



**Legislative Assembly for the  
Australian Capital Territory**

Standing Committee on Justice and  
Community Safety

# **Inquiry into the Corrections and Sentencing Legislation Amendment Bill 2022**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Justice and Community Safety

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Approved for publication

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# About the Committee

## Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety on 2 December 2020.

The Committee's areas of responsibility are:

- ACT Electoral Commission
- ACT Integrity Commission
- Gaming
- Minister of State (JACS reporting areas)
- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- ACT Ombudsman
- Corrective services
- Attorney-General
- Consumer affairs
- Human rights
- Victims of crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

## Committee members

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Mr Andrew Braddock MLA

## Secretariat

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## About this inquiry

The Corrections and Sentencing Legislation Amendment Bill 2022 was presented to the Assembly on 30 November 2022.<sup>1</sup> It was then referred to the Standing Committee Justice and Community Safety as required by clause 5 of the establishing resolution.

The Committee announced it would inquire into the Bill on 7 December 2022.

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<sup>1</sup> ACT Legislative Assembly, Proof Minutes of Proceedings, No 70, 30 November 2022, p 4025.

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# Acronyms

Acronym	Long form
ACT	Australian Capital Territory
AMC	Alexander Maconochie Centre
ATOD	Alcohol, Tobacco and other Drugs
ATODA	Alcohol, Tobacco and other Drugs Association ACT
CCO	Community Corrections Officer
CM Act	<i>Corrections Management Act 2007</i>
DPP	Director of Public Prosecutions
GBO	Good Behaviour Order
ICO	Intensive Corrections Order
JACS	Justice and Community Safety
NSW	New South Wales
SAB	Sentence Administration Board
VOCC	Victims of Crime Commissioner

# Recommendations

## Recommendation 1

The Committee recommends that the ACT Government consult with stakeholders (including the Aboriginal Legal Service, Domestic Violence Crisis Centre and the Victims of Crime Commissioner in addition to representatives from the legal sector) on the development of the guidelines to corrections officers applying the new discretion to not report breaches of a good behaviour bond to the sentencing court.

## Recommendation 2

The Committee recommends that the ACT Government ensure that ACT corrections facilities are adequately resourced and provide training to corrections officers in the application of the proposed guidelines for the new discretion to not report breaches of a good behaviour bond to the sentencing court.

## Recommendation 3

The Committee recommends that the ACT Government consult with stakeholders on the development of the notifiable instrument outlining the assessment process that will be the framework for corrections officers to determine if the person will be suitable for the community-based sentence transfer.

## Recommendation 4

The Committee recommends that the ACT government should amend the Bill to exclude searches of papers or laptops belonging to professionals such as lawyers and statutory officers, which are for the purpose of providing confidential legal or professional advice, providing safety and security risks can be managed.

## Recommendation 5

The Committee recommends that the ACT Government should make it clear in the Bill that search of non-detainees should be conducted in a way that seeks consent to the search and minimises intrusions on the privacy of the person being searched. In addition, the Bill should provide that consent should be obtained where there is a further search by a corrections officer of a different sex.

## Recommendation 6

The Committee recommends that the ACT Government ensure that policies and procedures that are developed to support corrections officers in their limited discretion in whether or not to conduct a strip search provide guidance on:

- how to prioritise less intrusive searches, including using no touch scanning technology;
- consulting within the AMC to avoid a detainee being strip searched more than once if necessary.

## **Recommendation 7**

The Committee recommends that the ACT Government provide the Legislative Assembly with more information about the strategic plan for therapeutic supports to be provided to assist detainees with the smoking ban at ACT correction centres, including the type of evidence-based nicotine replacement options, the availability of specialist counselling services, how individual cultural, ability and health needs will be met and who has been consulted in the development of the program of therapeutic supports.



