

2009

**GOVERNMENT RESPONSE TO THE REPORT BY THE STANDING
COMMITTEE ON PLANNING, PUBLIC WORKS AND TERRITORY
AND MUNICIPAL SERVICES**

**Inquiry into the Crimes (Bill Posting) Amendment Bill 2008
(REPORT 18 August 2009)**

**Authorised by
Mr Jon Stanhope MLA
Minister for Municipal and Territory Services**

25 / 08 / 2009

General comments

The Legislative Assembly's Standing Committee on Planning, Public Works and Territory and Municipal Services (the Committee) reported to the Assembly on its inquiry into the Crimes (Bill Posting) Amendment Bill 2008 (the Bill) on 18 August 2009.

The Government wishes to thank the committee for its work in relation to the Bill.

The Government wishes to acknowledge the individuals and organisations who provided submissions to the Committee and thanks them for their contributions to the debate on the Bill.

Responses to recommendations

In its report, the Committee made 7 recommendations. The Government agrees with 4, agrees in principle with 2 and notes one recommendation. The Government responses to the Committee's recommendations are set out below, under each of the Committee's recommendations.

RECOMMENDATION 1

The Committee recommends that the ACT Government facilitate adequate legal bill posting space in all local, group and town centres.

Agreed in principle.

The Government is committed to significantly increasing the number of bill-posting silos across Canberra and received appropriation this calendar year for this to proceed.

Priority for the placement of new silos will be given priority to Town Centres, Group Centres, then local shopping centres and will be based on data collected on bill-posting hotspots.

Installation of silos requires planning approval and it is important that they are located in areas of genuine demand. They must be placed in locations that are both safe (eg they do not jeopardise road-side "line of sight" requirements) and do not impede pedestrian movement. In addition, if a silo is proposed to be located near to a place listed on the Heritage Register, due regard must be had to heritage sensitivities of that place and in some cases approval from the Heritage Council may need to be sought.

The Government further considers that the billposting silos must not detract from urban amenity. For this reason the new silos are being purpose designed.

It is anticipated that 22 bill-posting silos will be installed around Canberra before the end of February 2010. The schedule for this project is as follows:

- Consultant for final design and to superintend the project engaged – April 09
- Final Sketch Plans complete – mid August
- Development Application submitted to ACTPLA – early Sept
- Call construction tenders – end October
- Commence construction – end November
- Complete construction – February 2010

To date, the project is running on schedule.

It should be noted that it appears that the vast majority of posted bills are for entertainment venues and events. These come and go. Thus the need for poster sites is variable. The overall demand for sites is largely dependant on the number and location of entertainment venues, the proximity of particular centres to those venues and also to where advertisers believe their target audience is located. While the government agrees that notice places should be located in all centres, there may be instances where the numbers recommended by the Committee (ie at least one in local centres, two in group centres, and four in town centres) is unwarranted.

The Government remains of the view that the rapid development of electronic communication and its enthusiastic uptake, particularly by young people, will see the demand for old fashioned bill-posting diminish over time.

RECOMMENDATION 2

The Committee recommends that the Department of Territory and Municipal Services include information on its website about the locations of community noticeboards to increase community awareness of legal bill posting facilities.

Agreed.

The Government's solution to the problem of unauthorised bill-posting is based on a three-pronged approach – providing additional places for lawful bill-posting, public education and tougher penalties.

The Department of Territory and Municipal Services' website will be updated to include the recommended information. It should be noted that individuals and businesses may choose to provide their own notice boards as a community service. They might equally chose to remove such notice boards. While the

department will include the locations of government maintained notice boards, it will not be feasible to include non-government facilities.

The website will be updated to include government community notice boards at shopping centres and new bill posting silos as they are installed. Data is currently being collated on locations of community notice boards and this information will be available on the TAMS website by 30 September 2009.

RECOMMENDATION 3

The Committee recommends that when information on new silo locations is published, the ACT Government also reinforce the need for good poster etiquette.

Agreed.

A reference to good poster etiquette is currently published on the TAMS website. Poster etiquette, together with information related to the cleaning of the silo sites will be published when poster sites are officially launched. Media Releases will also reinforce good poster etiquette when announcing new poster silos.

In addition, the Department of Territory and Municipal Services liaises with community groups (particularly youth groups) and individuals through forums dealing with graffiti and other public space usage and management. It will raise poster etiquette in those forums and other forums where appropriate.

It should be noted however that there are no legal means to enforce poster etiquette – it is entirely voluntary.

RECOMMENDATION 4

The Committee recommends that, as additional bill posting silos become available, the ACT Government undertake an awareness campaign to inform the community about the requirements of any legislation affecting bill posting activities.

Agreed.

The recommendation seems to be based on the premise that members of the community might be unaware that bill-posting is already illegal. The Government suggests that this is not borne out by the behaviour of bill-posters, who tend to post their bills at night, or when no-one is about. The government also argues that it is well understood by the community that it is wrong to damage property.

The Government believes therefore that the Bill therefore does not amount to an unusual or novel departure from broadly held community values.

