LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

(Reference: Inquiry into Community Corrections)

Members:

MR P CAIN (Chair)
DR M PATERSON (Deputy Chair)
MR A BRADDOCK

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 16 MARCH 2022

Secretary to the committee:
Dr D Monk (Ph: 620 50129)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 11.00 am.

BOERSIG PSM, DR JOHN, Chief Executive Officer, Legal Aid ACT
LEE, MS TAMZIN, Head of Criminal Practice, Legal Aid ACT

THE CHAIR: Good morning and welcome to the public hearing of the Standing Committee on Justice and Community Safety inquiry into community corrections, with the Legal Aid Commission of the ACT. Before we go further, the committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. The committee respects their continuing culture and the contribution they make to the life of this city and this region. We would also like to acknowledge any other Aboriginal and Torres Strait Islander people who may be attending today's event or watching online or later, as it is being recorded.

Today's proceedings are being recorded and will be transcribed and published by Hansard. The proceedings are also being broadcast and webstreamed live. When taking a question on notice, it would be useful if witnesses used these words: "I will take that as a question taken on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

I would like to welcome the CEO of Legal Aid ACT, Dr John Boersig, to the hearing. He has one of his lawyers in attendance as well. Could you each please confirm that you have read the privilege statement and that you understand its implications?

Dr Boersig: Yes, I have and I confirm that.

Ms Lee: Yes, I have read it and I confirm.

THE CHAIR: Thank you. John, obviously we have a very short time, till 11.30, for this, but would you like to take a minute or two for an opening statement?

Dr Boersig: Only if it helps, and then, of course, questions. The gist of our submission to you is around the notion of certainty. We have tried to suggest that there are other places in Australia that do provide more certainty. We think it is functional for the system and functional for people who have been our clients, and for people in prison. The other aspect which I will address, if you wish, is who receives Legal Aid and who does not. I can address those questions as they arise.

THE CHAIR: Thank you. I will lead off. We heard during the earlier public hearings about intensive correction orders, and the point was made by you that only those who have a residence in the ACT are eligible for one of these orders. I am just expressing my own view here, but for someone who may want to reside in Queanbeyan—or that is where their family home is—it seems unusual that they are not eligible for such an order. How have you gone in your discussions with the government about getting that eligibility extended?

Dr Boersig: That issue of the place of Canberra inside this region is very relevant. Many of the clients, particularly Aboriginals and Torres Strait Islanders, I might add, move in and out of Canberra for family, and in certain circumstances, where they get

into trouble, they may find themselves in jail here. We have pushed constantly the policy issue that there should be an arrangement with the New South Wales government, because effectively people across our borders who are often part residents here are not eligible for certain orders. That has been a theme of discussion for quite a few years in relation to this particular issue.

This is a complex question for government in the ACT. The relationship with the New South Wales government is no doubt a complex issue. The place of the ACT as a regional hub affects us in a whole range of ways—and, quite separately from here, in relation to family law and the Federal Circuit Court, for example. We cover everywhere from the South Coast through to Deniliquin in terms of it being a hub for activity. It is not just our hospital that is a hub; our court system is a hub as well.

THE CHAIR: Sure. Again, regarding your discussions with the ACT government, what is their current position on this?

Dr Boersig: I do not think I can answer that clearly at all. I am talking about a whole range of discussions over a number of years. There is no particular forum, I can say. My last discrete conversation about this was probably three years ago, in relation to other kinds of proceedings.

THE CHAIR: Okay.

Dr Boersig: Apart from what we have put to you now, involving this committee, there have not been, for us, more recent discussions.

THE CHAIR: Right. Obviously, the committee will be issuing a report to the Assembly and inviting a government response.

DR PATERSON: I was just wondering: can you speak to the numbers of clients that would be in that situation?

Dr Boersig: I certainly can in relation to family law and the Federal Circuit Court; around 10 per cent of our clients are from out of state in that sphere. In relation to Aboriginals and Torres Strait Islanders, Corrective Services, I would think, would have those figures. I would not be able to put an actual figure on it, but I can take that question on notice. The question would be, really: in criminal matters, who are the non-residents we assist? We will have a look at what kind of figure we can provide to you in relation to that.

DR PATERSON: I guess I am just posing an idea to you. People say that intensive correction orders are a lighter sentence; there is a bit of a perception around that and then saying, "Well, you can live wherever, such as across the border." Can you speak to that narrative?

Dr Boersig: The whole concept of intensive correction orders arose partly in relation to weekend detention and the dialogue that was had around that a few years ago. All of those work; we have the ancillary services available. In fact, as a general statement in terms of punishment, having ancillary rehabilitative services available is a pretty crucial element of a successful outcome in the end.

It is the kind of discussion you see happening around the Drug and Alcohol Court, for example, about what kind of investment is required in the management of people outside the criminal justice system: when they are in the public, where do they return to, under what kinds of conditions? What are the kinds of environments they go into, where they are faced with decisions around reoffending? There is quite a bit of material in relation to the importance of environments, and intensive correction orders sit within that context.

