

26 April 2022

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

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

Dear Committee,

RE: Legal Aid ACT's Position on Electronic Monitoring

On 16 March 2022, Legal Aid ACT ('the Commission') attended the Hearing in relation to the Inquiry into Community Corrections, to which the Commission had provided its submission.

During the Hearing, we took a Question on Notice about the Commission's position on Electronic Monitoring ('EM'). The question was asked by Dr Paterson MLA and our response was that the Commission would develop a position for the next Board of Commissioners meeting and report to the Committee our position on EM as supported by the Board.

The Board discussed the Commission's position on EM at its last meeting on 20 April 2022. Our position is in favour of considering the introduction of EM in the ACT with particular regard to bail in relation to family violence matters.

However, the Commission believes that before introducing any EM measures, careful consideration and discussion of the details of such measures should be undertaken, given the highly polarised views on EM and its impact on the human rights of individuals subject to it.

In particular, the Commission believes that before any measure is adopted, attention should be given to:

1. Clearly determine the extent and scope of the measure (e.g., which offences it applies to, stage of proceeding, any threshold as to the age of offenders). This should be determined in consultation with stakeholders, including representatives of Aboriginal and Torres Strait Islander communities and children and young adults' advocacy bodies.
2. Undertake research on the different technologies currently available on the market to determine the most reliable and appropriate one for EM.
3. Develop effective assessments that consider the specific circumstances of the offender, including criminogenic risks such as the person's employment status and

acquaintances, to determine the person's suitability for EM. This would contribute to preventing re-offending while under EM, which would defeat the purpose of such measures.

4. Consider potential additional rehabilitative measures to be imposed in combination with EM. Examples of such measures are unpaid work, medical treatment and vocational or life skills courses.
5. Refrain from requiring financial reimbursement from people subject to EM measures to cover part of the costs related to the technology. Imposing such costs would risk being inequitable and inflict an additional punishment, especially on less financially fortunate people, thus criminalising poverty.
6. Consider a trial period to assess the effectiveness of the implemented measures once the EM framework is clearly and thoroughly established. This approach has been followed by other states and would allow to get the most out of EM.

We have provided a document that highlights the Commission's position in more detail and the considerations that informed our position as set out in the Annexure.

Should you have any questions in relation to the above position, please do not hesitate to contact me on [REDACTED]

Yours sincerely

[REDACTED]
Dr John Boersig PSM
Chief Executive Officer
Legal Aid ACT

Annexure

Electronic Monitoring ('EM') is described as generally involving offenders being fitted with tamper-proof devices, generally GPS tracking devices, that send signals to authorities who are able to determine whether the offender is abiding to any temporal and/or geographical constraint conditions imposed on them.¹

Several Australian states and territories have implemented EM in different forms.

Queensland

On 31 March 2018, Queensland implemented EM in the form of GPS monitoring for high-risk perpetrators of domestic and family violence.

The adoption of GPS monitoring followed the recommendations of the 'Not Now, Not Ever' report into domestic and family violence. The measure is in connection to bail and offenders 'must be deemed suitable for bail before a GPS tracking device is considered'.² The devices used are 'tamper-resistant', generating an immediate alert to the monitoring centre if the device is broken or cut.

Queensland also implemented a 12-month trial allowing courts to use electronic monitoring as a bail condition for young people aged 16 or over. A report assessing the implementation of EM should be released in the next months.³

New South Wales

In New South Wales, the 'Domestic Violence Electronic Monitoring Program' (DVEM) commenced in 2017. The program uses GPS technology to monitor higher risk domestic violence offenders as part of a supervised parole order or Intensive Correction Order.⁴ The program was implemented as part of the NSW Government's Domestic and Family Violence Blueprint for Reform. The program is a collaborative initiative which also involves the Legal Aid NSW's Women's Domestic Violence Court Advocacy Program.

EM is also a potential additional condition that can be placed on Intensive Correction Orders.⁵

Finally, the Supreme Court may impose EM as a condition of supervision orders for serious sex offenders (*Crimes (High Risk Offenders) Act 2006* s 11(1)(e)). The imposition of EM was a mandatory condition for all serious sex offenders on parole in 2019-2020.⁶

¹ See Lorana Bartels, 'Electronic Monitoring: The Experience in Australia', (2017) 9(1) *European Journal of Probation* 80, 81.

² <https://www.police.qld.gov.au/initiatives/electronic-monitoring-gps-tracking-of-bailees/about-electronic-monitoring>.

³ <https://www.cyjma.qld.gov.au/resources/dcsyw/youth-justice/reform/electronic-monitoring-trial.pdf>.

