



Legislative Assembly for the ACT

STANDING COMMITTEE ON LEGAL AFFAIRS

Report on Annual Reports 2003-2004

JUNE 2005

Report 1

Committee Membership

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Ms Karin MacDonald MLA	Deputy Chair
Dr Deb Foskey MLA	Member

Secretariat

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Resolution of appointment

On 7 December 2004 the Legislative Assembly for the Australian Capital Territory resolved to establish a general purpose standing committee, called the Standing Committee on Legal Affairs:

to perform the duties of a scrutiny of bills and subordinate legislation committee and examine matters related to community and individual rights, consumer rights, courts, police and emergency services, corrections including a prison, governance and industrial relations, administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, consumer affairs and regulatory services.¹

¹ Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 7 December 2004

Terms of reference

On 7 December 2004 the Assembly agreed that the annual and financial reports for the calendar years 2003 and 2004, and the financial year 2003–2004, presented to the Assembly pursuant to the *Annual Reports (Government Agencies) Act 2004*, would stand referred to the Assembly's standing committees, on presentation, in accordance with an agreed schedule.²

² Legislative Assembly of the ACT, *Minutes of Proceedings*, No. 2–7 December 2004, p.28

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SUMMARY OF RECOMMENDATIONS

RECOMMENDATION 1

2.8 The Committee requests that relevant ACT Government agencies, under the supervision of the Department of Justice and Community Safety, develop workable inter-agency protocols, with a view to attaining improved data collection and reporting that is more consistent, focussed and clearer.

RECOMMENDATION 2

2.21 The Committee recommends that the ACT Government investigate the inclusion of the offence of constructive murder within the criminal law of the ACT.

RECOMMENDATION 3

2.24 That the Government and the ACT Legal Aid Commission explore further measures to encourage more private practitioners to become involved in the provision of legal aid.

1 INTRODUCTION

- 1.1 The annual reports of all ACT Government agencies were referred to the standing committees of the ACT Legislative Assembly on 7 December 2004 for examination and report.
- 1.2 The schedule³ defined that the following annual and financial reports be examined by the Standing Committee on Legal Affairs:
 - ACT Construction Industry Long Service Leave Board
 - ACT Cleaning Industry Long Service Leave Board
 - ACT Electoral Commission
 - ACT Ombudsman
 - Australian Federal Police (ACT Region)
 - Commissioner for Occupational Health and Safety
 - Community Advocate
 - Department of Justice and Community Safety
 - Director of Public Prosecutions
 - Discrimination Commissioner
 - Legal Aid Commission
 - Office of the Public Trustee
 - Victims of Crime Support Program
- 1.3 On 3 February 2005, the Committee resolved that the annual reports of the Cleaning Industry Long Service Leave Board, the Construction Industry Long Service Leave Board and the Occupational Health and Safety Commissioner and ACT WORKCOVER were to be forwarded to the Public Accounts Committee for their consideration.
- 1.4 The Committee has no comment to make on the following reports:
 - The Public Trustee [2003-2004]

³ Legislative Assembly for the ACT, *Minutes of Proceedings No 2*, 7 December 2004, p. 28

- The ACT Ombudsman [2003-2004]
 - The ACT Electoral Commission [2003-2004]
 - Victims of Crime Support Program [2003-2004]
 - The ACT Human Rights Office [2003-2004]
- 1.5 Initially, the Committee wrote to a number of agencies in order to determine priority issues for consideration and then determined a program of public hearings. Public hearings were held on 11 February, 25 February and 11 March 2005. A full list of participants is at Appendix A.
- 1.6 A total of 75 questions were taken on notice and answered in the course of this inquiry. The responses to these questions are available on the Assembly's website.

