STANDING COMMITTEE ON PUBLIC ACCOUNTS

Report on Annual and Financial Reports 2010-11

MAY 2012

Report 23

Committee membership

Ms Caroline Le Couteur MLA	Chair
Mr John Hargreaves MLA	Deputy Chair from 5 August 2011
	Member from 20 November 2009 to 5 August 2011
Mr Brendan Smyth MLA	Member from 5 August 2011
	Deputy Chair to 5 August 2011
Ms Joy Burch MLA	Member to 19 November 2009

Secretariat

Secretary:	Dr Andréa Cullen
Research assistance:	Dr Michael Sloane
Administration:	Ms Lydia Chung

Contact information

Telephone:	02 6205 0142
Facsimile:	02 6205 0432
Email:	committees@parliament.act.gov.au
Post:	GPO Box 1020, CANBERRA ACT 2601
Website:	www.parliament.act.gov.au

Resolution of appointment

The Legislative Assembly for the ACT appointed the Standing Committee on Public Accounts on 9 December 2008 to:

(i) examine:

(A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and

(B) all reports of the Auditor-General which have been presented to the Assembly;

(ii) report to the Assembly any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;

(iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and

(iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue.[1]

Terms of reference

Inquire into the 2010–11 annual and financial reports of government directorates and agencies as listed at **Appendix A** according to the schedule determined by the ACT Legislative Assembly.[2]

[1] Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 2, 9 December 2008, pp. 12–13.

[2] Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 120, 22 September 2011, pp. 1532–1536.

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RECOMMENDATION 1

2.40 The Committee recommends that the ACT Government ensure that all directorates and agencies comply with the Treasury Directorate's whole-of-government reporting timetable to ensure that the Territory's financial statements are completed and audited within the timeframe required by the Financial Management Act 1996.

RECOMMENDATION 2

2.46 The Committee recommends that, in future, the implementation of major alterations to the responsibilities of directorates and agencies should be aligned with the end of a financial year reporting period in order to minimise the complexity of subsequent reporting arrangements.

RECOMMENDATION 3

2.55 The Committee reminds all ACT Government directorates and agencies that they should provide sufficient information in their statements of performance to explain their achievements. In particular, directorates and agencies should ensure that:

a) each performance measure is clearly defined

b) sufficient explanatory information is included to enable external users to understand performance

c) significant judgements or estimates applied in measuring reported results are adequately disclosed

d) systems used to record and report performance results provide reasonable assurance that results are reliable, and

e) where possible, and appropriate, comparative data over previous periods or with other jurisdictions be supplied.

RECOMMENDATION 4

3.12 The Committee recommends that the ACT Government give consideration to establishing a central team within the ACT Public Service (ACTPS) to develop and provide expertise in dealing with bullying matters.

RECOMMENDATION 5

4.79 The Committee recommends that the ACT Government should examine the feasibility of establishing a centralised government-run asbestos register.

RECOMMENDATION 6

4.81 The Committee recommends that the ACT Government examine the feasibility of establishing a public register of all buildings, structures and sites in the Australian Capital Territory which contain asbestos.

RECOMMENDATION 7

4.128 The Committee recommends that given the issues raised by the draft environmental assessment, in particular the land offset ratio, the ACT Government may wish to reassess the location of the low-budget tourist accommodation.

RECOMMENDATION 8

4.154 The Committee recommends that the ACT Government table in the ACT Legislative Assembly, by the first sitting day in August 2012, the Government's ICT Sustainability Plan.

RECOMMENDATION 9

4.174 The Committee recommends that the ACT Government should ensure that a formal arrangement is in place to guarantee the involvement of ACTEW Corporation Limited in discussions about the development of the ACT's non-potable water strategy.

RECOMMENDATION 10

4.186 The Committee recommends that, as further developments arise with regard to the viability of ACTTAB Limited, the Minister should make a statement informing the ACT Legislative Assembly.

1 INTRODUCTION

1.1 On 22 September 2011, the annual and financial reports of all government agencies were referred to relevant standing committees of the Legislative Assembly for the ACT.[3]

1.2 The annual and financial reports for the 2010–11 financial year listed below were referred to the Standing Committee on Public Accounts (the Committee):

- ACT Auditor-General's Office
- ACT Gambling and Racing Commission
- ACT Government Procurement Board
- ACT Insurance Authority
- ACT Legislative Assembly Secretariat
- ACT Long Service Leave Authority
- ACTEW Corporation Limited
- ACTTAB Limited
- Chief Minister and Cabinet Directorate
- Commissioner for Public Administration
- Economic Development Directorate
- Exhibition Park Corporation
- Independent Competition and Regulatory Commission
- Rhodium Asset Solutions
- Totalcare Industries
- Treasury Directorate

[3] Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 120, 22 September 2011, pp. 1532–1536.

Conduct of inquiry

1.3 The Committee held public hearings on 3, 21, 24 and 29 November and 16 December 2011 and heard from Ministers, accompanying directorate and agency officers, and members of governing boards. Witnesses who appeared before the Committee are listed at **Appendix B**.

1.4 The Committee met on: (i) 24 May 2012 to discuss the Chair's draft report; and (ii) 31 May 2012 to discuss the Committee's draft report, which was adopted on 31 May 2012.

Questions taken on notice and supplementary questions

1.5 At the public hearings 59 questions were taken on notice in relation to the referred annual reports. The Committee also forwarded 82 supplementary questions following on from the public hearings. The following two tables summarise these questions by portfolio.[4]

Table 1.1—Summary of questions taken on notice by portfolio

Portfolio	Number of questions taken on notice
▪ ACT Auditor-General's Office	2
▪ ACT Legislative Assembly (Secretariat)	1
▪ Chief Minister's portfolio	18
▪ Economic Development portfolio	2
▪ Industrial Relations portfolio	6
▪ Gaming and Racing portfolio	3
▪ Tourism, Sport and Recreation portfolio	10
▪ Treasury portfolio	17
Total	59

[4] The appointment of Dr Bourke to the Ministry on 23 November 2011 and the subsequent rearrangement of portfolio responsibilities resulted in a situation where some questions were taken on notice by one minister and answered by another. Table 1.1 reflects QToN according to the current portfolio responsibilities.

Table 1.2— Summary of supplementary questions by portfolio

Portfolio	Number of supplementary questions
▪ ACT Auditor-General's Office	0
▪ ACT Legislative Assembly (Secretariat)	1
▪ Chief Minister's portfolio	12
▪ Economic Development portfolio	22
▪ Industrial Relations portfolio	11
▪ Gaming and Racing portfolio	11
▪ Tourism, Sport and Recreation portfolio	1
▪ Treasury portfolio	24
Total	82

1.6 The Committee thanks directorates and agencies for providing responses to questions taken on notice and supplementary questions following on from the public hearings. This information assisted the Committee in its understanding of the many issues being considered.

Acknowledgements

1.7 The Committee thanks relevant ACT Government Ministers and accompanying directorate and agency officers, and members of governing boards, who assisted the Committee during the course of its inquiry by appearing before it to give evidence and/or providing additional information.

1.8 The Committee sought clarification on a number of issues at public hearings, some of which are expanded upon in the following chapters. The full transcripts of public hearings are available on the Legislative Assembly website at: http://www.hansard.act.gov.au/hansard/2009/comms/default.htm.

2 PURPOSE AND INTENT OF ANNUAL REPORTS

2.1 Accountability of the Executive to the Legislative Assembly and to the public is a key principle of responsible government. For this to be achieved executive agencies must be fully committed both to accountability and to disclosure of information in a straightforward way that is meaningful and easily understandable without financial or accounting training.

2.2 The provision of meaningful operational and financial information by government to parliament and the public is a fundamental component of the accountability process.[5]

2.3 Annual reports are the principal and most authoritative way in which directors-general and chairpersons account to the Legislative Assembly and other stakeholders, including the public, for the ways in which they have discharged their statutory and other responsibilities and utilised public funds over the preceding 12 months.[6]

2.4 As key accountability documents, annual reports are:

- the principal way in which agencies account for their performance through Ministers to the Legislative Assembly and the wider community;
- tabled in the Assembly and form a key part of the historical record of government and public administration decisions, actions and outcomes;
- a source of information and reference about the performance of agencies and service providers for stakeholders, educational and research institutions, the media and the public, and
- key reference documents and documents for internal management.[7]

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[5] Public Accounts Committee, Legislative Assembly of Queensland, December 2001, Report No. 59, *Annual Reporting in the Queensland Public Sector*, p. 1.

[6] ACT Auditor-General's Report No. 1/2003: *Effectiveness of Annual Reporting*, p. 1.

[7] *Chief Minister's Annual Report Directions 2010-11*, p. 4.

2.5 Annual reports co-exist with other annual whole-of-government reporting processes to present an aggregated view of the performance of the ACT public sector as a whole.[8]

Reporting framework

2.6 Annual and financial reports are prepared by all reporting entities in accordance with the:

- *Chief Minister's Annual Report Directions 2010-11*
- *Annual Reports (Government Agencies) Act 2004*
- *Financial Management Act 1996*
- *Territory-owned Corporations Act 1990*, and
- where appropriate, reporting obligations specific to territory-owned corporations or public authorities as required by enabling or other applicable legislation.

2.7 The former Chief Minister informed the Legislative Assembly in 2006:

> The government seeks to ensure that the directions and the acts are continually updated to reflect best practice and full accountability in accordance with government policy.[9]

Annual Reports (Government Agencies) Act 2004

2.8 The *Annual Reports (Government Agencies) Act 2004* (the AR Act) sets the framework for annual reporting across the ACT public sector. This framework identifies which public bodies provide annual reports and outlines the time frame for provision of reports to the Legislative Assembly.[10]

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[8] For information on the role of annual reports relative to other accountability mechanisms, see Chief Minister and Cabinet Directorate, *Strengthening performance and accountability: a framework for the ACT Government*, February 2011, available at: http://www.cmd.act.gov.au/__data/assets/word_doc/0003/184602/Strengthening_Prefromance_and_Accountability_-_A_Framework_for_the_ACT_Government.doc.