⁴ <https://correctiveservices.dcj.nsw.gov.au/csnsw-home/community-corrections/domestic-violence-electronic-monitoring--dvem--program.html>.

⁵ <https://www.paroleauthority.nsw.gov.au/Pages/Function/ICO-Conditions.aspx>.

⁶ <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2019/tougher-conditions-for-paroled-sex-offenders.aspx>.

Tasmania

Tasmania introduced a trial for EM for high-risk family violence perpetrators called 'Project Vigilance'. The project won a Silver Award in the police-led category of the 2021 Australian Crime and Violence Prevention Awards.

Northern Territory

In Northern Territory, EM can be a condition on an offender's order, and it is used for offenders on home detention⁷ or that are subject to curfew, as well as offenders that are prohibited from going in certain places. The imposition of EM conditions follows an assessment of the suitability of the offender.⁸

South Australia

In South Australia, EM is used in the form of a GPS device as a possible condition to Court Ordered Home Detention,⁹ and for 'Intensive Bail Supervision'.¹⁰

South Australia also has an '*Intensive Bail Supervision program for domestic and family violence (DFV) offenders*', which won the silver award in the community-led category of the 2021 Australian Crime and Violence Prevention Awards.¹¹ EM is undertaken by the Intensive Compliance Unit, which operates 24/7.¹² The EM device, an ankle bracelet, raises a tamper alert if the offender attempts to or removes it.¹³

EM is also used for children and young people 'as a condition of Bail, an Obligation, Suspended Sentence Obligation or temporary or Conditional Release from the Adelaide Youth Training Centre (AYTC)'.¹⁴

Home detention combined with EM provides an additional sentencing option for the Courts. EM enables the Court to order that the defendant serves their time on a home detention order in cases where the only appropriate penalty is imprisonment and the matter is too serious to warrant suspension on bond (*Sentencing Act 2017* (SA) ss 71, 72). Home detention is not available for certain types of offences.

The Court has discretion to take into account time served on home detention bail when determining an appropriate sentence. Compliance with the strict rules of home detention, including EM, can be used as evidence of the defendant's willingness to abide by a Court Order, while breaches of it may make the Court reluctant to take that time into account.

⁷ <https://nt.gov.au/law/prisons/home-detention#:~:text=wear%20an%20electronic%20monitoring%20device>.

⁸ <https://nt.gov.au/law/prisons/electronic-monitoring>.

⁹ <https://www.corrections.sa.gov.au/community-corrections/home-detention/electronic-monitoring>.

¹⁰ <https://www.corrections.sa.gov.au/community-corrections/bail/court-bail/intensive-bail-supervision>.

¹¹ <https://www.aic.gov.au/media-centre/news/south-australias-intensive-bail-supervision-program-domestic-and-family-violence-offenders-recognised-increasing-safety-outcomes-victims>.

¹² <https://www.corrections.sa.gov.au/community-corrections/home-detention/electronic-monitoring>.

¹³ Ibid.

¹⁴ <https://dhs.sa.gov.au/services/youth-justice/youth-justice-services/home-detention>.

Victoria

Victorian courts have the power to impose EM conditions to offenders' community correction orders, provided the offender is suitable having regard to their specific circumstances (see *Sentencing Act 1991 (VIC)* [s 48LA](#)).

Evidence in Support of Electronic Monitoring

The Queensland Department of Prime Minister and Cabinet's Criminal Justice System Reform Framework contracted Deloitte, which partnered with Griffith University, to produce a report analysing the effectiveness of EM.

The [report](#) was published in December 2019 and concluded that EM 'can work'. However, it also suggested the need for mechanisms to enhance EM's effectiveness by encouraging the development of assessments that identify 'criminogenic risks' (e.g., offender's acquaintances, employment status etc) when assessing the suitability for EM measures.¹⁵

In 2010, an American study using national survey US state prison inmates showed that EM in combination with home detention could avert an estimate of 781,383 crimes per year, including 466,748 violent crimes, with a social value of \$481.1 billion as annual reduction in crime.¹⁶

Some research suggested that EM may represent a potential alternative to imprisonment, especially for people on bail and awaiting sentencing, to reduce the number of detainees in prison. Thus, implementing EM would appear beneficial when considering that between June 2020 and June 2021, the imprisonment rate in Australia increased by 5%, with a 16% increase of unsentenced prisoners.¹⁷

Moreover, a study from January 2019 found that, for non-violent offenders, EM reduces reoffending within 24 months by 16% compared to a prison sentence (from 64% to 21% for offenders under 30 years-old) and reduces the criminal justice costs by around \$30,000 for each eligible offender.¹⁸

Additionally, EM appears to be successful in family violence matters where the complainant expresses fear for their safety should the defendant be released on bail. Professor Lorana Bartels mentioned in [her submission](#) to the Inquiry into Community Corrections a study done in South Australia between January 2017 and November 2018.¹⁹ During this period, the

¹⁵ Lacey Schaefer and Gemma Williams, 'A Literature Scan of The Effectiveness of Electronic Monitoring with Community-Supervised Offenders' (Report, December 2019) v <<https://research-repository.griffith.edu.au/bitstream/handle/10072/409585/Schaefer518283-Published.pdf?sequence=3>> ('Deloitte Report').