Purpose and intent of annual reporting

- 1.7 The primary function of annual reports by government agencies is to report to the minister responsible on the work of the agency for the financial or calendar year under review. Annual reports are also an important means through which the Legislative Assembly can review the work of the Executive.
- 1.8 The content and structure of annual reports must comply with two primary sets of requirements:
- statutory requirements which define the form and content of the financial statements and other information which must be included; and
 - the Chief Minister's Annual Reports Directions (June 2003), which deal with both content and presentation of information.
- 1.9 The committee assessed the annual reports against these two sets of requirements. The public hearings also provided Members with an opportunity to seek clarification about issues raised in the annual reports. The transcript of proceedings provides a full record of these discussions. Transcripts can be accessed on the Assembly Internet site www.parliament.act.gov.au/committees.
- 1.10 The Directions note that annual reports are key accountability documents concerning management performance. They are high level documents

reflecting on the year's performance, achievements and outcomes and should be a concise way of accounting for the expenditure of public monies.

- 1.11 Agencies account for management performance through Ministers to the Legislative Assembly and the wider community. Since annual reports are tabled in the Assembly, they are historical documents on the public record, and are available for use by stakeholders, including educational and research institutions, the media and the public. Annual reports are also key reference documents and documents for internal management.
- 1.12 Annual reports should:
 - Report objectives that are clear and measurable
 - Focus on results and outcomes
 - Discuss results against expectations
 - Be complete and informative
 - Explain changes over time
 - Provide evidence of value for money
 - Discuss risks, strategies and the external operating environment.
- 1.13 The 2004 Annual Report Directions provide for agencies to follow a revised format, including:
 - Management analysis and discussion around seven key themes
 - Analysis complemented by detailed data on operational and resource performance
 - A number of specific requirements such as Compliance listings, Fuel Management Plans etc.
- 1.14 The Committee assessed the above reports in this context and also assessed the reports for:
 - Accessibility, clarity and focus in presentation
 - Clear links between output classes and results
 - Open and honest discussion of the impact of outside scrutiny on the agency and any difficulties faced.

2 AGENCIES ANNUAL REPORTS

Department of Justice and Community Safety

2.1 The Annual Report 2003-2004 of the Department of Justice and Community Safety includes the activities of the Department as well as the following annexed reports:

- ACT Administrative Appeals Tribunal
- Agents Board of the Australian Capital Territory
- Chief Coroner of the Australian Capital Territory
- Children's Court
- Consumer and Trader Tribunal
- Credit Tribunal
- Discrimination Tribunal
- Essential Services Consumer Council
- Guardianship and Management of Property Tribunal
- Mental Health Tribunal
- Official Visitor Report
- Residential Tenancies Tribunal
- Sentence Administration Board of the Australian Capital Territory.

2.2 Overall, the Committee considered the report to be compliant with the Chief Minister's Annual Reports Directions. The report is accessible, informative and comprehensive. However, the Committee considers that future reports should focus a little more on critical analysis of data presented. For example, the large and unexplained drop in community hours worked by detainees⁴ and the jump from 75 to 258 in Court of Appeal listed matters⁵, are left unexplained in the report, although an explanation was provided at public hearing.

⁴ Department of Justice and Safety Annual Report, Volume 1, p. 80

⁵ Department of Justice and Safety Annual Report, Volume 1, p. 30

- 2.3 Similarly, the Committee urges that disaggregated employment figures would assist the Committee and the public in assessing such matters as employment diversity performance.
- 2.4 The Chief Executive's overview noted that the imminent changes to the Department's responsibilities, through the new Emergency Services Authority, provided impetus to review the Department's future strategic priorities.
- 2.5 Debate during the public hearing, other than that directed at the specific agencies mentioned below, focussed on:
- Capital and ongoing operational costs and net savings of a new prison
 - Disaggregated employment figures for Departmental programs
 - Trend changes in community service work by detainees
 - Whole of government issues involving family support of offenders
 - Coronial system delays and management
 - Impact of case management
 - Human rights compatibility statements
 - Circle sentencing and training following the Human Rights Act.
- 2.6 Both the Community Advocate and the Director of Public Prosecutions voiced their frustration with developing inter-agency protocols outlining approaches and responsibilities. Both also, as an important side-issue of this, spoke about delays in establishing a better database to inform policy making, especially in sexual abuse matters.
- 2.7 As Government and its institutions become increasingly complex, and since traditional approaches to accountability have been confined to individual CEO or departmental level, it is the Committee's view that it becomes increasingly important that departmental functions are undertaken in ways that are better co-ordinated, more integrated, simpler, and especially more client-driven.