[9] Mr Stanhope, 'Committee reports—government response, papers and statement by minister', Legislative Assembly for the ACT, *Debates*, 21 September 2006, p. 3055.

[10] *Annual Reports (Government Agencies) Act 2004*, ss13-15.

Chief Minister's Annual Report Directions 2010-11

2.9 The *Chief Minister's Annual Report Directions 2010-11* (the Directions), which are issued under the AR Act:

> ...apply consistent public accountability and statutory reporting requirements across the public sector. The Directions apply to all administrative units and those government agencies identified as public authorities.[11]

2.10 The Committee plays a consultative role in the process of issuing annual report directions. Under the AR Act, the responsible Minister must consult the Committee before issuing an annual report direction. The Committee may make a recommendation to the Minister about any proposed direction.[12]

2.11 The ACT Auditor-General's Office audits the annual reports of all reporting entities for compliance with the Directions.[13]

2.12 In 2008, the Government streamlined annual reporting requirements by adopting Directions applicable for a three-year period.[14] Subsequently, in accordance with the AR Act, the Committee was consulted in 2009 and 2010 with regard to proposed technical amendments to be applied to the 2008–09 and 2009–10 reporting periods respectively.

2.13 The latest iteration of the Directions—*Chief Minister's Annual Report Directions 2010–11*—is current for only one reporting period. When presenting these Directions to the Legislative Assembly, the Chief Minister provided the following explanation for this shortened period of application:

> The government remains committed to developing and issuing directions on a three-yearly timetable. However, given the new administrative arrangements and directorate structure introduced on 17 May 2011, I have determined that the interim directions should continue for a single financial year, 2010-11.[15]

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[11] *Chief Minister's Annual Report Directions 2010–11*, p. 4.

[12] *Annual Reports (Government Agencies) Act 2004*, ss. 8-9.

[13] *Chief Minister's Annual Report Directions 2010–11*, p. 10.

[14] Chief Minister's Department, *Annual Report 2007–08*, p. 29; *Chief Minister's Annual Report Directions 2007–10.*

[15] Ms Gallagher, '2010-2011 annual report directions, paper and statement by minister', Legislative Assembly for the ACT, *Debates*, 23 June 2011, p. 2419.

2.14 The Chief Minister also informed the Assembly that:

> The 2010-11 directions largely replicate the 2007-2010 annual report directions. However, some minor and technical amendments have been made, including changes that both reflect the new administrative arrangements and provide proper accountability for those agency-based operations that were in place up to 17 May. Of some particular note are the amendments which have been made to sections A.10, triple bottom line report, and C.21, ecologically sustainable development, following recommendations from the relevant policy areas in directorates to improve the usefulness of the information reported.[16]

2.15 Pursuant to section 8 of the AR Act, the Committee considered the proposed changes to the Directions and advised the Chief Minister of its agreement to them on 15 June 2011.[17] In providing its comment, the Committee also conveyed feedback it had invited from the other Assembly Standing Committees.

Financial Management Act 1996

2.16 The *Financial Management Act 1996* (FM Act) provides for the financial management of the Government and the scrutiny of that management by the Legislative Assembly, and specifies financial reporting requirements for the Government.[18]

2.17 Directorates and public authorities with financial reporting obligations under the FM Act are required to include audited financial and performance statements in their annual reports.[19]

Territory-owned Corporations Act 1990

2.18 The *Territory-owned Corporations Act 1990* (ToC Act) provides for the establishment of government enterprises as territory-owned corporations. The financial reporting obligations required of territory-owned corporations under the ToC Act are similar to those specified under the FM Act.[20]

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[16] Ms Gallagher, '2010-2011 annual report directions, paper and statement by minister', Legislative Assembly for the ACT, *Debates*, 23 June 2011, p. 2420.

[17] ibid.

[18] *Financial Management Act 1996*

[19] *Financial Management Act 1996; Chief Minister's Annual Report Directions 2007–10*, p. 4.

[20] *Territory-owned Corporations Act 1990*; *Chief Minister's Annual Report Directions 2007–10*, p. 4.

2.19 As both Totalcare Industries Limited and Rhodium Asset Solutions Limited have ceased operations and are in the process of being wound up, there are currently two territory-owned corporations specified in Schedule 1 of the ToC Act—ACTEW Corporation Limited and ACTTAB Limited. Discussion with regard to the winding up of Totalcare Industries and Rhodium Asset Solutions can be found at paragraphs 4.195 and 4.189 respectively.

Compliance with Annual Report Directions

2.20 The Directions state:

> Compliance with the Annual Report Directions is compulsory for all reporting entities. However, not all requirements are relevant or applicable to all entities given the nature of their operations.[21]

2.21 The Committee found that, overall, annual reports generally complied with the Directions.

Ecologically sustainable development

2.22 The Directions require agencies to report on ecologically sustainable development (ESD). The statutory basis for this is drawn from section 158A of the *Environment Protection Act 1997* and is further supported by requirements of the ACT's climate change strategy, *Weathering the Change*.[22]

2.23 To assist agencies to meet this statutory reporting requirement, the Directions provide guidance on how ESD principles can be readily translated to an agency context. This includes reporting on:

- how Agency actions and administration of legislation accorded with the principles of ESD
- the contribution of agency outputs to ESD
- the effects of the agency outputs to ESD
- identification of any measures taken to minimise the impacts of these effects, and
- description of mechanisms used for reviewing and increasing the effectiveness of these measures.[23]

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[21] *Chief Minister's Annual Report Directions 2010–11*, p. 6.

[22] *Chief Minister's Annual Report Directions 2010–11*, p. 44; *Environment Protection Act 1997*, s.158A.

[23] *Chief Minister's Annual Report Directions 2010–11*, p. 45.

2.24 The Directions require agencies, as part of their direct operations, to report on resource use, including energy use, transport, water consumption, greenhouse gas emissions, resource efficiency and waste.[24]

2.25 On the topic of ESD reporting requirements under the Directions, Auditor-General's Report No. 1 of 2010: *Performance reporting* concluded that:

> Reporting on ecologically sustainable development is complex, and departments reviewed did not fully comply with the requirement. Audit notes that the data provided by departments is providing useful information on their resource usage.[25]

2.26 To improve this situation, the Auditor-General recommended, in part:

> a. The Chief Minister's Department should, in consultation with other agencies, seek to establish a simple and cost-effective set of performance measures and targets for ecologically sustainable development (ESD).
> b. The Chief Minister's Department should improve consistency in the guidance on completing the ESD section of the Annual Report.[26]

2.27 In response, the Government agreed in part, advising that the:

> ...Chief Minister's Department will, in conjunction with the Department of Environment, Climate Change, Energy and Water, undertake a review of existing ESD indicators and related requirements in the Annual reports Directions.[27]

2.28 The Committee notes that sections A.10, triple bottom line report, and C.21, ecologically sustainable development, of the 2010–11 Directions have been amended in order to align the common reporting elements in these two sections.[28]

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[24] *Chief Minister's Annual Report Directions 2010–11*, pp. 46-47.

[25] ACT Auditor-General's Report No. 1 of 2010: *Performance Reporting*, p. 45.

[26] Recommendation 8—ibid., p. 46.

[27] ACT Government—Submission to the PAC in response to Auditor-General's Report No. 1 of 2010: *Performance Reporting*, July 2010.

[28] Ms Gallagher, '2010-2011 annual report directions, paper and statement by Minister', Legislative Assembly for the ACT, *Debates*, 23 June 2011, p. 2420; *Chief Minister's Annual Report Directions 2010–11*, pp. 19–21 and pp. 44–49.

Timeliness of access—electronic versions of annual reports

2.29 The Directions require agencies to place their annual reports on the relevant internet site on the same day that their annual reports are tabled in the Legislative Assembly. The Auditor-General's Office monitors compliance with this timing requirement.[29]

2.30 The Committee notes the Auditor-General's finding that in 2010–11:

> …all agencies placed their annual reports on the relevant website by the date required by the Chief Minister's Annual Report Directions.[30]

2.31 The Committee also notes that agency compliance with this requirement in 2010–11 matches the rate of compliance in 2009–10. This improves upon the compliance rates of preceding years, which were: 89 per cent in 2008-09, 77 per cent in 2007–08 and 76 per cent in 2006–07.[31]

Inclusion of correct versions of audited documents

2.32 Reporting agencies are required to ensure consistency between the versions of their financial statements and statement of performance made available in their annual report with those on which the audit report and report of factual findings were issued and that the correct versions of these documents are included in the printed and electronic versions of their annual reports.[32]

2.33 The Committee notes the Auditor-General's finding that in 2010–11:

> All agencies included the correct version of their financial statements and statement of performance in the printed and electronic (website) version of their annual report.[33]

2.34 This result matches the performance of 2009–10 and continues the trend of improvement in the reliability of reporting. The use of incorrect versions of

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[29] *Chief Minister's Annual Report Directions 2010–11*, p. 10.

[30] ACT Auditor-General's Report No. 5/2011: *2010-11 Financial Audits*, p. 29.

[31] ACT Auditor-General's Report No. 10/2010: *2009–10 Financial Audits*, p. 26; ACT Auditor-General's Report No. 8/2009: *2008–09 Financial Audits*, p. 24; ACT Auditor-General's Report No. 8/2008: *2007–08 Financial Audits*, p. 27; ACT Auditor-General's Report No. 8/2007: *2006–07 Financial Audits*, p. 21; ACT Auditor-General's Report No. 8/2006: *2005–06 Financial Audits*, p. 17.

[32] ACT Auditor-General's Report No. 5/2011: *2010-11 Financial Audits*, p. 29.

