



Advocacy for Inclusion

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Standing Committee on Justice and Community Safety
Inquiry into the Administration of Bail in the ACT

via email – LACommitteeJCS@parliament.act.gov.au

RE: ADMINISTRATION OF BAIL IN THE ACT

Thank you for the opportunity to make a brief submission to the Inquiry into the Administration of Bail in the ACT.

Advocacy for Inclusion (AFI) is an independent organisation delivering reputable national systemic advocacy informed by our experience in individual advocacy and community and government consultation. We provide dedicated individual and self-advocacy services, training, information and resources in the ACT.

As a Disabled People's Organisation, the majority of our organisation, including our Board of Management, staff and members, are people with disabilities. AFI speaks with the authority of lived experience. We are strongly committed to advancing opportunities for the insights, experiences and opinions of people with disabilities to be heard and acknowledged.

AFI operates under a human rights framework. We uphold the principles of the United Nations Convention on the Rights of Persons with Disabilities and strive to promote and advance the human rights and inclusion of people with disabilities in the community. AFI is a declared public authority under the Human Rights Act 2004.

Our submission to this inquiry provides general feedback relating to the support service interactions for people with disability on bail and bail support programs. The focus of our submission is to highlight the necessity of ensuring disability perspectives and issues are considered in the available support programs to ensure not only successful meeting of bail requirements but also to reduce the risk of reoffending.

We note the need to mitigate the effects of any changes to the administration of bail in the ACT on people with disability, as well as minimising unintended consequences.

People with disability in the Justice System

People with disability are over-represented at all stages of the criminal justice system – as witnesses, victims, offenders, defendants, and prisoners.¹ In the ACT, approximately one third of detainees at the Alexander Maconochie Centre identified as having a disability. This is a conservative estimate. Such over-representation in the criminal justice system reflects the systematic failure to provide appropriate services and supports to people with disability.²

People with disability face a wide range of systematic and structural barriers to accessing justice. Inadequate disability support is linked to cycles of offending and reincarceration for people with disability. Identifying that a person with disability requires support is a critical gateway step to ensuring that appropriate adjustments can be made as early as possible in the criminal justice process.

Contact with the criminal justice system as it currently operates increases the likelihood of further contact. The ACT has one of the highest rates of recidivism within Australia, sitting close to 80 percent. Without appropriate support and adjustments, the legal system remains largely inaccessible and can produce unjust and costly outcomes. It can also hinder a person with disability's capacity to participate in health, education, employment, rehabilitation, and pre-release programs.

This inaccessibility can flow through to the system of bail and remand. A large proportion of the ACT's prison population is on remand. Australian Bureau of Statistics data from 2024 show that 46 per cent of the people in prison in the ACT were unsentenced. This exacts a high toll as it impacts an individual's access to programs, services, and necessary supports, especially the NDIS.³

Finally, bail can necessitate filling specific criteria and conditions such as suitable and stable accommodation, lodging of money or deeds as security, or attending a specific program. Not all programs are suitable and able to accommodate people with different disabilities. Either due to inaccessible venues, curricula or course materials, or a lack of sensory spaces.

For some people attending a mandated program requires a level of support to understand the requirement and mandated nature of the program. People needing this support need to be identified and provided with it in a timely way.

Such conditionality can create further barriers to access for people with disability, especially those relying on income support or emergency housing. Likewise other circumstances like accessing Centrelink and housing need to be identified and supported in a timely way.

¹ McCausland, R., and Baldry, E. (2017). 'I feel like I failed him by ringing the police': Criminalising disability in Australia. *Punishment and Society* 19(3): pp. 290-309. See also, Mackay, A. (2015). ['Human Rights Protections for People with Mental Health and Cognitive Disability in Prisons.'](#) *Psychiatry, Psychology and Law* 22(6): pp. 842-868.

² Sotiri, M., and Russell, M. (2020). [Locked out: The implementation of the NDIS for people in prison in NSW: 2016-2019.](#) NSW, Community Restorative Centre, p. 12

³ Doyle, C. et al. (2022). ['There's not just a gap, there's a chasm': The boundaries between Australian disability services and prisons.](#) Public Service Research Group, UNSW Canberra.

As such, it is important that a disability perspective is incorporated into the administration of bail in the ACT.

Administration of Bail in the ACT

This submission will focus on the *Bail Supervision and Support Policy*⁴ as it has direct relevance to people with disability.

It is encouraging to see that Bail Support Plans are being implemented through the Bail Supervision and Support Policy. There are a couple of areas we would like to draw your attention to, to better support the needs of people with disability complying with bail requirements. The current policy says at 8.1:

*Accused persons on supervised bail for a period of four weeks or greater will have a Bail Support Plan (BSP). The allocated supervising officer will work with the accused person to develop an individualised BSP that identifies their immediate, basic welfare and social needs and sets goals that may assist successful completion of their bail period.*⁵

Recommendation

That the ACT Government consider enhancement of Bail Support Plans to better support people with disability with precarious access to immediate and basic welfare needs such as income and housing. For instance, if an accused person is a person with disability on supervised bail we could grant access to a bail support plan from commencement of bail rather than after 4 weeks to better support compliance with bail conditions.

We also note that requirements to attend mandated programs can be problematic for people with disability where the mandated programs are not accessible or well supported. The requirement to attend the program can then become an unintended route back in justice interactions and penalties for people with disability.

We know that the offences for which people with cognitive disability are imprisoned are overwhelmingly in the lowest severity categories, including low level non-violent offences, traffic offences, theft and breach of orders.

The current policy says at 8.4:

*If the accused person is also subject to conditions that mandate attendance at a specific program or service, these mandatory requirements must be clearly articulated on the BSP. The allocated supervising officer must ensure that the accused person understands that compliance with mandatory requirements is not voluntary.*⁶

⁴ ACT Corrective Services *Bail Supervision and Support Policy*
https://www.correctiveservices.act.gov.au/_data/assets/pdf_file/0005/2068295/Bail-Supervision-and-Support-Policy-2023.pdf

⁵ Ibid., page 7.

⁶ Ibid.

And at 8.5:

An accused person's failure to comply with mandatory requirements noted in the BSP will be dealt with as a demonstration of non-compliance.

Recommendation

That this Inquiry and the ACT Government focus attention on addressing issues with mandated attendance by people with disability at specific programs e.g. drug and alcohol.

We recommend attention to issues with accessing services and maintaining compliance for people with accessibility barriers so they can attend the programs or locate alternatives.

We further recommend that failure to attend due to accessibility issues with a mandated program should not be counted as non-compliance with Bail conditions.

Please feel free to contact Roslyn Emmerick, Senior Policy Officer in the first instance by email at Roslyn@advocacyforinclusion.org or Craig Wallace, Head of Policy at Craig@advocacyforinclusion.org to discuss this submission further.

Regards

(Sent by email)

Nicolas Lawler
Chief Executive Officer
Advocacy for Inclusion
17 May 2024

