

PRIORITY ISSUES FOR SERVICE DELIVERY IN LEGAL AFFAIRS WITHIN THE 2002-2003 BUDGET

Report No.1 of the Standing Committee on Legal Affairs

April 2002

Legislative Assembly for the Australian Capital Territory



Resolution of appointment of the Standing Committee on Legal Affairs

On 11 December 2001 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 and regulatory services.

Committee Membership

Mr Bill Stefaniak MLA (Chair)

Mr John Hargreaves MLA (Deputy Chair)

Ms Kerrie Tucker MLA

Secretary: Mr Rod Power

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Secretary
Standing Committee on Legal Affairs
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Terms of reference for the inquiry

1. The terms of reference for this inquiry were set by the Standing Committee on Legal Affairs at its meeting on 5 February 2002 when it was decided to conduct an inquiry into the priority issues for service delivery to be considered in the 2002-2003 ACT Budget in the areas of:
 - courts
 - police and emergency services
 - corrections
 - law and order
 - consumer affairs
 - community and individual rights
 - civil liberties and human rights
 - governance and industrial relations,with particular reference (but not limited) to:
 - the adequacy of resources provided to meet current needs
 - gaps in services, and
 - any duplication of services and areas identified for re-prioritisation.
2. The committee took the decision to conduct an inquiry following a briefing by the Treasurer (Mr. Ted Quinlan MLA) on the government's view of the Budget consultation process for 2002.

Submissions

3. The committee invited public input to the inquiry by way of advertisements placed in the Public Notices section of the *Canberra Times* on 9 February 2002 and in the General Notices section of the *Chronicle* in the following week. The closing date for receipt of submissions was 8 March 2002.
4. The committee received six submissions. The committee also received correspondence from the Law Society that, though not treated as a submission, raised matters of relevance to the inquiry. This correspondence, along with the submissions, is summarised below (in alphabetical order by name of submitter).
5. **ACT Council of Social Service Inc. [ACTCOSS]** submitted, in relation to matters within this committee's resolution of appointment, that:

Funding be allocated for a People's Charter to be drawn up, according to the principles recommended by the Poverty Task Group [contained in the report *Sharing the Benefit: Final Report of the ACT Poverty Task Group Outlining Recommendations for Responding to Poverty in the ACT*, December 2000], and that the Charter be used as a basis for community education and prioritisation of service provision...

Funding be targeted at ensuring community information services and community service providers are able to provide information in a wide range of formats and languages...

The government provide funding for the establishment of a consumer legal centre; a review of the Legal Aid Commission, and a commitment to fund the Commission to allow fair and equitable representation before the ACT courts; increased availability of low-cost financial advice for people on low and fixed incomes...

Funds be allocated for a detailed study (conducted jointly by government and the sector) into unmet need for advocacy services for disadvantaged people who are unable to independently defend their rights.

A joint project be undertaken between advocacy groups and the government to develop quality service standards for advocacy work, based on the principles of the Compact on working relationships between the community sector and government...

[The government should] continue the ACT's progressive research into and use of alternatives to prison sentences for people before the courts.

[The government should] provide relief from over-crowding at the Belconnen Remand Centre by developing a new remand facility in the ACT as a matter of urgency.

[The government should] provide a "step-down" facility or halfway house to support Canberra community members returning from incarceration inter-state.

[The government should] address the over-representation of people with mental health problems in the corrections system as a priority.

[The government should] consider the detention of women prisoners as an issue separate from the construction of a traditional prison, recognising the special needs and differing crime patterns of women sentenced to prison terms.¹

[The government should] make the full range of preventative and primary health care services available within the community available to people on remand, including access to drug and alcohol-related services...

[Further, there should be] a review of the Residential Tenancies Act—this was foreshadowed when [the] Act was passed in 1998, and is now overdue; [there should be] a review of Legal Aid—without legal representation, the outcomes for people living with poverty are unnecessarily harsh; [there should be] a review of the Community Law Reform Committee; [and the government should ensure] adequate regulation exists to prevent exploitation of people with gambling problems.²

6. Canberra+Queanbeyan Attention Deficit Disorder Support Group Inc. submitted that:

There needs to be resources available at the discretion of the Magistrate in the Children's Court to assist children and adolescents with Attention Deficit Hyperactivity Disorder and/or learning disabilities (and their families) regardless of whether the child/adolescent is guilty or not...

Another concern is the amount of time since an offence is committed and how soon the case appears before the courts. Some cases take over six months and this is far too long for everyone concerned...

Another concern is that if you win a case in the Children's Court, that very same prosecutor has the authority to choose how much you should be reimbursed for expenses incurred. This is not fair or equitable. There should be an independent person and a quick process for the reimbursement to happen...