# 1. Introduction

## Background to the Bill

- 1.1. On 30 November 2022, Mr Gentleman presented the Corrections and Sentencing Legislation Amendment Bill 2022 to the Assembly to amend legislation about corrections management and sentencing.
- 1.2. The Bill proposes a number of amendments to the administration of corrective services and community-based sentences. Amendments made by this bill include giving authorisation to the Director-General of the Justice and Community Services Directorate to declare the entirety of correctional centres to be smoke free and will also address how searches will be undertaken on visitors and detainees. The amendments in this bill will also provide a framework to allow interstate community-based sentences to be transferred to the ACT and to ensure minor infractions of Good Behaviour Orders (GBOs) do not result in potential court sanctions. Amendments will also strengthen laws to combat the potential use of drones to deliver prohibited items to correctional centres.

## Conduct of the inquiry

- 1.3. On 7 December 2022, the committee agreed to inquire and report on the Bill and issued a media release inviting the community to participate in the inquiry by making a submission.
- 1.4. The Committee received nine submissions. These are listed in **Appendix A**.
- 1.5. The Committee did not hold a public hearing for this inquiry.
- 1.6. The Committee meet at a private meeting on 22 February 2023 and agreed to the report to be tabled out of session.

## Legislative Scrutiny

- 1.7. The Bill was considered by the Standing Committee on Justice and Community Safety (Legislative Scrutiny role) in Report 25.
- 1.8. The Committee noted that the Bill will extend the circumstances in which a strip search may be conducted and therefore limit the protection of privacy and the right to humane treatment when deprived of liberty in section 12 and 19 respectively of the *Human Rights Act 2004*. The explanatory statement to the Bill provides why this should be reasonable using the framework set out in section 28 of the Human Rights Act. However, the Committee raised concerns that it is unclear how the statutory discretion in section 70 of the *Corrections Management Act 2007* would be administered so as to provide for strip searches upon admission without a routine or blanket approach being taken. It was also unclear how the provision will work in conjunction with the related notifiable instruments that setting out procedures. The Committee also considered that any policies or procedures applying to limit the circumstances in which a strip search is undertaken should

be subject to scrutiny either explicitly in the Act or in regulations subject to Assembly disallowance rather than left to a notifiable instrument.

- 1.9. The Committee has asked the Minister to provide further information on how the amendments to the *Corrections Management Act 2007* (CM Act) relating to strip searching detainees on admission to a correctional centre are intended to operate to ensure that any discretion is exercised with minimal intrusion on detainees' human rights, and how any discrimination will be appropriately subject to scrutiny. The Minister was asked to respond prior to the Bill being debated.

## 2. Issues raised in evidence

### Processes for inquiries into Intensive Correction Order breaches

- 2.1. The Bill aims to streamline existing processes relating to notifying an offender and the Director of Public Prosecutions (DPP) of an inquiry relating to a breach of conditions of an Intensive Correction Order (ICO). Currently the Director-General of the Justice and Community Safety (JACS) Directorate is required to provide the offender and DPP with a notice of inquiry when the Sentence Administration Board (SAB) decides to conduct an inquiry.
- 2.2. The Bill proposes to instead authorise the SAB to provide the written notice of an inquiry of an offenders ICO breach aligning this with other responsibilities the SAB has in relation to ICOs.
- 2.3. Legal Aid ACT told the Committee that it supports this change given the administrative efficiency.<sup>2</sup>

### Good Behaviour Order breaches

- 2.4. The Bill proposes to provide community corrections officers with discretion on whether to report a 'reportable breach' to the SAB when certain conditions apply, to be established by a notifiable instrument.
- 2.5. This discretion is based on elements of an existing measure that applies during a COVID-19 emergency. It is designed to reduce pressure on the courts and to promote rehabilitation by offenders by allowing corrections officers to choose not to report the breach to a sentencing court (where the discretion applies).
- 2.6. The discretion framework is currently in development. The amendment will not apply until the notification of the discretion framework; therefore, the discretion will not be available until this time.<sup>3</sup>
- 2.7. Under the amendment, where the breach has occurred, but it has been determined not to report the breach to the SAB, the corrections officer may instead issue a warning, noting that further breaches will be reported to the SAB.<sup>4</sup>
- 2.8. Proposed new section 102 of the *Crimes (Sentence Administration) Act 2005* outlines several requirements of the discretion framework. The corrections officer must record the breach in writing, including the grounds for the breach. The guidelines must set out the matters that must be considered, the procedures and the circumstances for reporting the breach.<sup>5</sup>

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<sup>2</sup> Legal Aid ACT, *Submission 3*, p 5.