DR PATERSON: My question is in relation to legal representation. For example, the Law Society submission says that appearing before the Sentence Administration Board "often requires a written authority from clients to indicate that a solicitor is acting for a client". One of the other submissions said that there is no legal representation for people at the board.

The Justice Reform Initiative says:

> Applicants before the SAB are not eligible for Legal Aid assistance. We commend the Women's Pro Bono Parole Program.

Can you speak to what the current situation is and what you see as needing to happen there?

Dr Boersig: I should refer to the questions on notice, which we replied to. They may be with you by now. I tried to address some of that in them.

DR PATERSON: Okay.

Dr Boersig: The issues there about the grant of Legal Aid are discretionary, ultimately. It is about where you focus your available resources. Our priorities in this sphere are people who are incarcerated or facing incarceration, and children and women, particularly around family violence. That picks up a range of things like care and protection work, the classic territory responsibilities.

The focus of our grants of aid, where they are made, is in relation to those priority groups. The question is: where you have X amount of money, do you provide additional aid in relation to parole hearings? We have not traditionally done that. Partly that is a question of whether government wishes to invest further in that kind of service; the other is the context of what is the role of the SAB and how they prepare a matter for coming before the board. They have people who are paid, on the roll, who are intended to help people prepare their cases.

We do appear from time to time, and we support giving grants of aid where there are particularly strong, compelling personal reasons for the person—for example, if you have a long-term person on a hunger strike who is before the parole board; that kind of fairly highly compelling matter. From time to time, there is an ongoing relationship with our clients where they may have other matters which are before the court and where we would provide some assistance.

As a general principle, we do not allocate that. That is partially in relation to crime.

The Dietrich principle, which is the principle about someone getting a fair trial and being entitled to legal support, does not apply in relation to parole hearings. We are not at all saying that it is not a worthwhile and important aspect, but it is partly a question of government investment and the use of moneys throughout.

I suppose the other comment I would make on that is that your inquiry will shine, necessarily, a bigger light on this area. That will be something that, in the preparation of, for example, the next justice strategy, the government will be looking at to ask: "Where are the priorities now? Where should the investment be?" We of course will be listening to that.

DR PATERSON: Right. Thank you.

MR BRADDOCK: In your submission—I will paraphrase—you talk about the tendency for offenders to be subject to arbitrarily onerous parole conditions and how this might impact on reintegration and reducing recidivism. Can you please provide me with an idea of the proportion of cases that you see where this happens and also some examples of what this is?

Dr Boersig: Certainly. May I defer to Tamzin Lee, as head of our criminal practice?

Ms Lee: Thank you. The submission really goes to the crux of building communities and the reintegration of people who have offended back into community. We recognise that there is a need for strict supervision conditions. I hear what you say, Dr Paterson, about a perception that ICOs are not as strict a regime as a term of imprisonment. The fact of the matter is that an intensive correction order is a sentence of imprisonment.

The supervision that Corrective Services has over a person can address any manner of issues that underly their criminal offending behaviour. That includes access to drug or alcohol counselling. I think what we are saying in our submission is that there is the need for corrections officers to be a conduit between appropriate support services and the offender that they are working with and to be able to recognise where there may be difficulties with compliance that are outside of the offender's control. One that comes up is the availability of transportation to urinalysis or to meetings.

I think that corrections have been responsive in terms of, with COVID, arranging alternative ways of connecting with offenders that they are working with. I really think that it comes down to that connection between Corrective Services having an understanding of the person that is in front of them and what they are trying to achieve together. It is something that Corrective Services has been making steps towards, but it is there where those considerations of a person's subjective personal circumstances need to be factored into the supervision and the requirements that are placed on the person.

MR BRADDOCK: So you are saying that corrections are making steps towards that. Is there further work required in this area, and what is that?

Ms Lee: I think everything comes down to training and an understanding of the resources that exist within the community sector—that is, appropriate referrals and

appropriate supports to ensure that referrals are effective. I am probably speaking a little bit outside my area of expertise, because, as lawyers, we come into it when we are standing in front of the judge saying, "These are the types of orders that Your Honour should make which would assist this person to rehabilitate and prevent them from coming back here."

It then moves on to corrections to supervise, and they impose directions on people. It does appear that the success or otherwise of people when they are working with corrections officers is largely the functionality of the relationship between them, in terms of achieving a buy-in from the offender and having appropriate conditions imposed that are achievable and will assist them with their real issues.

I do not know what the answer is to better achieve that across the board. Certainly, there are some examples I have seen which show a really beautiful connection and nexus which helps people stay on the straight and narrow, but in terms of a policy or a government perspective it would come down to training and valuing the experience of the individual corrections officers and allowing them the opportunity to build a connection and therefore see what this person really needs. So it is probably a resourcing issue for corrections as well, if I may say so.

MR BRADDOCK: And to clarify: from your perspective, the issue is not normally the orders themselves but how they are actually actioned by the corrections officer and the detainee?