The police force should be educated on Attention Deficit Hyperactivity Disorder [ADHD] and they should be trained as to how they should treat ADHD children/adolescents/adults so as to keep them calm and in control...

¹ Submission by ACTCOSS dated 8 March 2002.

² Supplementary submission by ACTCOSS dated 2 April 2002.

The corrections officers and public servants in that area should be educated on ADHD...

For Quamby and if a gaol is built in the ACT, special diets without preservatives, additives and colourings should be implemented. There is evidence that these “additives” in food cause many problems with children/adolescents/adults with ADHD...

Judges, magistrates and legal professional[s] should have attended sessions on ADHD and how it affects the legal system...

[In relation to community and individual rights,] children/adolescents and adults with ADHD are continually discriminated against in all areas of life. If they were educated according to their learning needs, I am positive that a lot of their problems they have now, would never have happened...

There are no resources available to ADHD children/adolescents and adults and to their families.³

7. Care Inc. Financial Counselling Service submitted that:

The ACT urgently requires a consumer legal resource to:

- ensure that ordinary consumers can access their legal rights
- strategically test the extent, meaning and effectiveness of Territory consumer protection laws with particular regard to the needs of low-income and vulnerable consumers, and
- contribute to general community awareness and understanding of consumer rights, through education initiatives, public comment on issues of importance, etc...

[A] Consumer Law Centre for the ACT... could count amongst its activities Consumer Credit Law; Telecommunications Law; the delivery of Utilities; and General Trade Practices and Fair Trading.

Ensuring consumers have access to their rights, regardless of means, is a fundamental part of ensuring a safe and fair community. Utilising a Community Legal Centre model is a practical, cost-effective way to develop the expertise required. The service can then develop its role as a true community resource...

[The estimated annual cost is] \$94,190.⁴

8. The Law Society of the ACT drew the committee’s attention to three specific matters:

The ACT Legal Aid office provides outstanding service to the disadvantaged and to other people who are eligible for legal assistance. They also provide substantial legal advice free of means test, and fulfil legal education and other purposes outlined in the Legal Aid Act. The Society believes that the Standing Committee on Legal Affairs should have as one of its references the issue of efficacy and funding of legal aid services in the Territory.

We believe the correctional system needs to be the subject of an inquiry including the prison proposal, and the future of the Belconnen Remand Centre. Amongst considerations should be the possible combining of the two facilities.

In the area of Courts we believe particular attention should be paid to the position of the Children’s Court Magistrate established under the *Children and Young People Act 1999*.

³ Submission by Canberra+Queanbeyan Attention Deficit Disorder Support Group Inc. dated 21 March 2002.

⁴ Submission by Care Inc. Financial Counselling Service dated 7 March 2002.

Our particular concern relates to the existing provisions of Section 51 which, on literal interpretation, means that there can only be one Children's Court Magistrate sitting at any time. This has caused difficulty in the processing of cases through the Children's Court and is of concern to the Society, and we understand, to the Chief Magistrate.⁵

9. The Welfare Rights and Legal Centre Limited submitted:

That the ACT government conduct a review... of the Residential Tenancies Tribunal... [to] include an assessment of:

- the appropriateness of the... Tribunal's powers and functions as provided for under the legislation;
- the effectiveness of the... Tribunal as to the protection that it offers to tenants, looking particularly at the role legal representation has in the community's perception of the Tribunal as an informal (non-adversarial) method of adjudication;
- the process [by] which Members of the Tribunal have been appointed;
- how the... Tribunal fits into the administrative law structure, looking particularly at the appropriateness of appeals to the Supreme Court as opposed to the AAT;
- the effectiveness and appropriateness of powers exercised under s.120 of the *Residential Tenancies Act 1997*...

That, as a matter of urgency, the ACT government fund a committee to consider the establishment of an Indigenous Women's Legal Service for the ACT and region—proposed members of this committee would be representatives from the Indigenous women's community/services (majority), existing community legal services, government [and the] ATSIC Regional Council.

That the ACT government consider establishing an ACT Community Legal Centre funding program...

That the ACT government re-state the Territory's commitment to a safe and fair market through the establishment of a Consumer Law Centre for the ACT to:

- ensure that ordinary consumers and particularly "disadvantaged" consumers can access their legal rights;
- strategically test the extent, meaning and effectiveness of Territory consumer protection laws with particular regard to the needs of low-income and vulnerable consumers; and
- contribute to general community awareness and understanding of consumer rights, through education initiatives, public comment on issues of importance, etc.⁶

10. The Youth Coalition of the ACT submitted, in relation to matters within this committee's resolution of appointment, that:

The ACT government [should] fund the youth sector to research a [youth-specific legal services] model which would best meet the legal needs of young people in the ACT region...

