

Strategic Policy and Programs, Community Safety
Justice and Community Safety Directorate
GPO Box 158 Canberra ACT 2601
spp@act.gov.au

11 February 2025

Dear Strategic Policy and Programs,

DISCUSSION PAPER: ELECTRONIC MONITORING IN THE ACT

The ACT Council of Social Service (ACTCOSS) welcomes the opportunity to respond to the Discussion Paper on Electronic Monitoring (EM) in the ACT.

ACTCOSS is the peak body for the community sector in the ACT. We advocate for social justice and represent not-for-profit community organisations. Our membership includes organisations that support people affected by the justice system — offenders, victim-survivors, and their families — through rehabilitation, reintegration, crisis accommodation, counselling, legal assistance, intensive case management and coordination with police and other services.

In the absence of a dedicated justice peak in the ACT, ACTCOSS coordinates the Justice Reform Group (JRG), a cross-sectoral forum focusing on justice reform, human rights, and the social determinants of justice system contact. While the views in this submission are ACTCOSS's own and do not necessarily reflect those of all JRG members, they are informed by engagement with six community organisations and the ACT Human Rights Commission (including the Victims of Crime Commissioner).

Given the tight feedback window and the high-demand period for community services, ACTCOSS, with the cooperation and participation of the Justice and Community Safety Directorate (JACS), convened a verbal feedback session on 31 January. This submission builds on the insights provided during that session.

This submission summarises our broad policy positions and incorporates key points from one of our member organisations, the Canberra Rape Crisis Centre (CRCC), with their full statement included as an appendix. We look forward to working with the ACT Government, our member organisations, and the JRG to ensure EM is implemented in a way that benefits everyone impacted by the criminal justice system.

Key Points and Recommendations

Phase 1 implementation

- Do not pilot EM on individuals charged with domestic and family violence (DFV) offences.
- Trial EM on leave permit recipients as a first step.
- Insource EM provision or, if private providers are required, ensure strict government oversight and accountability.

Resourcing of community supports – EM should not be a standalone measure

- Ensure dedicated funding for community services is *included* in the cost of EM implementation.
- Invest in services that address social determinants of engagement with the justice system, such as housing instability, unsupported mental ill health and disability, trauma, systemic racism and socio-economic disadvantage.

Position EM within the broader principles of justice reinvestment

- Direct any cost savings from EM toward community-led diversionary supports to reduce incarceration.
- Ensure EM is not a punitive add on but contributes to community-based alternatives to prison.
- Prevent net-widening so EM does not expand overall judicial control.

Unintended consequences

- Protect children's rights and privacy and ensure services are adequately funded to meet their needs.
- Mitigate against misidentification of victim-survivors (particularly First Nations women and women with disabilities) as primary DFV perpetrators.

Establish a rigorous and ongoing evaluation framework

- Undertake ongoing, structured evaluations throughout each critical stage of EM's rollout, ideally conducted by an independent body.

ACTCOSS policy position on phase 1 implementation

ACTCOSS supports the overarching principles of EM as outlined in the discussion paper:

- Reducing the risk of recidivism
- Addressing the criminogenic needs of an offender
- Addressing the unmet needs of offenders
- Ensuring the protection of the community
- Ensuring the protection of victim/survivors

Not explicitly stated in the paper is the need to address the social determinants of engagement in the justice system¹ – we view this as a critical principle required when effectively implementing EM in the ACT.

ACTCOSS acknowledges the potential for EM to help achieve these principles but cautions that inadequate funding or oversight could lead to adverse outcomes outweighing its benefits. Any rollout of EM should include comprehensive wraparound supports and undergo rigorous evaluation, ideally conducted by an independent body, at each critical stage. In both delivering these supports and informing ongoing evaluation, community sector organisations must be recognised as active partners, leveraging their frontline expertise and direct experience to produce meaningful, representative insights. This collaborative approach will help mitigate unintended consequences and ensure that EM remains an effective tool to reduce the prison population and address the social determinants of justice system involvement.

