

2018

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE
STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
REPORT NO 2**

REPORT ON ANNUAL AND FINANCIAL REPORTS 2016-2017

**Presented by
Mr Andrew Barr MLA
Chief Minister**

Introduction

On 26 October 2017, the 2016–17 annual and financial reports of all government agencies were referred to the relevant standing committees of the ACT Legislative Assembly.

The annual and financial reports for 2016–17, or parts thereof, referred to the Standing Committee on Justice and Community Safety (the Committee) were:

- ACT Electoral Commission;
- ACT Gambling and Racing Commission;
- ACT Human Rights Commission;
- ACT Policing;
- Chief Minister, Treasury and Economic Development Directorate—parts thereof, relating to the Attorney-General’s portfolio:
 - racing and gaming policy;
- Chief Minister, Treasury and Economic Development Directorate—parts thereof, relating to the portfolio of the Minister for Justice, Consumer Affairs and Road Safety:
 - Access Canberra—Commissioner for Fair Trading;
- Director of Public Prosecutions;
- Justice and Community Safety Directorate (JACS) [relating to the portfolios of: Attorney General; Corrections; Justice, Consumer Affairs and Road Safety; and Police and Emergency Services];
- ACT Legal Aid Commission (referred to in this report as Legal Aid ACT); and
- Public Trustee and Guardian.

Response to Committee Recommendations

Recommendation 1

1.11 The Committee recommends that the ACT Government report to the ACT Legislative Assembly, by the last sitting day in 2018, on the progress of its implementation of the recommendations, made in the Standing Committee on Justice and Community Safety's report on Annual Reports 2015–16, that have been accepted either in-whole or in-part. This should include: (i) a summary of action to date, either completed or in progress (including milestones completed); and (ii) the proposed action (including timetable), for implementing recommendations (or parts thereof), where action has not yet commenced.

Government Response – Agreed

The Justice and Community Safety Directorate will report to the ACT Legislative Assembly, by the last sitting day in 2018, on the progress of its implementation of the recommendations, made in the Standing Committee on Justice and Community Safety's report on Annual Reports 2015–16, that have been accepted either in-whole or in-part.

Recommendation 2

3.11 The Committee recommends, pending the Government response to the report of the Select Committee on the operation of the 2016 ACT Election and the Electoral Act 1992, that for the 2020 General Election the ACT Electoral Commissioner, give consideration to: (i) reviewing the application of the 100 metre rule at an earlier period than that which was in place for the 2016 General Election; and (ii) communicating any such advice to political parties and the ACT community in a timely and accessible manner.

Government Response - Agreed

The Electoral Commissioner commits to reviewing the application of section 303 of the *Electoral Act 1992* at the earliest opportunity during election preparations for the 2020 ACT Legislative Assembly election and will ensure political parties, candidates and the ACT community have access to the application of the 100m rule so that the particular boundaries surrounding each polling place will be known well in advance of the commencement of the official election period which begins on 11 September 2020.

Recommendation 3

3.14 The Committee recommends that the ACT Electoral Commissioner give consideration to: (i) preparing a written response to the report of the Select Committee on the 2016 ACT Election and the Electoral Act 1992 (as presented on 30 November 2017); and (ii) providing the written response to the Speaker of the ACT Legislative Assembly for tabling by 2 August 2018.

Government Response - Agreed

The Electoral Commission has prepared a written response to the report of the Select Committee on the 2016 ACT election and the *Electoral Act 1992* and will ensure the response is tabled by the Speaker by 2 August 2018.

Recommendation 4

4.23 The Committee recommends that the Minister for Disability, Children and Youth should inform the ACT Legislative Assembly when the operational communications protocol between the Community Services Directorate and the Human Rights Commission has been finalised. This should include: (i) information as to the agreed timeliness of the provision of, and quality of information contained within, annual review reports (pursuant to sections 497 and 495); and (ii) notification reports (pursuant to section 507) of the *Children and Young People Act 2008*.

Government Response - Agreed

The Communications Protocol between the Public Advocate and Child and Youth Protection Services is in final draft stage.

It has been agreed in the protocol that CYPS will endeavour to provide Annual Review Reports within three (3) months after the end of the review period.

Further, an agreed process for s507 reports has been established including the provision of a fortnightly list of identified s507 cases, and the provision of both the Child Concern Report and the Appraisal Outcome Report at the time of advising the Public Advocate that an appraisal has been completed.

Recommendation 5

4.33 The Committee recommends that a draft Victims of Crime Charter of Rights be prepared for circulation and comment by the end of the 2018 calendar year.

