

Advocacy for Inclusion

Incorporating People with Disabilities ACT

2.02 Griffin Centre

20 Genge Street

Canberra City 2601

(02) 6257 4005

ABN: 90670934099

www.advocacyforinclusion.org

Standing Committee on Justice and Community Safety
Inquiry into the Crimes Legislation Amendment Bill 2023

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

Re: Crimes Legislation Amendment Bill 2023

Thank you for the opportunity to make a brief submission to the Inquiry into the *Crimes Legislation Amendment Bill 2023*.

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. It is 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 amendments within the *Crimes (Sentencing) Act 2005* and the *Magistrates Act 1930*. The focus of our submission is to highlight the necessity of ensuring disability perspectives and issues are considered in the proposed amendments in relation to non-parole periods and extension of time to pay penalties.

While AFI do not have expertise in this area and cannot comment on the broader application of the proposed amendments to the *Crimes Legislation Amendment Bill 2023*, we cautiously support changes in relation to non-parole periods and extension of time to pay penalties. We note the need to mitigate the effects of any changes to the legislation on people with disability, as well as minimising unintended consequences.

Part 5 – Crimes (Sentencing) Act 2005

Clause 8 – Section 64 (2), definition of *excluded sentence of imprisonment*, paragraph (a)

AFI understands that the purpose of this clause relates to allowing the court discretion to consider the individual circumstances around detainees who may have committed an offence while in custody. This may allow more detainees the opportunity to become eligible for parole, by not extending their sentence.

AFI welcomes this as a positive step towards not extending a person's sentence where it has been ruled appropriate to do so by a court. However, we would also like to draw your attention to consider a person with disability and how their behaviour is assessed in general while in custody.

Research shows us that people with disability face a wide range of systemic and structural barriers to accessing justice. Inadequate disability support is linked to cycles of offending and reincarceration for people with disability.¹

This can create difficulties for people with disability as unaddressed support needs resulting in behavioural symptoms may lead to additional disciplinary charges while in custody. In turn, this could increase the likelihood that people with disability will be assessed as being at risk of reoffending.

Notably, this can occur where behaviours associated with disability and undiagnosed health conditions are interpreted as offending behaviour. In the ACT, only 14 percent of respondent detainees reported ever being told they had an intellectual disability. Upon subsequent screening, 1 in 4 respondents screened positive.²

AFI are aware the Alexander Machonochie Centre (AMC) is working towards improved disability screening and providing disability supports. This could help mitigate the instances where a detainee's behaviour relating to their disability, is misinterpreted as a punishable offence within custody.

Together with the proposed changes to the *Crimes (Sentencing) Act* relating to the excluded punishment clause, AFI see this as a positive step for people with disability serving custodial sentences, particularly if this is linked with addressing the support needs of detainees with disability at the AMC.

¹ 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.

² Young, J., van Dooren, K., Borschmann, R., and Kinner, S. (2017). [ACT Detainee Health and Wellbeing Survey 2016: Summary results](#). Canberra, ACT Government, p. 31. p. 31

Part 9 – Magistrates Act 1930

Clauses 19 – 23

AFI welcomes amendments to the extension of time to pay penalties section of the *Magistrates Act 1930* allowing people additional time to pay a penalty for a wide range of reasons.

We note the addition of the new sections extending the period of beginning prosecution for an infringement notice offence, together with the sections offering either alternate pathways to paying penalties or the discretionary waiving of penalties.

While we welcome these additions, we point to the potential unintended consequences of the application of a potential prosecution for unpaid fines.

Data shows us 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.³

AFI encourage the courts to always keep this in mind when assessing prosecution versus alternate pathways for people with disability.

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)

Craig Wallace
Head of Policy
Advocacy for Inclusion
29 November 2023

³ Simpson, J. (2014). [‘Participants or just policed?’](#) Guide to the role of the NDIS – people with intellectual disability who have contact with the criminal justice system. Sydney, New South Wales Council for Intellectual Disability, p. 28.