LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
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Submission Cover Sheet

Inquiry into Community Corrections

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JAILING IS FAILING

JUSTICE REFORM INITIATIVE

THE JUSTICE REFORM INITIATIVE

The Justice Reform Initiative (JRI) is a national justice advocacy organisation, working to reduce over-incarceration in Australia and promote a community, in which disadvantage is no longer met with a default criminal justice system response.

We currently have a network of over 100 eminent Australians as our patrons, including two former Governors-General, former High Court judges, and former parliamentarians from all sides of politics. The JRI's patrons in the Australian Capital Territory (ACT) are:

- **Professor Lorana Bartels (co-chair)**, Australian National University (ANU); Adjunct Professor, University of Canberra (UC) and University of Tasmania
- **Emeritus Professor John Braithwaite,** School of Regulation and Global Governance (RegNet), ANU
- **Professor Tom Calma AO,** Chancellor, UC; Co-Chair, Reconciliation Australia (currently on leave to undertake the Co-Chair of the Senior Advisory Group of the Indigenous Voice to Government role); former Aboriginal and Torres Strait Islander Commissioner and Race Discrimination Commissioner
- **Kate Carnell AO,** former Chief Minister of the ACT; Deputy Chair, BeyondBlue; Australian Small Business and Family Enterprise Ombudsman
- **Simon Corbell,** former Deputy Chief Minister, Attorney General, Minister for Police and Emergency Services of the ACT; Adjunct Professor, UC
- **Dr Ken Crispin QC,** former ACT Director of Public Prosecutions, Justice of the ACT Supreme Court and President of the ACT Court of Appeal
- **Shane Drumgold SC**, ACT Director of Public Prosecutions
- **Gary Humphries AO (co-chair),** former Chief Minister of the ACT and Senator representing the ACT in the Australian Parliament
- **Rudi Lammers APM,** former ACT Chief Police Officer
- **Dr Michael Moore AM,** former Independent Minister for Health and Community Care, ACT Legislative Assembly; Past President, World Federation of Public Health Associations; Distinguished Fellow, The George Institute, University of New South Wales (NSW); Adjunct Professor, UC
- **The Honourable Richard Refshauge**, Acting Justice of the ACT Supreme Court; former ACT Director of Public Prosecutions
- **Dr Helen Watchirs OAM,** President, ACT Human Rights Commission

The JRI's general principle is that **jailing is failing**. Specifically, we argue that it is failing:

- **Aboriginal and Torres Strait Islander people:** In 2018, Aboriginal and Torres Strait Islander peoples accounted for 3% of the total population, but 28% of the adult prison population. In an even grimmer statistic, only 5% of young people (age 10–17) are Aboriginal and Torres Strait Islander people, but they represent 59% of young people in detention. It is now 30 years since the Royal Commission into Aboriginal Deaths in Custody. Although governments accepted almost all of the Commission's recommendations, many of them, such as imprisonment being the 'last resort,' have not been implemented. Governments have also failed to adequately address the underlying systemic issues which the Royal Commission identified as the cause of the disproportionate rate of Indigenous incarceration;
- **young Australians**: sadly, most of the young people in Australia's juvenile justice system come from backgrounds where they have already often suffered from severe neglect or abuse and/or have been placed in out of home care. This was clearly demonstrated by the Royal Commission into the Don Dale Centre in the Northern Territory. The children in these centres, who can be as young as 10, have often had the hardest of young lives and need family and community support, education and life opportunities, rather than being locked up;
- **women:** women represent the fastest growing cohort of Australia's prison population and a disproportionate number of those women are Aboriginal and Torres Strait Islanders. Most have committed non-violent offences and many are themselves victims of horrific domestic abuse. One immediate consequence of incarcerating these women is that they are separated from their children, who are thereby made victims of the same systemic failure;
- **those with particular challenges, such as people living with mental illness and cognitive disability**: 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. The estimates of people in prison with intellectual disability or borderline intellectual disability are as high as 20%. These populations have limited access to appropriate mental health or other critical support while they are in prison and most will be released back into the community in a relatively short period of time from remand or having served their sentence, but still lacking strong enough supports to prevent reoffending. We should be diverting more people away from detention and into community-based support where possible and providing better therapeutic responses for those who cannot be diverted;
- **the most disadvantaged:** the number of people in prison has increased by nearly 50% since 2000. People from disadvantaged or marginalised groups are far more likely to come into contact with police and prisons than anybody else. Inter-generational poverty, homelessness, lack of education and opportunity, and exposure to constant policing cause more and more young people from disadvantaged communities to be

criminalised. We should be providing solutions to the disadvantaged, not locking people up; and

- **victims of crime**, who indicate that they are not helped by 'tough-on-crime' rhetoric. Victims have frequently called for support and processes that recognise and give voice to their experience as victims, alongside programs that genuinely address the causes of offending and also ensure that people who have committed crime are held accountable for their actions (see JRI 2021).