¹⁶ Stuart S Yeh, 'Cost-benefit analysis of reducing crime through electronic monitoring of parolees and probationers' (2010) 38(5) *Journal of Criminal Justice* 1090 <<https://www.sciencedirect.com/science/article/abs/pii/S0047235210001650>>.

¹⁷ [Prisoners in Australia, 2021 | Australian Bureau of Statistics \(abs.gov.au\)](#).

¹⁸ Jenny Williams and Don Weatherburn, 'Can Electronic Monitoring Reduce Offending?' (Discussion Paper, January 2019) 2 <<https://ftp.iza.org/dp12122.pdf>>.

¹⁹ Lorana Bartels, Submission Number 022 to the Standing Committee on Justice and Community Safety's Inquiry into Community Corrections 5-6

movements of 394 men on bail after being charged with domestic violence were tracked by correctional officers and academics. Half of these men was electronically monitored 24/7, the other half was not. Of the men subject to EM, only 27 committed an offence and only 16 were charged with domestic violence offences ('DVO'), while of the other half 64 offended and 44 were charged with DVO. The half subject to EM was also more inclined to engage with rehabilitation services.

Evidence of the success of EM in relation to domestic violence matters is also provided by the findings following the implementation of 'Project Vigilance', which led the Tasmanian Government to commit additional funding to continue and expand the scope of EM of family violence offenders. The trial demonstrated:

- 76% decrease of high-risk incidents;
- 75% reduction of assaults;
- 81% reduction of threats;
- 74% reduction in property damage;
- 100% decrease in reports of stalking; and
- 80% of offenders did not re-offend in 6 months following the removal of the electronic monitoring device.²⁰

Additionally, the use of EM in domestic violence matters would not only provide victims with greater safety and protection, but it would also allow offenders who are adhering to the conditions on their court order to prove they are complying should any accusation be raised.

Therefore, it appears that EM, if properly implemented, has the capacity to reduce the burden in the prison system, potentially provide additional sentencing options for the defendants, and better ameliorate the risk to victims of domestic violence.

Problematic Aspects of Electronic Monitoring

Studies have shown that EM may also have downsides.

Firstly, there are issues in relation to human rights. EM limits individual's freedom of movement and their rights of privacy, and it is said to stigmatise people subject to it. In its [submission](#), the Foundation for Alcohol Research and Education (FARE) highlighted how intrusive EM can be, taking as example how EM is implemented in Victoria:

In Victoria, for a person to be granted EM at home, the entire family (including children) must be interviewed, assessed and provide consent for EM, including 24-hour phone calls, right of entry and search of the entire residence, and discussions about the detainee's progress. There is no real choice when the only other option is for their family member to stay in prison.²¹

<https://www.parliament.act.gov.au/__data/assets/pdf_file/0010/1917451/Submission-022-Lorana-Bartels.pdf>.

²⁰https://www.premier.tas.gov.au/site_resources_2015/additional_releases/project_vigilance_recognised_nationally

²¹ Foundation for Alcohol Research and Education, Submission Number 018 to the Standing Committee on Justice and Community Safety's Inquiry into Community Corrections 4

Additionally, EM devices need to be charged. FARE reported the experience of some offenders who were subject to EM, one of which reported how they had to wake up an hour early to plug the bracelet into a charger and stand next to the outlet for the device to be charged,²² a practise that felt dehumanising to the offender.

It has been argued that EM does not really prevent offenders from re-offending, an example in support of that argument being the man who killed four people and injured one in Darwin in 2019 while on parole and wearing an EM bracelet.²³

EM may be inequitable and unfair, especially when the offender must contribute to the costs of the device's maintenance since EM has also been criticised for being expensive and criminalising poverty,²⁴ or when it requires the offender to have a permanent residence and the agreement from the offender's family members.²⁵

EM devices may also have effectiveness and reliability issues, especially in remote areas. In 2018, for instance, hundreds of offenders were unmonitored for more than 24 hours due to their devices' electronic failure because of a Telstra outage.²⁶