Government Response – Agreed in principle

Options for implementation of the Victims Charter of Rights have been developed in close consultation with the Victims Advisory Board, key justice agency stakeholders and the Victims of Crime Commissioner who made recommendations to the Government on the Charter and victim of crime issues more broadly in December 2017.

Public release of the ACT Government Victims Charter of Rights Options Paper and community consultation will occur in mid-2018. There is a strong focus on engaging directly with people who have experienced crime and diverse groups who are more vulnerable when in the justice system.

Consultation is seeking input on what rights should be included in the Charter, which groups of victims should access these rights, which justice agencies should be obliged to deliver particular rights, and options for accountability of the Charter.

Recommendations on the Charter will be developed in close consultation with justice and victim support agencies, and will be delivered to the Minister for Justice in late 2018 alongside budget bid processes.

The aim is to begin implementation of the Charter in 2019. Implementation will likely include both legislative change and practical initiatives to support justice agencies to deliver rights.

Recommendation 6

5.19 The Committee acknowledges the consistent advice from witnesses spanning several reporting periods, coupled with the findings of an independent strategic review (2017) of the operations of the ACT Office of the Director of Public Prosecutions (DPP), regarding the need for additional funding to the Office of the DPP. Accordingly, the Committee recommends that funding for the Office of the DPP in 2018–19, and across the budget outyears: (i) reflect the important functions of the Office; (ii) target structural and resourcing shortcomings and the increase in the number and complexity of matters dealt with by the Office; and (iii) should, where appropriate, implement the findings and recommendations of the independent strategic review.

Government Response - Agreed in principle

The Government is actively considering the recommendations of the DPP Strategic Review and has already responded with an increase in resources.

The Government has announced that the 2018-19 Budget will provide a significant \$3.1 million funding increase in for the ACT justice system to support the appointment of an 8th full time resident magistrate.

As part of this initiative, the Director of Public Prosecutions will be provided with \$987,000 over four years for additional staff to support the increased capacity of the Magistrates Court. Legal Aid will also receive an additional \$1.3 million over the four year period in recognition of the need to fund the justice system holistically.

The appointment of an additional magistrate, funding for Legal Aid and DPP, re-appointment of special magistrates, and recent amendments to justice legislation across the statute book aimed at building efficiency will improve the efficiency of the justice system and the timeliness of proceedings in the Magistrates Court.

The Government will continue to work closely with the DPP to consider its future funding model in light of the recommendations of the review, and the funding of the justice system more broadly.

In the 2017-18 budget, the Government provided additional funding to increase the capacity of the Office of the Director of Public Prosecutions (DPP) to better support prosecutions in the Territory.

The Government also provided four full time additional staff to support the work of the Confiscation of Criminal Assets scheme as part of the 2107/18 mid-year budget review. That funding will assist the DPP to keep pace with demand and respond to the needs of the court, police, other investigative agencies and the criminal justice sector more broadly.

It also provided funding in the 2017-18 financial year for costs associated with the retrial of Mr David Eastman and other related proceedings. Funding is provided for an additional three positions in the DPP, external counsel costs, witness expenses and other administrative costs.

Recommendation 7

5.20 The Committee recommends that, at the conclusion of the 2018–19 budget process, the report of the independent strategic review (2017) of the operations of the ACT Office of the Director of Public Prosecutions be tabled in the ACT Legislative Assembly.

Government Response - Agreed

The Attorney-General will provide an update to the ACT Legislative Assembly.

Recommendation 8

5.21 The Committee recommends, to the extent that work is not already taking place, that the ACT Government: (i) prepare a response to the report of independent strategic review (2017) of the operations of the Office of the DPP; and (ii) table the response in the Assembly by the last sitting day in August 2018.

Government Response – Agreed in principle

The Attorney-General will provide an update to the ACT Legislative Assembly.

Recommendation 9

5.22 The Committee recommends that where the ACT Government does not support all the recommendations of the independent strategic review (2017) of the operations of the ACT Office of the Director of Public Prosecutions (DPP) that the Attorney General make a statement to the ACT Legislative Assembly explaining why it has not supported certain recommendations.

Government Response - Agreed in principle

The Attorney-General will provide an update to the ACT Legislative Assembly.

Recommendation 10

5.27 The Committee recommends that the ACT Government consult with the Office of the Director of Public Prosecutions (DPP), the legal profession and other stakeholders to engage in a review of the extent of professional work undertaken by the paralegal cohort in the Office. This review should consider the professionalisation of the paralegal cohort to allow paralegals to undertake routine list work to free up lawyers to do more complex matters.