INQUIRY INTO COMMUNITY CORRECTIONS

We thank the Standing Committee on Justice and Community Safety for the opportunity to comment on the operation of community corrections in the ACT. We state at the outset our broad support for the increased use of community corrections, in appropriate circumstances, instead of imprisonment. This brings significant cost savings, as research by the Australian Institute of Criminology (Morgan 2018) has found that prison costs over nine times more than community corrections. However, as Bartels (2018: 409) has noted,

> community-based orders are not without their challenges. Adequate resourcing… and a willingness by judicial officers, politicians and the public to accept such orders in lieu of prison are just some of the issues that may arise. The conditions imposed on offenders can also be onerous, especially for those who are mentally ill, cognitively impaired and/or have substance abuse issues. It is crucial that they are not set up to fail.

We also note that there is an ongoing need to ensure that increasing use of community corrections does not result in an overall net-widening of the criminal justice system.[1] While community correction orders are a vital alternative to imprisonment, exploration of the role of community corrections should happen in conjunction with an exploration of the available supports for people with complex support needs *outside* of the justice system. There are still far too many people 'managed' in correctional settings in the ACT, whose pathway into the justice system could have been avoided, if there were adequate support services in the community.

As set out in Table 1, data from the Australian Bureau of Statistics (ABS) (2021a) indicate that the imprisonment rate in the ACT fell by 21% between 2018 and March 2021 (from 149.7 to 118.8 per 100,000). As set out in the table above, this was by far the largest decline, while some jurisdictions experienced an increase over the period. Other jurisdictions (NSW, Vic, WA and Tas) either experienced smaller declines or increase of up to 8% (see Qld, SA, NT). On this basis, it can already be said that the ACT not only has the country's lowest imprisonment rate, but is heading in the right direction, from the JRI's

[1] Net-widening generally refers to any process that results in people in the justice system becoming subject to more intrusive sanctions: see Cohen 1985.

perspective. It should be noted, however, that the current imprisonment rate remains much higher than before the Alexander Maconochie Centre (AMC) opened, in March 2009, at which time the ACT imprisonment rate was only 63 per 100,000 (ABS 2010).

Table 1: Change in imprisonment rate, by jurisdiction,

	2018	March 2021	% change
NSW	218.4	206.4	-5
Vic	152.4	137.7	-10
Qld	227.8	246.8	+8
SA	219.7	222.6	+1
WA	344.5	325.1	-6
Tas	151.7	145.3	-4
NT	936.7	992.8	+6
ACT	149.7	118.8	-21
Aus	220.5	214.2	-3

Source: ABS 2021a

Table 2 sets out the same data in respect of community-based corrections (CBC), with the ACT experiencing an 8% decline in its CBC rate. It is clear that this presents a much more varied picture, ranging from a 45% reduction in Victoria to a 71% increase in NSW. It is equally clear that no pattern emerges across jurisdictions; while the most common experience was a fall in both the imprisonment and CBC rates (Vic, WA, ACT and nationally), some saw the imprisonment rate go up, while the CBC rate fell (Qld, SA, NT), while others saw the reverse (NSW, Tas). These data confirm that changes in the use of CBC will not necessarily result in a reduction in the use of imprisonment, rather than widening the net of penal control (Cohen 1985).

Table 2: Change in community-based corrections rate, by jurisdiction

	2018	March 2021	% change
NSW	327.9	561.5	+71
Vic	282.5	155.1	-45
Qld	531.5	458.4	-14
SA	390.5	369.3	-5
WA	281.0	283.4	+1
Tas	480.6	464.2	-3
NT	712.8	684.9	-4
ACT	337.2	309.8	-8
Aus	363.6	387.3	7

Source: ABS 2021a

Table 3 sets out the proportion of community correction orders completed successfully over time and across Australia. This demonstrates that, in 2019-20, the ACT performed slightly below the national rate, at 68% and 71% respectively. Successful completion rates ranged

from 57% in Victoria to 83% in Tasmania. Analysis of the data over time indicates that the ACT's performance has been declining, as 84% of people on community correction orders completed them in 2010-11. Further research is required to determine the reasons for this.

When the 2019-20 data are disaggregated by gender and Indigenous status, it emerges that men's performance is relatively closer to the national rate (69% vs 71%), while women's is comparatively poorer (66% vs 74%). This may suggest that more is required to support women to successfully complete their orders, especially as most jurisdictions see a higher completion rate for women than for men. Although all jurisdictions showed higher completion rates for non-Indigenous people than Indigenous people (with national rates at 74% and 64% respectively), the respective completion rates in the ACT were 53% vs 71% – a difference of 18 percentage points. This highlights the need to ensure appropriate steps are taken to address the needs of Aboriginal and Torres Strait Islander peoples in the ACT criminal justice system. Specifically, we note Recommendation 7-3 of the *Pathways to Justice* report by the Australian Law Reform Commission (ALRC) (2017):

> State and territory governments and agencies should work with relevant Aboriginal and Torres Strait Islander organisations to provide the necessary programs and support to facilitate the successful completion of community-based sentences by Aboriginal and Torres Strait Islander offenders.