<sup>3</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 4-5.

<sup>4</sup> Proposed paragraph 102 (3)(b), Corrections and Sentencing Legislation Amendment Bill 2022

<sup>5</sup> Proposed subsection 102 (4) and (6), Corrections and Sentencing Legislation Amendment Bill 2022

- 2.9. Legal Aid ACT told the Committee that it supports this change to avoid hearings that may result in trauma for victims and the defendant where the breach is not significant, noting that all warnings are recorded for consideration of future breaches considered by the sentencing court. Legal Aid ACT also recommended that the guidelines include consideration of the following factors:
- (a) specific emphasis on whether an application to amend subsequent to s112 of the Act has been considered;
  - (b) the nature and circumstances of the offence;
  - (c) the personal circumstances of the offender;
  - (d) the offender's history of compliance with the good behaviour order;
  - (e) the likelihood than any victim of the offender or their family will be subject to violence or harassment;
  - (f) the importance of protecting the community and rehabilitating the offender (section 7(c)-(d)); and
  - (g) action taken previously in response to earlier breaches of the order.<sup>6</sup>
- 2.10. The ACT Law Society also supported the inclusion of factors (b) to (g) (listed above) taken from section 102A of the *Crimes (Sentence Administration) Act 2005* and propose that they be included in the amendment and be supported further by the notifiable instrument or at the minimum informed by stakeholder feedback.<sup>7</sup>
- 2.11. The Aboriginal Legal Service were supportive of the discretion framework but also asked to be involved with the consultation process, particularly to ensure that a corrections officer exercising the discretion can consider issues relevant to a person's Aboriginality.<sup>8</sup>
- 2.12. The Domestic Violence Crisis Centre also raised concerns about not knowing the detail to be included in the guidelines. They are concerned that without consultation, the guidelines may result in relevant background information not being considered:
- In the context of coercive control and patterns of behaviour some may use in perpetrating Domestic, Family and Intimate Partner Violence, we hold concern that this amendment being instituted without the opportunity to assess the guidelines, may lead to missed information about the pattern of behaviour which sits in a broader context than the corrections officer would know and as such, would be unable to consider it alongside the broader information it holds.<sup>9</sup>
- 2.13. The Victims of Crime Commissioner (VOCC) was supportive of the amendment based on the safeguards that are to apply, including that the amendment will not commence until the discretionary framework is in place, the record keeping requirements and the reviewable nature of the discretion. However, the VOCC told the Committee that the

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<sup>6</sup> Legal Aid ACT, *Submission 3*, p 6-7.

<sup>7</sup> ACT Law Society, *Submission 5*, p 2.

<sup>8</sup> Aboriginal Legal Service, *Submission 6*, p 1.

<sup>9</sup> Domestic Violence Crisis Service, *Submission 8*, p 1-2.

human rights of the victim to right of security of person must also be taken into account under the ACT Human Rights Act 2004.<sup>10</sup>

- 2.14. The VOCC therefore recommended that the discretionary framework must be developed with consideration to these rights because a breach of a GBO may increase the risk of harm to victims. The VOCC also raised concerns that low level non-compliance with a GBO order can also amount to ongoing abuse of the victim:

... the experience of the VOCC's office has highlighted that non-compliance with orders may comprise a continued form of abuse, where a perpetrator demonstrates to a victim that they are able to breach orders or other legal obligations with little to no repercussion. The VOCC is of the view that such patterns of violence, and the accompanying obligations upon officials to appropriately respond to such patterns, is a human rights obligation inherent to the exercise of power under proposed s 102.<sup>11</sup>

- 2.15. The VOCC also told the Committee that it was important that there should be support for Corrections Officers in applying the new discretion in terms of adequate resourcing and training to ensure the discretion was followed consistently and correctly, meeting the record keeping requirements.<sup>12</sup>

- 2.16. The explanatory statement noted:

The Bill seeks to reduce pressure on the courts, which would ordinarily hear every instance of breach, and equip CCOs with discretion to promote the rehabilitation of offenders by allowing officers to choose not to report a reportable breach to a sentencing court.<sup>13</sup>

- 2.17. While the VOCC acknowledged the importance of efficiency, it was felt that it was inappropriate including this as a key objective in the explanatory statement.