[33] ibid.

financial statements and/or statements of performance in website and printed versions of annual reports fell from 69 per cent in 2005–06 to 36 per cent in 2006–07. There were two instances in 2007-08, one instance in 2008–09 and nil instances in 2009–10 and 2010–11.[34]

2.35 The Committee notes that this enhancement in the reliability of reporting appears to be indicative of a strengthening of agencies' processes for ensuring the correct versions of financial statements and statements of performance are included in both the electronic and printed versions of their annual reports.

Timeliness of financial reporting processes

2.36 The Treasury Directorate issues a whole-of-government reporting timetable each year. The Auditor-General states that agencies must comply with this timetable to ensure that:

- they comply with applicable legislative annual reporting deadlines; and
- the Territory's financial statements are completed and audited within the timeframe required by the *Financial Management Act 1996*.[35]

2.37 The Committee notes with concern the Auditor-General's finding that only 79 per cent of agencies complied with the Treasury Directorate's whole-of-government reporting timetable in the 2010–11 reporting period. This is a decline from the 94 per cent compliance rate in 2009–10 and furthermore, a small number of agencies provided financial statements that were late and of poor quality.[36]

2.38 In its *Report on Annual and Financial Reports 2009–10*, the Committee noted that agencies had demonstrated improvement in this area over the preceding three reporting periods but also emphasised the importance of continued vigilance by all agencies to ensure that a high-level of compliance is maintained.[37]

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[34] ACT Auditor-General's Report No. 5/2011: *2010-11 Financial Audits*, p. 29; ACT Auditor-General's Report No. 10/2010: *2009–10 Financial Audits*, p. 26; ACT Auditor-General's Report No. 8/2009: *2008–09 Financial Audits*, p. 23; ACT Auditor-General's Report No. 8/2008: *2007–08 Financial Audits*, p. 27; ACT Auditor-General's Report No. 8/2007: *2006–07 Financial Audits*, p. 22.

[35] ACT Auditor-General's Report No. 5/2011: *2010-11 Financial Audits*, p. 26.

[36] ibid.

[37] Standing Committee on Public Accounts, *Report on Annual and Financial Reports 2009-10*, April 2011, p. 11.

2.39 The Committee reiterates the importance of compliance with the Treasury Directorate's timetable and emphasises the following comment by the Auditor-General:

> Agencies need to improve their compliance with Treasury Directorate's whole-of-government timetable to provide assurance that the Territory's financial statements are completed and audited within the earlier legislative reporting timeframes which will apply in 2011-12 which is an election year.[38]

RECOMMENDATION 1

2.40 **The Committee recommends that the ACT Government ensure that all directorates and agencies comply with the Treasury Directorate's whole-of-government reporting timetable to ensure that the Territory's financial statements are completed and audited within the timeframe required by the Financial Management Act 1996.**

Quality of statements of performance

2.41 Pursuant to the FM Act, directorates and authorities are required to prepare statements of performance that set out their results against planned performance targets.

2.42 The Committee notes with concern the Auditor-General's finding that the quality of statements of performance declined significantly in 2010–11, including a large increase in the percentage of statements deemed to be unsatisfactory from 7 per cent in 2009–10 to 43 per cent in 2010–11.[39]

2.43 The Auditor-General explained:

> This significant decline in quality was caused by several directorates not effectively addressing the effects of the major restructuring of administrative arrangements on 17 May 2011 when preparing their statements of performance. In particular, these directorates did not ensure their statements of performance correctly reflected the instruments prepared under section 19D of the *Financial Management Act 1996* to amend targets for accountability indicators when functions transferred between the relevant directorates.[40]

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[38] ACT Auditor-General's Report No. 5/2011: *2010-11 Financial Audits*, p. 27.

[39] ibid.

[40] ibid., pp. 27-28.

2.44 In its *Report on Annual and Financial Reports 2009-10* the Committee noted that agencies had demonstrated improvements in the quality of their statements of performance over the preceding three reporting periods but also emphasised the importance of continued vigilance by all agencies to ensure that this quality is sustained.[41]

2.45 While the Committee recognises the administrative complexities generated by the introduction of the directorate structure, it also draws the attention of agencies to the following comment of the Auditor-General:

> Statements of performance become less useful when the period covered by the targets for accountability indicators are not consistent with the period covered by actual results (i.e. the period that the directorates have responsibility for the relevant functions).[42]

RECOMMENDATION 2

2.46 **The Committee recommends that, in future, the implementation of major alterations to the responsibilities of directorates and agencies should be aligned with the end of a financial year reporting period in order to minimise the complexity of subsequent reporting arrangements.**

Usefulness of performance measures

2.47 The FM Act requires that each agency's statement of performance should permit readers to compare the performance of the agency in delivering its outputs to its planned performance by reference to the performance indicator targets included in that agency's budget or statement of intent.

2.48 The effectiveness of this reporting framework—that is, the usefulness of the statement of performance—is to a large extent dependent upon the quality of the performance indicators.[43] Further, the Auditor-General has commented:

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[41] Standing Committee on Public Accounts, *Report on Annual and Financial Reports 2009-10,* April 2011, p. 12.

[42] ACT Auditor-General's Report No. 5/2011: *2010-11 Financial Audits*, p. 28.

[43] ACT Auditor-General's Report No. 5/2011: *2010-11 Financial Audits*, p. 28; ACT Auditor-General's Report No. 8/2008: *2007–08 Financial Audits*, p. 25.

> Where planned levels of performance are not clearly defined and adequately explained in agencies' budget papers, it is less likely that agencies can be held accountable for their performance.[44]

2.49 As performance measures are determined through the budget process, the Auditor-General's Office does not provide an opinion on the relevance or appropriateness of the targets. However, for the 2010–11 reporting period, the office found:

> …as in previous years, there were several instances where accountability indicators provided limited useful information about the planned and actual performance of agencies. For example, there were many cases where indicators only referred to the conduct of an activity, with no explanation of what the activity was or how well it was being performed. In other cases, there was no logical or obvious connection between the indicator and the target.[45]

2.50 The Committee is aware that agencies are required to develop and report on two types of performance indicators or measures—strategic and accountability. With regard to reporting requirements:

> Government agencies report on performance indicators and their targets. Accountability performance indicators are included in the annual Statements of Performance. These are provided with the financial statements for both departments and statutory authorities and are subject to review by the Auditor-General's Office, as part of the annual audits of financial statements. Strategic performance indicators, if defined, are reported in agencies' Annual Reports.[46]

2.51 The Committee notes in relation to the history of performance reporting:

- from November 2005, strategic performance measures were no longer subject to audit scrutiny, to some extent because these measures are concerned with long-term goals and outcomes that may not always be auditable

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[44] ACT Auditor-General's Report No. 5/2011: *2010–11 Financial Audits*, p. 28.

[45] ibid.

[46] ACT Auditor-General's Report No. 1/2010: *Performance reporting*, p. 12.

- in 2007–08, strategic performance measures were removed from the statement of performance; however, reporting on these measures remains a requirement within annual reports, and
- since 2004–05, the number of accountability measures has declined substantially. However, some departments still have large numbers of these measures.[47]

2.52 The development of relevant and useful performance measures, and subsequent reporting on the achievement of these measures by agencies in their annual statements of performance and annual reports, are critical elements of an effective performance measurement and reporting system. Such a system ensures that agencies are accountable for their performance to the Legislative Assembly and the community. Further, it provides opportunities for agencies to improve performance.

2.53 The Committee notes the Auditor-General's finding:

> The relevance and usefulness of agencies' performance measures vary significantly between agencies. In some agencies, many performance measures were still unclear, unhelpful, or were not well aligned to strategic or operational objectives.[48]

2.54 The Committee has inquired into Auditor-General's Report No. 1 of 2010: *Performance reporting* and has reported on its inquiry. The Committee's report considers matters relating to performance measures in more detail and is available at the Inquiry homepage.[49]

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[47] ibid., p. 11.

[48] ibid., p. 4.

[49] Standing Committee on Public Accounts, *Review of Auditor-General's Report No. 1 of 2010: Performance reporting*, August 2011—
http://www.parliament.act.gov.au/committees/index1.asp?committee=116&inquiry=992.

RECOMMENDATION 3

2.55 **The Committee reminds all ACT Government directorates and agencies that they should provide sufficient information in their statements of performance to explain their achievements. In particular, directorates and agencies should ensure that:**

a) **each performance measure is clearly defined**

b) **sufficient explanatory information is included to enable external users to understand performance**

c) **significant judgements or estimates applied in measuring reported results are adequately disclosed**

d) **systems used to record and report performance results provide reasonable assurance that results are reliable, and**

e) **where possible, and appropriate, comparative data over previous periods or with other jurisdictions be supplied.**

3 WHOLE-OF-GOVERNMENT ISSUES ARISING FROM DEPARTMENT AND AGENCY REPORTS

3.1 During discussions over the course of its public hearing program, the Committee sought clarification on a number of whole-of-government issues arising from specific annual reports.

One ACT Public Service reforms

3.2 The Committee discussed at length the process of implementing the reforms recommended by the ACT Public Sector Review final report—*Governing the city state: one ACT government—one ACT Public Service*.[50]

3.3 The Committee was advised that the establishment of a strategic board to promote collaboration and coordinated policy development has been, amongst others, a central focus of senior executives across the ACT Public Service (the ACTPS), and that this arrangement was showing great promise.[51] In addition, to structural and administrative changes, the Committee was advised that a change in the culture and values of the Service was also necessary and that work was underway to develop a new code of conduct. The Code will build on the Respect, Equity and Diversity (RED) Framework that was launched in December 2010.[52]

3.4 The Committee sought to establish precisely which values were considered to require updating and what issues this change would address. The Head of Service explained that the aim was partly to make the values of the ACTPS clearer and more explicit—at present the values are set out briefly in section 6

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50 Chief Minister and Cabinet Directorate, *Governing the city state: one ACT Government—one ACT Public Service*, February 2011.