RECOMMENDATION 1

- 2.8 **The Committee requests that relevant ACT Government agencies, under the supervision of the Department of Justice and Community Safety, develop workable inter-agency protocols, with a view to attaining improved data collection and reporting that is more consistent, focussed and clearer.**

Emergency Services Bureau

- 2.9 The Emergency Services Bureau reports as part of the Department of Justice and Community Safety annual report. The year saw major changes in the administration of emergency services, with the development of new legislation, the *Emergencies Act 2004*, which:
- established the new Emergency Services Authority;
 - brought the provision of all emergency services within a single piece of legislation, with single management; and
 - provided for the appointment of an Emergency Services Commissioner.
- 2.10 Questioning of the Minister and the Commissioner at public hearing largely centred around the establishment of new systems and the costs of those systems.
- 2.11 The Committee noted the considerable progress made in terms of such matters as:
- Recruitment drive in key areas
 - Enhanced approach to individual and collective training
 - Computer aided dispatch system
 - A new approach to establishing an ongoing dual VHF with UHF communications system
 - Impact of enhanced mapping capability on operations
 - Strengthening of relationship with NSW, including signing of a memorandum of understanding.
- 2.12 The Committee considered whether the 2003/2004 tabling of the Auditor-General's report into the emergency services should have been addressed in

detail in the annual report. No clear conclusion was reached, although the point was made that many public opportunities had been available to address the implications. The coronial enquiry had made the issue more sensitive, but had also expanded opportunities for scrutiny.

Director of Public Prosecutions

- 2.13 The Director of Public Prosecutions responded to an initial written request on matters raised in the annual report⁶. The major issues explored by the Committee included:
- The increasing complexity in the criminal justice system and the prosecution of criminal offences, as well as the increasing numbers of offences to prosecute;
 - The increasing pressures on the office of the impact of new technology, human rights issues and scientific advances;
 - The increasing complexity of annual reports and their requirements.
- 2.14 The DPP noted the 'lacuna in the development of policy in the criminal justice area in the absence of reliable statistics' and expressed concern that the ACT may now be falling behind other jurisdictions in areas where once it had been a leader.⁷ The public hearing further explained negotiations with the Australian Institute of Criminology to substantially upgrade data systems, as a part of research into sexual assault. It is clearly important that these processes continue to be adequately driven and resourced.
- 2.15 During the hearings, the DPP was asked to expand on annual report comments about relationships between the Office of the DPP and other agencies. The Committee noted the complexity of relationships, especially in denoting clear lines of accountability and responsibility between the DPP and the Coroner. It also noted that a draft memorandum of understanding between agencies involved in inquests had not yet been finalised. It seems important that these matters should be resurrected and resolved.

⁶ Correspondence, Office of the DPP, 19 January 2005

⁷ *ibid*

- 2.16 In the report overview, and subsequently during the hearings, the DPP provided a useful appreciation of the pervasiveness of trends (such as Human Rights, circle sentencing and the Criminal Code) within the legislative environment, plus the impacts of extraordinary events such as the Eastman and bushfire inquiries. Such matters have significant impacts on resources and the application of justice.
- 2.17 The DPP report is generally very well presented. It provides good data, and thoughtful analysis in terms of the way it addresses its working environment, raises issues, and discusses data. The DPP raised concerns about the annual report process itself, ‘...It is sometimes difficult to see the significance of some of the information required in this Report’⁸ and suggested that more thought could be given to the genuine value of the information in such reports.
- 2.18 Notwithstanding this, the Committee’s view is that the annual report is an important component of accountability, and that the information and analysis provided does provide the basis for Assembly and public scrutiny.
- 2.19 The Committee notes the Director's concern that the ACT is the only jurisdiction without some form of the offence of constructive murder. Further, the ACT differs from other jurisdictions in that the mental element of the offence of murder is much more difficult to prove here than in most other jurisdictions:

In the ACT it has been the law since 1990 that the prosecution has to prove, in relation to the mental element, that the accused either intended to kill the deceased or was reckless as to the probability of death occurring. In other jurisdictions it is sufficient that the accused had the intention to inflict grievous bodily harm.⁹

- 2.20 The Committee notes the difficulty of obtaining a conviction for murder in the ACT when death occurs during a serious unlawful event. The Committee is concerned that this situation places Canberra citizens and the DPP at a disadvantage relative to other jurisdictions in Australia.

