



Shane Rattenbury MLA

Attorney-General

Minister for Consumer Affairs

Minister for Water, Energy and Emissions Reduction

Minister for Gaming

Member for Kurrajong

Mr Tom Duncan
Clerk
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Our ref: PRO22/3235

Dear Mr Duncan *Tom*

Thank you for your letter of 11 October 2022, regarding petition 22-24 lodged by Mr Jeremy Hanson MLA.

The petition calls for an independent review of sentencing decisions made by ACT Courts over the past five years to determine whether the *Crimes (Sentencing) Act 2005* and the common law have been applied correctly, and particularly whether the purposes of sentencing have been considered properly.

The petition also seeks that the review consider:

- whether the ACT's correctional services regime is working to address recidivism;
- whether ACT correctional facilities are fit for purpose, and whether they have sufficient capacity; and
- whether correctional programs and relevant community-based services (e.g. drug and alcohol services) are fit for purpose and have sufficient capacity.

The petition further seeks a commitment to trial electronic tagging for offenders serving community-based orders, to review any effect on recidivism.

I understand that this petition reflects concerns that some sentences have not met expectations and that reoffending is a serious issue, particularly in relation to dangerous driving offences. I want to acknowledge these concerns, and that they have arisen from tragic circumstances. I also want to

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acknowledge that these concerns are motivated by the very noble goal of protecting people in the future. We must all work towards reducing tragic deaths on our roads.

The role of the ACT Legislative Assembly with respect to sentencing is to set maximum penalties for criminal offences that are consistent with community views and which reflect the relative seriousness of the offences.

Maximum penalties send a signal to the courts about the seriousness of these offences. However, the sentences actually imposed within the sentencing ranges available should, and do, remain a matter for the courts. The effects on victims of an offence are highly relevant, and the overriding purpose of the criminal justice system is to avoid anyone else suffering in the same way. The courts must take into account the objective nature of the offending, the seriousness of the offence, the subjective circumstances of the offender, and treatment of similar matters by courts in the past.

Imprisonment can only be considered as a sentencing option if the court is satisfied, having considered possible alternatives, that no other penalty is appropriate. This same rule exists across most other Australian jurisdictions.

Imprisonment is the most serious penalty that can be given to an offender. It should also be noted that other custodial orders are significant impositions on the life of an offender. While an offender serving a suspended sentence or intensive corrections order may be physically at liberty, their lives are still subject to strict conditions, demanding the offender address the issues causing and arising from their offending behaviour. These can be even more demanding than simply residing in prison.

Custodial sentences data available for all offences in the ACT indicates that 19% of defendants with a guilty outcome were sentenced to a custodial order, with 62% of these offenders serving that sentence by full-time imprisonment. Only South Australia, Tasmania and the Northern Territory had higher percentages of defendants sentenced to custodial orders.¹ NSW, Queensland and Victoria all had a lower proportion. The ACT is also positioned in the middle in terms of how many custodial sentences are served by full-time imprisonment.

Caution must be used when making comparisons between states and territories as there are differences in offences, maximum penalties and judicial systems. However, as some of the best large-scale comparative data, it does not identify the ACT as an outlier in any clear respect.

The ACT Government recognises that an independent judiciary is essential to the proper functioning of our system of government. It is not the role of executive Government to intervene in judicial decision-making. The proper and accountable way to achieve different results from judicial decision-making is to alter the legislative framework, through the process of democratically considering legislation. Importantly, while courts administration is the business of Government, judicial officers are not, and never should be, subject to executive government override in terms of judicial decisions made within a legislative framework.

¹ Australian Bureau of Statistics, *Criminal Courts, Australia* (24 February 2022), accessed at <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/2020-21>.

On 7 October 2022, I announced that the ACT Government will establish a law reform and sentencing advisory council to provide ongoing advice to the public and to government on ways to ensure our laws remain current and relevant.

This ongoing and dedicated body will mean not only can the present issues be reviewed independently, but other issues as they arise into the future. The Government is of the view that having a dedicated council that can undertake sustained work and proactively look at issues facing the ACT will put us in the best position on these issues, over time.

The petition also touches on other aspects of the justice system, in particular the ACT's corrective services framework and operations, and its role in reducing recidivism in the ACT. Throughout this term of Government progress has been made to improve outcomes for staff and detainees within ACT Corrective Services.

A range of factors influence recidivism and re-offending behaviour, including individual circumstances, behaviour and characteristics; housing availability; education and employment; capacity and capability of the broader human service system to support offenders to reduce offending behaviour and practices of various criminal justice and law enforcement agencies. ACT Corrective Services also acknowledges its important role in supporting the rehabilitation of offenders and reducing recidivism.

ACT Corrective Services finalised its new Integrated Offender Management (IOM) Framework in December 2021. The IOM is a holistic 'end to end' service model that aims to support positive rehabilitative outcomes for offenders throughout their custodial and/or community supervision period to reduce reoffending behaviour and thereby improving community safety. As part of the graduated implementation of the IOM, rehabilitative programs offered by ACTCS for offenders both in community and custodial settings have been reviewed and a new suite of contemporary, evidence-based programs were implemented throughout the 20-21 financial year. As part of the IOM implementation, these programs will be evaluated in terms of their effectiveness, including impacts on reducing offending behaviour.

On 27 July 2022 the Legislative Assembly Standing Committee on Justice and Community Safety released its report from the Inquiry into Community Corrections (the Inquiry), which among a range of focus areas, included a recommendation on electronic monitoring. The ACT government is actively considering options for electronic monitoring in the ACT. A decision by Government to introduce electronic monitoring would be informed by appropriate consultation, scoping and feasibility work specific to the ACT environment.

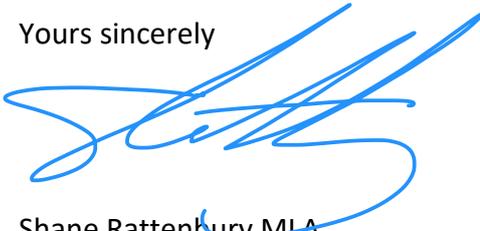
The ACT Government response to the Inquiry's report and its recommendations was tabled in the Legislative Assembly on 24 November 2022.

The ACT Government also acknowledges the ACT Inspector of Corrective Services 2022 Healthy Prison Review of the Alexander Maconochie Centre, released on 24 November 2022. Reports such as the Healthy Prison Review 2022 are an important feature of AMC oversight and promote accountability. The ACT Government will carefully consider its 63 findings and 29 recommendations and will prepare a response for tabling to the Legislative Assembly in the first half of 2023.

The ACT Government remains committed to its plan for Reducing Recidivism in the ACT by 25% by 2025 (2020-2023) which is underpinned by a justice reinvestment approach. The ACT Government is continuing to work collaboratively across justice and human service systems and with the local community to meet our shared goals.

The Government welcomes the referral of this petition to the Standing Committee on Justice and Community Safety, and the potential consideration of these issues by the Committee.

Yours sincerely



Shane Rattenbury MLA
Attorney-General

18 December 2022