51 Mr Andrew Cappie-Wood, *Transcript of evidence*, 24 November 2011, p. 77.

52 ibid., pp. 77-79.

of the *Public Sector Management Act*—and partly to reassess those values in the light of the current expectations of the community and the Government.[53]

3.5 The Committee sought further information as to how the cultural change would be reinforced and implemented at the middle and lower levels of the public service. The Head of Service explained that developing a very clear sense of purpose was central to achieving this change, so that lower level public servants can see a direct relationship between their work and the outcomes sought in government policies, and that each directorate would be responsible for communicating the change to its workforce.[54]

3.6 Finally, the Committee was informed that the ACT Public Sector Review headed by Dr Allan Hawke had cost $285,000 in 2010–11 and that no jobs had been lost as a result of the Review. Furthermore, it was neither possible to quantify the total cost of implementing the recommendations of the Review nor possible to set a final time frame for its implementation.[55]

Bullying in the ACT Public Service

3.7 The Committee discussed bullying in the ACTPS and the measures the Government was taking to address this important issue. The Chief Minister stated that she did not believe there was a culture of bullying in the Service and that it was not tolerated. However, as it was not possible to completely eradicate bullying, it is important to establish clear systems for dealing with it when it arises, such as the new code of conduct that is currently being developed.[56]

3.8 The Commissioner for Public Administration reported that there had been eight substantiated cases of bullying in the public service in 2010.[57] He stated that, while improvements could be made, the figures did not indicate the

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[53] ibid., p. 78.

[54] ibid., p. 82.

[55] Ms Katy Gallagher MLA and Mr Andrew Cappie-Wood, *Transcript of evidence*, 24 November 2011, pp. 83-84.

[56] Ms Katy Gallagher MLA, *Transcript of evidence*, 24 November 2011, pp. 79-81.

[57] Commissioner for Public Administration, *Annual Report 2010-11*, p. 32.

presence of an entrenched culture of bullying.[58] In response to questions about how the reforms to the public service would help reduce the incidence of bullying, the Commissioner stated:

> The structure now cannot undo what has happened. But my hope would be that we are able to capture and disseminate better in this structure both expectations of what should happen but also the lessons and the training that need to be rolled out to those people in the service responsible for managing staff.[59]

3.9 The Committee noted that the number of reports of bullying had risen from 39 in 2009 to 62 in 2010. The Commissioner for Public Administration explained that this rise coincided with the release of the RED Framework and that he believed the rise was the result of this stronger focus on identifying bullying and an improved framework for reporting complaints.[60]

3.10 The Commissioner also reported that consideration was being given to establishing a central team for dealing with the escalation of complaints. This proposal may contribute to the development of greater expertise in dealing with bullying matters, rather than having human resources personnel dealing with matters independently.[61]

3.11 The Committee also notes that it is important to keep in mind that there are circumstances where managers giving critical performance feedback, as part of established performance management processes, or occasions where unreasonable requests are not acceded to, can be misrepresented by some staff as harassment or bullying.[62] The Committee, however, believes there is merit in establishing a central team within the ACTPS to develop and provide expertise in dealing with bullying matters.

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[58] Mr Andrew Kefford, *Transcript of evidence*, 24 November 2011, p. 85.

[59] ibid., p. 86.

[60] Mr Andrew Kefford, *Transcript of evidence*, 24 November 2011, pp. 87–88; Commissioner for Public Administration, *Annual Report 2010-11*, p. 32.

[61] Mr Andrew Kefford, *Transcript of evidence*, 24 November 2011, p. 87.

[62] Australian Public Service Commission, *State of the Service Report 2007–08*.

RECOMMENDATION 4

3.12 **The Committee recommends that the ACT Government give consideration to establishing a central team within the ACT Public Service (ACTPS) to develop and provide expertise in dealing with bullying matters.**

Open government agenda

3.13 The Committee discussed the open government initiative and the measures that will ensure its goals are implemented in practice. The Chief Minister explained that the default position of the Government is now that background papers and consultancy reports that are considered by Cabinet as part of submissions should be released unless there is a strong reason not to do so. If a document is not to be released, the Director-General concerned must now advise their Minister of the reasons for such a decision.[63]

3.14 Difficulties remain in certain areas of the administration, particularly health care, where the effort to release as much information as possible might discourage workers from reporting incidents for fear that the information will be made public at a later date. Work has been done to encourage the reporting and disclosure of all healthcare incidents—bullying, adverse events and concerns around clinical performance—and the Health Directorate has implemented a risk management system, RiskMan, to deal with these problems.[64]

Complaints handling

3.15 The Committee discussed the implementation of a whole-of-government complaints handling system and was informed:

> …we have had some very constructive discussions with the Ombudsman's office, and continue to do so. We have, as has already been stated, committed to looking at standardising the common core complaints and grievance handling system. It is necessary to appreciate the differentiation in this space as well. Recognising that a number of particular directorates have specialist requirements in these

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[63] Ms Katy Gallagher MLA, *Transcript of evidence*, 24 November 2011, p. 105.

[64] ibid., pp. 105-106.

> areas, I note that Health, for instance, has specific requirements in terms of complaint handling when it comes to medical practices et cetera.[65]

3.16 The Committee notes that the effectiveness of the complaints handling arrangements in the former Department of Territory and Municipal Services was the subject of an Auditor-General's report in 2010—*Management of feedback and complaints*—which concluded in part that:

> Policies, procedures and guidelines for staff involved in handling complaints and feedback were not adequate, and there were shortcomings in ongoing monitoring, review and analysis of feedback and complaints. These, combined with the limited use and roll-out of the management information system, can impair the ability of TAMS and other ACT Government agencies to effectively use information provided through feedback and complaints to improve business practices and services delivered.[66]

3.17 The Committee subsequently inquired into the Auditor-General's report and recommended that:

> …the ACT Government develop and publish a whole-of-government policy for the management of feedback and complaints.[67]

3.18 The Government agreed to this recommendation and, when tabling its response to the Committee's report, the Chief Minister told the Legislative Assembly:

> The government has agreed that a whole-of-government policy on the management of feedback and complaints is to be developed. Indeed, the head of service tells me that one has been drafted and after a period of consultation will be finalised shortly. The policy augments existing systems with high level principles pulled from the Ombudsman's better practice guide as a way to provide a stronger foundation from which procedures can be advanced.[68]

3.19 The ACT Ombudsman's report—*Room for improvement: a proposed 10-point plan to improve ACT Government service delivery*—has also addressed the issue of complaints handling in in the ACTPS. Amongst other things, the Ombudsman recommended that the Government:

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[65] Mr Andrew Cappie-Wood, *Transcript of evidence*, 24 November 2011, p. 92.

[66] ACT Auditor-General's Office, Report No. 7/2011: *Management of feedback and complaints*, October 2010, p. 5.

[67] Standing Committee on Public Accounts, Review of Auditor-General's No. 7 of 2010: *Management of Feedback and Complaints*, August 2011, p. v.

[68] Ms Gallagher, 'Public Accounts—Standing Committee, Report 17—Government Response', Legislative Assembly for the ACT, *Debates*, 14 February 2012, p. 78.

> Introduce a consistent complaint-handling structure across the whole of government. Specifically:
>
> a. provide clear information about making and progressing complaints
> b. adopt an agreed definition of what constitutes a complaint.
> c. introduce consistent ACT Government complaint service standards
> d. ensure better processes and IT systems.[69]

3.20 As recommended by the Committee, the Government also responded to each of the Ombudsman's 10 recommendations and again agreed to implement a consistent whole-of-government complaints handling process.[70]

Co-location of the ACT Public Service

3.21 The Committee discussed the importance of the co-location of public servants to the success of the 'One ACT Public Service' reforms. The Chief Minister informed the Committee that co-location would provide benefits such as streamlining and greater efficiency of shared services; however, co-location was not necessary and many elements of the reforms had been successfully implemented in its absence. Furthermore, the co-location of 4,500 public servants would not conflict with the Government's aim of decentralising the public service workforce among Canberra's town centres.[71]

3.22 The Committee was further informed that the Government was prioritising work on establishing an office building in Gungahlin to house ACTPS employees. However, the Chief Minister was unable to confirm how many public servants would be located in Gungahlin as the precise number had not yet been finalised.[72] Subsequent to the public hearing, the Government announced in January 2012 that approximately 500 employees would be moving to Gungahlin in 2014–15. These employees would be:

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[69] ACT Ombudsman, *Room for improvement: a proposed 10-point plan to improve ACT Government service delivery*, viewed 1 May 2012, http://ombudsman.act.gov.au/docs/ten_point_plan.pdf

[70] See recommendation 2, Standing Committee on Public Accounts, Review of Auditor-General's No.7 of 2010: *Management of Feedback and Complaints*, August 2011, p. v, and ACT Government, *Government response to the Standing Committee On Public Accounts Review of Auditor-General's Report No.7 of 2010*: Management of Feedback and Complaints, 14 February 2012, p. 3.

[71] Ms Katy Gallagher MLA, *Transcript of evidence*, 24 November 2011, pp. 90-92.

[72] ibid., pp. 91-92.

…from Shared Services in the Treasury Directorate…many of them from the aged accommodation at Callam Offices in Woden.[73]

3.23 The Government's proposal to establish a major office block in order to co-locate a large number of ACTPS personnel has been a subject of concern to the Committee since 2009. The whole-of-government accommodation strategy was the subject of the following recommendation in the Auditor-General's Report No. 6 of 2009: *Government office accommodation*:

> Recommendation 3
> ACT Property Group should develop and implement an office accommodation strategy that considers short, medium, and long-term planning strategies and objectives for the whole-of-government.[74]

3.24 The Committee resolved to inquire further into the Audit report and the Government submission to that inquiry contained the following response to the Auditor-General's recommendation:

> The development of accommodation strategies are identified within the ACT Government Real Estate Policy.
> The long term strategy will be influenced by the Government's consideration of the possible whole-of-government office block.[75]

3.25 In the course of its inquiry into the Audit report, the Committee heard evidence that a final decision on the Government's whole-of-government office block was imminent. As a result, the Committee tabled an interim report on 15 February 2011.[76] The interim report contained the following three recommendations:

> RECOMMENDATION 1
> 3.30 The Committee recommends that the ACT Government make no final decision with regard to the whole-of-government office building project until the Standing Committee on Public Accounts has received a copy of the business case, and the economic and environmental analysis, together with any other relevant considerations, and had time to consider this information and report to the ACT Legislative Assembly.

