

# JUSTICE AND LAW REFORM

ACT Labor is committed to a strong and independent justice and legal system.

The ACT Labor Government has been characterised by an extensive program of justice and law reform. Virtually every area of the law has been reviewed, reformed or amended to ensure that it remains relevant to the modern Canberra community.

ACT Labor's continued law reform agenda will ensure that our Courts remain efficient, accessible and open.

ACT Labor is committed to a legal system that fairly and efficiently resolves disputes between citizens

Many new justice initiatives have been introduced aimed at achieving a fairer and more just society for all.

ACT Labor is committed to a criminal justice system that enforces the law in a robust and balanced way and vindicates the rights of victims of crime.

ACT Labor will continue to work to address inequity and discrimination in our community. Our commitment to human rights, enshrined in Australia's first Bill of Rights, is ongoing.

ACT Labor will also continue to work to further support and protect victims of crime, especially those who are the victims of the most invasive of crimes - sexual assault and serious violent offences.

ACT Labor will continue to work to make the law more accessible to more citizens. We have reformed the ACT Tribunal structure to achieve this outcome and will explore further options to ensure access to justice is available to all citizens.

**Jon Stanhope**  
Chief Minister

**Simon Corbell**  
Attorney General

## A Proud Record of Law Reform

ACT Labor has undertaken significant law reform across a wide range of policy areas since first being elected. Our commitment has been to more equitable access to justice, removing discrimination, strengthening the ACT's human rights framework, tort law reform and reform of the numerous areas of the criminal law, including the Bail Act, the Committal process and the protection of victims of crime.

## Our Record

ACT Labor has undertaken major law reform in a wide range of areas:

- Australia's first Bill of Rights was introduced in the *Human Rights Act 2004*
- The removal of discrimination against gay, lesbian, transsexual and intersex persons from the statute book
- The law of torts was rewritten and incorporated in the *Civil Law (Wrongs) Act 2002*
- The *Criminal Code 2002* codified criminal law in the ACT and incorporated many new and simplified offences to assist the police and courts in the fight against crime
- The *Bail Act 1992* was overhauled and made more relevant to today's conditions by distinguishing between offences that the community considers call for a presumption for, or against, bail, and a range of other offences in which the Court can exercise its discretion
- The *Human Rights Commission Act 2005* established the Human Rights Commission. The Commission promotes human rights and deals with complaints of unlawful discrimination, complaints concerning health services, services for older people, disability services and services for children and young people
- A review of the first full year of operation of the Human Rights Act was undertaken in 2005-06 and tabled in the Assembly in 2006
- The Human Rights Act was amended in 2008 to provide a direct right of action flowing from a duty on public authorities to comply with human rights. The inclusion of a direct duty on public authorities brought the ACT into line with other human rights jurisdictions and furthered strengthened the human rights protections available to the people of the ACT
- The law dealing with the sentencing of criminal offenders was comprehensively overhauled and a new sentencing act introduced
- The *Crimes (Child Sex Offenders) Act 2005* was passed to create a register of child sex offenders. The scheme ensures child sex offenders are registered in the ACT, that their whereabouts are known and contains a scheme of reporting obligations. The Act also makes it an offence for registered sex offenders to work in child-related employment
- The ACT implemented the uniform national approach to defamation law in 2006;
- The *Legal Profession Act 2006* introduced national model laws allowing for new registration procedures, incorporated legal practices, non lawyer partners, reciprocal rights to practice interstate as well as modified, robust costing, trust accounting and disciplinary procedures

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- *Powers of Attorney Act 2006* modernised the scheme for powers of attorney in the ACT. The revised Act deals comprehensively with powers of attorney, and clearly provides all the requirements a person must meet to appoint another person to make decisions on their behalf
- On the spot fines were introduced for a range of less serious criminal activities such as urinating in public, defacing premises and consuming liquor in public. This reform followed a request from Police for alternative ways of dealing with various types of anti-social behaviour
- The law dealing with firearms was further reformed as part of the ACT Government's ongoing commitment to implementing the national firearms scheme developed following the Port Arthur and Monash University shootings. Extensive amendments were introduced to address the illegal trade in firearms, increase penalties for firearms offences and modernise the licensing scheme for firearms.
- The *Civil Partnerships Act 2008* was passed to allow couples to enter into civil partnerships and to register their relationships under law. The scheme, available to heterosexual and homosexual couples, allows for the recognition by law of intimate relationships. The ACT Government remains committed to pursuing recognition under law of a ceremony to mark the creation of civil partnerships.
- The law governing sexual assault trials was comprehensively overhauled with special measures introduced to reduce the 're-victimisation' of complainants, and to reduce the stress and trauma they endure in legal proceedings.
- Summary justice was modernised with reforms introduced to stream-line the committal hearing process and to extend the power of the Magistrates Court to make determinations on less serious criminal matters.
- The *ACT Civil and Administrative Tribunal Act 2008* merged a large number of existing ACT tribunals and boards into one 'super tribunal'. This amalgamation will enhance both the efficiency and quality of the tribunal process in the ACT.
- The *Crimes (Forensic Procedures) Amendment Act 2008* enables the ACT to participate in the national DNA database exchange scheme. The Act also enshrines appropriate oversight and accountability bodies to review and audit DNA procedures and data. The ACT was one of the first jurisdictions to successfully match DNA data with all other jurisdictions in Australia. The Act also created separate procedures for victims of crime who provide forensic materials to assist the police with investigations.
- The *Crimes (Controlled Operations) Act 2008* was passed creating a legal frame work for the conduct of undercover police operations targeting a range of serious criminal activities.
- The Government moved to make significant amendments to the *Protection of Public Participation Bill 2008*, presented by Dr Deb Foskey MLA in May 2008. The amended legislation enhances the legal protection of people who speak out in public, and provides for a court to impose penalties on plaintiffs who bring certain actions for an improper purpose (an action designed to silence those who speak out), while maintaining the integrity of the general body of civil wrongs legislation.