Government Response – Agreed in principle

Options for supporting the DPP by allowing paralegals to perform routine list and mention hearings are being considered by government as part of a suite of amendments to courts and justice legislation for consideration by the Assembly in the second half of 2018.

Recommendation 11

5.34 The Committee recommends that the ACT Government commence in 2018–19 a review of the funding of Legal Aid ACT in light of the reported ‘increasing demand for its services, a widening justice gap and a variety of practical challenges to service delivery’.

Government Response - Noted

Recommendation 12

5.36 The Committee recommends that the ACT Government undertake in 2018–19 a review into low and moderate cost legal services in the ACT and, to the extent possible, that a list of these legal services be made publicly available.

Government Response - Noted

The ACT Legal Assistance Forum, which meets on a quarterly basis and is made up of members from the community legal sector, maintains a list of free and low cost legal services called the *Free Law Directory: A guide to the free and low-cost legal services in Canberra*. The Directory is hosted on the Legal Aid ACT website and is maintained by Legal Aid.

Ensuring that this Directory is up-to-date is a standing item on ACTLAF meetings, and ACTLAF members send updates regularly to Legal Aid.

Expanding this Directory, or creating a new directory, to include moderate cost legal services in the ACT could possibly be done in collaboration with ACTLAF members and the ACT Law Society.

Recommendation 13

5.46 The Committee suggests, to the extent that this work does not already take place, that Legal Aid ACT give consideration to analysing Australian Bureau of Statistics demographic data as to languages spoken at home, together with country of birth and proficiency in English, to assist in identifying specific cultural and ethnic groups in the Canberra area to inform the services it provides to meet the needs of clients from culturally and linguistically diverse (CALD) backgrounds.

Government Response – Agreed in principle

JACS is in discussions with Legal Aid about whether and how ABS demographic data could assist in identifying specific cultural and ethnic groups in the Canberra area to inform the services it provides to meet the needs of clients from culturally and linguistically diverse (CALD) backgrounds.

Recommendation 14

5.52 The Committee acknowledges the increased workload of Legal Aid ACT and recommends that its funding in 2018–19 and across the budget outyears should reflect its important functions in providing legal assistance services to vulnerable and disadvantaged people within the ACT community.

Government Response – Noted

As noted in relation to recommendation 12, the ACT Government reviews the funding allocated to Legal Aid ACT each financial year during the preparation of its budget business cases. This review takes into account both Legal Aid's important functions in assisting disadvantaged and vulnerable people in need of legal advice and representation and Legal Aid ACT's workload.

Recommendation 15

5.66 The Committee recommends that the ACT Government report to the ACT Legislative Assembly, by the last sitting day in September 2018, on the recommendations (that have been accepted either in-whole or in-part) of all KPMG audit reports concerning the Public Trustee and Guardian's controls, business process improvements and fraud risk since the issuing of the 2014 KPMG Forensic report. This should include: (i) a summary of action to date, either completed or in progress (including milestones completed); and (ii) the proposed action (including timetable), for implementing recommendations (or parts thereof), where action has not yet commenced.

Government Response – Noted

The Public Trustee and Guardian has provided a copy of both KPMG reports to both the Annual Reports and Estimates Committees.

Recommendation 16

6.27 The Committee recommends that should completion of the new court building be delayed beyond the first quarter of 2018—that the Attorney General should inform the ACT Legislative Assembly at the first available sitting period. The Statement, amongst other things, should detail the contingencies that will need to be made for the court and its sitting periods.

Government Response - Agreed

The Attorney-General tabled an update in the ACT Legislative Assembly on 10 May 2018.

Recommendation 17

6.37 The Committee recommends that the Attorney General inform the ACT Legislative Assembly by the last sitting day in September 2018 as to the proposed model for the ACT Drug and Alcohol Court.

Government Response – Agreed in principle

The Attorney-General will inform the Legislative Assembly about the progress made to establish a Drug and Alcohol Court.

Recommendation 18

6.39 The Committee recommends that after the ACT Drug and Alcohol Court has commenced operation, the Attorney General should report annually on its operations.

Government Response – Noted

The Attorney-General will consider the form the report should take to the Legislative Assembly on the operations of the Drug and Alcohol Court.

Recommendation 19

6.40 The Committee recommends that the ACT Government, as part of the ACT Drug and Alcohol Court evaluation and reporting framework, should ensure that relevant data sets are collected and collated to permit the effectiveness of the Court to be assessed. This should include: statistical data to show recidivism rates, and the rates of offenders who reappear in other courts on different criminal matters.

