

2005

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

TABLING STATEMENT

Government Responses to:

Standing Committee on Public Accounts: Report No. 3 – Report on 2003-04 Annual and Financial Reports of the Chief Minister's Department, Department of Treasury, Department of Economic Development and related entities and ACT Legislative Assembly – August 2005;

Standing Committee on Legal Affairs: Report No 1. – Report on Annual Reports 2003- 2004: Department of Justice and Community Safety and related entities – June 2005;

Standing Committee on Planning and Environment: Report No 8. - Inquiry into Referred Annual and Financial Reports 2003-2004: Department of Urban Services, ACT Planning and Land Authority, Land Development Agency and related entities – May 2005;

Standing Committee on Education, Training and Young People: 2003-2004 Annual and Financial Report: Department of Education and Training and related entities, Office for Children, Youth and Family Support – May 2005.

Tabled by
Jon Stanhope MLA
Chief Minister

I am pleased to present the Government's Responses to four Standing Committee reports on the Annual and Financial Reports for 2003-04.

Like last year, I am tabling the responses to all of the Standing Committee reports covering all portfolios. This is because the Standing Committee reports generally cover more than one Minister and more than one portfolio and, in certain cases, issues raised in the reports apply to all departments and agencies.

As members will be aware, annual and financial reports are prepared by agencies in accordance with the Chief Minister's annual report directions and in accordance with the *Financial Management Act 1996*. The government seeks to ensure that the directions and the Act are continually updated to reflect best practice and full accountability in accordance with government policy. In line with this approach, some of the issues raised in the Committee reports have already been addressed in the 2005 Annual Report Directions.

The four Standing Committee reports made a total of 19 recommendations. In broad terms the Government supports 16 of these, with 2 recommendations noted, and 1 recommendation not agreed.

The issue where the Government does not agree with the recommendations of the Committee concerned relates to reporting in Annual and Financial Reports of the quantity and quality of volunteerism in ACT Government departments and related entities.

Guidelines on volunteerism in the ACT Public Service are currently being developed, including how volunteerism should be reported across Government.

While some agencies already include qualitative information on the use of volunteers in their Annual Reports, the Government believes that the most comprehensive source of information on the volunteer workforce is available from the Australian Bureau of Statistics, and that it is not necessary for quantitative information on volunteerism to be

included in Agency annual reports. The ACT Government contributes to the ABS Voluntary Work Survey and the General Social Survey which includes a full volunteer survey and is proposed for publication in January 2007. The General Social Survey will provide information on quantifying unpaid work, and recognising its social and economic value.

Overall, however, I am sure the Assembly will agree that the Government has responded in a manner that enhances our record of openness and accountability.

I would like to thank the Standing Committees for the effort they have made in preparing their reports.

Mr Speaker, I commend the Government's Responses to the Assembly.

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GOVERNMENT RESPONSE

Standing Committee on Legal Affairs

Report 1

Annual and Financial reports of the Department of
Justice and Community Safety and related entities -
June 2005

Tabled by
Jon Stanhope MLA
Chief Minister

15/12/05

Government Response

Report 1 - Standing Committee on Legal Affairs - Annual and Financial reports of the Department of Justice and Community Safety and related agencies – June 2005

Introduction

The Annual Reports of all ACT Government agencies are referred to the Standing Committees of the ACT Legislative Assembly for examination and report.

The Standing Committee on Legal Affairs reviewed annual reports for:

- Department of Justice and Community Safety
- Emergency Services Bureau
- Director of Public Prosecutions
- Legal Aid Commission of the ACT
- Office of the Community Advocate
- Australian Federal Police (ACT)
- ACT Human Rights Office

The Committee makes 5 recommendations.

Response to Committee 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, focused and clearer.

Government Response

Agreed. This recommendation appears to relate specifically to the Emergency Services Bureau, which was previously administered as a sub-agency of the Department of Justice and Community Safety.

The Emergency Services Authority (ESA) was established on 1 July 2004 and functions as an independent government department. The ESA reports on strategic, management and financial performance through its own Annual Report, the first of which was published at the conclusion of the 2004-05 financial year.

The ESA maintains close working links with other Government Departments, including JACS.

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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.

Government Response

Agreed. The Department of Justice and Community Safety (JACS) is currently examining the issue of whether to incorporate constructive murder in the definition of murder in the ACT, and will be advising the government on this matter as part of the development of chapter 5 of the Criminal Code. Chapter 5 will deal with offences against the person and will be the next chapter of the Criminal Code to be introduced in the Assembly.

The arguments surrounding the constructive murder debate are numerous and complex and relate not only to whether it is appropriate to enact an offence of constructive murder but also to the form it should take if it is to be enacted. Although most Australian jurisdictions include a form of constructive murder, their laws vary considerably so that what is (constructive) murder in one jurisdiction is not murder in another. It is significant that where the Commonwealth has enacted murder offences in its area of responsibility it has followed the recommendations of the Model Criminal Code Officers Committee (MCCOC) and not defined murder to incorporate the doctrine of constructive murder.

There has also been criticism of the concept in the past, essentially because it allows a person to be convicted of murder, and to be stigmatised as a murderer, even though he or she had no intention to kill and was not reckless about the possibility of death occurring. Indeed the cause of death may be accidental. It was essentially for this reason that constructive murder was abolished in England over 40 years ago and the Victorian Law Reform Commission recommended that it be abolished in 1992.

Moreover, there are concerns with the concept from a human rights perspective. The Canadian Law Reform Commission has been critical of it and more significantly, the Canadian Supreme Court has held that the doctrine is contrary to the Canadian Charter of Rights (Vaillancourt (1987) 39 CCC (3d) 118).

In preparing its recommendations to the government on this issue JACS will give careful consideration to the competing arguments for and against the adoption of constructive murder for the ACT. In addition to the consultation that MCCOC undertook in developing the recommended chapter 5 model provisions, the department will also consult widely with relevant agencies, including the Director of Public Prosecutions, ACT Policing, Legal Aid, the Human Rights Office, the ACT courts and the ACT Law Society and Bar Association.

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.

Government Response

Agreed. The Government shares the concerns of the Legal Aid Commission regarding the decline in the number of private practitioners prepared to undertake legal aid work.

While the ACT was successful in obtaining an increase in the agreed minimum hourly rate to be paid to private legal practitioners undertaking family law and war veteran's matters in the 2005-2008 Commonwealth/ ACT legal aid funding agreement, this rate is still well below market rates in the ACT. This is a national problem and must be addressed at a national level. The Government made strong representations to the Commonwealth regarding funding of legal aid during the last round of negotiations and will continue to do so.

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