### Committee comment

- 2.18. The Committee noted that while the proposed amendment received general support, significant concerns were raised by stakeholders about the detail in the guidelines that would underpin how the new discretion for corrections officers to not report a breach of a GBO. The guidelines are critical to ensuring that the discretion will apply in a manner that protects the human rights of offenders and victims alike, is fair, and to reduce the risk of some breaches not being reported when they should be.

In the same vein, the Committee considers that in implementing the new discretion and following the proposed guidelines, training of corrections officers is paramount to ensure that the requirements in applying the discretion are followed correctly so that the policy intent of the amendment is met.

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<sup>10</sup> Victims of Crime Commissioner, *Submission 9*, p 3-5.

<sup>11</sup> Victims of Crime Commissioner, *Submission 9*, p 6.

<sup>12</sup> Victims of Crime Commissioner, *Submission 9*, p 7.

<sup>13</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 5.

### Recommendation 1

The Committee recommends that the ACT Government consult with stakeholders (including the Aboriginal Legal Service, Domestic Violence Crisis Centre and the Victims of Crime Commissioner in addition to representatives from the legal sector) on the development of the guidelines to corrections officers applying the new discretion to not report breaches of a good behaviour bond to the sentencing court.

### Recommendation 2

The Committee recommends that the ACT Government ensure that ACT corrections facilities are adequately resourced and provide training to corrections officers in the application of the proposed guidelines for the new discretion to not report breaches of a good behaviour bond to the sentencing court.

## Interstate community-based sentence transfers

- 2.19. Currently, community-based sentence transfers are only possible with NSW. The Bill will enable transfers with all other states. The explanatory statement provides that there will be an assessment process in a notifiable instrument which will address any safety implications for victim survivors of domestic and family violence.<sup>14</sup>
- 2.20. The assessment process will be based on existing national eligibility criteria and is to be finalised in consultation with stakeholders. The transfers with other states and the Northern Territory will not commence until the assessment process has been finalised and notified as a notifiable instrument.<sup>15</sup>
- 2.21. Legal Aid ACT told the Committee that they supported the change citing the benefits for offenders cutting ties with acquaintances, escaping domestic abuse, accessing rehabilitation programs (particularly given limited residential drug and alcohol rehabilitation services in the ACT), and for transient people particularly Aboriginal and Torres Strait Islander people. They recommended that the notifiable instrument consider the following considerations based on their experience relating to community-based sentences for interstate residents:
- a) The nature and circumstances of the offence;
  - b) The personal circumstances of the offender;
  - c) The offender's history of compliance with the good behaviour order;
  - d) The likelihood than any victim of the offender or their family will be subject to violence or harassment;

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<sup>14</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 6.

<sup>15</sup> Mr Mick Gentleman, Minister for Corrections, *Proof Minutes of Proceedings*, 30 November 2022, p 4023.

- e) The importance of protecting the community and rehabilitating the offender (section 7(c)-(d))<sup>16</sup>

2.22. The ACT Law Society also supported this amendment and were interested in an opportunity to comment on the notifiable instrument given its significance.<sup>17</sup> The amendment was also supported by the Aboriginal Legal Service.<sup>18</sup>

### Committee comment

2.23. The Committee supports the amendment noting the benefits to offenders for their rehabilitation needs. The Committee notes that much of the detail is yet to be available as it will be in the notifiable instrument and therefore considers there are benefits to be gained from the experience of stakeholders such as Legal Aid ACT through consultation on the development of the instrument.

### Recommendation 3

The Committee recommends that the ACT Government consult with stakeholders on the development of the notifiable instrument outlining the assessment process that will be the framework for corrections officers to determine if the person will be suitable for the community-based sentence transfer.