Despite this, the Department of Territory and Municipal Services will publicise the new bill posting silos - and the rules governing them - via the ACT Government's Community Noticeboard and through Departmental media releases. Canberra Connect will also be informed and links placed on the ACT Government website.

The City Rangers will also raise awareness of new legislative requirements as part of their compliance role.

RECOMMENDATION 5

The Committee recommends that the ACT Government provide a link on the Department of Territory and Municipal Services 'Bill Posting' webpage to the Roads and Public Places (Removable Signs) Code of Practice 2005 in order to direct the public to further information on the use of community signs.

Agreed.

An appropriate link to the Code (together with information on the Code) will be established by 31 August 2009.

RECOMMENDATION 6

The Committee recommends that, in future, relevant public consultation processes be undertaken by the ACT Government prior to amendments being proposed in the ACT Legislative Assembly.

The Government notes the broad-ranging nature of this recommendation. The Government will continue to consult with the Canberra community on a range of legislative and non-legislative proposals.

The Government notes that there may be instances where the development of legislation should not be preceded by formal community consultation. Minor technical amendments, for example as contained in the annual Statute Law Amendment Bills seem unlikely candidates for community consultation. There may be situations where corrective legislation might be required urgently, or in response to judicial comment on particular provisions. Legislation may be required to meet the Territory's obligations under national agreements.

The Government also notes that responding to community complaints should continue to form a legitimate basis for its actions, including the development of legislation to respond to such complaints.

Further, the Assembly's own processes – requiring a hiatus between introduction of Bills and their debate, or referring them to Committee – provide opportunities for public consultation, as occurred in relation to this Bill.

RECOMMENDATION 7

The Committee recommends that commencement of the provisions in the Crimes (Bill Posting) Amendment Bill 2008 should be delayed for six months following the introduction of the Bill to enable the ACT Government to undertake a comprehensive awareness campaign. The Bill should not be brought into effect until legal bill posting facilities are readily available.

Agreed in principle.

It should be noted that the Bill provides for delayed commencement. Under section 79 of the *Legislation Act 2001*, the default commencement date is 6 months after passage of the Bill.

As discussed in relation to recommendation 1, it is anticipated that the new bill-posting facilities will be available in February 2010. Commencement of the Bill will be delayed until that time. Raising public awareness is discussed above in response to recommendations 3 and 4 and will be undertaken at appropriate times to maximise its effect in the lead up to the installation of the additional bill-posting facilities. Commencement should therefore be aligned with the “roll-out” of the poster sites, rather than a strict six month period after the passage of the Bill.

However, should the Assembly agree to the passage of the Bill in August 2009, the 6 month delay period recommended by the Committee will expire in February 2010, which would be concurrent with the Government's anticipated commencement schedule.

Other matters raised by the Committee, but not the subject of recommendations

In its report, the Committee raised a number of matters which, while not reflected in its final recommendations, warrant a response from the Government.

Malicious, third party advertising

At paragraph 3.11 and following, the committee expressed its concern about how the duty to promote an event “cleanly” might be established if someone were to mischievously post bills, wishing to hurt a promoter.

New section 121A would require promoters to take “reasonably practicable steps” to identify, eliminate or minimise the risk that their event will be advertised by way of illegal bill posting. Subsection 121A (2) sets out the steps that an organiser needs to take to identify the risks and respond to them.

Depending on the circumstances of an event, an organiser might choose to consider the risk that their event will be “maliciously advertised” illegally and react accordingly. Without wanting to limit the range of reasonable steps that an organiser might take, they might for example, choose to limit the number of posters they produce. They might choose to restrict the number of people who are given posters and to tell those individuals where the posters are to be put up or to inform those persons only to put the posters up with the express permission of the occupants of the property concerned. They might choose only to use reputable marketers, or not to advertise using posters and instead use hand-distributed leaflets.

If the organiser has taken reasonable steps to eliminate or minimise the risk of unauthorised bill-posting, they cannot be held liable for the actions of third parties if unauthorised bill-posting still occurs.

The provision recognises that the organisers need only consider those things which it would be reasonable for them to consider – so the organiser of a one-off event with no experience in marketing is not required to have the same level knowledge or experience as someone with many years of experience of marketing events.

Effect of the Bill on children

The Committee also expressed concern at paragraph 3.26 that children marking roads with chalk to play hopscotch would be caught by the provisions.

This concern is misplaced.

Section 25 of the *Criminal Code 2002* completely absolves any person under the age of 10 from criminal liability. Section 26 states that for children older than 10 but younger than 14, the prosecution must prove that the child knew, as a matter of fact, that the behaviour is wrong before they can be held criminally liable for that action.

The current “on the spot” fine regime for graffiti (including chalk marking) is established by the *Magistrates Court (Crimes Infringement Notices) Regulation*

2008 (the Regulation). If the Bill is passed, this regime will also apply to unauthorised bill-posting.

It is important to note that on the spot fines for graffiti cannot be issued to children under the age of 16 – see Schedule 1 of the Regulation. It is not possible to issue an “on-the-spot” fine to a child who marks out a hopscotch board with chalk.

Nor will not be possible to issue on the spot fines for children under the age of 16 who are caught bill-posting.
