



ACT GOVERNMENT RESPONSE

STANDING COMMITTEE ON PUBLIC ACCOUNTS REPORT NO 15, 2008 – *REVIEW OF AUDITOR- GENERAL'S REPORT NO. 4 OF 2005: COURTS ADMINISTRATION*

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**ACT GOVERNMENT RESPONSE TO STANDING COMMITTEE ON PUBLIC
ACCOUNTS REPORT NO 15, 2008 – REVIEW OF AUDITOR-GENERAL'S
REPORT No 4 OF 2005: COURTS ADMINISTRATION**

INTRODUCTION

The Standing Committee on Public Accounts Report No 15, 2008 – *Review of Auditor-General's Report No 4 of 2005: Courts Administration* (the Report) presents the findings of the Standing Committee on Public Accounts Inquiry into the Auditor-General's performance audit on administration of the Courts.

The Report covers an area of significant importance to the ACT community.

The ACT Government has announced a study of the possibility of a Single ACT Court to determine whether our existing courts arrangements can be enhanced to satisfy legitimate community expectations about access to justice in the Territory. Some of the issues covered in the review will be the subject of detailed consideration in this study.

RECOMMENDATIONS

Recommendation 1 The Committee recommends that the annual report(s) of the ACT Law Courts and Tribunals be sent directly to the Attorney-General and published separately from the annual report of the Department of Justice and Community Safety.

Noted

Noted. To the extent that the annual report of the courts and tribunals relates to administration, as this is a service provided to the courts by the department it is more appropriate for the relevant information to be incorporated with the department's annual report.

The issue of appropriate reporting arrangements will be considered in the study considering the establishment of a Single ACT Court to be issued in 2010. In this context, to the extent that the annual report relates to the decision-making business of the courts and tribunals, the department might redirect part of the operational funding for the courts to publication costs. In future the chief executive will agree on a mechanism for publication each year with the heads of jurisdiction and the general president of the ACAT.

Recommendation 2 The Committee recommends that JACS report to the Legislative Assembly providing details on the specific steps taken to ensure that risk management practices are being included in all business and project planning within the Law Courts and Tribunals Unit.

Agreed

A risk management plan was developed for the period 2007-2009 by the Department of Justice and Community Safety. It includes specific risks identified by ACT Law Courts and Tribunal and risk mitigation strategies. The Department, has begun work on the risk management plan for the period 2009-2012.

The business plan for the Administration of the ACT Supreme Court, ACT Magistrates Court and ACT Civil and Administrative Tribunal, launched in April 2009, recognises the importance of risk management.

Most recently, risk management planning at ACT Law Courts and Tribunal focused on continuity planning. A continuity plan for information technology is in place, and the continuity plan for the organisation as a whole is presently under review.

In addition to this plan the ACT Law Courts and Tribunal administration continues to include risk management planning in all major projects.

JACS will report to the Legislative Assembly providing details on the specific steps taken to ensure that risk management practices are being included in all business and project planning within the Law Courts and Tribunals Unit.

Recommendation 3 The Committee recommends that JACS continues to include in its annual reports a summary of the progress made in implementing the recommendations of Auditor-General Reports in that financial year.

Agreed

JACS will continue to include in its annual reports a summary of the progress made in implementing the recommendations of Auditor-General Reports in that financial year.

Recommendation 4 The Committee recommends that the ACT Government approve an expanded duty solicitor scheme.

Not Agreed

The ACT Government deals directly with Legal Aid ACT about the provision of legal assistance and manages the resourcing of that service within the Budget cycle. Legal Aid ACT determines how best to prioritise the delivery of legal aid services.

The duty lawyer service provided by Legal Aid ACT at the ACT Magistrate's Court was expanded in August 2007 as the result of additional funding provided by the ACT Government in the 2007/8 Budget. The expansion of the duty lawyer scheme was made in conjunction with new criminal listing arrangements introduced by the Court in August 2007. The effect of the expansion of the service is that since August 2007 there has been two duty lawyers in attendance at the Magistrate's Court each sitting day who are available to advise and, in appropriate cases, represent accused persons appearing without legal representation. The representation extends, in appropriate cases, to making pleas in mitigation of penalty in cases where the accused has decided to plead guilty.

Recommendation 5 The Committee recommends greater use of pre-trial conferencing and mediation in civil matters be encouraged in the ACT.

Noted

The commencement of the ACT Civil and Administrative Tribunal (ACAT) has led to a greater use of conferencing and mediation in the ACT. From its inception, the ACAT has adopted and built on the previous successes of the conferencing approach that had been pioneered in the Small Claims Court and several of the previous Tribunals that preceded it. Additionally, it has continued the processes of mediation used in the Administrative Appeals Tribunal system.

