



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 the Corrections and Sentencing Legislation Amendment Bill 2022

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Standing Committee on Justice and Community Safety
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

By email: LACommitteeJCS@parliament.act.gov.au

Dear Standing Committee,

Inquiry into the Corrections and Sentencing Legislation Amendment Bill 2022

The ACT Law Society (the Society) appreciates the opportunity to offer feedback towards the Standing Committee's Inquiry into the Corrections and Sentencing Legislation Amendment Bill 2022. We offer the following comments which largely reflect our earlier feedback to the Justice and Community Safety Directorate on the draft legislation. The following feedback has been prepared in consultation with the Society's Criminal Law Committee.

National system of interstate community-based sentence transfers

Currently, NSW is the only participating jurisdiction for the purpose of Part 12.2 of the *Crimes (Sentence Administration) Act 2005*, which concerns the transfer of community-based sentences between the ACT and other jurisdictions. The proposed amendment to section 5 of the *Crimes (Sentence Administration) Regulation 2006* will extend this status to all jurisdictions, with the aim of reducing inefficiencies faced by the courts when having to rely on existing informal arrangements for transfers to non-participating jurisdictions.

The Society supports this proposal, noting that a suitability assessment process is being developed by ACT Corrective Services to ensure that adequate safeguards are in place for the protection of domestic and family violence victims, based on the National Operating Procedures for the Interstate Transfer Scheme. While we note that this assessment process will be introduced via notifiable instrument, the Society welcomes the opportunity to offer feedback on this, given its significance in the broader scheme of the proposal.

Minor breaches of good behaviour orders – non-reporting discretion

The Bill proposes to amend section 102 of the *Crimes (Sentence Administration) Act 2005* which provides that if a corrections officer believes on reasonable grounds that an offender has breached any of their good behaviour obligations, they must report this in writing to the sentencing court.

The amendment will allow corrections officers to take non-reporting action for a suspected minor breach that would not amount to an offence, by issuing a written warning to the offender. Corrections officers will be required to abide by guidelines instituted via notifiable instrument, that will set out when a corrections officer can take non-reporting action, including any factors that they

must first consider, procedures for warning the offender, and circumstances in which it is mandatory to report a breach. We note the amendment reflects the existing emergency measure provision which affords corrections officers this discretion during a Covid-19 emergency.

We support this in-principle, given the intention is to reduce pressure on the sentencing court. However, we note that the emergency provision in section 102A lists the factors a corrections officer must have regard to when deciding not to report a suspected breach, including:

- The nature and circumstances of the offence;
- The personal circumstances of the offender;
- The offender's history of compliance with the good behaviour order;
- The likelihood than any victim of the offender or their family will be subject to violence or harassment;
- The importance of protecting the community and rehabilitating the offender (section 7(c)-(d)); and
- May have regard to action taken previously in response to earlier breaches of the order.

The proposed amendment does not include this list of considerations, but instead proposes to introduce a set of guidelines at a later date (via notifiable instrument), to guide corrections officers when making these decisions.

We consider that the list of considerations in section 102A would be worthwhile to include in the amendment. These could then be expounded upon in a set of guidelines imposed by notifiable instrument. In any event, we consider that these guidelines should be informed by stakeholder feedback and corrections officers should receive training prior to the commencement of this amendment. We consider that victim and community safety should be front of mind when corrections officers apply this discretion.

Strip searches of detainees

Strip searches of detainees on admission to ACT correctional facilities are authorised under section 70 of the *Corrections Management Act 2007*. An amendment is proposed to revoke the application of sections 113A, 113B and 113C to section 70, so that corrections officers will no longer need to form a reasonable belief that it is prudent to search the detainee for possible contraband or form a reasonable suspicion that a detainee is concealing a seizable item, before strip searching detainees on admission for the purpose of an initial risk assessment upon admission.

However, we note that the protection afforded by section 108 will continue to apply, requiring searches of detainees to be as minimally intrusive as is reasonable and necessary in the circumstances. Noting that section 108 will continue to apply and any gross abuse of this power would still be actionable in tort, we do not consider these amendments contentious. Moreover, we support the proposed review of this amendment following its second year of operation.

We trust that these comments are of assistance to the Standing Committee.

Yours sincerely



Simone Carton
Chief Executive Officer