## Searches of non-detainees

2.24. The Bill proposes changes to searches of non-detainees:

- a) by certain scanning devices by a corrections officer of any sex; and
- b) clearly authorising routine scanning and ordinary searches (staff, contractors, and visitors) as a condition of entry to an ACT correctional centre.<sup>19</sup>

2.25. The scanning devices are limited to equipment such as a 'roto-turn' (metal detector gate), handheld metal detecting wands and property x-ray machines. The searches do not allow any physical touching of the person.<sup>20</sup>

2.26. The second change will mean:

The Bill will remove the requirement for a view to be formed in relation to each individual about the prudence of searching that individual. A search of a non-detainee before entry to a correctional centre would always be prudent to protect the safety of anyone at a correctional centre, or the security and good order at a correctional centre. This is because any person entering the centre could bring in

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<sup>16</sup> Legal Aid ACT, *Submission 3*, p 7.

<sup>17</sup> ACT Law Society, *Submission 5*, p 1.

<sup>18</sup> Aboriginal Legal Service, *Submission 6*, p 2.

<sup>19</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 2.

<sup>20</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 6.

items that represent safety or security risks, and this risk can only be addressed by conducting a search.<sup>21</sup>

- 2.27. Mr Shannon Pickles, an Official Visitor for Corrections, told the Committee that the provisions should clarify whether the search should include documentation of legal or statutory officers and a refusal to include this documentation in the search should not mean that the person is refused entry to the facility.<sup>22</sup> This position was also supported by Legal Aid ACT who said that such searches of legal papers and laptops of professional visitors such as lawyers may be a breach of confidentiality and privacy obligations. Legal Aid ACT suggested that an alternative could be that the professional person such as a lawyer could provide an assurance that the papers or laptop are for the genuine purposes of advising their client.<sup>23</sup>
- 2.28. Mr Pickles also told the Committee that a visitor should have the right to leave the facility instead of being subject to a frisk search.<sup>24</sup>
- 2.29. Legal Aid ACT told the committee that the provision that the changes will overcome some issues with the current legislation in relation to use of scanning equipment that does not require a corrections officer to touch a person when it comes to gender binaries, and the need to have corrections officers of different sexes at the entrance to the Alexander Maconochie Centre (AMC). However, Legal Aid ACT also told the committee that there should be:
- a) more emphasis on consent and privacy for the person being scanned where this exceeds a simple scan,
  - b) a requirement that the search should be conducted so that to minimise breaches of privacy, and
  - c) consent by non-detainees to the conduct of a further search by a corrections officer of a different sex.<sup>25</sup>

### Committee comment

- 2.30. The Committee considers that the rights of detainees to be provided confidential professional advice of a legal nature or related to the role of a statutory officer should be respected providing that safety and security risks can be managed. The Committee also seeks assurance that any searches will be conducted in the least intrusive way possible.

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<sup>21</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 6.

<sup>22</sup> Shannon Pickles, Official Visitor, Corrections, *Submission 2*, p 1.

<sup>23</sup> Legal Aid ACT, *Submission 3*, p 3-4.

<sup>24</sup> Official Visitor, Corrections, *Submission 2*, p 1.

<sup>25</sup> Legal Aid ACT, *Submission 3*, p 2.



#### Recommendation 4

The Committee recommends that the ACT government should amend the Bill to exclude searches of papers or laptops belonging to professionals such as lawyers and statutory officers, which are for the purpose of providing confidential legal or professional advice, providing safety and security risks can be managed.

#### Recommendation 5

The Committee recommends that the ACT Government should make it clear in the Bill that search of non-detainees should be conducted in a way that seeks consent to the search and minimises intrusions on the privacy of the person being searched. In addition, the Bill should provide that consent should be obtained where there is a further search by a corrections officer of a different sex.

## Strip searches of detainees on admission to an ACT Corrections Centre

- 2.31. The Bill contains changes to the provisions in respect of searches on admission with a view to provide clarity on their operation:

Searches on admission are covered specifically under section 70 of the Corrections Management Act, for the purpose of assessing a new admission for immediate health needs as well as for safety and security reasons. Amendments introduced after the original act was enacted have caused confusion regarding the authority provided through section 70. The amendments in this bill clarify the operation of these provisions.