We take this opportunity to endorse the *Pathways* report and urge the ACT Government to implement all of its 35 recommendations, which have been described as a 'blueprint for addressing disproportionately high Indigenous incarceration rates' (Fitzpatrick 2018).

Table 3: Completion of community corrections orders, by jurisdiction

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*	*Aust*
2019-20									
Male	71.7	56.9	77.8	65.8	65.2	82.3	68.7	71.2	70.7
Female	75.5	59.6	83.7	63.0	62.1	83.7	66.2	78.9	74.1
Indigenous	64.6	45.2	70.4	56.0	55.1	79.4	53.3	70.0	64.0
Non-Indigenous	75.3	58.5	82.8	69.9	67.7	83.3	70.8	84.3	74.0
2019-20	72.4	57.4	79.2	65.1	64.7	82.6	68.1	72.5	71.4
2018-19	68.8	56.4	76.5	61.4	68.7	87.3	69.2	75.8	68.8
2017-18	76.1	59.2	78.0	61.6	71.3	86.9	67.4	73.1	72.9
2016-17	73.5	62.9	77.0	60.8	72.0	86.4	70.3	71.4	72.2
2015-16	74.0	66.2	77.7	60.9	67.0	85.0	72.8	73.4	72.8
2014-15	75.8	66.5	75.6	61.2	67.5	87.6	79.9	69.0	72.9
2013-14	74.0	66.4	77.3	60.0	70.1	87.1	77.0	69.2	72.8
2012-13	77.7	63.2	75.7	61.3	70.2	85.5	77.3	60.6	72.7
2011-12	79.7	58.7	72.6	55.6	71.8	90.2	81.6	65.1	71.2
2010-11	81.1	66.3	62.7	58.4	73.1	87.9	83.5	64.0	70.7

Source: Productivity Commission 2021

We turn now to consider the specific terms of reference.

1. Parole system

Although parole and other forms of community supervision constitute a less severe penalty than imprisonment, it is critical to acknowledge that the *way* that parole is experienced by many is often highly punitive. The challenges of reintegration post-prison are of course well documented (see eg Halsey 2016). In addition to these challenges, people on parole also experience the unique (and, for some people, devastating) tension of being punished and restricted, as a consequence of parole conditions, interacting with an often de-humanising parole system, being treated like an offender, rather than a citizen, *alongside* ostensibly being 'free'. Our starting point for thinking about parole systems should acknowledge that, while a lesser penalty than prison, the pains of parole are significant (see McNeill 2019). There is accordingly a need to both acknowledge the punitive dimensions of supervision in the community, as well as looking at what resourcing (including resourcing outside of the justice system) is required to support people through this process to successfully complete parole.

There is strong evidence that high-quality programs to help place people on parole in employment can reduce reoffending, while benefitting the economy. Contemporary econometric findings show clearly that unemployment can be averted by vocational training and education, that this reduces crime, and that wages for the poor can thereby be increased, reducing crime, by increasing the attractiveness of legitimate work, compared to illegitimate work (Chalfin & McCrary 2017). This path to crime reduction is resource-intensive, but less so than a massive prison system, and it is a benefit to the economy, in contrast to the economic deadweight of prison.

In the ACT context specifically, we note the ACT Ombudsman's (2020) report, which made 15 recommendations, including the need for ACT Corrective Services to:

- provide comprehensive information to detainees through the 'sentence management continuum' about sentence management and parole processes, with information effectively communicated, particularly for detainees with high and complex service needs, or alternative service requirements (Recommendation 4);
- amend its induction policy to require a discussion about parole at the induction stage, supported by up-to-date written documentation (Recommendation 7);
- identify and implement new arrangements, to ensure programs are more accessible to detainees, particularly for those on remand (Recommendation 10); and
- provide detainees with a parole application form at least seven months in advance of their earliest release date, talk through the form with detainees, to ensure they understand what is required of them and the process, and support them, where required, with their written application, or identify another support person to assist—

for example, an Indigenous Liaison Officer, if the detainee identifies as Aboriginal or Torres Strait Islander (Recommendation 11).

We are pleased to see that ACT Corrective Services has accepted all of the Ombudsman's recommendations and look forward to seeing further information on their implementation and the impact thereof.