Phase 1 implementation

Do not pilot EM on individuals charged with domestic and family violence (DFV) offences

In line with feedback from member organisations and the VOCC, ACTCOSS does not support the initial application of EM to individuals charged with DFV offences. Robust infrastructure, risk assessment frameworks, and real-time response mechanisms must be tested before EM is expanded to DFV offenders. Potential roll out of EM to this cohort must be addressed at a more advanced phase of implementation.

CRCC also warns of the potential “false sense of security” EM may create if police are under-resourced:

If this service is provided it would need to be adequately resourced to ensure police are able to respond quickly and therefore adequately protect victim-survivors. If this does not occur, it could provide a false sense of security to victim-survivors who then become less alert than they may have been without EM and therefore has the potential to lead to more adverse outcomes than if the EM had not been in place.

¹ R McCausland and E Baldry, 2023, [Who Does Australia Lock Up? The Social Determinants of Justice](#), *International Journal for Crime, Justice and Social Democracy* 12 (3):37-53

EM alone does not prevent violence nor is it able to monitor coercive control. The technology, processes and legal framework need to be more established before risks of DFV offenders can be managed in the community with EM.

Trial EM on leave permit recipients as a starting point

Given the pilot's early stage, ACTCOSS supports a member organisations recommendation to begin the rollout with leave permit recipients, who comprise a smaller, lower-risk cohort. This provides an opportunity to evaluate EM's effectiveness and refine processes before expanding its use.

Insource EM provision

ACTCOSS strongly recommends that EM remain under government administration and oversight. Privatising EM risks undermining human rights protections, potentially compromises accountability, and may lead to cost cutting priorities over rehabilitation and community safety. Any private involvement should be tightly regulated to uphold the principles of EM set out in the discussion paper.

Resourcing of Community Supports – EM should not be a standalone measure

The successful implementation of EM in the ACT is contingent on properly resourcing the community sector to provide the necessary wraparound supports for individuals subject to EM, victim-survivors, and their broader social networks. It appears, in this first phase, no consideration has been given to the resourcing requirements for community sector organisations. These organisations are already responsible for supporting victim-survivors, offenders, and their families, yet they are expected to navigate complex case management without additional funding.

One critical risk an ACTCOSS member organisation identified is the lack of clear communication and resourcing for service providers managing clients with non-association orders. Community organisations working with clients subject to EM, must be resourced to manage the complexities of EM compliance. For example, services may have two individuals accessing the same support program who are subject to a non-association order. Without proper funding and communication mechanisms, these services risk unintentionally facilitating breaches.

This issue is especially critical for Aboriginal and Torres Strait Islander communities, where the limited number of ACCOs and the existence of only one Aboriginal Community Controlled Health (ACCHO) Service in the ACT create additional barriers. Services must be funded to coordinate with EM monitoring agencies and manage clients safely while ensuring that EM does not impede access to essential supports.

Without the measures outlined above, EM risks exacerbating existing service gaps, criminalising individuals for breaches that could have been prevented with proper support, undermine rehabilitation and reintegration goals of EM. This would leave friends and family (including children) of people impacted by the justice system without adequate supports, and increase surveillance on marginalised communities rather than addressing the social determinants of justice system involvement.

Targeted funding must be *included* in EM costing and be allocated (but not limited) to:

- Aboriginal Community Controlled Organisations (ACCOs)
- Legal assistance services
- Housing and homelessness support services
- Domestic, family & sexual violence services
- Alcohol and other drug (AOD) services
- Mental health services
- Disability support services
- Child, youth, and family support services

Without dedicated investment in community service organisations, the roll out will undermine the principles of EM set out in the discussion paper.

Position EM within the broader principles of justice reinvestment

EM should be positioned within the broader principles of justice reinvestment, that prioritises community-led diversionary supports over expanding punitive measures. If not carefully implemented, EM risks becoming an add on to existing punitive measures, increasing judicial control over individuals who might not otherwise be subject to such restrictions.

To ensure EM serves its intended purpose as set out in the discussion paper, it must be framed as a tool for rehabilitation and reintegration rather than a mechanism for extended judicial control. This means prioritising its use as a diversionary measure, supporting individuals (where the risks can be adequately managed) to remain in the community with access to housing, employment, mental health services, and cultural connection, rather than as a condition that expands monitoring, increases breach rates, funnels more people into incarceration, and has the net effect of simply delaying people's entry into custody.