The ACT *Civil and Administrative Tribunal Act 2008* (Division 5.3) sets out the various means by which it can progress and resolve matters, prior to hearing. Every matter that comes before the Civil Division, as well as rental bond aspects of the Residential Tenancy Division of the ACAT is allocated a preliminary conference with a view to either achieving a negotiated outcome between the parties on a face-to-face basis, or, if that is not possible, to pinpoint the issues in dispute and to make directions as to the procedures the ACAT requires to expedite the final hearing of the matter.

The Administrative Review jurisdiction of ACAT uses a more formal approach to dispute resolution, by way of mediation.

The Energy and Water Consumer Council which is now part of ACAT has had

successful outcomes in dispute resolution by using a conferencing system that both intervenes substantively in disputes, and achieves outcomes satisfactory to all parties.

The option of conducting conferences is explored in respect of all matters that come before the Tribunal.

Both the Supreme Court and the Magistrates Court procedures are prescribed by the *Court Procedures Rules 2006*. These rules do not mandate conferencing or mediation prior to trial. Parties may elect to have a dispute mediated outside the court process or request the court make an order referring a proceeding, or part of a proceeding, for mediation or neutral evaluation.

The ACT Government is committed to prompt, flexible, easy access to justice for the people of the ACT. These principles (and the value of the early resolution of civil claims) will guide the study considering the establishment of a Single ACT Court to be issued in 2010.

Recommendation 6 The Committee recommends that, as a matter of urgency, the ACT Courts' information technology be upgraded, including effective links to other relevant agencies.

Noted

The information technology services in the courts and the new ACAT are being improved as a matter of priority in conjunction with other resource priorities.

In the 2006-07 and 2008-09 Budgets the Government provided resources for the upgrade of the courts case management system MAX. Now into its third year the upgrade of MAX has included modernising the user interface, automating production of documents that are frequently used, automating some major statistical reporting functions and upgrading the technology used for data backup and recovery for MAX.

It is expected that during 2009/2010 the MAX upgrade will continue with the investigation into the introduction of "e-business" facilities such as online filing of court documents, online searching of case records and hearing dates, and possible online payment of fees, fines and costs. Links are now in place from MAX to other agencies.

The courts continue to investigate opportunities to collaborate with other jurisdictions to improve the information technology facilities in the Court.

The Courts were also provided with funds in both the 2007/2008 and 2008/2009 years to provide video conferencing technology in courtrooms and remote witness room. In addition funds to provide for an e-court platform in

the courts was provided. To date two courtrooms in both the Supreme Court building and the Magistrates Court buildings and two remote rooms have had video conferencing and e-court enabling technology installed.

Recommendation 7 The Committee recommends that an independent comprehensive cost analysis for Court services be conducted to establish an appropriate level of base funding for the Courts.

Noted

Before a decision is made about whether to undertake a comprehensive base costing review, the Department of Justice and Community Safety will engage a consultant to review the efficiency and effectiveness of a range of court-based practices and procedures, especially in light of the February 2009 commencement of the new ACAT. This information will guide the study considering the establishment of a Single ACT Court to be issued in 2010.

Recommendation 8 The Committee recommends that the Auditor-General provide a follow-up report to the Legislative Assembly in April 2009 examining efforts to address problems in the ACT Courts Administration.

Noted

Recommendation 9 The Committee recommends that the ACT Government commission an independent report on the appropriateness of applying the South Australian model of courts administration in the ACT, including a comprehensive examination of the associated costs and benefits.

Not Agreed

The ACT Government is committed to the Latimer House Principle that an independent, impartial, competent and honest judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The Government is also committed to the Latimer Principle of ensuring adequate resources are provided for the judicial system to operate effectively without any undue constraints. While there is some merit, especially in larger jurisdictions, for maintaining a separately resourced courts administration, the relative cost of duplicating existing administrative resources to service the needs of the small judiciary in the ACT outweighs the potential benefit to be gained from establishing a fully independent arm of government.

Recommendation 10 The Committee recommends that the Law Courts and Tribunals Unit prepare its own draft budget for submission to the Attorney-General and that a copy of its budget proposal be provided to the Standing Committee on Legal Affairs of the Legislative Assembly for comment at the same time as it is provided to the Attorney-General.

Not Agreed

The Government is satisfied that existing arrangements placing responsibility for the management of the courts budget in the hands of the chief executive of the Department of Justice and Community Safety ensure adequate resources are provided for the judicial system to operate effectively without any undue constraints.