Parole time credit

We support the *Sentencing (Parole Time Credit) Legislation Amendment Act 2019* (ACT), which provides credit for any time spent in the community on parole, before parole is revoked (also known as 'street time'). Prior to these reforms, the ACT position was 'the most unfavourable to parolees' in Australia (Bartels & Freiberg 2019: 482). We note that the passage of this legislation gives effect to Recommendation 9-2 of the ALRC's *Pathways to Justice* report. The Commission called for 'the immediate abolition of the relevant provisions, and the adoption of regimes that count time on parole as time served if parole is revoked' (2017: 314).

As Bartels and Freiberg noted, Indigenous prisoners were more likely than their non-Indigenous counterparts to have justice procedure offences (which includes breach of parole) as their most serious offence (9% vs 6% in 2018) and Indigenous prisoners accounted for 35% of people imprisoned for such offences, compared with 28% of all prisoners. Accordingly, they concluded that '[c]hanging practices on this issue is therefore likely to be particularly beneficial for Indigenous people and contribute to reducing their over-incarceration' (2019: 486). This reform is therefore expected to assist in the ACT's goal of achieving parity between Indigenous and non-Indigenous incarceration rates (Lindell 2021).

We note that the new law came into effect in March 2020, ie as the pandemic was taking effect. We would therefore be interested to know the extent to which detainees at the AMC have been made aware of the reform and the impact, if any, on the number of people applying for parole, as well as any data in relation to parole breaches as a result of the reform.

2. Intensive correction orders

Intensive correction orders (ICOs) became available in the ACT on 2 March 2016. The ACT Government completed a statutory review of such orders in November 2019 and tabled the review in the Legislative Assembly in February 2020 (ACT Justice and Community Safety Directorate (JACS) 2019). According to the review, by 31 October 2019, there had been 441 ICOs imposed on 244 people, with 102 people serving such orders, as at 1 October 2019. The review found that:

> the ICO is an effective sentencing option and some stakeholders considered it was likely to contribute to reducing re-offending which was also supported by data analysis of the cohort through the operational period of the ICO. Additionally, the order has met its strategic priority indicating a stabilising effect on the detainee population growth in the AMC (JACS 2019: 3).

The review made seven recommendations, including to '[a]mend the Sentencing Act to exclude certain serious offences from being amenable to an ICO and limit availability of ICOs to lower terms of imprisonment' (JACS 2019: 4). The body of the report indicates that '[i]t was submitted that the ACT ICO *could* be amended to be in line with the NSW legislation, which precludes the availability of ICOs for certain offences' (JACS 2019: 13; emphasis added). We do *not* support this recommendation. As the report notes, the 'policy intention …was that the sentencing court is best placed to weigh up the myriad of factors relevant to sentencing' (JACS 2019: 7). In the absence of more comprehensive data suggesting that ICOs are being used inappropriately, we do not see any justification for fettering judicial officers' discretion to determine the most appropriate sentence in all the circumstances.

We *do* support the report's recommendation that ACT Corrective Services employ identified Aboriginal and Torres Strait Islander Community Corrections Officers in Community Corrections. We note that 14 of the 102 people on ICOs in October 2019 (14%) were Indigenous, much lower than the proportion in prison. Our experience correlates with the stakeholder feedback in the report, to the effect that more culturally appropriate supervision for Aboriginal and Torres Strait Islander people on ICOs is required. This is also consistent with the point above about the low rate of successful completion of community correction orders.

More broadly, we note the evidence supporting the effectiveness of ICOs. Research from the NSW Bureau of Crime Statistics and Research (BOCSAR) compared reoffending rates between people who received an ICO and those who received a prison sentence of less than two years. The two groups were matched on a wide range of factors, including age, gender, race, offence, prior criminal record and prior penalties. The authors, Wang and Poynton, found a 11%-31% reduction in the odds of re-offending for those who received an ICO, compared with those who received a short prison sentence. Even larger reductions in reoffending were observed when the prison group was restricted to people serving a fixed term of six months or less (ie, those who receive no supervision or treatment post-release). In this case, the odds of reoffending among those receiving an ICO were between 25% and 43% lower for people across all risk categories and 33-35% lower among people in the medium-to-high risk categories. As a result, Wang and Poynton suggested that the results 'further strengthen the evidence base suggesting that supervision combined with rehabilitation programs can have a significant impact on reoffending rates' (2017: 1). Commenting on the findings, BOCSAR's Executive Director, Dr Don Weatherburn, suggested

that this shows that 'ICOs are a cost-effective alternative to prison for offenders who would otherwise be sent to prison for short periods of time' (BOCSAR 2017: np).