Government Response – Agreed in principle

The work to establish the Drug and Alcohol Court includes an evaluation framework and program logic. The data to be captured by government and non-government organisations is still under development.

Recommendation 20

7.20 The Committee recommends that ACT Corrective Services, as part of the Alexander Maconochie Centre’s (AMC) Detainee Education and Training program, consider making available more industry training programs to assist with rehabilitation and employment prospects upon release and prisoner engagement.

Government Response – Agreed

ACT Corrective Services (ACTCS) is committed to improving the delivery of industry training programs to assist and support prisoner employment within the Alexander Maconochie Centre (AMC) and post release. Detainees can undertake industry-compliant and accredited training in cleaning operations, construction, business administration, horticulture, hospitality, hairdressing and community services. Report on Government Services data for February 2018 shows that there were 197 detainees, or 49% of the total detainee population, actively participating in accredited vocational educational and training courses.

The number of accredited training and employment available to detainees has increased with the expansion of prison industries in the AMC. The AMC’s Detainee Education and Training Program now includes industry-specific training that supports employment in the AMC bakery, which became fully operational in October 2017. In February 2018, six detainees undertook industry specific training as part of their employment in the AMC bakery.

Recommendation 21

7.21 The Committee recommends that ACT Corrective Services, as part of the Alexander Maconochie Centre's (AMC) Detainee Education and Training program, consider providing asbestos awareness training, in addition to White Card certificate training, to meet the minimum requirement for working in the construction industry.

Government Response – Agreed

The AMC's education provider, Campbell Page, is not licensed to provide Asbestos Awareness training. As such, detainees have not been able to undertake Asbestos Awareness training in the AMC. ACTCS has recently brokered a training option with Capital Training Institute (CTI) that involves CTI staff attending the AMC to provide Asbestos Awareness training to detainees. The CTI will run a pilot Asbestos Awareness training course at the AMC before the end of June 2018.

During 2016-2017 ACTCS facilitated and funded Asbestos Awareness training for six detainees undertaking the Transitional Release Program. Asbestos Awareness training may also be brokered through ACTCS' Extended Throughcare Program.

Recommendation 22

7.28 The Committee recommends that in its policy response to managing gender diverse or unspecified detainees at the Alexander Maconochie Centre (AMC), ACT Corrective Services must ensure the safety of vulnerable detainees is paramount.

Government Response - Agreed

ACTCS recognises the diversity of the detainee population and has implemented policies to support and ensure the safety of detainees with gender diverse or other needs. The *Corrections Management (Reception and Management of Transgender and Intersex Detainees) Policy 2014* provides guidance on safety and security management and accommodation needs of transgender and intersex detainees. This policy is currently under review as part of a broader project to review all operating policies and procedures.

Recommendation 23

7.29 The Committee recommends that the ACT Government develop and implement a policy on the accommodation arrangements for any detainees of the Alexander Maconochie Centre (AMC) who choose to change their gender identity during detention.

Government Response – Agreed

The *Corrections Management (Reception and Management of Transgender and Intersex Detainees) Policy 2014* stipulates that, unless there are overriding concerns for the safety or security of any person, including the detainee, a transgender or intersex detainee should be accommodated in an area appropriate to their identified gender. However, the General Manager of the Alexander Maconochie Centre may make a determination to alter the placement if the detainee considers it necessary for their safety or it is considered necessary for the good order and security of the centre.

This policy is currently under review as part of a broader project to review all operating policies and procedures.

Recommendation 24

8.18 The Committee recommends that the ACT Government continue to raise awareness of restorative justice benefits for both victims and perpetrators across the ACT community.

Government Response – Agreed

The Restorative Justice Unit continues engage in activities designed to raise awareness of the benefits of restorative justice for both victims and perpetrators across the ACT community. This includes:

- Holding a meeting of the phase two RJ stakeholder reference group in October 2017 to ensure the smooth transition from phase one to working with adults and more serious offences;
- Engaging with key stakeholders in February 2018 to consult on guidelines for FV and sexual assault;
- Engaging with key stakeholders currently to address any amendments of the RJ Act that might assist community access to the scheme;
- Providing presentations and information to referring entities, legal and support agencies;
- Working on an updated and improved RJU website to provide information about the expanded scheme and raise awareness generally in the community of the benefits of RJ;
- Engaging with media in the past financial year to promote information and stories about RJ conferencing that highlight the benefits of participation. This included an ABC story on an RJ conference conducted in the Territory's prison in July 2017, a one hour Community Radio segment on RJ as well as media interviews with television and radio about the movement into phase three of the scheme in March 2018;
- Supporting awareness of RJ conferencing and post sentence referrals for young people in Child and Youth Protection Services by having an RJU convenor hot desking at CYPS once a fortnight;
- Delivering training to existing station police personnel in 2017; and
- Moving into phase three receiving referrals for FV and sexual offences later this year and are seeking to be part of the ACT's FVIP Coordinating Committee and FV Case Tracking and the Sexual Assault Reform Program to provide further awareness of the potential benefits of a referral RJ for victims and perpetrators for family violence matters where safe and appropriate.