Ms Lee: That is right. That is so.

MR BRADDOCK: Thank you.

THE CHAIR: I am happy for this to be either my substantive or a supplementary on your submission about a parole system similar to Queensland's. My first question is: has this been presented to the government as an option for legislative reform? Secondly, just how does the Queensland system work? Is there a fixed time when parole is granted for certain eligible offenders?

Dr Boersig: I will take the first part of the question. It certainly has not been put by us directly to government. That does not mean it has not been considered by government elsewhere and other departments, but I do not recall providing any input on that particular question, Mr Cain. As to the second part, I will defer to Ms Lee.

Ms Lee: A similar system exists in other jurisdictions, including New South Wales. My understanding of a parole eligibility date is that there is an option at sentencing for the court to impose a date from which parole will commence without the need for application, which is useful in terms of providing certainty for people to plan post custody. It also provides certainty for other services—for example, guardians or other community based services that deal with housing—to have definitive dates as to when somebody is going to be released, to arrange for placements in rehabilitation or whatever it may be.

The other benefit of having a system where certainty is given at the outset, at sentencing, is that it does remove some of the difficulties, which the committee has

obviously heard about, in terms of representation and a reliance on individual offenders to make application for parole. That is ordinarily done on a written basis and then the parole board will make a determination as to whether they require a further submission. So it would assist in terms of people knowing what is going to happen to them and being able to move forward.

THE CHAIR: Sure. I understand, as Dr Boersig mentioned, that question of certainty in New South Wales. Are you aware of what the time frames are for this automatic grant in any of the other jurisdictions?

Ms Lee: I am not. I will take that as a question taken on notice and can prepare some information for the committee. My generalised understanding is that it is not always the case that an immediate parole date is given, but I will certainly provide some additional information in respect of that. I think that, as with all sentencing options and considerations, it would depend very much on the circumstances of the particular matter that was before the judicial officer.

THE CHAIR: Finally, is the current eight weeks that you have quoted in the submission, Dr Boersig, the average parole application period? I am just wondering where you have got that figure from.

Ms Lee: I can answer that question.

THE CHAIR: Yes.

Ms Lee: That is a general experience, and that figure represents what we understand to be the process. I note that the Law Society have said that sometimes it takes 12 weeks. I think the real point is that, if a judicial officer is of the view that somebody should be released on parole quite close to the date of sentence, there is really no ability for them to effect that sentence.

THE CHAIR: Okay. Thank you.

DR PATERSON: We asked the Sentence Administration Board about this. They said that the advantage of going through them is that they look at the whole case and they ensure that people have housing and have everything set up for when they are released. I do not know her title, but the board—

MR BRADDOCK: Chair.

DR PATERSON: chair said that, yes, there was a risk that people would be leaving the system, going on parole, into homelessness and those types of things. What is your experience or understanding there?

Ms Lee: I would suggest that that is a matter that would be taken into account at sentencing. If there was a judge who was minded to impose a date for parole, a fixed date for release, then certainly in terms of the legislative framework for considerations of sentence, they would need to be satisfied that that was an appropriate response to the offending and to the offender. They would, in my experience, take into account those types of considerations. From my experience, where these types of issues arise

is where people have mental health issues or where they require assistance with not being released into homelessness. It is very difficult in the current climate to arrange for somewhere for somebody to go without a date fixed for their attendance.

MR BRADDOCK: This is just about eligibility for that period. It is not actually about automatic parole release, is it?

Ms Lee: Well, it is both. There is a parole eligibility date, which is currently imposed by the courts in this jurisdiction, whereby from this particular date someone is eligible. Therefore, they may make an application and they may or may not be granted parole, depending on the determination of the Sentence Administration Board. I am trying to think of the language that they use in the legislation, but it is effectively a fixed parole date; it is a date from which someone is automatically granted parole. So there is no need for application.

MR BRADDOCK: Okay. Sorry; I misunderstood your submission. I thought it was the former. Thank you.

DR PATERSON: We had a submission on electronic monitoring. That was a pretty interesting discussion. We talked to the minister about that as well. I think the ACT went down the path of exploring that years ago, but technology has changed. We are a human rights jurisdiction, so there may be issues there. I am just interested to know what Legal Aid's position on this might be.

Dr Boersig: I do not think we have a formal position on this.

DR PATERSON: Do you have some thoughts?

Dr Boersig: It is probably something I would take back to the board, our board of commissioners. Can I take that on notice? You are right; there is quite a history to this and I had best have a look at all that before I say too much more.

DR PATERSON: No problem.

THE CHAIR: On behalf of the committee, I would like to thank you, Dr Boersig and Ms Lee, from Legal Aid ACT. The secretary will provide you with a copy of the proof transcript of today's hearing, when it is available. As you have both noted, there have been some questions taken on notice. Could the answers to these please be provided to the committee secretary within five working days of the receipt of the uncorrected proof transcript of today's hearing. Thank you.

The committee adjourned at 11.28 am.