

2012

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE
STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE
REPORT NO. 4**

OFFICERS OF THE PARLIAMENT

**Presented by
Ms Katy Gallagher MLA
Chief Minister**

Tabled on 7 June 2012

Introduction

The Government supports a number of recommendations from this review by the Standing Committee on Administration and Procedure into the feasibility of establishing Officers of the Parliament in the ACT. However, the Government has a different view on a number of fronts.

Any framework or criteria used to identify Officers of the Parliament must be fit for purpose and take into account practical considerations of the ACT's scale and context. These criteria also need to take into account the separation of powers doctrine as well as constitutional context of the Legislative Assembly and the Territory's governance arrangements.

Officers of the Parliament should be created sparingly and at this stage the Government cannot see any reason to go beyond the designation of the Auditor-General. As flagged in some of the submissions to the Inquiry, the practical benefits of making some statutory office holders Officers of the Parliament must be questioned.

There may also be disadvantages in designation, such as constraints to the statutory roles as not all dimensions of a role may fit equally – some important advocacy or opportunities to work from within government may be lost. This means more may be lost than gained.

A number of statutory officers clearly must operate at arm's length from executive government. The best way of articulating and preserving this independence is through legislation that defines the nature of independence, not only from the executive but also the parliament itself. Designation as an Officer of the Parliament should not be used as a mechanism for expressing independence when there is a better approach through clear legislative provision.

Government Response to Recommendations

RECOMMENDATION 1

The Committee recommends that statutory office holders who meet established criteria be made Officers of the Parliament.

Government Response

Agreed in-principle. The Government agrees that criteria should be developed and would be useful in guiding any future decisions. However, a decision to designate a statutory office holder an Officer of the Parliament ultimately requires a balancing of a range of issues that should be informed by criteria, rather than determined by criteria.

RECOMMENDATION 2

The Committee recommends that a two tiered test be established for determining whether a statutory office is appropriate to be considered for Officer of the Parliament status, and that test be as outlined in the following graph.

Government Response

Agreed in-principle. The Government agrees that criteria are useful to inform Officer of the Parliament status. However, the proposed test is complicated. Potentially it is a three tier test – with the final question of whether designation is useful and appropriate. In the context of the ACT, a final decision might be a balance of principle and pragmatism.

Possible criteria to guide such consideration may include:

- Is the role one that might be performed by the parliament?
- Do existing arrangements impair the independent operation the statutory office?
- Can the independent nature of the role be enhanced by clearer definition in the legislation creating the statutory role?
- Are any concerns with independence sufficient to justify further expenditure of public money on administrative functions to support separate operation from portfolio agencies?
- Are there other options to address any risks?
- Is what is gained as designation as officer of the parliament greater than what is lost?

RECOMMENDATION 3

The Committee recommends that the Auditor-General become an Officer of the Parliament.

Government Response

Agreed. The Government agreed to this in its response to the Standing Committee on Public Accounts Inquiry into the *Auditor-General Act 1996*.

RECOMMENDATION 4

The Committee recommends that the position of Ombudsman be made an Officer of the Parliament, but that this not take effect until the ACT establishes its own Ombudsman or similar changes are made to the Commonwealth Ombudsman.

Government Response

Agreed in part. The Government agrees that any consideration of the Ombudsman as an officer of the parliament should not take place until the ACT establishes its own Ombudsman.

The Government is concerned about the proposal to designate the Ombudsman as an officer of the parliament. As argued in its submission to this inquiry, the Government considers the Ombudsman role is primarily an element of executive government oversight rather than an extension of the parliament's scrutiny role.

The Ombudsman supports a complaint based function about government services and administration, with a community as well as a within government education role. Notwithstanding formal investigation powers, this role is intended to work collaboratively within Government to resolve problems and complaints and more broadly maintain standards of public administration. Public reporting provides a robust accountability mechanism for Government agency responsiveness.

