



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

SELECT COMMITTEE ON ESTIMATES 2023-2024

Mr Mark Parton MLA (Chair), Ms Jo Clay MLA (Deputy Chair),
Mr Michael Pettersson MLA

ANSWER TO QUESTION ON NOTICE

Mrs Elizabeth Kikkert MLA : To ask the Minister for Families and Community Services

Ref: Budget Outlook, p. 127

Hearing Date: 28 July 2023

In relation to: Establishing External Merits Review

- (1) In the hearing, it was said that publicly releasing the report recommending a model (or models) for external merits review for child protection decisions will be considered. What is the expected timeline for this to occur?
- (2) There was brief mention made during the hearing that information in this report informing Cabinet decisions may need to be redacted. What kind of information might fall under this umbrella, and why may it pose a risk?
- (3) It was said in the hearing that external merits review may be assigned to either the Childrens Court or ACAT but that either choice raises concerns regarding implementation. Can the minister please summarise the concerns for each?

MINISTER STEPHEN-SMITH: The answer to the Member's question is as follows: –

- (1) The report is expected to be released in September 2023.
- (2) The final report contains legal and technical advice, as well as analysis of legislative considerations of the child protection system in the ACT. This legal advice was provided by the ACT Government to the consultant to inform the project and may be subject to legal privilege.
- (3) An analysis of reports and engaging with various stakeholders has brought to light a pressing need for a user-friendly, efficient and accessible external mechanism to address disputes and conduct reviews across different aspects of child protection.

Option 1: ACAT as the Jurisdiction and Oversight Body

ACAT offers a valuable conciliation and mediation process before any formal hearings. This approach has shown success in resolving similar matters without the need for prolonged, contested hearings. ACAT has a reputation for effectively handling a wide range of administrative cases in a prompt and efficient manner. ACAT's track record emphasises efficiency, fairness, and a commitment to accessibility.

ACAT is an entity that has already proven its ability to manage diverse cases while ensuring that all parties involved receive a fair and efficient resolution. Other jurisdictions in Australia have their external merits reviews conducted in their civil and administrative tribunal or equivalent.

However, a potential drawback of adopting ACAT in this role is the risk of fragmenting the child protection decision-making jurisdiction, which may lead to inefficiencies and complexities in the overall legal framework. Advice from other jurisdictions indicates that matters referred for external decision review regularly need to be deferred due to Childrens Court consideration of related matters.

Option 2: ACT Childrens Court as the Jurisdiction and Oversight Body

ACT Childrens Court is familiar with child protection matters and has an inherent grasp of the intricate nuances and sensitivities involved. This Court possesses an in-depth understanding of the complexities associated with child protection cases, making it a natural fit for such a role. Entrusting the Childrens Court with these responsibilities has the potential to provide a cohesive and comprehensive approach to child protection matters. This could ensure a unified perspective that encompasses all dimensions of child protection, avoiding any unnecessary divisions and ensuring consistency in handling such sensitive cases. This could be further supported by the Childrens Court adopting restorative practices, as it has demonstrated a commitment to through the Care and Protection Intensive List.

However, if not established carefully and with a commitment to restorative practice, reduced formality and timely outcomes, using the Childrens Court may result in proceedings becoming adversarial and higher expenses being incurred by all parties, including the need for additional Court resources.

Approved for circulation to the Select Committee on Estimates 2023-2024

Signature:



Date:

17/8/23

By the Minister for Families and Community Services, Rachel Stephen-Smith MLA