Table 4: Use of 'custody in the community', as a proportion of all principal sentences, by jurisdiction

	2016-17	2017-18	2018-19	2019-20
NSW	1.2%	1.5%	4.5%	5.9%
Vic	0.6%	0.6%	0.5%	0.5%
Qld	0.2%	0.2%	0.2%	0.2%
SA	3.5%	4.2%	4.1%	3.6%
WA	0%	0%	0%	0%
Tas	0%	0%	0.3%	1.2%
NT	1.1%	0.8%	0.9%	0.7%
ACT	1%	1.5%	1.3%	1.5%

Source: ABS 2018, 2019, 2020a, 2021b

The data in Table 4 report on the use of 'custody in the community', which is comprised of ICOs and home detention (see ABS 2021b: Appendix 3), as a proportion of all principal sentences imposed, for the years 2016-17 and 2019-20. Although jurisdictions vary in terms of whether they have ICOs and/or home detention available, this reveals that there has been relatively limited use of 'custody in the community' generally. In the ACT, this means ICOs have accounted for 1% of all sentences in 2016-17 (when the option was only available for four months of the year) and 1.3-1.5% of sentences since then. Custody in the community is not used in Western Australia, accounts for only 0.2% of sentences in Queensland and generally less than 1% in Victoria, Tasmania and the Northern Territory. By contrast, it is more widely used in South Australia (generally referring to home detention: see ABS 2021b: Explanatory Notes), representing 3.5-4.2% of sentences.

What is of most interest for the present purposes, however, is the change in use in NSW over this period. The NSW Government reformed its sentencing options in 2018, by passing the *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2018* (NSW). The Act's objective was 'strengthening the [ICO]…[and] offenders who would otherwise be unsuitable or unable to work will be able to access intensive supervision as an alternative to a short prison sentence' (Speakman 2017: 2). When introducing the Bill, the Attorney-General commented:

> Community safety is not just about incarceration. Imprisonment under two years is commonly not effective at bringing about medium- to long-term behaviour change that reduces reoffending. Evidence shows that community supervision and programs are far more effective at this (Speakman 2017: 3).

As noted above, BOCSAR's research on the effectiveness of ICOs was released in 2017. It appears from the foregoing that it was highly influential on the Government. The reforms

came into effect in June 2018 and it is clear that the use of ICOs has increased since: in 2016-17, custody in the community accounted for 1.2% of all sentences imposed, but this rose to 4.5% in 2018-19 and 5.9% in 2019-20.[2]

Accordingly, if the ACT recognises the scope of ICOs to address the underlying causes of offending and wants to increase its use of ICOs, it should consider the NSW experience and may contemplate legislative reform to explicitly require judicial officers to assess whether prison or an ICO is likely to be more effective.[3] Caution should of course be taken to ensure that any increased use of ICOs is not a form of net-widening, ie, at the expense of less severe options, such as good behaviour orders.

3. Sentence Administration Board

The bulk of the work of the ACT Sentence Administration Board (SAB) 'is deciding whether to grant parole, managing some offenders more intensively while on parole (management hearings), deciding if alleged breaches of parole and ICOs are proved and if so then deciding the appropriate sanctions for these breaches' (ACT Government 2020: 448).

We note that the number of parole application matters before the SAB decreased by 17% in 2019-20 compared to the prior year, largely due to the decrease in SAB sittings, itself due to the pandemic. However, we assert that whether and when a person is released from custody should not be dependent on such administrative logistics. We draw the Committee's attention to ALRC's recommendation that:

> [t]o maximise the number of eligible Aboriginal and Torres Strait Islander prisoners released on parole, state and territory governments should introduce statutory regimes of automatic court-ordered parole for sentences of under three years, supported by the provision of prison programs for prisoners serving short sentences (2017: Recommendation 9-2).

Adopting such an approach would reduce the SAB's workload and ensure that it can focus on higher-risk cases, as well as reducing the number of Indigenous people in custody.

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[2] The *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2018* (NSW) abolished home detention as a stand-alone sentencing option, so it can be inferred that all instances of 'custody in the community' in NSW since 2018 relate to ICOs.

[3] Section 66 of the *Crimes (Sentencing Procedure) Act 1999* (NSW) now provides:

> (1) Community safety must be the paramount consideration when the sentencing court is deciding whether to make an intensive correction order in relation to an offender.
> (2) When considering community safety, the sentencing court is to assess whether making the order or serving the sentence by way of full-time detention is more likely to address the offender's risk of reoffending.
> (3) When deciding whether to make an intensive correction order, the sentencing court must also consider the provisions of section 3A (Purposes of sentencing) and any relevant common law sentencing principles, and may consider any other matters that the court thinks relevant.

Women's Pro Bono Parole Program

Applicants before the SAB are not eligible for Legal Aid assistance. We commend the Women's Pro Bono Parole Program, which supports women to apply for parole (Bladen 2020). By August 2021, the program had represented 15 clients before the Board (email correspondence, A McKenna, 6 Aug 2021).

We recognise that the SAB seeks to ensure its 'hearings are informal and fair, and the Board responds to special needs of persons appearing before it when known and as required' (ACT Government 2020: 447). We applaud the efforts the SAB makes to afford procedural fairness to those appearing before it. Nevertheless, 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. It follows that many will struggle to adequately represent their own interests in applying for parole (or other issues that may arise before the SAB, eg, alleged breaches of ICOs). The Committee should therefore consider what measures can be put in place to better support people appearing before the SAB without legal representation.