The ACT government [should] investigate and implement best-practice models of early intervention programs as part of a comprehensive crime prevention strategy...

⁵ Correspondence from the Law Society of the ACT dated 26 February 2002 (Denis Farrar, President).

⁶ Submission by The Welfare Rights and Legal Centre Limited, dated 7 March 2002.

The ACT Police Force [should be] trained in youth issues, youth services availability in the ACT and cultural awareness particular to indigenous youth and young people from non-English speaking backgrounds...

The ACT Government [should] support and commit additional resources to the development and provision of alternative sentencing options and diversionary programs... [particularly for] Indigenous young people (aged 10-19 years) who are 19 times more likely to be in a juvenile correctional facility within the ACT than a non-Indigenous young person...

An independent review of the Youth Justice Community Unit [should] be resourced to evaluate the effectiveness of service provision to young people...

The ACT Government [should] commit greater resources to the investigation and implementation of best practise post-release models for young people existing the Quamby Youth Detention Centre [and] all staff at Quamby [should] gain educational qualifications, of at least a Certificate Level 3 in Youth Work.⁷

11. **Toora Women Inc. (formerly Toora Single Wimmin's Shelter Inc.)** submitted, in relation to matters within this committee's resolution of appointment, that:

A new remand facility [should be] built as a matter of urgency and [that it] include innovative approaches to the accommodation of women on remand [to] provide them with safety, privacy and separate programs and support;

The detention of women prisoners be considered as a separate issue from the construction of the proposed prison, recognising their special needs and differing crime and incarceration patterns;

The ACT government continue to develop and implement a range of progressive alternatives to sentencing for offenders.⁸

Conclusion

12. The committee extends its appreciation to those who participated in the inquiry.
13. Because of the absence of a government submission to the inquiry, the committee does not have the data that is necessary to determine the priority issues for service delivery in the 2002-03 Budget in the areas of courts, police and emergency services, law and order, consumer affairs, community and individual rights, civil liberties, industrial relations and governance generally.
14. The sole document provided to the committee by the government was delivered to the committee on 28 March 2002. It is entitled *2002-2003 Budget Consultation* and 'invites input from the public'.⁹ The document is intended 'to promote improved information about the major issues currently facing the ACT'.¹⁰ The document states that:

The forward estimates indicate a deficit position. With this in mind, the government will be seriously considering a number of revenue and saving

⁷ Submission by Youth Coalition of the ACT sent by e-mail dated 8 March 2002.

⁸ Submission by Toora Women Inc. dated 8 March 2002.

⁹ *2002-2003 Budget Consultation* (undated) with a covering letter dated 27/3/02 by Mr. Ted Quinlan MLA, Treasurer, p. 3.

¹⁰ Ditto

proposals in conjunction with a review of existing and proposed expenditure proposals...

It is anticipated that borrowings will be required in 2003-2004.¹¹

15. In relation to specific areas of government activity affecting this committee, the *2002-2003 Budget Consultation* document lists the following items:

Department of Justice and Community Safety
Overtime Remand Centre..... - \$600,000
Bushfire Costs-\$633,000
Emergency Services– logistics support.-\$300,000
DPP extraordinary cases-\$737,000¹²

16. In noting these additional expenditures, the committee is aware that they are included in Appropriation Bill 2001-2002 (No.3) which is currently being examined by a separate Assembly committee; therefore, the committee makes no comment on the additional expenditures at this stage.

17. The committee is disturbed that the process of this inquiry may have generated hopes within the Canberra community about a meaningful input to the Budget process that, in the absence of timely government input to the inquiry, cannot be realised. Further, the committee considers that the language of the *2002-2003 Budget Consultation* document makes the engagement of the community in this process particularly difficult. This is especially disappointing given that the document purports to be designed for community engagement (see paragraph 14 above).

18. In the circumstances, the committee considers that the best it can do is recommend:

(a) that the Assembly note the difficulties for any committee inquiry into Budget-related matters that does not have the benefit of a whole-of-government perspective to be provided to the community and the committee at the beginning of the Budget development process; and

(b) that the government carefully and thoughtfully consider the matters raised in submissions to this committee as it formulates the 2002-03 Budget. To this end, the committee has authorised the publication of the submissions and correspondence it received on priority issues for service delivery in the forthcoming Budget, and these will be forwarded to the Chief Minister/Attorney-General along with a copy of this report.

Bill Stefaniak MLA
Chair
2 April 2002

¹¹ *ibid.*, pp. 15-16

¹² *ibid.*, p. 13