mental health facility, through the rehabilitation ward, once reviewed they are then moved to Gawanggal, as a community transition mental health unit, as part of the broader Brian Hennessy Centre at Bruce. Much of this Centre requires updating to meet current health unit standards, and a revised Model of Care. The suggested Model of Care is out of date and applies to the Dhulwa Mental Health Unit. There is the opportunity to provide more occupational therapy (OT) support to enhance transitions. As of August 2021, OT positions remain vacant within secure mental health services. Improved pay and conditions may assist recruit and retain staff across a range of justice health and allied health positions including psychologists. There are reports of staff moving to other better funded Australian Government and other agency positions.

Example program - Detention Exit Community Outreach - Wellways Australia program

CMHF supports the operation of programs to provide additional support to those with mental illness. One example is the Detention Exit Community Outreach program that has been operating in the ACT since 2015. The program enables case-managers to support those with a mental illness with employment, living skills, self-esteem and socialisation of those with involved with the justice system, including offenders. Minister for Mental Health in 2018, now Attorney General, Shane Rattenbury, advocated for the program and the extension of their remit to a longer transition support time. Most participants have been men with a diagnosis of severe mental illness. Many have a history of substance abuse or misuse, did not finish high school and/or have spent half their adult life in detention. As at 30 June 2021, the DECO program has had a recidivism rate of less than 15% since 2015. The figures are in stark contrast to broader recidivism rates: well below the ACT rate of 42.4 (2018-2019); and the national rate of 46.4 (2018-2019) as reported by the Australian Productivity Commission 2020 (Smith & Atayeo, 2021, Wellways Outcomes 2020-21). This example program shows that recidivism can be reduced, with more productive and healthy lives achievable.

Appropriate housing is a fundamental issue for people associated with the justice system (Martin et al, 2021). The current housing situation has significantly reduced access to public housing properties and renting in the private market has become impossible. Single males exiting detention have minimal chance of securing a property from Housing ACT. Wellways report that lack of housing is also preventing detainees from securing parole as they are unable to provide an exit address resulting in longer periods in detention.

We recommend:

- **improve conditions for those working in the justice and mental health sector**
- **ensure discharge mental health plans are completed and connect to community mental health supports**
- **increase resourcing of detention exit outreach programs**
- **review model of care, access, funding and resources for Gawanggal mental health unit (GMHU) at Bruce**
- **increase availability of suitable housing options.**

Conclusion

We strongly recommend that the Committee consider the potential for significant improvement in outcomes and recidivism for those with cognitive disability, and mental illness in the corrections system.
We would encourage the Committee to seek views from Mental Health, Justice Health, and Alcohol and Drug Services from Canberra Health Services on ways to improve services and outcomes for offenders. Additionally, we would encourage the Committee to seek input from contracted services such as Wellways Australia, and Winnunga Nimmityjah Aboriginal Health and Community Services.

[i] Igoumenou, A., Kallis, C., Huband, N., Haque, Q., Coid, J.W. & Duggan, C. (2019) Prison vs. hospital for offenders with psychosis; effects on reoffending, The Journal of Forensic Psychiatry & Psychology, 30:6, 939-958, DOI: 10.1080/14789949.2019.1651381