4. Drug and alcohol treatment orders

Nearly all Australian jurisdictions have some form of drug court and, despite methodological limitations, there is ample research to demonstrate their effectiveness (see Kornhauser 2018). For example, BOCSAR found that participants who successfully completed the NSW Drug Court program were 37% less likely to be reconvicted of any offence than those in the comparison group (Weatherburn et al 2008). A longer follow-up study found that NSW Drug Court participants had a 17% lower reoffending rate than those not placed in the program and took 22% longer to commit an offence against the person (Weatherburn et al 2020).

We strongly support the use of Drug and Alcohol Treatment Orders and the Drug and Alcohol Sentencing List in the Supreme Court.[4] We would encourage consideration to be given to the expansion of this program to the Children's and/or Magistrates Court, to ensure substance-related offending is dealt with appropriately.

[4] We acknowledge that one of the JRI's ACT patrons, Acting Justice Richard Refshauge, is the presiding judge in the Drug and Alcohol Sentencing List and the co-chair of the JRI's ACT chapter, Professor Lorana Bartels, is part of the team evaluating this program.

5. Recidivism outcomes

We support the ACT Government's (2020) *Reducing Recidivism Plan*,[5] which seeks to reduce recidivism by 25% by 2025. We especially welcome the focus on 'addressing the root causes of people's offending' (2020: 3) and emphasis on:

- reducing the over-representation of Aboriginal and Torres Strait Islander people in custody;
- responding to justice housing needs;
- supporting people with substance use disorders in the justice system;
- supporting people living with a mental illness or disability in the justice system;
- supporting detainee reintegration;
- developing community capacity; and
- responding to women in the justice system.

The need to develop effective programs and policies in relation to these and other causes of recidivism is stark: the ACT currently has Australia's highest proportion of people in prison who have previously been incarcerated, at 78%, compared with 51-74% in other jurisdictions and a national average of 59% (ABS 2020b). This suggests a high level of support is required, to ensure post-release success and community safety.

The ACT Government is using the Productivity Commission's *Report on Government Services* data to measure the effectiveness of its plan. The most recent data (Productivity Commission 2021) are set out below in Table 5. These data indicate that the ACT has recently been improving, after a period of decline, in terms of both the proportion of people returning to prison within two years of release (37% in 2019-20, down from 42% the year before and 44% the year before that) and those returning to corrective services more broadly (63%, down from 71% and 70% in the previous two years). An interjurisdictional comparison indicates that the ACT performs well on the first measure (37%, vs 46% nationally and a range elsewhere of 35-61%) but nearly the worst performers on the second (63%, vs 55% nationally and a range of elsewhere 42-64%). This suggests that much more work needs to be done to reduce the risk of people who have been in prison returning to corrective services generally. More research is required to explore the reasons for this. In terms of people who have been on a community correction order, this has been getting slightly worse in recent years, with 18% returning to community corrections within two years in 2019-20, up from 17% in 2018-19% and 15% in 2017-18. The ACT also performed worse than the national average (16%) and was only behind Tasmania, at 21%. On the measure of returning to a new correctional sanction, by contrast, the ACT was one of the better performers, at 21%, compared with a national average of 26% and range of 17-32%.

[5] We note that Professor Bartels is leading the evaluation of this plan on behalf of the ACT Government. Bartels and other ACT patrons also had input into the development of the plan.

Nevertheless, the ACT's performance has been declining, from 17% in 2017-18 and 19% in 2018-19. Again, more research is required to understand the reasons for this and ensure that appropriate steps are taken to support the Government's objective of reducing recidivism of 25% by 2025.

Table 5: Returns to correctional system within two years, by year and jurisdiction