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[73] Ms Katy Gallagher MLA, Media release: '500 ACT Shared Services staff to move to Gungahlin', 9 January 2012.

[74] ACT Auditor-General's Office, Report No.6/2009: *Government office accommodation*, August 2009, p. 31.

[75] ACT Government submission to Standing Committee on Public Accounts Review of Auditor-General's Report No. 6 of 2009: *Government office accommodation*, May 2010, p. 4.

[76] Legislative Assembly for the ACT, *Minutes of proceedings*, No. 90, 15 February 2011, p. 1118.

RECOMMENDATION 2
3.32 The Committee recommends that the ACT Government provide the Standing Committee on Public Accounts with an assessment of the opportunity cost of a whole-of-government office building project against other significant infrastructure projects, such as the Majura Parkway, a light rail network, a new convention centre, or a third major hospital.
RECOMMENDATION 3
3.42 The Committee recommends that the ACT Government whole-of-government office accommodation strategy should be finalised, and considered by the ACT Legislative Assembly, prior to any final decision, or awarding of any contract, with regard to the whole-of-government office building project.[77]

3.26 On 16 August 2011, the Government tabled its response to the Committee's interim report, outlining its reasons for disagreeing with each of the three recommendations listed above.[78]

3.27 The proposed government office building was also the subject of a motion passed in the Legislative Assembly on 24 August 2011, which in part called on the Government to:

(a) ensure the feasibility studies and market testing both include:
(i) examination of the adaptive reuse of existing office buildings; and
(ii) consideration of the options for an ACT Government office precinct, as opposed to just a single building model;
(b) ensure that whole of life cycle analysis of the environmental impact is considered;
(c) finalise the government office accommodation strategy; and
(d) report back to the Assembly on progress by December 2011.[79]

3.28 In response to this motion, the Deputy Chief Minister made a statement to the Legislative Assembly on 6 December 2011. The Statement outlined that, with regard to the Gungahlin office block, a registration of interest process was underway and the adaptive reuse of existing office buildings was not possible as it was a new town centre.[80]

3.29 With regard to the Civic office building, the Deputy Chief Minister stated:

[77] Standing Committee on Public Accounts, Review of Auditor-General's Report No. 6 of 2009: *Government office accommodation*, Interim Report, February 2011, p. v.

[78] Mr Barr, 'Committee report—government response, Paper and statement by minister', Legislative Assembly for the ACT, *Debates*, 16 August 2011, pp. 3273-3275.

[79] Legislative Assembly for the ACT, *Minutes of proceedings*, No. 116, 24 August 2011, pp. 1461-1464.

[80] Mr Barr, 'Government office building—Statement by minister', Legislative Assembly for the ACT, *Debates*, 6 December 2011, pp. 5663-5664.

> As I stated in the original debate, a range of options were analysed and evaluated in determining a way forward for the Civic office building and this included the adaptive reuse of buildings and the whole of life cycle analysis—as with any project that the government pursues. The analysis by the government and our consultants has determined that a new government built and owned office block is the best option, both environmentally and economically.
>
> However, Cox Architects are leading a team of consultants examining the adaptive reuse of existing office buildings and consideration of the options for an ACT government office precinct. The buildings being examined for adaptive reuse and consolidation into a campus-style precinct are located close to the Legislative Assembly. We will also be testing the delivery of a Civic office building in the market in 2012.[81]

3.30 Finally, with regard to the Government's office accommodation strategy, the Deputy Chief Minister stated:

> …this strategy is indeed influenced by the government's decision to locate facilities in Gungahlin and the need for a CBD presence. This will see significant consolidation in the current office accommodation and changes our previous requirements for refits, refurbishments and relocations. The whole-of-government accommodation strategy is being finalised in association with consultants peckvonhartel and KPMG. I am anticipating its completion before the end of this calendar year.
>
> As I have outlined previously, the strategy will include an analysis of all of the owned and leased properties to assess their compliance with the government's objectives for office accommodation. It will include recommendations about whether or not these properties should be retained. In addition, the strategy will examine whether the government's office utilisation standards are still appropriate and reflect best practice. The strategy will make recommendations for the composition of the government's property portfolio and assess the advantages or otherwise of whether the assets in the portfolio should be leased or owned.[82]

3.31 The Committee notes that, during debate on a censure motion concerning the proposed government office building on 14 February 2012, the Deputy Chief Minister stated that the Government had received nine expressions of interest

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[81] ibid., pp. 5664.

[82] ibid., pp. 5665.

from the private sector to build office accommodation in Gungahlin and that he would shortly be announcing a short list for the project.[83]

3.32 The Minister also stated that, due to the success of the Gungahlin procurement process, the Government intends to use the same approach for its proposed Civic office building.[84]

Salary packaging policy (ATO ruling—bus tickets)

3.33 The Committee has pursued for several years the issue of making more environmentally friendly transport options available as approved salary package items. In its *Report on Annual and Financial Reports 2007–2008*, the Committee recommended:

> … that the Commissioner for Public Administration explore the feasibility of the inclusion of more environmentally friendly transport items, such as bicycles and bus tickets, as approved salary packaging menu items for ACT Public Service employees.

3.34 The Government agreed to this recommendation and advised that the Commissioner for Public Administration would consider the option of including such items under the ACTPS Salary Packaging Policy and Procedures subject to advice on the tax deductibility of these items from the Australian Taxation Office (ATO).[85]

3.35 During the course of its 2009–10 inquiry into annual and financial reports, the Committee received the following update from the Chief Minister:

> The Australian Tax Office ruled that the reimbursement of ACTPS employees and their associates' travel costs on ACTION buses is an eligible fringe benefit for the purposes of section 62 of the Fringe Benefits Tax Assessment Act 1986 (FBTAA).
>
> Section 62 of the FBTAA enables the total taxable value of an employee's eligible fringe benefits to be reduced by a maximum of $1,000 in an FBT year under an effective salary packaging arrangement.

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[83] Mr Barr, 'Chief Minister and Deputy Chief Minister—motion of censure', Legislative Assembly for the ACT, *Debates*, 14 February 2012, p. 37.

[84] ibid., p. 38.

[85] ACT Government, Government response to Standing Committee on Public Accounts Report No. 2*: Report on Annual and Financial Reports 2007-2008*, October 2009.

> The 2010-11 Enterprise Agreements require the Government to initiate action to establish the necessary administrative arrangements to introducing salary sacrificing of public transport by 31 March 2011.[86]

3.36 In light of this information, during its current inquiry the Committee sought information as to how many ACTPS employees had taken up the salary sacrificing opportunity established as part of the 2010–11 enterprise agreements. The Chief Minister advised that:

> Shared Services has received a total of 480 email enquiries and to date 213 employees have 'signed-up' for the scheme.
>
> However not all employees who have 'signed-up' have submitted claims. In the first two quarters of the scheme's operation, to September 2011, there were a total of 288 claims. Of these, 137 claims were submitted in the first quarter (April to June 2011) and 151 claims were submitted in the second quarter (July to September 2011).[87]

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[86] Mr Jon Stanhope MLA, Response to supplementary question No. 10, 25 November 2010.

[87] Ms Katy Gallagher MLA, Response to supplementary question No. 12, 24 November 2011.

4 SPECIFIC ISSUES ARISING FROM DIRECTORATE AND AGENCY REPORTS

ACT Auditor-General's Office

Staff turnover

4.1 The Committee sought information on what strategies had been used to respond to the high staff turnover rate at the Office. The Committee was told that:

> Notwithstanding the positive staff feedback, the Audit Office experienced a high staff turnover in 2010-11, as experienced staff retired and other staff accepted job opportunities in the private and public sectors. The high staff turnover is expected to continue with a significant proportion (42 percent) of staff indicating they will probably leave the Office within the next three years.[88]

4.2 The Committee heard that, as many people did not want a long-term career with the Audit office, contracts had been used more extensively. This allowed qualified people to join the Office for short periods, 12 to 18 months, and then return to their home agencies. The Office is also looking at whether retirees are willing to return to the workforce to take on short-term projects.[89]

4.3 Given the Office was now employing more people who do not desire a long-term career with the Office, the Committee was interested to know what sort of qualifications and/or experience was required and the Director of Performance Audits and Corporate Services explained:

> It is probably not so much a matter of them not necessarily wanting a career in auditing but necessarily a longer term career in the audit office per se. The folks that we brought into our organisation—a couple of senior managers, for example—certainly have a background in research, a background in investigation type processes. One is from the internal audit of one of the agencies, for example. We are quite satisfied, as the Auditor-General was saying, that they

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[88] ACT Auditor-General's Office, *Annual Report 2010-11*, p. 3.

[89] Dr Maxine Cooper, *Transcript of evidence*, 29 November 2011, p. 182.