A core concern is net-widening, in which individuals not previously subject to judicial supervision are monitored via EM, increasing rather than reducing justice system contact. ACTCOSS does not support implementation of EM that has the potential for net-widening. For example, mandatory application of EM as an additional condition of bail.

Additionally, any cost savings arising from a shift to EM over incarceration should be invested in community led diversionary and early intervention programs that address housing, health, and other critical social determinants of justice system contact.

For EM to align with justice reform objectives, the ACT Government must:

- Position EM as a genuine mechanism to reduce the prison population, directing any cost savings from EM toward community-led diversionary supports.
- Ensure EM is not a default punitive condition but rather an alternative to prison, used selectively and supported by wraparound services.

- Establish clear limits on EM eligibility to prevent unnecessary expansion of judicial control and over-surveillance of already surveilled communities.

Unintended consequences

Considering the needs of children living with a person subject to EM

The downstream implications of EM are complex, and one significant risk and potential unintended consequence is that children's rights and needs may be overlooked. Implementation of EM should acknowledge the rights and wellbeing of children who may be living with, or cared for by, a person subject to EM. It is estimated that up to 50% of the prison population are parents, yet there is little data on children affected by criminal justice interventions, including EM.² The absence of targeted policy considerations for children affected by criminal justice intervention, including EM, raises serious human rights concerns, particularly regarding privacy, emotional wellbeing, and access to education and support services.

The legal framework for EM must explicitly safeguard children's rights and prevent unintended harms such as increased stigma, heightened surveillance, or unnecessary family separation. ACTCOSS is particularly concerned about the secondary use of EM data, which could result in inappropriate information sharing with child protection agencies. This risks shifting resources from family support to increased surveillance, and contributes to the likelihood of child removal rather than ensuring families receive the necessary resources to remain together safely. Long term, it is important to consider that being in out of home care has been identified as one of the main social determinants of justice system involvement.

Additionally, where a person subject to EM is in a relationship with a parent or carer, decision makers must actively consider the potential impacts on children's welfare and stability. Privacy protections, child impact assessments, and access to appropriate family support services must be embedded in the legislative framework to ensure that EM does not disrupt family cohesion or contribute to child removals or intergenerational justice system involvement. It's crucial to establish clear protocols in this pilot phase and in subsequent phases to ensure EM data is not misused and shared with child protection agencies.

To mitigate these risks, community-based child, youth, and family support services must be adequately resourced to provide targeted support for children affected by EM. Likewise, criminal justice agencies, including police and monitoring agencies, must be trained and resourced to engage appropriately with children. This includes establishing child-sensitive procedures for breach responses, particularly if a parent or carer is arrested in the presence of a child, with the goal of minimising harm and actively prioritising the child's needs. Given that parental incarceration is recognised as an Adverse Childhood Experience (ACE), these measures are crucial to preventing deeper disadvantage. Without such safeguards, EM risks further entrenching negative outcomes for children and families already impacted by the justice system.

² Legislative Council Legal and Social Issues Committee, [Inquiry into children affected by parental incarceration](#), Parliament of Victoria, August 2022, p74-75

Mitigate against misidentification of victim-survivors

ACTCOSS echoes the concerns of the Victims of Crime Commissioner (VOCC) and the Domestic Violence Crisis Centre (DVCS) about EM being used on female victim/survivors who've been misidentified as perpetrators, particularly Aboriginal and Torres Strait Islander women and women with disabilities. Police are known to have misinterpreted reactive violence — where a victim defends themselves after prolonged abuse — as an offence, leading to unjust criminalisation. If EM is applied without rigorous risk assessment, it could further entrench systemic biases and disproportionately surveil vulnerable women who should be receiving support and safety, not punishment. ACTCOSS rejects any applications of EM that risk reinforcing existing inequalities, hinders efforts to address the social determinants of justice, or undermines the safety of victim/survivors.

Establish a rigorous and ongoing evaluation framework

The discussion paper does not specify how EM will be evaluated throughout its rollout, leaving no clear plan for measuring effectiveness or ensuring accountability. To address this, a structured evaluation framework must be established before the pilot phase begins, ensuring that effectiveness, potential risks, and unintended consequences are assessed at every step. Engaging the community sector in this evaluation process is vital, given its front-line expertise and insight into the lived experiences of those most affected by EM. This should include collaboration in establishing the evaluation framework and in the evaluation itself.