	NSW	*Vic*	*Queens*	*WA*	*SA*	*Tas*	*ACT*	*NT*	*Aust*
% of adults released from prison who returned to…									
prison with a new sentence within two years									
2019-20	49.9	44.2	45.3	36.6	34.8	47.1	37.1	60.8	46.0
2018-19	50.6	43.3	44.6	40.1	37.5	47.1	42.4	59.4	46.4
2017-18	50.8	43.7	42.7	38.5	37.1	46.3	44.2	55.9	45.6
2016-17	51.3	43.6	40.2	37.8	36.2	44.3	38.6	57.1	44.8
2015-16	50.7	42.8	39.7	38.1	36.9	39.8	41.0	58.3	44.6
2014-15	48.1	44.1	40.9	36.2	38.1	39.9	38.7	59.5	44.5
corrective services with a new correctional sanction within two years									
2019-20	56.1	54.8	57.5	44.4	42.3	56.6	63.4	63.7	54.9
2018-19	54.2	57.0	56.2	48.2	44.9	56.0	71.3	63.1	54.9
2017-18	55.8	58.2	53.7	45.3	45.7	55.5	69.9	58.7	54.2
2016-17	55.8	57.7	51.1	44.9	45.0	55.0	58.5	60.1	53.4
2015-16	55.1	55.6	49.8	45.7	46.1	49.8	61.3	61.0	52.6
2014-15	52.9	53.7	49.1	42.7	46.0	50.0	59.8	61.6	51.3
% of adults discharged from community corrections orders who returned to…									
community corrections within two years									
2019-20	17.5	13.9	17.1	13.2	13.5	20.9	18.3	10.5	16.1
2018-19	15.4	12.9	15.6	12.3	14.8	22.8	16.9	12.6	15.0
2017-18	12.7	13.9	16.2	11.6	11.6	18.5	14.9	11.2	13.6
corrective services with a new correctional sanction within two years									
2019-20	31.6	17.1	24.1	19.0	23.8	27.1	20.8	30.8	25.7
2018-19	28.6	15.6	21.9	18.9	24.7	28.8	19.1	31.0	23.9
2017-18	27.1	16.4	22.3	19.0	23.5	23.6	16.8	29.3	23.1

Source: Productivity Commission 2021

6. Experiences of offenders and their families

Drawing on lived experience perspectives

Doyle, Gardner and Wells recently observed that:

> It is widely acknowledged that 'good policy' should be informed by the individuals it most directly affects… however, drawing on the lived experience of people who have spent time in prison has received little attention… By listening to, valuing and including a diversity of voices, policymakers will be provided with an expanded set of

> perspectives for generating newer practice-based knowledge that is more closely aligned with user experiences, thereby offering insights into reducing incarceration and reincarceration rates (2021: 84; references omitted).

We support a model that draws on the insights of people with lived experience of the justice system, who are often best placed to comment on what does – and, perhaps more crucially, does not – work to reduce further engagement with the justice system.

Circles of Support and Accountability

The idea that people who have been involved in the justice system might act as 'wounded healers', who aid their own reintegration by helping those currently involved in the justice system, is becoming more influential in community corrections (LeBel et al 2015). In Canada, graduates of Circle of Support and Accountability (CoSA) programs successfully volunteer as 'wounded healers' (Wager & Wilson 2017).

CoSAs involve groups of volunteers supporting people convicted of sex offences, as they reintegrate into society after their release from prison, under professional supervision. This program was initiated nationally by Canadian prisons, desperate to come up with a solution for the problems faced by people convicted of sex offences, when they were due for release, with a view to reducing reoffending rates upon release to the community. In many cases, where people are considered 'high risk', a gradualised release from prison is required. For example, in the months before full release, day leave might be granted, so that people might attend a job, an apprenticeship or a university course in the community. The politics of parole (Freiberg et al 2018) is such that parole systems may be reluctant to take responsibility for the early release of people convicted of child sex offences, because of their fear of blame, should something go wrong. Consequently, this group often serve maximum possible terms and are released only when opportunities for graduated or conditional forms of release are exhausted.

CoSAs tend to develop self-incapacitation agreements of the following form. In the restorative circle, the person convicted of a sex offence (known as the 'core member') acknowledges that certain events tend to be contexts of temptation, such as visiting sex shops, watching internet pornography, hanging around outside schools and/or or drinking alcohol. It is agreed that, if any of these triggers arise, the core member will call a member of the circle to go to their home immediately to spend time together until this period of drift into danger passes. The intervention is resource-intensive in community volunteerism, with daily meetings and/or monitoring and emotional support from at least one volunteer.

The evidence that the regular social support of Canadian CoSAs is effective is encouraging, with Wilson et al (2009) reporting an 83% reduction in sexual reoffending. A subsequent randomised-controlled trial in the United States showed the intervention to be effective and strong in cost-benefit terms (Duwe 2013; see also Duwe 2018). A similar cost-effectiveness result was replicated in the United Kingdom by Elliott and Beech (2013). Although the

methodological limitations of these studies, especially small sample sizes, should be acknowledged, a systematic review by Clarke et al (2017) cautiously supports their cost-effectiveness.