The RJU accepts volunteers and interns from relevant faculties at educational institutions to give them a good understanding of the benefits of RJ processes. These volunteers and interns then find work in other justice settings where their knowledge of RJ can be disseminated further.

Recommendation 25

10.18 The Committee recommends that once the review of the resourcing of the ACT Ambulance Service (as agreed by the ACT Legislative Assembly on 14 February 2018) has reported, that the ACT Government make available to the Standing Committee on Justice and Community Safety the findings of the Review (within three months of its completion).

Government Response – Noted

The Assembly resolution recommended that a review of minimum crewing levels be undertaken to assess whether it remained the most appropriate way of allocating resources. This work is currently being undertaken by the Government. Upon completion the Government will assess the outcomes of the review and determine what, if any, further actions are required, including how and when findings will be publicised outside of the Justice and Community Services Directorate.

Recommendation 26

10.19 The Committee recommends that where the ACT Ambulance Service departs from minimum crewing levels that such departures should be clearly justified and explained by the ACT Government.

Government Response – Noted

The Government remains committed to explaining the reasoning behind any changes to policy. The current minimum crewing policy is being reviewed and the Government will assess the recommendations once they are available.

Recommendation 27

10.20 The Committee recommends that the ACT Government undertake a review of the ACT Ambulance Service's leave and overtime arrangements.

Government Response – Noted

Ambulance resourcing levels, leave and overtime arrangements are already monitored by ESA. The Government considered this information prior to the announcement in December 2017 to recruit an additional 23 paramedics.

This information will also form part of the review of minimum crewing levels currently being undertaken.

Recommendation 28

10.30 The Committee recommends that the ACT Emergency Service, as a means of mitigating the impact of weather on the prescribed burns program quota, give consideration to scaling up resources to complete prescribed burns on an increased hectare count on good weather days—so that in a shorter number of days, the prescribed burn quota may be achieved.

Government Response – Noted

The Government relies on the expert advice of fire managers in the ACT Emergency Services Agency (ESA) and the Environment, Planning and Sustainable Development Directorate (EPSDD), who have the skills and experience to determine when a prescribed burn should be delivered.

It is important to note that prescribed burns can only be undertaken under conditions that will deliver a reduction in fire fuels without compromising the safety of firefighters or the community. For this reason, there are a number of factors to consider when conducting prescribed hazard reduction burns. The weather and availability of volunteers and staff are just some of these factors. Others include, but are not limited to, the fuel load, the size of the burns, environmental outcomes for native species, and health issues for the community in relation to smoke management.

To ensure best practice is maintained, the ESA and EPSDD are always considering options to ensure the ongoing and effective implementation of prescribed burns in the ACT, and will always seek to identify opportunities to complete more prescribed burns during suitable weather conditions.

It is also important to remember that prescribed burns are one of many tools used to reduce the risk of bushfires. Others include strategic grazing, slashing in urban areas, physical removal of fuels, and fire trail maintenance.

Recommendation 29

10.43 The Committee recommends that the Minister for Police and Emergency Services provide the ACT Legislative Assembly with: (i) an estimated date of delivery for the second aerial appliance pumper; and (ii) regular updates on the progress of its delivery until the pumper is delivered and fully operational.

Government Response – Noted

The Government has implemented a range of measures that are designed to both mitigate and help respond in the event of a fire emergency. The acquisition of the second aerial pumper forms part of this strategy. The Government will keep Canberrans informed of all the measures being implemented to protect against the threat of fires.

Recommendation 30

10.61 The Committee recommends that the Minister for Police and Emergency Services inform the ACT Legislative Assembly by the last sitting day in June 2018 as to the project scope of the strategic reform work—Policing for tomorrow’s ACT—being undertaken by the Chief Police Officer.

Government Response – Noted

The Government will continue to keep Canberrans informed about any proposed reforms to ACT Policing to improve the policing services provided to the ACT.