FARE also argued how there are effective measures, such as community-based programs, other than EM, that are valid alternatives to imprisonment, less invasive than EM and with great rehabilitative value. FARE used as example the NSW and Qld Work and Development Order systems, which include the provision of activities like unpaid work, medical or mental health treatment by approved practitioners, educational, vocational or life skills courses, financial or other counselling and drug or alcohol treatment.²⁷

The same report commissioned to Deloitte by Queensland's Department of Prime Minister and Cabinet's Criminal Justice System Reform Framework stated that, should the Government opt for abandoning EM

there are alternate mechanisms of reducing prison [...] We suggest five alternate strategies: the use of imprisonment as a last resort (including the restriction of short prison sentences and reformed bail/remand guidelines), improved parole application and early release processes, more re-entry services and the use of throughcare, further rehabilitative programming, and more effective

<https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/1917447/Submission-018-Foundation-for-Alcohol-Research-and-Education.pdf> ('FARE submission').

²² Ibid 2.

²³ Neda Vanovac, 'Darwin shooting: Four people killed and another injured, 45yo alleged gunman arrested by police', *ABC News* (4 June 2019) <<https://www.abc.net.au/news/2019-06-04/darwin-shooting-people-police-arrest-gunman/11179136>>.

²⁴ FARE submission (n 20).

²⁵ Jyoti Belur et al, 'A systematic review of the effectiveness of the electronic monitoring of offenders' [2020] 68 *Journal of Criminal Justice* 1, 16 <<https://openresearch-repository.anu.edu.au/bitstream/1885/220330/1/1-s2.0-S004723522030026X-main.pdf>>.

²⁶ Camron Slessor and Casey Briggs, 'Telstra outage leaves hundreds of offenders unmonitored for 24 hours in South Australia', *ABC News* (4 November 2018) <<https://www.abc.net.au/news/2018-11-04/telstra-outage-leaves-hundreds-of-offenders-unmonitored/10463642>>.

²⁷ FARE Submission (n 20) 8.

supervision practices. Each of these strategies would be useful as standalone methods for reducing prison demand, although each could likewise be augmented with electronic monitoring.²⁸

Legal Aid ACT's Position

The debate on EM is highly polarised. EM appears to be a good alternative to imprisonment, especially in relation to bail and domestic violence matters. However, the specific circumstances and life conditions of the offender often affect the effectiveness of EM measures. Therefore, should EM be introduced it would be crucial to develop assessment tools that allow to identify the suitability of the offender considering their circumstances and surrounding.

In the ACT, there are significant delays in obtaining Hearing dates, even when the defendant is in custody. Magistrates are often reluctant to release defendants on bail due to concerns about the complainant's safety and escalation of the alleged offensive behaviour, which may lead to having the presumption of innocence pushed to the side. This situation raises concerns as to the protection of the rights of the accused. EM can represent a measure to prevent clients from being remanded for a lengthy period while awaiting Hearing, balancing the rights of the defendant against the rights of the complainant and the protection of the public more generally.

Using EM measures to control people on parole may be problematic since it would potentially mean imposing an additional punishment by limiting the person's freedom and privacy in addition to the parole's condition of not reoffending.²⁹ Thus, before adopting any measure, an analysis of what stages of a proceeding would be best served by EM options should be undertaken.

While issues around human rights breaches have been raised in relation to EM, when balancing the benefits and drawbacks, EM appears to be the 'lesser evil' compared to imprisonment. Offenders would hardly prefer being in custody to being electronically monitored.

In conclusion, Legal Aid's position is in favour of considering and exploring the introduction of EM in the ACT, with particular emphasis on bail and domestic violence matters.

Nevertheless, before EM is adopted:

1. The extent of the measure should be clearly determined (e.g., which offences, stage of proceeding, any threshold as to the age of offenders) and consultations should be undertaken, including with representatives of Aboriginal and Torres Strait Islander communities and children and young adults' advocacy bodies.
2. Extensive comparative research on the best and most reliable technology on the market to be used for EM should be undertaken.
3. Effective assessments that consider the specific circumstances of the offender, including the above-mentioned criminogenic risks, should be developed to determine the suitability of offenders for EM, which would help prevent scenarios with offenders re-offending while being electronically monitored.

²⁸ Deloitte Report (n 15) v.

²⁹ [RichterRyserHostettler.2021.Punitivenessofelectronicmonitoring.pdf](#)

4. Potential additional rehabilitative measures to be imposed in combination with EM should be considered, e.g. unpaid work, medical treatment and vocational or life skills courses.
5. Any EM measure implemented should refrain from imposing any of the costs deriving from the technology used on the users, otherwise risking being inequitable and inflicting additional punishment, also criminalising poverty.
6. It may be a good idea to have a trial period to assess the effectiveness of the implemented measures once the EM framework is clearly and thoroughly established.