> bear the communication capabilities and the analytical and research capabilities that are really fundamental to our performance audit approach.[90]

4.4 Staff responsible for financial audits normally have backgrounds as certified practicing accountants or have chartered accounting qualifications. The Committee understands that there is high demand outside the Office for auditing skills. The Director of Performance Audits and Corporate Services elaborated:

> There is a whole range of professions or activities that you can do. Yet the move back into the office is more difficult because actually doing a financial audit is a fairly defined task. You find that the market for our auditors is quite broad but it is not so easy for staff to move back the other way. So it is more difficult for us, for example, to attract people with an accounting qualification with no audit background, bring them into our organisation and start them at a more senior level, because they do not have the audit component.[91]

4.5 Finally, the Auditor-General told the Committee that, although they had a budget for 36 staff members and would ideally like to employ that many people, she believed that contracts, secondments and other short-term arrangements would always be required to meet the staffing requirements of the Office.[92]

Agency responses to performance audits

4.6 The Committee noted that page 1 of the Auditor-General's Office annual report stated:

> Two agencies responding to a performance audit advised that the performance audit team did not understand their operations. The Office carefully considered these and other comments made by agencies and, where appropriate, will improve practices accordingly.[93]

4.7 The Committee was informed that the two responses came from the Land Development Agency and the former Department of Land and Property

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[90] Mr Rod Nicholas *Transcript of evidence*, 29 November 2011, pp. 183-184.

[91] Mr Bernie Sheville, *Transcript of evidence*, 29 November 2011, p. 185.

[92] Dr Maxine Cooper *Transcript of evidence*, 29 November 2011, p. 182.

[93] ACT Auditor-General's Office, *Annual Report 2010-11*, pp. 1-2.

Services, and that they both related to the 2011 performance audit report—*Residential land supply and development*.[94]

4.8 The Committee was interested to know what practices had been improved in order to avoid such responses and was told:

> …in more recent times we have re-examined our initial planning processes and we are now undertaking more intensive pre-engagement planning activities. That will involve us meeting on several occasions with the agency and typically with the senior executives of the agency. We speak also to various stakeholders. That is a fairly common process in our audits anyway, but we are certainly going out of our way to make sure that we capture many of those now. We have certainly established a more formal communications plan in the course of an audit. We will continue to engage agencies during the activities of the audit so that it is unlikely that we will reach a stage where we deliver a report to the agency, whether it is a draft or otherwise, and they go: "Wow. That's a surprise to us." It is really about engagement and communication.[95]

Financial impact of portability arrangements for employee entitlements and recruitment processes

4.9 In relation to the 2010–11 financial results, the Office annual report explains that:

> In 2010-11, the Audit Office incurred an operating deficit of $210 635, compared to a budgeted deficit of $49 000. This deficit included unbudgeted and unavoidable 'one-off' costs associated with the incoming Auditor-General (employee entitlements for prior service of $346 516 and recruitment costs of $82 462). Excluding these costs, the Office generated an 'underlying' operating surplus of $218 343.[96]

4.10 The Committee raised concerns about the impact of the portability arrangements for employee entitlements on the budget of the Office and on those of other small agencies.

4.11 The Committee was informed that it was standard practice in both the Commonwealth and ACT Governments to transfer the liability for employee entitlements to the agency that currently employs the staff member. Although

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[94] ACT Auditor-General's Office, Report No. 2/2011, *Residential land supply and development*, February 2011; Mr Rod Nicholas, *Transcript of evidence*, 29 November 2011, p. 182.

[95] Mr Rod Nicholas, *Transcript of evidence*, 29 November 2011, p. 183.

[96] ACT Auditor-General's Office, *Annual Report 2010-11*, p. 4.

this practice had been adopted for ease of administration, it holds implications for small agencies where:

> …every time we bring in somebody who is experienced, whether it is Dr Cooper or an experienced performance auditor from the commonwealth, for us there is a risk that we will have to meet all of their accumulated annual and long service leave entitlements when they arrive. The implication for our office is that we need to have some level of buffer when we plan our budget so that we deal with that financial shock as and when it happens.[97]

4.12 The Committee noted that, although the Office's budget had been negatively affected by these portability arrangements in 2010–11 financial year, when members of staff leave the organisation the situation is reversed and the liability for their entitlements is transferred to their new employing agency.[98]

4.13 The Auditor-General undertook to seek advice in relation to the payment of staff entitlements between ACT Government agencies and the recovery of costs incurred for recruitment activities. With regard to payment of staff entitlements, the Auditor-General's response provided correspondence from the Under Treasurer stating that:

> …section 16A of the *Financial Management Act 1996* (FMA) allows agencies to write to the Treasurer requesting further appropriation if the agency employee entitlements to be paid exceed the amount appropriated to the agency for the current financial year.
>
> Section 16A was used by the Long Service Leave Authority during the 2011 financial year to address a similar situation to the above where employee entitlements exceeded the amount appropriated.
>
> However, in view of the difficulties experienced by some agencies, Treasury will be releasing a new policy prior to 30 June 2012, relating to independent agencies that do not normally receive appropriations. The policy will advise that in keeping with their independence, the transfer of staff to and from such agencies will be accompanied by a monetary payment.[99]

4.14 In relation to the cost of recruitment activities, the Under Treasurer's advice stated:

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[97] Mr Bernie Sheville, *Transcript of evidence*, 29 November 2011, p. 188.

[98] ibid., p. 189.

[99] Letter from the Under Treasurer to the Auditor-General, 2 February 2012, provided in Dr Maxine Cooper, Response to question taken on notice No. 1, 29 November 2011.

> Treasury would expect that any recruitment costs incurred by an agency will be managed through the agency's budgeted appropriation. Typically, funding required for non-recurring expenditure that exceeds the amount already appropriated would be sought through annual budget process.[100]

4.15 The Committee notes that it made comment on issues experienced by small agencies in relation to leave entitlements in its *Report on Annual and Financial Reports 2009-2010*. In that report, the Committee recommended, in the context of a long-standing problem concerning leave entitlements that arose when an officer transferred from an ACT Government department to the Long Service Leave Authority:

> …that ACT Treasury give urgent attention to: (i) resolving the long standing issue of the transfer of long service leave entitlements, including cash settlements, for the affected officer of the Long Service Leave Authority; and (ii) determine a policy for the transfer of long service leave entitlements, including cash settlements, for all small ACT Government agencies.[101]

4.16 The Committee is pleased to hear that the Treasury Directorate will be releasing a new policy prior to 30 June 2012 stating that the transfer of staff to and from independent agencies will be accompanied by a monetary payment.

Consideration of the Audit Office's 2012–13 Budget Submission

4.17 The Committee notes that post the public hearing, pursuant to section 22 of the *Auditor-General Act 1996*, it considered the Auditor-General's draft budget estimates for 2012–13 and forward budget estimates from 2013–14 to 2015–16. The Committee is pleased that a funding model to support growth in the performance audit function has been factored into the proposed budgets for the operations of the ACT Auditor-General's Office for each of the financial years from 2012–13 to 2015–16.

4.18 The Committee also discussed:

- the cost of the recruitment process for the new Auditor-General[102]
- the environmental performance of the Office[103]

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[100] ibid.

[101] Standing Committee on Public Accounts, *Report on Annual and Financial Reports 2009-2010*, April 2011, p. 56.

[102] *Transcript of evidence*, 29 November 2011, p. 188.

- details of specific entries in the financial results section of the annual report[104], and
- investigations triggered by representations.[105]

ACT Legislative Assembly Secretariat

Compliance with Legislative Assembly members' staff certified agreement

4.19 The Committee discussed in detail the section of the Secretariat's annual report referring to staff employed by members, specifically the following passage:

> …it was necessary in some isolated cases during the year to address significant compliance failures in some members' offices where some staff had failed to complete and/or lodge attendance records and to complete and lodge leave applications for some absences. These matters demanded considerable management resources to address.[106]

4.20 The Committee was interested to know the process that would be followed in these cases. The Clerk told the Committee:

> …as you know, the LA(MS) Act enterprise agreement requires members' staff to keep timesheets. From time to time we like to inform members of whether they are complying with that particular section of the LA(MS) Act agreement. You will recall that we had an Auditor-General's report about 18 months ago that commented on this particular aspect and made several recommendations in relation to that.
>
> We have a sort of graduated system. In the first instance it is undertaken by an officer in the Corporate Services office. Where that approach is not met with any success it is gradually escalated. The examples that we have put in the annual report are situations where the Clerk has had to write to the member to remind the member of their obligations to meet that requirement. That has taken quite a bit of management time. Consistent with my obligations to get an honest and accurate report of the operations of the Secretariat during the year it was felt necessary that we should reflect that in the annual report.[107]

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[103] ibid., p. 191.
[104] ibid., p. 193.
[105] ibid., p. 192.
[106] ACT Legislative Assembly Secretariat, *Annual Report 2010-11*, p. 61.
[107] Mr Tom Duncan, *Transcript of evidence*, 29 November 2011, pp. 202–203.

4.21 The Committee was informed that, although some of these compliance failures had been resolved, some matters remained outstanding.[108]

4.22 The Committee then sought to establish what penalties existed under the certified agreement for continued compliance failures and who was responsible for enforcing the provisions of the certified agreement. The Committee was informed that there were no explicit penalties mentioned in the Agreement and that the Secretariat did not believe it had the power to enforce compliance within Members' offices.[109]

4.23 The subject of the Secretariat's role in enforcing compliance with the certified agreement was discussed in the Auditor-General's 2009 performance report—*Administration of employment issues for staff of Members of the Legislative Assembly*—which stated:

> The ability of CMD and the Secretariat to insist on the submission of timesheets is limited by their role – that of advisors, facilitators and administrators. They do not have, nor do they seek, the authority to require staff to comply with standard human resource management practice, or clause 22 of the Collective Agreement; this is the employer's responsibility – that is, the employing MLAs.[110]

4.24 The Speaker also indicated that, as section 8 of Appendix A20 to the Standing Orders deals specifically with Members' obligations as employers, a further option in cases of continued non-compliance might involve the Speaker approaching Members directly or making a statement to the Legislative Assembly.[111]

4.25 The Committee notes that this matter has been the subject of a motion of grave concern in the Assembly, passed on 14 February 2012, which directed the Leader of the Opposition to provide a written statement concerning staffing arrangements in his office and directed the Speaker to commission an

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[108] Mr Ian Duckworth, *Transcript of evidence*, 29 November 2011, pp. 203–204.

[109] ibid., p. 204.