⁸ Office of the DPP Annual Report, p. 6

⁹ Office of the DPP Annual Report, p. 13

RECOMMENDATION 2

- 2.21 **The Committee recommends that the ACT Government investigate the inclusion of the offence of constructive murder within the criminal law of the ACT.**

Legal Aid Commission of the ACT

- 2.22 The Committee notes the concerns expressed by the President of the ACT Legal Aid Commission Annual report 2003/2004 that the heavily restricted base funding was placing pressure on the delivery of legal aid services to ACT residents, particularly so far as the partnership with the private legal profession is concerned. The President stated:

‘Ever tightening purse strings have led to private lawyers opting out of legal aid work...there remains a core of private legal practitioners who are prepared to do legal aid work and I express my gratitude to them for supporting the system. I hope that the Commission will be able to improve their remuneration. I am aware that in many instances they undertake legal aid work because of a feeling of professional duty, rather than for financial gain. However, communities should not impose on lawyers to underwrite the delivery of legal aid. No other professional group is required to finance a Government social policy objective out of their own pocket.’¹⁰

- 2.23 The Committee pursued this matter at public hearing and the concerns expressed in the report were reiterated. The Committee is concerned at the decline in participation of the private profession in making themselves available to undertake legal aid work and notes the concern of the President of the Commission that an unfair burden rests with the profession in relation to legal aid work.

¹⁰ Legal Aid Commission (ACT), 2003-2004 Annual Report, p. 7

RECOMMENDATION 3

- 2.24 **That the Government and the ACT Legal Aid Commission explore further measures to encourage more private practitioners to become involved in the provision of legal aid.**
- 2.25 The Committee also notes that funding from the Statutory Interest Account managed by the ACT Law Society, was substantially in excess of that received the previous year, principally because of the rise in property values.¹¹ This funding had substantially assisted the office to meet its statutory obligations.

Office of the Community Advocate

- 2.26 The focus of the Committee's inquiry into the Community Advocate's annual report was the relationship between Ms McGregor's office and the care and protection system. While the annual report was highly critical of the system applicable at the time, the evidence Ms McGregor gave at public hearing indicated that the system was highly improved:
- ‘There have been very significant changes, as everyone would know, including structural changes...the leadership is there now to bring about the necessary reforms and changes in directions and culture’.¹²
- 2.27 Nevertheless, the public hearing process revealed the inherent problems in co-ordination across agencies. Ms McGregor outlined her view that in the early days of the legislation, there were differing perceptions of the importance and directions of agencies involved in care and protection work and the legal system. The Committee noted with satisfaction that this climate was now changing, with increasingly close relationships among key agencies.

¹¹ Transcript of Evidence, 11 March 2005, p. 75

¹² Transcript of Evidence, 11 March 2005, p. 78

- 2.28 Ms McGregor voiced similar concerns to the Director of Public Prosecutions in reporting on the frustration with developing inter-agency protocols outlining approaches and responsibilities. Both also, as an important side-issue of this, spoke about delays in establishing a better data base to inform policy making, especially in sexual abuse matters.
- 2.29 During the public hearing, Ms McGregor noted the alarming increase in incidence of abuse-in-care reports, the resultant resource pressures and the enforced strategic change of approach from individual to systemic advocacy. The Committee will look with interest at future annual report analysis on the balance and real cost-effectiveness of this change of direction, and whether a return to individual advocacy is demanded.
- 2.30 The annual report complies with the Directions, and the Committee applauds its level of discussion and at times refreshing reporting format.
- 2.31 The Committee notes Ms McGregor's retirement from the position of Community Advocate and wishes her well for the future.