Given the nature of the role, it does require independence and it does need to report transparently to maintain public accountability. These elements are supported by its current role. However, it also maintains confidentiality of complaints, and resolves issues through investigation as well as mediation and negotiation. These critical elements might be lost if the relationship with the parliament became the predominant feature.

RECOMMENDATION 5

The Committee recommends that, in the event that Officers of the Parliament are established, the Assembly should, from time to time, review the appropriateness of each Officer of Parliament's status as an Officer of the Parliament and whether new offices of Parliament should be established.

Government Response

Agreed.

RECOMMENDATION 6

The Committee recommends that a template be developed for use in the legislation that establishes Officers of the Parliament (for example, the Auditor-General Act) so that for each Office the Act prescribes:

- *The establishment of the Offices;*
- *The functions of the Office;*
- *The appointment process;*
- *The length of the appointment;*
- *Suspension and termination of appointment;*
- *How remuneration and conditions of employment are determined;*
- *Staffing arrangements;*
- *Budget arrangements*
- *Reporting arrangements; and*
- *If the Office is subject to direction, and in what circumstances.*

Government Response

Agreed, although any statutory template must reflect the constitutional framework of the ACT. As the Government has pointed out a number of times, examples from different jurisdictions with different constitutional arrangements are of interest but of limited direct relevance.

RECOMMENDATION 7

The Committee recommends that should more than one Officer of the Parliament be created, the Standing Committee on Administration and Procedure be the Committee to oversight and administer Officers of the Parliament in relation to:

- *Funding and budget;*
- *Reporting requirements;*
- *Recruitment.*

Government Response

Agreed in principle, subject to the proviso that any oversight and administration role must reflect the constitutional context of the ACT. Further, any duplication or conflict with the Public Accounts Committee's role in relation to the Auditor-General would need to be resolved.

The Government's view is that an Officer of the Parliament framework should not change existing budgetary and appointment arrangements and should apply the existing process under the Auditor-General Act 1996 to ensure appropriate consultation arrangements. This view is informed by legal advice that sets out the constitutional constraints of the Legislative Assembly. This advice was provided to the Public Accounts Committee Inquiry into the *Auditor-General Act 1996* and attached to the Government's response to that Inquiry.

RECOMMENDATION 8

The Committee recommends that where there is more than one Officer of Parliament appointed, after consultation with the Officer of the Parliament, the Standing Committee on Administration and Procedure advise the Treasurer of the appropriation the Committee considers should be made for the Officer of the Parliament for the financial year, and recommend to the Treasurer a draft budget for the Officer of the Parliament for the financial year.

Government Response

Agreed – this reflects an existing provision in relation to the Public Accounts Committee in the *Auditor-General Act 1996*. Any new process should align with the Public Accounts Committee process.

RECOMMENDATION 9

The Committee recommends that the budgets of Officers of the Parliament be included in a separate Appropriation Bill.

Government Response

Not agreed. It is not clear what a separate Appropriation Bill would achieve in terms of transparency for Officers of the Parliament. Existing budget processes for the Auditor-General, with a separate line in the Appropriation Bill and separate listing in the Budget Papers, is clear and transparent.

RECOMMENDATION 10

That Committee recommends that any requirement for the Executive Government to respond to the report of an Officer of the Parliament be legislated in the enabling legislation.

Government Response

Not agreed. As the report indicates, reporting arrangements for existing statutory office holders are already robust in the ACT without the need to embed them in legislation. There is a benefit in parliaments determining this without requiring legislative change.

RECOMMENDATION 11

The Committee recommends that where more than one Officer of the Parliament is appointed, Officers of the Parliament be given full autonomy with the development of their work plan, but that they be required to submit the plan to the Standing Committee on Administration and Procedure.

Government Response

Agreed in relation to the Auditor-General, although noting that this recommendation raises a potential conflict with the role of the Public Accounts Committee and the Auditor-General. The Government's response to the Public Accounts Committee Inquiry into the *Auditor-General Act 1996* agreed with a similar recommendation, but also commented that there should be a similar requirement to consult government agencies. This recommendation was also agreed in the context that any statutory change should not blur the independence of the Auditor-General or impact on provisions stating that the Auditor-General is not subject to direction.

