



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 Administration of Bail

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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 Committee Members,

Re: Administration of bail in the ACT

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited (**the ALS**) regarding the Inquiry into the Administration of Bail (**the Inquiry**).

The ALS is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. More than 280 ALS staff members based at 27 offices across NSW and the ACT support Aboriginal and Torres Strait Islander people through the provision of legal advice, information and assistance, as well as court representation in criminal law, children's care and protection law, and family law.

Increasingly, we represent Aboriginal and Torres Strait Islander families in the NSW Coroner's Court, and provide a variety of discrete civil law services including tenant advocacy, employment and discrimination, and assistance with fines and fine-related debt. We represent the interests of the communities we service through our policy work and advocacy for reform of systems which disproportionately impact Aboriginal and Torres Strait Islander people.

This submission is informed by the feedback and experiences of our solicitors who represent Aboriginal adults and children in criminal proceedings before courts of all levels in the ACT.

Introduction

The ALS welcomes the Committee's attention to improving bail laws and supporting compliance with bail.

We support evidence-based law reform, particularly reforms which foreground the importance of connection to culture, community and healing for Aboriginal and Torres Strait Islander people, and which recognise the unique historical and contemporary experiences of Aboriginal and Torres Strait Islander people flowing from dispossession and colonisation.

One significant and worsening legacy of colonisation is the gross overrepresentation of Aboriginal and Torres Strait Islander people in custody. The Productivity Commission's 2024 *Report on Government Services* shows that, on average, 28 per cent of people in prison in the ACT are Aboriginal or Torres

Strait Islander, representing the highest rate of Aboriginal incarceration in the country.¹ This is a crisis for the ACT community as a whole, and in particular for the communities served by the ALS.

In 2021, the Productivity Commission observed that the rate of imprisonment was at its highest in a century in Australia, despite falling crime rates.² Studies have suggested that imprisonment had little to do with the decline in crime rates over the period. Instead, improved economic conditions, better vehicle security, a decline in alcohol consumption, falling demand for stolen goods and a reduction in the use of cash seemed to contribute to the decline in crime.³

Relevantly, the increase in the number of people on remand has been found to account for the majority of the growth in imprisonment rates in Australia.⁴ This further highlights the importance of ensuring that any amendments to bail law in the ACT are carefully considered before implementation.

Bail Support Programs for Aboriginal and Torres Strait Islander People

We recommend the Committee expand funding to new and existing bail support programs in the ACT, especially those delivered by Aboriginal Community-Controlled Organisations (ACCOs).

The ALS Ngurrumbai Bail Support Program is a wraparound bail support program for Aboriginal and Torres Strait Islander adults funded by the Justice and Community Safety Directorate (JACS) and which operates at our Canberra office. The Ngurrumbai staff provide clients with support and assistance during their bail period, provide advice and legal representation for bail applications, and provide referrals and other support to assist clients while on bail. Our team also works productively with Community Corrections facilitate contact with clients to avoid breaches of bail conditions and support attendance at mandatory appointments.

The program is available for all adult clients in the ACT, and almost all clients on bail use the support program to some extent. Participation in the program looks different for different people. Some clients need very little support to comply with their conditions—for them, support might mean a text message to remind them of upcoming court dates. For others, the bail support provided is comprehensive and ongoing.

Ngurrumbai staff provide transport for clients to attend court or appointments, help them buy new clothes at the shops, assist with Centrelink and obtaining identification documents, send reminders about court dates, and make referrals to a variety of programs. Our support staff spend time explaining and ensuring clients understand their conditions, especially for clients with lower levels of literacy. Service delivery is flexible, responsive and culturally safe; recently our support team established a Facebook profile to enable clients to easily contact the team even if they don't have credit or have lost their phone. This is an example of how bail support programs delivered by ACCOs, and Aboriginal and Torres Strait Islander Legal Services specifically, can support clients in obtaining and staying on bail, including by avoiding breaches.

In addition to practical support, our staff members also add value by providing a safe and culturally appropriate person to support them through a very stressful time in their lives. This can simply mean providing a calm and supportive ear when a client is upset prior to a court proceeding. It can also mean providing a safe person who clients can contact when things are beginning to go wrong—one with the means and the knowledge to help the client get back on track. The collaborative, cooperative spirit of

