

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**STANDING COMMITTEE ON
PLANNING, DEVELOPMENT
AND INFRASTRUCTURE**

REPORT No. 6

**FEASIBILITY OF RENAMING
RHODES PLACE, YARRALUMLA**

NOVEMBER 1990

TERMS OF REFERENCE

On Wednesday 17 October 1990 the Legislative Assembly passed a resolution, part (6) of which stated :

"That the ACT Legislative Assembly... (6) resolves to refer Mr Berry's notice of motion relating to the renaming of 'Rhodes Place' to the Standing Committee on Planning, Development and Infrastructure for a report by 29 November 1990 on the feasibility of the proposal."

COMMITTEE MEMBERSHIP

Mr Norm Jensen (Chairman)

Mrs Robyn Nolan

Mr Wayne Berry

Secretary : Greg McIntosh

Keyboard/Clerical : Kim Blackburn

THE INQUIRY

- 1.1 The Committee, as required by the terms of reference, was only concerned with investigating the feasibility of renaming Rhodes Place. This was taken to mean whether or not it was possible for the ACT Government to rename Rhodes Place rather than an examination of the arguments for and against a particular name change.
- 1.2 Accordingly, the Committee restricted its deliberations to the issue of whether or not the ACT Government had the legal authority to rename Rhodes Place.
- 1.3 On 30 October 1990 the Committee agreed that written advice should be sought from
- (1) the ACT Attorney-General
 - (2) the ACT Department of Environment, Land and Planning
 - (3) the National Capital Planning Authority
- on whether or not the ACT government had the legal power to rename Rhodes Place, Yarralumla.
- 1.4 Following an examination of all written evidence the Committee believes that the ACT Government does have the power to rename any street within Territory Land.

Department of Environment, Land and Planning

- 1.5 According to the Department of Environment, Land and Planning (DELDP) the
- ..."Responsibility for naming streets in the ACT is divided between the Commonwealth and ACT Government according to the status of the land...Rhodes Place is Territory Land situated in an area designated as national interest and its naming is therefore the legislative responsibility of the ACT Government."¹
- 1.6 DELDP also advised the Committee that the relevant Act with respect to naming streets in the ACT is the Public Place Names Act 1989.

¹ Letter to Committee from J.V. Townsend, Secretary of the Department of Environment, Land and Planning – 13 November 1990.

1.7 The Public Place Names Act 1989 (Section 6)

"requires that the naming of a street should have regard to the following :

6 (2) When, making a determination in respect of the naming of a public place, the Minister shall have regard

to –

(a) the names of persons famous in Australian exploration, navigation, pioneering, colonisation, administration, politics, education, science or letters;

(b) the names of persons who have made notable contributions to the existence of Australia as a nation;

(c) the names of Australian flora;

(d) the names of things characteristic of Australia or Australians; and

(e) the vocabulary of the Aboriginal race of Australia."²

1.8 The Committee was further advised by DELP that legal advice sought in the past has indicated that the Minister is under no obligation to follow the provisions for street naming as set out in 1.7 above.

1.9 According to DELP previous administrative practice in regard to street naming in the ACT has restricted the use of personal names for streets to those of deceased persons and where there is likely to be foreign policy implications advice is sought from the Commonwealth Government and particularly the Department of Foreign Affairs.

1.10 The Committee considers that if the ACT Government proposes to change the name of Rhodes Place then consultation should take place with the Commonwealth Government.

National Capital Planning Authority

1.11 The National Capital Planning Authority (NCPA) confirmed the legal opinion put forward by DELP that Rhodes Place is located on Territory Land and as such it was within the power of the ACT Government to initiate a name change if it so desires.

² *ibid.*

- 1.12 The NCPA advised the Committee that it had sought the views of the Australian Government Solicitor on the matter and that the Solicitor had concluded :

"The ACT Legislative Assembly has the power to rename Rhodes Place. The Australian Capital Territory Executive has the power to make laws with regard to Territory Land by virtue of s.37 and schedule 4 of the Australian Capital Territory (Self Government) Act 1988 (Cth). The Public names Act 1989 (ACT) empowers the Minister to determine the name of a public place that is Territory land (sub-s 4(a)). "Public place" is defined to include an avenue, road, street or place which the public is entitled to use (s.3)."³

- 1.13 The Committee was further advised that the NCPA had no intention of using the National Capital Plan as a vehicle to become involved in naming streets on Territory Land and that the appropriate means for dealing with Rhodes Place is via the Public Names Act 1989.

The ACT Attorney General

- 1.14 The ACT Attorney-General indicated that he was aware of the legal advice already provided to the Committee by the Department of Environment, Land and Planning and the NCPA and that this advice was consistent with his views on the matter. The Attorney-General confirmed "that the matter is one for the ACT Government."⁴

³ Letter to Committee from Lyndsay Neilson – Chief Executive, National capital Planning Authority, 14 November 1990.