Australian Federal Police (ACT)

- 2.32 The major topics of discussion in the public hearing included:
- Long and short term trends in crime data
 - How to improve policing performance vis-à-vis the contractual arrangements with the Commonwealth – by numbers, by performance agreement or by a combination
 - A different approach to targeting crime – the ‘pile-on’ strategy and volume-crime targeting, such as Operation Halite and the usefulness of close contact with recidivists and families, housing estates and schools
 - police numbers in the ACT.
- 2.33 The Committee found that the ACT Policing Report presented data and analysis in a very simple and informative way and which enabled informed debate during the public hearings.
- 2.34 The Committee noted the positive short-term effects of newer targeted strategies, especially when combined with extra police personnel in the second

half of 2003/2004. The future challenge will be how to respond innovatively and with numbers to maintain the pressure consistently to ensure long-term reductions across all areas of crime. It is interesting to note that such targeting may also contribute positively to early intervention.

- 2.35 The Committee also noted that increased technology, co-operation with interstate agencies and whole-of-government approaches increased both workloads and opportunities, creating ongoing challenges for management.
- 2.36 In particular, since early intervention approaches are fundamental to long-term success, the Committee would like to see ACT Policing continue the development of measures to further reflect robust early intervention and whole of government approaches.

ACT Human Rights Office

- 2.37 In response to a written invitation from the Committee, the Human Rights and Discrimination Commissioner, Dr Helen Watchirs, provided a brief summary of matters raised in the 2003/2004 annual report. In the summary¹³, Dr Watchirs noted the major impacts on the Office during the course of the year, including:
- The retirement of the previous Discrimination Commissioner and Dr Watchirs' appointment
 - Staff turnover and the physical relocation of the Office
 - Legislative changes
 - Complaint handling and finalisation statistics
 - Community education.
- 2.38 The Committee notes the now dual role of the Commissioner, that of Human Rights and Discrimination Commissioner, and the additional functions the Office must now undertake to fulfil that role.

¹³ Correspondence, Human Rights Office, 2 February 2005

Mr Bill Stefaniak MLA
Chair
10 May 2005

Appendix A: List of Witnesses

Public hearing of 11 February 2005

- Mr Jon Stanhope, Chief Minister, Attorney-General
- Mr Tim Keady, CEO, Department of Justice and Community Safety (JACS)
- Ms Elizabeth Kelly, Deputy Chief Executive, JACS
- Mr Bruce Kelly, Courts Administrator, ACT Law Courts and Tribunals, JACS
- Mr Brett Phillips, Executive Director, Policy and Regulatory Division, JACS
- Mr Michael Ockwell, Registrar General's Office, JACS
- Mr Peter Garrisson, Chief Solicitor, Government Solicitor's Office, JACS
- Mrs Lana Junakovic, Director, Corporate Services, JACS
- Mr Derek Jory, Director, Criminal Law and Justice Group, JACS
- Mr Phil Hextell, Director, Accounting Branch, Department of the Treasury
- Mr Rob Gadsdon, Manager Finance, Corporate Finance, Chief Ministers Department
- Mr Richard Refshauge, Director, Director of Public Prosecutions
- Ms Heather McGregor, Community Advocate, Office of the Community Advocate
- Mr Chris Staniforth, Chief Executive Officer, Legal Aid Commission

Public hearing of 25 February 2005

- Mr John Hargreaves, Minister for Police and Emergency Services
- Mrs Vicki Dunne, MLA
- Mr Steve Pratt, MLA
- Mr Peter Dunn, Commissioner for the ACT Emergency Services Authority
- Mr John Davies, Chief Police Officer

Public hearing of 11 March 2005

- Mr Jon Stanhope, Chief Minister, Attorney-General
- Mr Tim Keady, CEO, Department of Justice and Community Safety (JACS)
- Ms Elizabeth Kelly, Deputy Chief Executive, JACS

- Mr Bruce Kelly, Courts Administrator, ACT Law Courts and Tribunals, JACS
- Mr Brett Phillips, Executive Director, Policy and Regulatory Division, JACS
- Mr Michael Ockwell, Registrar General's Office, JACS
- Mr Peter Garrison, Chief Solicitor, Government Solicitor's Office, JACS
- Mrs Lana Junakovic, Director, Corporate Services, JACS
- Mr James Ryan, Director, Corrective Services, JACS
- Mr John Paget, Manager, ACT Prisons Project, JACS
- Mr Phil Hextell, Director, Accounting Branch, Department of the Treasury
- Mr Rob Gadsdon, Manager Finance, Corporate Finance, Chief Ministers Department
- Ms Heather McGregor, Community Advocate, Office of the Community Advocate
- Mr Chris Staniforth, Chief Executive Officer, Legal Aid Commission