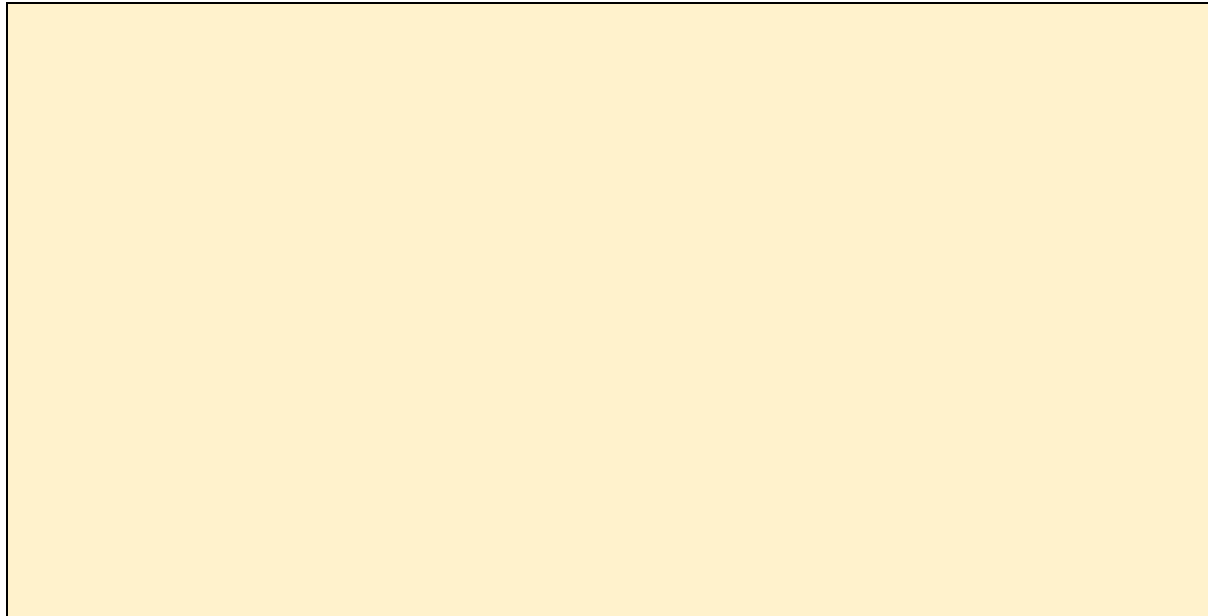
¹ Productivity Commission, [Report on Government Services 2024](#) (29 January 2024), Part C, Section 8, Table 8A.4. See also Productivity Commission, *Australia's Prison Dilemma* (Report, October 2021) 32: 'The growth of imprisonment rates for Aboriginal and Torres Strait Islander people was fastest in the ACT (149 per cent growth between 2006 and 2020)'.

² Productivity Commission, [Australia's Prison Dilemma](#) (research paper, 2021) 9.

³ Ibid 10, citing Don Weatherburn and Sara Rahman, *The Vanishing Criminal: Causes of Decline in Australia's Crime Rate* (Melbourne University Press, 2021); see also

⁴ Productivity Commission, [Australia's Prison Dilemma](#) (research paper, 2021) 26.

the programs is key to its success. In 2022-23, we helped a record 271 clients through Bail Support. Of those who have participated in the program, 55.7% have not breached bail or re-offended in the ACT and 23.5% have only breached bail or committed a further offence on one occasion.



The value of the support program is routinely recognised by the judiciary and the broader legal sector. The ACT Chief Magistrate has publicly recognised the Bail Support program and suggested that bail decisions be granted in favour of the client when program staff are present in court. This recognition has been echoed by other magistrates who have called upon program staff during proceedings to assist in their respective decisions to grant bail. We have received increased referrals for Bail Support from Legal Aid Canberra and private law firms. Our staff have also participated in regular meetings with ACT Policing, who are genuinely supportive of the program.

The ALS recommends the Committee expand funding for the Ngurrumbai Bail Support Program to allow it to service children and young people. Under the current funding agreement with JACS, the Ngurrumbai Bail Support Program is not available for children and young people. We understand that funding is needed from the Community Services Directorate to expand the program to young people. Members of the judiciary have repeatedly observed the success of the program and the need for young Aboriginal and Torres Strait Islander defendants to have access to the same culturally appropriate supports.

Recommendation: Fund culturally appropriate bail support programs for Aboriginal and Torres Strait Islander young people and children, including providing funding to the ALS to expand the Ngurrumbai Bail Support Program to this cohort.

We note the ACT Law Reform and Sentencing Advisory Council has an upcoming review of bail laws in the ACT, with comprehensive terms of reference particularly as to the substantive laws of bail.⁵ While we do not have capacity to make a fulsome submission at this time on the laws of bail, we note the following:

⁵ ACT Law Reform and Sentencing Advisory Council, [Bail](#) (web page, 2023).

- We support the inclusion of a standalone provision for Aboriginality, which makes the consideration of culture mandatory and ensures consideration throughout the entire bail determination process.⁶
- We oppose presumptions against bail and consider, if they are used, that they should be reserved for the most serious offences, characterised by a maximum penalty of 25 years or more. In particular, we recommend that young people and children who are charged with criminal offences have a presumption in favour of bail, or at a minimum, a neutral presumption toward bail. We strongly oppose presumptions against bail operating for less serious offences committed whilst on conditional liberty.
- We support child-specific legislation which recognises that arrest and detention should operate as a last resort, particularly for young people and children.

Conclusion

Experience shows that reactive and punitive law-making has historically led to disproportionate harmful impacts for the Aboriginal and Torres Strait Islander communities and entrenched marginalised people in cycles of criminalisation by compounding, rather than addressing, the factors underlying their contact with the legal system.

We acknowledge the harm that serious offences of violence cause to individuals and communities, as well as the justified community concern around highly publicised incidents involving defendants on bail; however, we consider that any reforms to criminal law and policy must be carefully considered, justified by a strong evidence base in support of the need for reform, and take into account any unintended consequences which would flow from the amendments.

We would welcome the opportunity to provide feedback to the Committee on any specific law reforms or programs being considered.

If you have any questions or require further feedback, please do not hesitate to contact our organisation at policy@alsnswact.org.au.

Sincerely,

⁶ See, for example, s 3A of the *Bail Act 1977* (Vic); and Australian Law Reform Commission, *Pathways to Justice - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, 2017) 17, Recommendation 5-1.