[110] Mr Ian Duckworth, *Transcript of evidence*, 29 November 2011, p. 204.; ACT Auditor-General's Office, Performance Report, *Administration of employment issues for staff of members of the Legislative Assembly*, August 2009, p. 33.

[111] Legislative Assembly for the ACT, *Companion to the Standing Orders of the Legislative Assembly for the Australian Capital Territory*, p. 403; Mr Shane Rattenbury, *Transcript of evidence*, 29 November 2011, p. 205.

independent workplace audit of the staffing arrangements in Leader of the Opposition's office from 2009 to 2012.[112]

4.26 The report of the independent workplace audit was publicly released on 11 April 2012 and found in part:

> The review is critical of the failure of the Leader of the Opposition in taking so long to resolve his office's staff records failures and in not responding earlier to the Assembly Secretariat's promptings and the Clerk's personal urgings.
>
> Mr Seselja has acknowledged the failures and has given an assurance that the requirements will be met in the future. Staff returns have been brought up to date promptly since the issue become a matter of public contention.
>
> The audit confirmed that once the records had belatedly been brought up to date it was able to confirm that there had been no overpayments or other entitlements inappropriately extended to staff as a consequence of the compliance failures.[113]

4.27 The Committee reiterates previous comments it has made with regard to the successful administration of entitlements to staff employed by MLAs, that is, it is incumbent on all MLAs, as employers of staff, to ensure compliance with the applicable employment framework, policies, procedures, and guidelines for the engagement of MLAs' staff.[114]

Use of ICT in the Legislative Assembly

4.28 The Committee raised several issues regarding the use and provision of ICT services within the Legislative Assembly. The Committee sought information about what was being done to bring the Assembly's website into line with current accessibility guidelines and was informed that the *Web Content Accessibility Guidelines 2.0* will form part of the specifications for the redevelopment of the website in 2011–12.[115]

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[112] Legislative Assembly for the ACT, *Minutes of Proceedings*, No. 133, 14 February, 2012, p. 1725; for the Leader of the Opposition's statement in response to the motion see: Mr Seselja, 'Leader of the Opposition, statement by member', Legislative Assembly for the ACT, *Debates*, 16 February 2012, pp. 348-352.

[113] Legislative Assembly for the ACT, *Report of the independent workplace audit of staffing arrangements in the office of the Leader of the Opposition for the period 2009 to 2012*, April 2012, p. 4.

[114] ACT PAC—Review of Auditor-general's report No. 5 of 2009: *Administration of employment issues for staff of Members of the ACT legislative Assembly*.

[115] Mr David Skinner, *Transcript of evidence*, 29 November 2011, p. 199.

4.29 The Committee also expressed concern about the difficulty of finding material relating to committees on the current website. The Assembly Secretariat informed the Committee that:

> I think one of the really important things when the website is redeveloped is that there is a general community user perspective rather than an inside perspective or one for those of us that know how the institution works. We may be able to get around it, or some of us may not, but certainly for users out there in the wider community there would be an acknowledgement that it is not always easy to find particular bits of information. Having said that, I think there is a lot of very good content on the website. I think it is really an issue of trying to arrange it in a way that makes sense to more people.[116]

4.30 Finally, the Committee discussed the possibility of extending the use of ICT in the Chamber in order to both save money and increase the speed with which documents are delivered. The Clerk provided the following update on initiatives that are being undertaken to that end:

> That is a project that we are keen to pursue in terms of delivery of papers to the chamber via electronic means. As members will be aware, every sitting day you get loads and loads of paper on your desk. We are having discussions with representatives of the Chief Minister's department to alleviate that situation. I have got to say that one of our priorities now is also looking at e-petitions. We have got Intact involved in trying to get that initiative up and running and I think we are waiting to get that resolved and then move on to the next project.
>
> We will need the cooperation of the executive because what we want is each executive agency to give us an electronic copy of every document that they need to table in the Assembly. Of course the spread of the executive is quite wide and that is going to take a bit of work on the part of the executive, then we have got to do a bit of work at our end to determine how we compile that information, how we best deliver it to members and how we best deliver it to the people who want to get access to those documents in terms of storage and IT facilities.
>
> It may well be that we look at tablets and those sort of devices as well. But, as I said, the priority at the moment is to get e-petitions up. Because the Canberra community is very IT literate we think there will be a lot of interest in that sort of procedure in terms of how to petition the Assembly via electronic means. Once that is done that is our next priority.[117]

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[116] ibid., p. 200.

[117] Mr Tom Duncan, *Transcript of evidence*, 29 November 2011, pp. 200–201.

4.31 The Committee expressed concern that the introduction of electronic document delivery mechanisms may create unintended difficulties, such as making it more difficult to respond to the content of documents immediately after they are tabled. Concerns were also raised that, if all documents were to be distributed to Members electronically, the costs of printing those documents would be transferred from the Executive to either the Secretariat or Members.[118]

4.32 The Committee also discussed:

- the potential for conflict between Mr Rattenbury's roles as both the Speaker and a Member[119]
- the Assembly's community engagement working group[120]
- progress on plans to install a photo-voltaic solar system on the roof of the Assembly[121]
- the high rate of staff turnover and adequate resourcing of the Secretariat[122]
- progress on plans to provide surplus computers to Kiribati[123]
- repairs to the roof of the Legislative Assembly building[124]
- savings arising from moving financial processing in house[125], and
- problems with the service provided by Shared Services ICT.[126]

Chief Minister's portfolio

4.33 The Committee considered a range of matters that fall within the Chief Minister's portfolio but which have whole-of-government significance, including: the 'One ACT Public Service' reforms; bullying in the ACTPS; the open government agenda; complaints handling processes in the ACTPS; and

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[118] Mr Brendan Smyth MLA, *Transcript of evidence*, 29 November 2011, pp. 201–202.
[119] *Transcript of evidence*, 29 November 2011, p. 195.
[120] ibid., p. 199.
[121] ibid., p. 198.
[122] ibid., p. 207.
[123] ibid.
[124] ibid., p. 210.
[125] ibid., p. 211.
[126] ibid., p. 212.

the proposed co-location of the ACTPS. Discussion on these matters is set out in Chapter 3.

Single select contracts

4.34 The Committee discussed the circumstances under which the Chief Minister's Directorate awarded contracts through a single select process, with specific reference to a $388,306 contract awarded for providing strategic advice, research facilitation and report writing services for the *Time to Talk—Canberra 2030* consultation.[127]

4.35 The Committee was informed that with reference to that specific contract, the Government believed very few firms would be able meet its requirements and that this had led to the contract being awarded through a single select process:

> When you look at who has national real experience of undertaking these high-level broad-scale engagements, who has an appreciation and understanding of the ACT and who knows new methods of engagement, particularly with social media, those firms were very small indeed.[128]

4.36 The Committee was later provided with a document which set out the rationale for why a single select process was used. In part, that document stated:

> A single select arrangement is proposed. Elton Consulting is a clear leader in conducting these conversations across Australia. The Elton team have worked with a number of state and local governments in developing and implementing these broad based engagements. Given this experience and background, Elton Consulting is considered to possess the unique expertise and qualifications that are necessary to deliver a community engagement program in the short timeframe available.[129]

4.37 The Committee also discussed the use of a single select tender process to award a $143,630 contract for the development of the Kingston Arts Precinct Strategy.[130] The Committee sought further information on the basis for using a single select tender process on this occasion and was told:

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[127] Chief Minister and Cabinet Directorate, *Annual Report 2010-11*, p. 87.
[128] Mr Andrew Cappie-Wood, *Transcript of evidence*, 24 November 2011, p. 96.
[129] Ms Katy Gallagher MLA, Response to question taken on notice No. 1, 24 November 2011.
[130] Chief Minister and Cabinet Directorate, *Annual Report 2010-11*, p. 95.

> A single select procurement was authorised by the Chief Executive, Chief Minister's Department (now Director-General, Chief Minister and Cabinet Directorate) as Ms Conroy had already undertaken extensive cultural and community planning in regard to Kingston Foreshore through the work she had previously undertaken for the Land Development Agency.[131]

4.38 The Committee was further informed that, although Ministers are not required to sign off on decisions to award single select contracts, decisions made in this regard must accord with guidelines contained in the FM Act and in the Government's procurement processes.[132]

4.39 After considering the evidence from the Chief Minister's Directorate at the public hearing and further documentation provided on notice, the Committee remains concerned at the use of single select processes on the basis that a contractor has provided similar services. In the Committee's view, the use of competitive tenders, wherever possible, allows the Government to establish which contractors offer the best value for money. Excessive use of single select processes has the potential to circumvent this important aspect of procurement policy.

Invoice payment policies

4.40 The Committee notes that section 45 of the *Government Procurement Act 2001* requires the Territory to pay interest to a creditor on any account that remains unpaid, subject to the following conditions being satisfied:

> (a) the Territory or a territory entity does not pay a commercial account in full by the relevant date for the account; and
> (b) the person to whom the account is payable requests, in writing, that the Territory, or the territory entity, pay interest on the amount of the account that remains unpaid from time to time after the payment date.[133]

4.41 The Committee also notes that section 7.3 of the Parliamentary Agreement between the Australian Labor Party[134] and the Greens[135] states:

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[131] Ms Katy Gallagher MLA, Response to question taken on notice No. 2, 24 November 2011.

[132] Ms Katy Gallagher, *Transcript of evidence*, 24 November 2011, pp. 98-99.

[133] *Government Procurement Act 2001*, s. 45(1)(a) and (b)

[134] Australian Labor Party—ACT Branch

[135] ACT Greens

> …all ACT government agencies to pay invoices for small businesses within 30 days, and pay commercial interest on late payments.[136]

4.42 Given the requirements of the *Government Procurement Act 2001* and the terms of the Labor-Greens agreement, the Committee sought to establish whether the Government does in fact pay interest on unpaid accounts.

