

 A.C.T. LEGISLATIVE ASSEMBLY COMMITTEE OFFICE	
SUBMISSION NUMBER	
DATE AUTH'D FOR PUBLICATION	

Our Ref: CJS:ac 2276

23 December 2005

The Legislative Assembly for
The Australian Capital Territory
Standing Committee on Legal Affairs
Civic Square,
London Circuit
CANBERRA ACT 2601



Dear Colleagues,

**RE: TERRORISM (EXTRAORDINARY TEMPORARY
POWERS) BILL 2005**

The Legal Aid Office has been asked to comment on the above-mentioned Bill.

In responding to that request the office understands that the Bill is the subject of an agreement between the Commonwealth, State and Territory Governments made on 27 September 2005. Consequently, the following comments do not extend to the general policy underpinning the Bill nor to any views (if the office had any) about whether such legislation is necessary. The following comments are restricted to those provisions of the Bill which place obligations on the Legal Aid Commission.

Clearly the most important of these is Clause 49 and the office is generally supportive of the content of that clause but for sub-clause 5.

Put as boldly as it is, this sub-clause appears to allow a millionaire access to legal aid. Indeed, the entire mechanism for determining legal aid eligibility appears to be removed in the circumstances outlined in the Bill.

It is difficult to understand why this is so. In the view of this office a person detained subject to this Bill should be in no different position in terms of legal aid eligibility to any other person including, for example, persons apprehended on suspicion of having committed criminal offences. The eligibility, duty lawyer advice and minor assistance provisions of the Legal Aid Act can apply to the circumstances envisaged in the Bill. However it seems socially iniquitous to promote

Mort Street
GPO Box 512
Canberra ACT 2601
Fax: 5638
Phone (02) 6243 3411
Fax (02) 6247 5446
Email
legalaid@legalaid.canberra.net.au
ABN: 40 848 011 291

Chief Executive Officer
C.J. Staniforth
B.A.(Hons) LL.B
Assistant Executive Officer
L.K. Crebbin
B.A. LL.B

Legal Aid
Office (ACT)

the interest of persons in this position beyond the framework contained in the Legal Aid Act.

We would recommend that the sub-clause be amended to make the Commission's mandatory actions conditional upon the person being eligible for an appropriate legal aid service. Certainly substantial legal services should be subject to the Legal Aid Act particularly section 28 which requires two things; that the person is "unable to afford the cost of obtaining from private legal practitioners the legal services in respect of which legal assistance is sought" and "that it is reasonable in all the circumstances to provide the legal assistance".

It would seem beyond argument that the second consideration is satisfied in the circumstances envisaged by this legislation.

Secondly the Commission is required to arrange for the services of a public interest monitor in certain circumstances. This includes a requirement to maintain a list of persons able to act as public interest monitors. We support the inclusion of those provisions in the Act. We see this as a flexible and cost effective method of providing the service. There will be need for a statutory provision empowering the Legal Aid Commission to pay the PIM given that this is a service clearly not falling within the provisions of the Legal Aid Act.

We note that the Bill does not require any special qualifications for the public interest monitor nor any suggestion that the person would be paid for their work. It would seem that the Bill would require a lawyer (see for example sub-clause 15(4)). Given that the proceedings are before the Supreme Court that seems especially appropriate. However we would not anticipate that legal qualifications should be expressed in legislation of this nature.

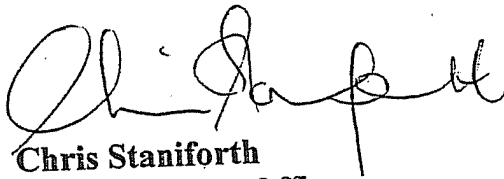
Clearly the office has the capacity to comply with the relevant provisions.

Finally, we have been asked to comment on the choice of forum. The Bill states that proceedings are to be heard before the Supreme Court. It has been proposed that these proceedings could in fact occur before a Magistrate with possible savings in time and money.

Having considered that proposal carefully, we do not think that those savings will be achieved. Clearly the powers contained in this Bill are novel and in many ways contrary to the liberal philosophical underpinning of a democracy. It is, in our view, utterly predictable that should the proceedings be commenced and heard before a Magistrate the decision reached in that Court would be tested in a superior court

thereby in fact removing the very savings on money and time which underpin the proposal. Certainly in terms of the protection of the Legal Aid Fund, this office would strongly support the retention of the present provisions of the Bill in so far as they require that the proceedings be before the Supreme Court. We hope we have been of assistance.

Yours sincerely
LEGAL AID OFFICE (ACT)



Chris Staniforth
Chief Executive Officer

Ph: (02) 6243 3496
Fax: (02) 6249 8249