Appendix B: Correspondence



AUSTRALIAN CAPITAL TERRITORY

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DPP

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Your Reference: RJ



19 January 2005

Ms Robina Jaffray
Secretary
Legislative Assembly of the ACT
Standing Committee on Legal Affairs
GPO Box 1020
CANBERRA CITY ACT 2601

Dear Ms Jaffray

ANNUAL REPORT

Thank you for your letter forwarded under cover of your e-mail message of 14 January 2004 in which you request "further comment on [my] organisation's annual report, and to identify those issues that you consider may be of particular interest to the Committee and the broader community.

As you will appreciate, the Director's Overview in the Annual Report is specifically designed to identify the issues that I consider to be of particular interest to the community, which includes, of course, the members of the Committee. I do not consider it appropriate simply to reproduce that Overview, but, in summary, the issues are:

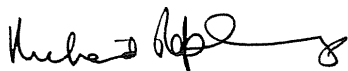
1. There is an increasing complexity in the criminal justice system and, in particular, the prosecution of criminal offences.
2. Prosecutors have increasing pressures to master scientific, technological and human rights issues as well as increasingly being obliged to assist courts, such as in sentencing proceedings.
3. Reform is adding to these pressures and, in the reporting period, the *Criminal Code*, *Circle Sentencing* and the *Human Rights Act 2004* are particularly noted.

4. The practice of criminal law is changing with society and there is an increase, in particular, of the mental impairment of offenders, complexity in crime, especially by computer.
5. The increase in police numbers and the sophistication of police investigative techniques means there are more crimes to prosecute.
6. The independent prosecutor remains important and so resources increased to meet the demands noted above are necessary, but increasingly inter-agency co-operation is necessary.
7. The Family Violence Intervention Program remains a world-class example of this and is now joined by the Case Tracking Committee I have established for forensic mental health defendants.
8. Criminal cases are also increasing in length as well as complexity and the continuing matters of the 2003 Bushfire Inquiry and Inquests, the Inquests into the death of 5 mental health patients and the Eastman Inquiry still puts pressure on my relatively small and under-resourced Office, though it has been supplemented with additional resources.
9. Despite the pressures of prosecuting a wide range of offences, including regulatory offences, the delivery of services remains of a high professional standard.
10. The Office has continued to give particular attention to continuing legal education and strategic planning.
11. A prosecutor in my Office, Mr Shane Drumgold, gained a Churchill Fellowship to study restorative justice developments in the reporting period.
12. The staff of the Office have contributed to policy in a significant and beneficial way.
13. The specially funded project for the reporting period, the Sexual Assault Response Program, a joint program with the AFP, is identifying best practice in the investigation and prosecution of sexual offences and the Report, due out shortly, will highlight reforms at all levels (legislative, policy and administrative) that could be implemented if resources are available.
14. There are important issues around the management of coronial inquiries that need attention.
15. There remains a big lacuna in the development of policy in the criminal justice area in the absence of reliable statistics.
16. While the ACT has led the way in many areas of practice it is falling behind in a number, including those where it had been a pioneer, such as technological aids for vulnerable witnesses and assistance to victims.

17. The Office contributes to the community through the DPP Plate and prizes to UC and ANU criminal law students.
18. Annual Reports are becoming more complicated and filled with required information that is often irrelevant or meaningless or the significance of which is marginal.
19. The Office delivers well against the Canberra Plan and has, in the reporting period, substantially contributed to the well-being of Canberrans. The statistical and other information in the Report attests to this.

I am more than happy to expand on any of these matters or provide any further information if required. If considered necessary, I will, of course appear before the Committee.

Yours sincerely



Richard Refshauge SC
Director



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HUMAN RIGHTS OFFICE

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Dear Ms Jaffray,

**Re: ACT Human Rights Office Annual Report 1 July 2003 - 30 June 2004 -
Standing Committee on Legal Affairs Hearing, 10 February 2005 1.30–2.30pm**

Thank you for your letter of 24 January 2005. I am writing to confirm my attendance and provide a brief summary of the Human Rights Office's Annual Report to assist the Committee in its hearing on Wednesday 10 February 2005.