⁴ Letter to the Committee from Bernard Collaery, ACT Attorney-General, 26 November 1990

CONCLUSIONS

- 2.1 After consideration of all written evidence the Committee came to the following conclusions about the feasibility of renaming Rhodes Place :
- (1) The ACT Government has the clear legal power to rename Rhodes Place, Yarralumla. This power is vested with the ACT Government by virtue of s.37 and schedule 4 of the Australian Capital Territory (Self Government) Act 1988 (Cth).
 - (2) The power to rename Rhodes Place under the relevant ACT legislation – The Public Names Act 1989 (ACT) – rests with the "Minister". Under present ACT administrative arrangements this means that the Chief Minister has the power to rename Rhodes Place.
 - (3) It is customary for the Lands Division, within the Department of Environment, Land and Planning to advise the "Minister" on street names.

Norm Jensen
(Presiding Member)
27 November 1990

**ADDITIONAL STATEMENT BY MR WAYNE BERRY MLA
CONCERNING COMMITTEE PARTICIPATION
BY AUSTRALIAN LABOR PARTY MEMBERS**

On 27 March 1990 (Hansard page 879) the Leader of the Opposition, Ms Follett, said in relation to the Government's restructure of committees:

"Ms Follett: ... I have said many times before that we stand ready to participate fully in the life and the work of Assembly committees. But committees must be an arm of the Assembly and not simply a rubber stamp for Government decisions ... It is extremely important that there is a clear separation of powers between the Executive Government and the Assembly and this separation must not only occur in fact but it must be seen to occur – even to the casual observer ... The Labor Party will not be seen as part of a committee which appears to be an Executive Committee ... we will not serve on a committee which is chaired by an Executive Deputy who has portfolio responsibilities in that committee's area of responsibility."

I agree that there must be and must be seen to be a clear separation between Assembly committees and the Executive if these committees are to have a credible independence from the Executive Government. In my view, there is no logic in Mr Jensen's continuing as chair of the Standing Committee on Planning, Development and Infrastructure if there is a wish by Government to preserve this important concept of parliamentary government. In other words, it is reprehensible for the ACT Government to persist with a mechanism of parliamentary democracy which so arrogantly ignores the requirement to preserve the independence of standing committees of this Assembly and to be seen so to do.

On the other hand, the Government is apparently keen to ensure that executive deputies are given something as important to do as the recently invented title suggests. It is also apparent that as part of forming the alliance, it had to be attractive to new members to accept their new role – though not as ministers – and personal preference as well as party political interests formed the basis for the allocation of Executive Deputy assignments and the chairs of committees.

It is this later assignment where the Government and its members, in the Labor Party's view, failed to give due consideration to the need to properly separate the Executive role from that of the Assembly. Unfortunately it also appears that the Government, having made its decision, has no process available to it whereby its attitude to this important issue might change.

On 15 May 1990 at a meeting of the Standing Committee on Planning, Development and Infrastructure, I drew the above mentioned position to the attention of Mr Jensen, the Liberal, Residents Rally and Independents Group ACT Government Executive Deputy responsible for planning.

I then requested that because of Mr Jensen's Executive Deputy responsibilities for planning, that he stand down as chair of the committee. Mr Jensen declined.

I note that the Labor Opposition is not alone in the Assembly in its concerns about the future functioning of Assembly committees. It is a matter of record that Mrs Nolan made statements to the Standing Committee on Planning, Development and Infrastructure expressing her concern that the composition of the committee, consisting of two Government members only, might be seen as improper.

I also requested that Mr Stefaniak not make himself available for the position of presiding member of the Standing Committee on Legal Affairs on the grounds of bias. He refused, though at the same time, acknowledged that there would be instances where the question of conflict of interest between his Executive Deputy duties and his position as presiding member of the committee would cause him to stand down.

On the issue of bias, one needs only to turn to the courts for guidance and while the attention of the courts is directed at those who might carry out a judicial function, it is nevertheless the case in my view that the same rules should apply in determining the propriety of executive deputies performing the duties of presiding member on committees where there is an overlap between the respective executive deputies and the committees on which they serve.

The courts have made clear the point and as Lord Denning said in *Metropolitan Properties Co. v Lannon* 1969:

"The court looks at the impression which would be given to other people. Even if he was an impartial as could be, nevertheless if right minded persons would think that in the circumstances, there was a real likelihood of bias on his part then he should not sit ..."

I repeat that the Labor Opposition is keen to participate fully in an Assembly committee system which is not under a cloud regarding its independence. In my view it is an issue for the parties to the ACT Government whether or not they too wish to have the Assembly committee system seen to be independent by the ACT community.

W Berry MLA