- 2.32. The explanatory statement states that searches are considered to be required on admission due to the high risk of detainees carrying contraband. Existing section 108 of the *Corrections Management Act 2007* requires that officers must consider the least intrusive way to carry out the search. The changes remove requirements that a strip search can only be conducted if there are reasonable grounds that the detainee has a seizeable item concealed or it is prudent to search for a seizeable item. This has been removed on the grounds of ambiguity or uncertainty for corrections officers when making individual assessments.<sup>26</sup>

- 2.33. The explanatory statement provides that the amendment will not mean all detainees are automatically strip searched on admission:

The proposed amendment will not displace the processes and safeguards outlined in the CMA. Section 70 will continue to confer a statutory discretion on corrections officers to strip search a detainee as part of an initial assessment on admission. It will not authorise a routine or blanket approach. In exercising the discretion under

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<sup>26</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 7.

section 70, correctional officers will need properly to consider relevant human rights, in accordance with the director-general's public authority duties under s 40B(2) of the *Human Rights Act 2004* (HR Act). Further, Part 9.4 of the CM Act and importantly section 108, will apply to the strip search on admission.<sup>27</sup>

- 2.34. The amendments are intended to be supported by policies and procedures on the limited discretion and include a statutory requirement for a review of the amended strip search provision after two years from commencement.<sup>28</sup> Over the last 18 months, strip searches have reduced at the AMC by almost half.<sup>29</sup>
- 2.35. This change to provide more clarity and the requirement for a review period was supported by Legal Aid ACT.<sup>30</sup> The ACT Law Society also supported the amendments and the review period.<sup>31</sup>
- 2.36. However, the Aboriginal Legal Service opposed the amendment due to concerns that strip searches will occur more broadly without considering individual cases, despite the retention of the discretion not to strip search.<sup>32</sup>
- 2.37. The ACT Ombudsman told the Committee that there should be an emphasis on prioritising less intrusive forms of searches and communication with relevant parties to avoid a detainee being subject to a strip search more than once if it can be avoided:

Overall, the Office considers searching procedures should be responsive and proportionate to safety risks. The Office encourages communication and liaison with relevant parties, such as ACT Policing, to avoid any unnecessary repetition of detainee searches during the chain of custody.

The Office notes the proposed changes in the Bill to procedures involving strip searching of detainees. The Office would like to emphasise the importance of prioritising the use of the least intrusive search methods. There should be no delay in efforts by ACT Government authorities to move to less intrusive forms of searching, such as body scanning technology, which would achieve the same outcomes. The Office encourages a transition to less intrusive forms of searching as soon as possible, and no later than the scheduled 2-year review.<sup>33</sup>

### Committee comment

- 2.38. The Committee is pleased to hear that strip searches at the AMC have significantly declined in the last 18 months and would like to see this trend continue, with priority placed on less intrusive searches where possible to protect the right to privacy of detainees, especially where the detainee may have already been subjected to a strip search in another part of the AMC on admission.

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<sup>27</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 7.

<sup>28</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 8.

<sup>29</sup> Mr Mick Gentleman, Minister for Corrections, *Proof Minutes of Proceedings*, 30 November 2022, p 4027.

<sup>30</sup> Legal Aid ACT, *Submission 3*, p 4-5.

<sup>31</sup> ACT Law Society, *Submission 5*, p 2.

<sup>32</sup> Aboriginal Legal Service, *Submission 6*, p 2.

<sup>33</sup> ACT Ombudsman, *Submission 7*, p 1.

- 2.39. The Committee also notes the reservations of the Scrutiny Committee and that the Minister has been asked by that Committee to provide further information on how the amendments are intended to operate to ensure that any discretion is exercised with minimal intrusion on detainees' human rights, and how any discrimination will be appropriately subject to scrutiny prior to the Bill being debated.