It is not clear how this work plan consultation requirement would be relevant to complaint based statutory roles.

The Electoral Commissioner must be free from influence from both the Executive and the Legislative Assembly. A statutory requirement to produce draft workplans might not be appropriate in the context of that role.

RECOMMENDATION 12

The Committee recommends that merit based selection be legislated for all Officers of the Parliament.

Government Response

Agreed.

RECOMMENDATION 13

The Committee recommends that whenever reasonably practicable an executive search firm be employed to manage the recruitment of new Officers of the Parliament.

Government Response

Not agreed. This is a decision that must be taken on a case by case basis, rather than framed as a default requirement. In some cases it may be considered unnecessary, while reasonably practicable. The Government notes the reference in the report to the practice of a New Zealand Parliamentary Committee engaging a recruitment consultant to manage the recruitment program on its behalf. This may not sensibly translate to a smaller jurisdiction with different arrangements flowing from different constitutional contexts and different budgets.

RECOMMENDATION 14

The Committee recommends that where reappointment to an Office of the Parliament is an option, reappointment not take place without a merit based selection process.

Government Response

Agreed.

RECOMMENDATION 15

The Committee recommends that tenure for an Officer of the Parliament be determined by legislation on a case by case basis, with an appropriate term length to ensure independence.

Government Response

Agreed.

RECOMMENDATION 16

The Committee recommends that where more than one Officer of the Parliament is appointed, Officers of the Parliament be appointed by the Executive, but that the Standing Committee on Administration and Procedure have a veto power (similar to that now exercised by the Standing Committee on Public Accounts in relation to the appointment of the Auditor-General).

Government Response

Agreed.

RECOMMENDATION 17

The Committee recommends that the ACT Remuneration Tribunal determine the remuneration for an Officer of the Parliament and that the Remuneration Tribunal Act 1995 be amended to insert Officers of the Parliament as a new Part to Schedule 1.

Government Response

Not agreed. The Remuneration Tribunal, which itself operates independently, considers remuneration on the basis of the role and function of each statutory office. There is no single category of Officer of the Parliament.

RECOMMENDATION 18

The Committee recommends that where more than one Officer of Parliament is appointed, staffing arrangements for Officers of the Parliament reflect the current arrangements for the Auditor-General, namely staff are employed under the Public Sector Management Act 1994 and the Officer of the Parliament has all the powers of the Head of the Service and Directors-General in relation to the staff.

Government Response

Agreed, although this approach has risks around the additional costs to maintain separate staffing arrangements.

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TABLING STATEMENT

**Presented by
Ms Katy Gallagher MLA
Chief Minister**

The Standing Committee on Administration and Procedure tabled its Report 4: Officers of the Parliament on 29 March 2012. The Government welcomes the Committee's Report.

The Report highlights the important role of statutory office holders in the Territory and discusses the importance of safeguarding independence of statutory office holders.

The Government is pleased to support a number of recommendations from the Committee's Report, including Recommendation 3, that the ACT Auditor-General become an Officer of the Assembly.

The Government strongly supports the designation of the ACT Auditor-General as an Officer of the Assembly. To give effect to this, in May this year I introduced the Auditor-General Amendment Bill 2012.

The Report states that an Officer of the Parliament should be created only rarely. I strongly support this view.

The Government has not agreed with all recommendations from the Inquiry. More broadly the Government considers that well-framed legislation is the best way to define and safeguard the independence of statutory officers.

In relation to further work on this issue, any framework or criteria used to identify Officers of the Assembly must be 'fit-for-purpose'. Criteria must take into account practical considerations of the ACT's scale and context. They also need to take into account the 'separation of powers' doctrine, as well as constitutional context of Assembly, and the Territory's governance arrangements.

I now table the Government's Response to the Standing Committee on Administration and Procedure Report 4: Officers of the Parliament.

I would like to thank the Committee for its Report.