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- The Alexander Maconochie Centre (AMC), the ACT's first prison, was opened. This important social infrastructure project is the culmination of many years of planning and has been undertaken with careful attention to human rights and the needs of Indigenous people. The construction of the AMC took almost two years. The capacity of the AMC is 300 with accommodation including cell-blocks, domestic style cottages, a Medical Centre and Crisis Support Unit, a 14 bed Management Unit and a Transitional Release Centre. Prisoners from all security classifications will be accommodated. The prison will operate on a human rights framework and rehabilitation will be a central priority. The new prison is a powerful example of the ACT Labor Government's progressive and reformist approach to criminal justice.
- Launched in 2007, the Sexual Assault Reform Project is a major inter-agency initiative involving victim agencies, the Canberra Rape Crisis Centre, child advocates, police, prosecution, courts and the legal profession. It has been designed to address problems in the operation of the criminal justice system for victims of sexual offences. As part of this project nearly \$4 million in new funds were made available for initiatives to kick start urgent reforms in the criminal justice system for victims of sexual assault.
- Restorative justice processes for young people were introduced in 2005, covering less serious offences. The review of the first year of the *Restorative Justice Act* demonstrated the process has been very successful, with high levels of satisfaction from both victims and offenders, and early indications of reduced recidivism.
- The Aboriginal Justice Centre (AJC) was launched in 2007. The centre is funded by the ACT Government and managed by a Board of indigenous community representatives. The AJC is partnering with other agencies to facilitate the creation of an Aboriginal Justice Agreement in 2008. A primary objective of the agreement will be to target reducing Indigenous incarceration in the ACT by providing or linking persons to support and prevention programs. These will complement, but do not duplicate, the role of the Australian Government funded Aboriginal Legal Service and other service providers in education, health, employment and the like.
- ACT Labor established the Ngambra Circle Sentencing Court, using a conferencing approach for adult offenders. Indigenous Elders, the offender and Magistrate meet to discuss the offences committed by the offender, and agree on how the offender can make amends for his/her actions
- Victims – a one-stop shop was created for victims in 2007 with the establishment of Victim Support ACT, bringing together the Victims Services Scheme (VSS) and the Office of the Victims of Crime Coordinator (VoCC). The amalgamation was to ensure improved, more integrated responses to victims, with the VoCC becoming responsible for the overall management of the VSS. The amalgamation enabled the VoCC to bring together in the justice sector as many victim-focussed resources as possible. From 07/08, an additional \$500,000 in recurrent funding has been provided to enhance the services available to victims of crime in the ACT, particularly to reduce waiting periods for counselling.

In the 2008/09 ACT Budget the ACT Labor Government has:

- Reviewed and increased payments made to jurors. This was the first review of juror's fees since 1995 and demonstrates Labor's ongoing commitment to strengthening the jury system.
- Bolstered funding for the Office of the Public Advocate to strengthen the public advocate's capacity to act as guardian of last resort and emergency guardian.
- Allocated funds to commence a feasibility study to examine options for the construction of a new Supreme Court building to provide an appropriate environment for the Supreme Court to discharge its role in upholding the rule of law.
- Allocated funds for additional and improved court technology to replace the existing outdated Closed Circuit Television and video playback facilities in the ACT Law Courts and Tribunals with a new integrated electronic technology platform, including linking with remote witness facilities to support vulnerable witnesses and to better utilise the time of courts, witnesses, police and the legal profession. This investment was made to fully implement the Government's reforms to the way in which the criminal justice system deals with vulnerable victims, particularly in sexual assault matters.
- Provided funding for the construction of a new Forensic Medical Centre (FMC). The FMC serves an important and continuing function in the justice system of the ACT and directly supports the Coroner's Court. Post Mortem forensic examinations are required under the Coroner's Act 1997 and are an important safeguard against undetected crime.