### Recommendation 6

The Committee recommends that the ACT Government ensure that policies and procedures that are developed to support corrections officers in their limited discretion in whether or not to conduct a strip search provide guidance on:

- how to prioritise less intrusive searches, including using no touch scanning technology;
- consulting within the AMC to avoid a detainee being strip searched more than once if necessary.

## Smoking prohibitions applying to an ACT Correctional Centre

- 2.40. The Bill proposes to change the existing ability for the Director-General of JACS to prohibit smoking in part of a correctional centre, to be fully smoke free. All Australian jurisdictions except for the ACT and Western Australia have prohibited smoking in correctional centres.<sup>34</sup>
- 2.41. The Bill requires the director-general to ensure that therapeutic supports are available to detainees at the correction centre to help them stop smoking before smoking can be prohibited at the whole of the correctional centre.<sup>35</sup>
- 2.42. ATODA told the Committee that they supported the amendment, but were concerned about its implementation and the narrow terms of the proposed therapeutic support to be provided, given outcomes of a survey conducted by the ACT Inspector of Correctional Services Healthy Prison Review of the AMC Report 2022:

70% of detainees at AMC who smoked and responded to the 2022 survey would either give up smoking or were unsure whether they would if they had access to free support such as nicotine replacement therapy and counselling. Detainees have also previously advised the Office of the Inspector of Custodial Services that there needs to be a greater variety of nicotine replacement options at AMC.<sup>36</sup>

- 2.43. ATODA made the following recommendations:

ATODA recommends that the ACT Government consider the following:

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<sup>34</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 8.

<sup>35</sup> Clause 5, Corrections and Sentencing Legislation Amendment Bill 2022

<sup>36</sup> ATODA, Submission 4, p 1.

- Understand “appropriate therapeutic support” in relation to a smoking ban at the AMC to at a minimum include the following:

1. The availability of all types of evidence-based nicotine replacement therapy that can be used concurrently and ready access to a suitably trained prescriber, at no cost to detainees;
2. The availability of specialist counselling services at no cost to detainees to support quit attempts; and
3. The availability of ongoing support to cease smoking upon exit from prison.

- Consult with the ATOD sector on evidence-based appropriate therapeutic supports for smoking cessation and options for the ATOD sector to play a role in supporting smoking cessation amongst detainees both during and post detention.

- 2.44. ATODA told the Committee that this inquiry was their only opportunity to formally provide comment on the proposed changes.<sup>37</sup> They were not involved in the consultation process in the development of the Bill according to the explanatory statement.<sup>38</sup>
- 2.45. ACTCOSS told the Committee in their submission that it was important that the therapeutic supports are culturally safe, community led, accessible and ongoing. They supported ATODA’s view that adequate therapeutic support should include ‘multiple types of nicotine replacement therapy, specialist counselling services and ongoing support to cease smoking upon exit from prison’ and noted that given the prison is the detainee’s home that human rights of smoking and non-smoking detainees be a focus during policy development and implementation. They also spoke to the benefits that the ACT can derive from the experiences of other Australian jurisdictions in the implementation of the smoking ban.
- 2.46. In addition, ACTCOSS told the Committee that it was important to replace smoking with other forms of activity to reduce the incentive for smuggling and trade of tobacco products and illegal drugs. ACTCOSS stressed the importance of ensuring that the therapeutic supports were considerate of individual needs, and that the transition of the measure should be guided by co-design with detainees. In particular, ACTCOSS were concerned about the needs of:
- a) Aboriginal and Torres Strait Islander detainees who have had problems with accessing alcohol and other drug support programs, are more likely to smoke and be subject to disciplinary measures at the AMC and recommended the involvement of Winnunga in delivery of the services and supports;
  - b) detainees with mental health problems who may need intensive positive supports; and

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<sup>37</sup> ATODA, Submission 4, p 1.

<sup>38</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 3.