There has been relatively little attention given to CoSAs in Australia, although they are supported by the former Deputy Premier and Attorney-General of Victoria, Rob Hulls (Worthington 2015).[6] In 2015, South Australia commenced a small pilot program (Worthington 2015). Examination of this program by Richards et al (2020), which included interviews with core members, revealed that the program provided:

> core members with the social support systems that they lack and work[s] to connect core members with other community supports (both welfare service providers and social avenues such as community groups), including family where appropriate. CoSA volunteers work to address core members' justifications of, excuses for and minimisations of their offending. In doing so, they role-model appropriate behaviours and social interactions, by demonstrating socially acceptable language and mores. They actively reduce stressors in core members' lives, including those stressors (e.g. family issues, isolation) that research shows can lead to reoffending. CoSA volunteers implicitly help core members create Good Lives by supporting them to achieve health, social and other goals. They are strongly future- focused and intent on supporting core members to develop new, law-abiding identities. They support core members to meet their release requirements, which have been imposed to prevent the core member from reoffending. CoSA volunteers also challenge core members' inappropriate thoughts and behaviours (e.g. minimisations of their offending), support them to avoid trigger behaviours, and report any concerns to the program. Addressing these concerns in the circle or by having the relevant core member breached is another critical role of CoSA. Both in helping core members to see the value in adhering to these rules and by supporting them to meet the rules, these circles are undoubtedly contributing to the safety of the community. In supporting core members to avoid technical breaches of these requirements (i.e. those conditions of their release into the community that would not invite criminal justice consequences under other circumstances, such as adhering to a curfew or not consuming alcohol), they may also be contributing towards criminal justice cost savings) (2020: 9).

In light of this, consideration should be given to exploring the scope for adopting a CoSA program in the ACT and incorporating the perspectives of people convicted of sex offences and their families into the development of such a program and criminal justice responses more broadly.

[6] Hulls is also a patron of the JRI.

7. Experiences of victim survivors

The ACT has long been a leader in relation to restorative justice (RJ), which is designed to better recognise the needs and experiences of victims. This occurred most notably through the Reintegrative Shaming Experiments (RISE) in the 1980s (see Strang 2017 for an overview) and, more recently, the expansion of RJ conferencing to adults and family and sexual violence offences (Burgess 2018).

Strang summarised the findings as revealing, across all the experiments combined, a 27% reduction in reoffending for those who experienced RJ, in addition to normal justice processing, compared with those randomly assigned not to receive RJ. There were also

> *exceptional* levels of satisfaction among participating victims, with the additional benefit of significant reductions in post-traumatic stress symptoms among victims who had met their offenders in an RJ conference compared with those who had not had this experience (2017: 494).

The most recent ACT evaluation of RJ showed modest, but statistically significant, reductions in reoffending (Broadhurst et al 2018). In addition, 93% of all conference participants (victims, offenders, and supporters) reported being pleased with the outcome of their conference, while 97-99% of participants felt treated with respect, able to say what they wanted as part of the process, that the process was fair for them and the offender, and that their rights had been respected. In light of these positive outcomes, there may be scope to expand RJ further, for example, to federal offences investigated by ACT Policing.

8. Any other relevant matter

It is often assumed that the public does not support community-based alternatives to imprisonment, but this is not borne out by the data. Although we are not aware of any ACT-specific data, unpublished national data from a representative sample of the ANUpoll (see JRI 2020) indicates that 70% of respondents agreed with the statement that, instead of going to prison, people who had been convicted of non-violence offences should be given a community based-order. There was even stronger support for the proposition that, instead of prison:

- people who are drug-addicted should be put on an intensive program of rehabilitation and counselling (87%);
- people who are mentally ill should receive treatment in mental health facilities (89%); and
- young people should have to take part in programs that teach job skills, moral value, and self-esteem (91%).

In addition, Fitzgerald et al (2020) reported a nationally representative survey of 1200 Australian adults, which found that only 19% could be be classified as 'punitive' in relation to their views on parole, with high levels of agreement that prisoners should serve their entire prison sentence inside and governments should fund prisons to hold prisoners longer, while 31% were considered 'progressive', agreeing with statements such as 'prisoners should be released on parole', 'society is obligated to assist prisoners upon re- entry' and 'governments should fund rehabilitation programs'. Half of the cohort were defined as 'mixed', holding both punitive and progressive views. As a result, Fitzgerald et al concluded:

> Our findings send a strong message to policy-makers and politicians that they should in fact feel emboldened to adopt approaches that support offenders' ability to redeem themselves. Measures to promote this include increased funding for prison rehabilitation and education programmes and re-entry services, as well as social safety nets more generally, including adequate funding for housing, employment options for people with a prison record and support for people with mental illness and/or substance abuse issues. This would accord with the public attitudes to parole identified by our research. It would also enable more offenders to pass through the gates of redemption (2020: 183; references omitted).

In this context, we also note Bartels and Weatherburn's recent paper, relevantly titled 'Building community confidence in community corrections', in which they 'contend that there is much that governments could and should do to strengthen public confidence in community corrections' (2020: 293). To do so, they called on governments to:

- evaluate programs and publish the results;
- provide regular updates on trends in successful order completion;
- do more to educate the public about crime and corrections;
- make community corrections credible; and
- humanise the people on community corrections orders.

Like Bartels and Weatherburn, we also 'recognise the value of the work done by community corrections and suggest it deserves more publicity, attention and support than it currently gets' (2020: 304).

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