## **Moving Forward**

### **Sentencing Council**

A re-elected ACT Labor Government will spend \$633,000 over four years to create an ACT Sentencing Council. The Council will:

- conduct research on sentencing practices in the ACT;
- collect, analyse and publish statistical data on sentencing;
- gauge public opinion on sentencing;
- consult on sentencing matters;
- assess the effectiveness of present sentencing options;
- explore the viability of new sentencing options; and
- advise the Attorney-General on sentencing issues.

### **Toughening the Offence of Murder**

If re-elected ACT Labor will amend the Crimes Act to modernise the offence of murder and bring it into line with equivalent provisions in other states and territories. Currently in the ACT murder can only be proven if it is shown that an accused intended to bring about death by their acts or knew that death would result. The Government will reform the offence so that persons who cause death while intending to inflict grievous bodily harm on their victim can be convicted of murder.

### **Develop the ACT's own Privacy Act**

The ACT currently relies on the Commonwealth privacy law. A new ACT law will ensure statutory protection for a range of privacy rights including those relating to the use and storage of electronic data

### **Freedom of Information**

If re-elected ACT Labor will amend the Freedom of Information Act to remove conclusive certificates. These provisions currently allow for a Minister to determine conclusively that a document is exempt from release. This reform will ensure that our Act remains consistent with Commonwealth legislation and that ACT citizens enjoy a high level of access to government information.

### **An Electronic Filing System for the Legal System**

Develop a policy for the introduction of an 'e-filing' system to enable parties to file court documents electronically. This will improve the efficiency of litigation, lead to cost savings and enhance the quality of justice in the ACT.

### **Reform of the Self Government Act**

If re-elected the ACT Labor Government will undertake a process of community consultation around reform of self government and will continue to work cooperatively with the Federal Government to achieve a comprehensive review of the ACT (Self Government) Act 1988. ACT Labor will allocate \$50,000 to commission the ACT's own review of the Self Government Act.

### **Human Rights Culture**

If re-elected the ACT Labor Government will undertake a review of the Human Rights Act, to commence in 2009. This review will examine the first 5 years of operation of the Act and consider the question of whether the Human Rights Act should be expanded to provide for the recognition and protection of economic, social and cultural rights

### **A New Structure for the ACT Courts**

ACT Labor will spend \$125,000 on a proposal for the streamlining of Courts administration and jurisdiction in the ACT if re-elected. This proposal would then be released for public comment and feedback.

Currently the ACT is served by two separate Courts, the Magistrates and Supreme Courts. The Supreme Court is also known as the Court of Appeal when it sits in its appellate jurisdiction. Appeals from the Magistrates Court are heard by a single Judge of the ACT Supreme Court and then, if appealed further, are heard by the Court of Appeal.

These two Courts are served by different registries and support staff and operate separately of each other. The judicial officers who staff the Courts do not move between the two Courts.

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While ACT Labor remains committed to a tiered system of justice, we believe that there are a number of ways in which this can be achieved. While the Government is open to a wide variety of policy ideas, proposals to be examined will include:

- Whether the current three tiered Court system could operate in the context of a single administrative structure. In the same way that the Court of Appeal is currently constituted from the Supreme Court it could be both efficient and effective for the ACT to have a unified Court structure, with the different levels of the Court known by separate names when sitting in the summary, superior and appellate jurisdictions. Such a proposal would maintain the benefits of discrete separate Courts, within a concentrated and efficient single Court structure;
- Whether judicial officers in such a structure could move between the various Court levels according to speciality and availability;
- Whether certain appeals from the summary jurisdiction should proceed directly to the appellate jurisdiction; and
- Whether the ACT needs a separate Court of Criminal Appeal, as opposed to the current structure where the Court of Appeal hears civil and criminal matters;

ACT Labor seeks to ensure that the judicial system of the ACT is tailor made for our unique jurisdiction and it's changing needs. The recent passage of the *ACT Civil and Administrative Tribunal Act* and the ongoing merger of all the ACT's tribunals will provide useful lessons in the development of this proposal.

ACT Labor is committed to the independence of the judiciary as the foundation of the rule of law. Labor recognises that maintenance of both appointments, and terms and conditions, are central to real independence for judicial officers. The proposal will be developed on the firm and unequivocal basis that all existing judicial appointments will be respected and maintained. Any future structure for ACT Courts will similarly protect and uphold independence of the judiciary as the foundation of the rule of law.

ACT Labor if re-elected will consult extensively with community and relevant stakeholders on this proposal to streamline the broad structure of the Court system.