- c) detainees with disabilities or from non-English speaking backgrounds who will require support materials, which should be in easy English and available in audio-visual formats.
- 2.47. ACTCOSS also raised concerns that the procedures governing the decision that the AMC has sufficient therapeutic supports prior to implementation of the ban is not transparent including what kind of data will indicate a satisfactory level of supports.<sup>39</sup>
  - 2.48. Mr Shannon Pickles, Official Visitor for Corrections recommended that the legislation specifically clarify that therapeutic supports include the management of withdrawal symptoms.<sup>40</sup>
  - 2.49. Legal Aid ACT told the Committee that further assurance was required that the therapeutic support would be accessible, and that support should be provided to manage health and behavioural impacts from nicotine withdrawal, noting that 59 percent of AMC detainees identify as being current tobacco smokers.  
  
Currently, it is unclear the degree to which therapeutic support will realistically be made available to detainees, especially given the existing limitations on access to in-person programs due to staffing shortages and COVID measures. The difficulty in supporting attendance at such programs is further limited by the general separation of various cohorts at the AMC, which is noted to limit things such as recreation, booking of visiting times, and health centre waiting capacity.
  - 2.50. Legal Aid ACT recommended a strategic plan setting out the implementation of therapeutic support prior to commencement.<sup>41</sup>
  - 2.51. The Aboriginal Legal Service raised concerns with the Committee that the majority of Aboriginal and Torres Strait Islanders are current smokers on entry to prison and that smoking bans lead to black markets of tobacco and other harmful substances.<sup>42</sup>

### Committee comment

- 2.52. The Committee found that there was general support for a power to introduce a smoking ban at ACT Correctional Centres but there were concerns around the therapeutic support to be provided detainees. While the explanatory statement acknowledges that withdrawal symptoms can be serious, there is little detail on what the therapeutic support will entail apart from the positive safeguard that the supports will be available before the smoking ban can commence.

The Committee would therefore like to see more information about the therapeutic support that is intended to be provided particularly in relation to the concerns raised in submissions.

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<sup>39</sup> ACTCOSS, *Submission 1*, p 1-3.

<sup>40</sup> Shannon Pickles, Official Visitor, *Submission 2*, p 1.

<sup>41</sup> Legal Aid ACT, *Submission 3*, p 2.

<sup>42</sup> Aboriginal Legal Service, *Submission 6*, p 3.

### Recommendation 7

The Committee recommends that the ACT Government provide the Legislative Assembly with more information about the strategic plan for therapeutic supports to be provided to assist detainees with the smoking ban at ACT correction centres, including the type of evidence-based nicotine replacement options, the availability of specialist counselling services, how individual cultural, ability and health needs will be met and who has been consulted in the development of the program of therapeutic supports.

## Prohibited items at a correctional centre

- 2.53. The Bill contains measures to limit bringing in contraband into the correctional centre by any means, clarifying that this includes by remotely piloted aircraft or drone. This is done by clarifying that the existing offence to send a prohibited item to a correctional centre covers a wide range of delivery mechanisms.<sup>43</sup>
- 2.54. Legal Aid ACT told the Committee that it supports this change given the administrative efficiency.<sup>44</sup>

## 3. Conclusions

- 3.1. The Committee thanks everyone who participated in this inquiry through making a submission.
- 3.2. The Committee has made seven recommendations in relation to the Corrections and Sentencing Legislation Amendment Bill 2022.

Peter Cain MLA  
Chair  
February 2023

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<sup>43</sup> Corrections and Sentencing Legislation Amendment Bill 2022, *Explanatory Statement*, p 9.

<sup>44</sup> Legal Aid ACT, *Submission 3*, p 5.

## Appendix A: Submissions

No.	Submission by	Received	Published
001	ACTCOSS	19 January 2023	1 February 2023
002	Shannon Pickles	20 January 2023	1 February 2023
003	Legal Aid ACT	24 January 2023	1 February 2023
004	ATODA	27 January 2023	1 February 2023
005	ACT Law Society	1 February 2023	1 February 2023
006	Aboriginal Legal Service	1 February 2023	15 February 2023
007	ACT Ombudsman	2 February 2023	15 February 2023
008	Domestic Violence Crisis Service ACT	3 February 2023	15 February 2023
009	Victims of Crime Commissioner	9 February 2023	15 February 2023