Overview of the ACT Human Rights Office

The Discrimination Commissioner is an independent statutory office-holder whose role is to promote understanding of and compliance with the *Discrimination Act 1991*, to review Territory laws for consistency with the Act, and to advise the Minister on any matter relevant to the Act's operation (s.112). The Commissioner is also responsible for investigating complaints of unlawful discrimination, and the Office responds to requests for information and advice about discrimination and human rights. The Office staff for the reporting period comprised two Senior Conciliators (one position was vacant for several weeks, then filled by a new part-time officer), an Office Manager and an Administrative Assistant.

Change of Commissioner and other staff turnover

I commenced work as Discrimination Commissioner on 19 April 2004. The previous Commissioner, Rosemary Follett, who was in-post for most of the reporting period, completed her term on 31 March 2004. The year also saw significant staff turnover and shortages, which had some impact on operations. In addition, the Office was required to relocate from Mort Street.

Law reform

The *Discrimination Act* was amended to make it unlawful to vilify a person on the grounds of sexuality, transsexuality, or HIV/AIDS status, and the offence of serious vilification was also broadened to include these grounds (*Part 6*). Previously the Act only covered racial vilification.

Complaint handling

The number of new complaints received in the reporting period was consistent with the last 3 years although there was an increase in allegations (96 complaints involving 299 allegations).

Most allegations (87) continued to be on the ground of disability, mainly physical disability. These complaints are mainly in the areas of employment, access to premises and provision of goods, services and facilities (Table 6, page 25). Sex was the second largest ground for

complaint, while in previous years it has been race discrimination. Aggregating grounds related to sex (pregnancy, breastfeeding, sexual harassment, and status as a parent or carer) the number of allegations is 73, with the majority in the area of employment.

The number of complaints closed (74) was less than the previous reporting year, due to staff shortages and turnover delaying conciliations. This also accounts for the one case in which the 60-day statutory time limit for the investigation of complaints was exceeded (in the period in-between Commissioners). Of the complaints closed, 22 were withdrawn, 26 were declined after investigation, and 22 were conciliated (see Table 3, page 23). Most complaints referred to conciliation were successfully resolved (see pages 14-18 for case examples).

The Commissioner referred 14 complaints to the Discrimination Tribunal at the complainant's request, with only 4 cases having had an attempted conciliation.

Decisions of the Discrimination Tribunal

The ACT Discrimination Tribunal handed down 8 decisions during 2003-4. The 4 major cases are summarised in the Report (*Nester v ACT Fire Brigade*; *Allan v ACT Corrective Services*; *Anderson v ACT Community Care*; *Lucy Couper v ACT Housing*).

Community Education

There is continuing strong demand for information and community education. We provided 61 community education sessions involving 2201 participants. As in previous years, the most requested topic was Introduction to the Discrimination Act, followed by workshops on harassment. Feedback from participants was very positive. Our Office is the only anti-discrimination agency in Australia that does not charge for its education and training.

Financial results

The total revenue for the Office was \$569,000 (see pages 38 and 54). Our operating deficit increased from \$40,000 to \$94,000 mainly because of the required move to 14 Moore Street, which occurred in January 2004 and has almost doubled our rental costs, as well as an asset loss of \$93,790 through writing off the remaining book value of the old premises in 4 Mort Street.

Future Directions/Issues

Immediately after the period covered in this 2003/04 Annual Report the *Human Rights Act 2004* commenced and the Commissioner took on functions under that Act and my current title reflects this dual role. The Office received some additional funding to support its new functions under the *Human Rights Act* and has conducted extensive community education and liaison about the new law. The *Discrimination Act 1991* is in need of a general review, and a number of amendments have already been flagged (see page 6). Meanwhile the Government's proposal in response to the FEMAG review (see page 36), to establish a Human Rights and Services Commission will have a major impact on our Office.

I look forward to the opportunity to discuss our Annual Report with the Committee.

Yours sincerely,



Dr Helen Watchirs
Human Rights and Discrimination Commissioner
2 February 2005