Alongside developing this robust framework, the ACT Government should commit to publishing evaluation findings to foster public trust and guide evidence-based improvements. Ongoing assessments at each critical stage of EM's expansion will allow for timely course corrections and will help ensure that EM achieves its intended outcomes, rather than generating new harms or exacerbating existing inequalities.

Further engagement

ACTCOSS would welcome the opportunity to engage further with the ACT Government and other stakeholders in the implementation of EM in the ACT.

If you would like to discuss any of the issues raised in this submission please contact Ms Emma Agostino, Senior Policy Advisor at ACTCOSS, at emma.agostino@actcoss.org.au or on (02) 6202 7200.

Yours sincerely

A handwritten signature in blue ink that reads 'Devin Bowles'.

Dr Devin Bowles
CEO
ACT Council of Social Service
devin.bowles@actcoss.org.au

Appendix A: Full statement from Canberra Rape Crisis Centre (CRCC)

The Canberra Rape Crisis Centre (CRCC) welcomes the opportunity to comment on the Justice and Community Safety Directorate's December 2024 'Electronic Monitoring in the ACT' Discussion Paper.

CRCC is a non-government not for profit organisation working to eliminate sexual violence in the Australian Capital Territory. CRCC has supported victim-survivors of sexual violence since 1976. CRCC is available for any woman, man or child who has experienced any form of sexual abuse whether recent or historic. CRCC provides free, confidential and specialised sexual violence support across four areas for victim survivors of sexual violence, their supporters, professionals and the Canberra community: crisis support, counselling, advocacy and education. CRCC crisis support includes a 365 day crisis phone line, 24 hour call outs to police and forensic medical services. Counselling support includes confidential counselling and advocacy for women and children who have experienced any form of sexual violence recently or in the past, and their supporters. Our [Nguru Program](#) provides education, support and access to counselling for women, men and children of Aboriginal or Torres Strait Islander communities and their families and supporters. Our [Service Assisting Male Survivors of Sexual Assault \(SAMSSA\)](#) offers counselling and support to men over the age of 16. Our advocacy and education work includes support through all legal, court and medical processes, referrals to relevant services, and training and community education to schools and government and private workplaces. We also provide support to professionals who work with victim-survivors of sexual violence across government, private and community sectors including debriefing and advice to professionals directly.

In response to the Discussion paper, as a starting point, CRCC supports all policies and tools that enhance capability in the ACT justice system.

CRCC supports Electronic Monitoring (EM) in principle if rolled out with appropriate funding and considerations, and offers the following comments.

First, CRCC works closely with the Sexual Assault and Child Abuse Team (SACAT) in ACT Policing to support clients. CRCC's strong preference in terms of ACT Policing funding to support SV victim survivors in the ACT would be for the ACT Government to provide more resourcing to SACAT rather than to provide more resources to implement an EM process. However, noting that EM is an election commitment, if it does need to progress, I would propose it is trialled as a limited pilot and that more money instead be directed towards SACAT and if system-wide funding is under consideration, then also to CRCC and other front-line services.

Second, front line services would need to be sufficiently resourced to support this measure, such as any repercussions falling on victim survivors and their families as a result. I note the suggestion to focus on domestic and family violence (DFV) and that sexual violence (SV) is often a part of DFV, including within our clients. Therefore, any focus on this area would also affect our clients.

Third, CRCC would also support electronic monitoring if ACT Policing is adequately resourced. For example, if this service is provided it would need to be adequately resourced to ensure police are able to respond quickly and

therefore adequately protect victim survivors. If this does not occur it could provide a false sense of security to victim survivors who then become less alert than they may have been without EM, and therefore has the potential to lead to more adverse outcomes than if the EM had not been in place.

Fourth, empowering victim survivors by focusing on an electronic monitoring system that provides information directly to the victim survivors could help ensure the most vulnerable receive the benefit of the information EM provides in real time. For example, information could be conveyed to both police and victim survivors.