4.43 The Chief Minister and Cabinet Directorate informed the Committee that 81 per cent of its invoices—2 548 out of 3 164—had been paid within the terms of the payment arrangements in 2010–11 and that it had not paid interest on any outstanding invoices.[137] The issue of late payment of invoices has been raised at meetings of the Strategic Board and the performance of the public service when paying invoices is considered to be an area that requires improvement.[138]

4.44 The Committee notes that some confusion exists as to when the 30-day period begins. At present, the Government's invoice system records the date the invoice was raised rather than the date it was received. Consequently, statistics on late payments do not represent cases in which the Government has not paid invoices within 30 days of them being received but rather cases in which the Government has not paid invoices within 30 days of them being raised, regardless of when they were actually received.[139]

4.45 The Chief Minister stated that she did not believe that section 7.3 of the ALP-Greens Parliamentary Agreement had been implemented yet, but the Government remained committed to all elements of the Agreement.[140]

4.46 The Committee also discussed:

- triple bottom line reporting[141]
- planning for the 2013 Centenary of Canberra[142]
- Australian Bureau of Statistics locational disadvantage project[143]

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[136] *Parliamentary Agreement for the 7th Legislative Assembly for the ACT*, p. 14.
[137] Mr Paul Ogden, *Transcript of evidence*, 24 November 2011, p. 108.
[138] Mr Andrew Cappie-Wood, *Transcript of evidence*, 24 November 2011, p. 110.
[139] Mr Paul Ogden, *Transcript of evidence*, 24 November 2011, p. 109.
[140] Ms Katy Gallagher MLA, *Transcript of evidence*, 24 November 2011, p. 114.
[141] *Transcript of evidence*, 24 November 2011, p. 132.
[142] ibid., p. 115.

- the outcomes of the *Time to Talk* consultation process[144]
- complaints handling processes of the ACTPS[145]
- provision of services to Jervis Bay[146]
- Aboriginal and Torres Strait Islander recruitment strategy[147], and
- inspections and investigations undertaken by the Commissioner of Public Administration.[148]

Economic Development portfolio

Clean Economy Strategy

4.47 The Committee sought an update on the development of the Clean Economy Strategy for the ACT. The Minister for Economic Development advised that preliminary work on the Strategy had been undertaken by the University of Canberra, that further discussions had taken place with stakeholders and a proposal will be put to Cabinet in the second quarter of 2012.[149]

4.48 The Committee was further advised that the ACT's clean technology sector, in the main, consists of small companies that need capital funding in order to grow. Recent developments at the Commonwealth level, including the introduction of a price on carbon and the creation of the Australian Renewable Energy Agency and the Clean Energy Finance Corporation, mean that the ACT's programs will largely be focused on helping these companies take advantage of Commonwealth programs.[150]

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[143] ibid., p. 120.

[144] ibid., p. 95.

[145] ibid., p. 93.

[146] ibid., p. 125.

[147] ibid., p. 131.

[148] ibid., p. 126.

[149] Mr Andrew Barr MLA, *Transcript of evidence*, 21 November 2011, p. 64; also see University of Canberra, *Framework for an Australian Capital Territory clean economy strategy: economic, environmental, and social perspectives*, September 2010.

[150] Mr Ian Cox, *Transcript of evidence*, 21 November 2011, pp. 64-65.

Interstate Investment Cooperation Agreement

4.49 The Committee referred to a recent media report that Victoria would join New South Wales (NSW) in withdrawing from the Interstate Investment Cooperation Agreement, which is intended to prevent the States and Territories from entering into bidding wars to attract investment. The Agreement was originally signed in 2003 and renewed by all States and Territories except Queensland in 2006.[151] With Victoria, NSW and Queensland now not bound by the Agreement, the Committee expressed concern that it was effectively defunct.

4.50 The Minister advised that, although he was aware that some funds had recently been devoted towards attracting specific major events in Sydney, Melbourne and Adelaide, he did not believe any states other than Western Australia had the financial resources needed to establish market-distorting incentives for businesses and that this was unlikely to change in the near future. At present, the strongest influence over where businesses choose to undertake new projects is the availability of skilled workers, and in this respect the ACT holds some advantages when it comes to research and intellectual work rather than manufacturing.[152]

National Broadband Network

4.51 The Committee discussed the rollout of the National Broadband Network (NBN) in the ACT and what the Government was doing to exploit the opportunities that would arise from the new infrastructure. The Committee was told that, to date, the Government's activities had been focused on understanding the practical issues of the rollout together with providing a central point through which the NBN Co. can communicate with the Government and its agencies.[153]

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[151] F Tomazin, 'Victoria spurns no-poach pact between states', *The Age*, 20 November 2011, viewed 12 April 2012, http://www.theage.com.au/victoria/victoria-spurns-nopoach-pact-between-states-20111119-1nojw.html .

[152] Mr Andrew Barr MLA, *Transcript of evidence*, 21 November 2011, pp. 65-66.

[153] Mr Ian Cox, *Transcript of evidence*, 21 November 2011, pp. 73-74.

4.52 The Committee was concerned that the Government did not appear to be doing any work to ensure that business and industry capitalised on the opportunities arising from the NBN rollout. The Committee was advised that whilst the the Government's work to date had focused on resolving practical issues concerning the rollout with NBN Co. and its contractor, Silcar:

> …the task force is probably going to move to those issues around business development, content and the opportunities that NBN can provide around e-health, e-education services and engaging businesses in a deeper conversation about what the NBN can actually provide—not just a website solution or a static brochure web-type solution but quite a deep business NBN strategy. We will move those conversations with the business community in that space over the next 12 months.[154]

4.53 The Minister for Economic Development also noted that:

> …it is not the role of government to hold people's hands through every element of running a business and it is not what this area of policy is about. I want to send a very clear signal that I am not interested in that sort of government intervention. I think that the most important thing that we can do is get the macro policy settings right to enable businesses to make the right investment decisions for this economy, but they will be decisions that they will make, not ones that the government seeks to dictate outcomes in.[155]

4.54 The Committee also discussed:

- support provided to businesses by TradeConnect and the Lighthouse Business Innovation Centre[156], and
- the relationship between the Clean Economy Strategy and the Capital Development strategy.[157]

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[154] ibid., p. 74.

[155] Mr Andrew Barr MLA, *Transcript of evidence*, 21 November 2011, p. 74.

[156] *Transcript of evidence*, 21 November 2011, p. 66.

[157] ibid., p. 69; 72.

Industrial Relations portfolio

Chief Minister and Cabinet Directorate

Sham contracting

4.55 The Committee raised the issue of sham contracting in the ACT, a practice in which employers attempt to misrepresent or disguise an employment relationship as an independent contracting arrangement so as to avoid paying employees their proper work entitlements.[158] Specifically, the Committee sought information on whether the ACT Government had been involved in sham contracting arrangements.

4.56 The Minister for Industrial Relations informed the Committee that no Government agency knowingly enters into sham contracting arrangements. However, sham contracting relationships may arise between contractors and subcontractors and remain beyond the knowledge of the commissioning agency. The Chief Minister and Cabinet Directorate have been working with Shared Services Procurement and the Construction, Forestry, Mining and Energy Union (CFMEU) in order to minimise sham contracting.[159]

4.57 An audit system modelled on what occurs in NSW is being developed and Shared Services Procurement is modifying its tendering arrangements in order to prevent sham contracting.[160]

4.58 The Committee was interested in the nature of the audit system that would be implemented by Shared Service Procurement.[161] The audit system referred to at the Committee's public hearings forms part of the *Compliance with Industrial Relations and Employment Obligations Strategy*, which states:

> 3. The implementation of the Strategy will include the following:
> (1) establishment of an open panel of Approved Auditors responsible for:

[158] Fair Work Ombudsman, 'Sham Contracts', 2 December 2011, viewed 12 April 2011, http://www.fairwork.gov.au/employment/independent-contractors/sham-contracts/pages/default.aspx.

[159] Ms Katy Gallagher MLA, *Transcript of evidence*, 3 November 2011, p. 2.

[160] Ms Liesl Centenera, *Transcript of evidence*, 3 November 2011, p. 2.

[161] Mr Andrew Barr MLA, Response to supplementary question No. 7, 24 November 2011.

> (a) assessing applications by Building Entities for IRE Certificates and issuing IRE Application Reports to those Building Entities; and
> (b) conducting random Project Compliance Audits of Building Entities as and when requested by the ACT Government.[162]

4.59 The Committee was further informed that the Strategy commenced on 1 July 2011 and remains ongoing, and that:

> Building entities will be required to meet the cost of the accreditation audits themselves. There is no budget allocation for random site audits in 2011-12. Shared Services Procurement is meeting the cost of administering the strategy.[163]

4.60 In response to questions regarding what was being done to address sham contracting beyond the public sector in the ACT, the Committee was informed that the ACT had played a leading role in pushing for reform at the Commonwealth level via the Workplace Relations Ministers' Council. In addition, the Fair Work Ombudsman and local regulators, such as WorkSafe ACT and the Long Service Leave Authority, also play a role in monitoring sham contracting.[164]

4.61 The Committee also understands that policing sham contracts in the construction industry can be difficult as in some cases both the employer and the employee consider such arrangements to be mutually beneficial and actively seek them out.[165]

Workers' Compensation Scheme

4.62 The Committee was interested in the release of a document in May 2011 which detailed suggested reasonable premium rates by industry. Its release was widely publicised and welcomed by peak business representative groups.[166] Industry specific recommended premium rates had not been determined prior

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[162] Treasury Directorate, *Compliance with Industrial Relations and Employment Strategy for ACT Government capital works projects*, p. 6, viewed 2 May 2012, http://www.procurement.act.gov.au/__data/assets/pdf_file/0004/215995/1._Strategy_final.pdf .

[163] Mr Andrew Barr MLA, Response to supplementary question No. 7, 24 November 2011.

[164] Ms Liesl Centenera, *Transcript of evidence*, 3 November 2011, p. 3.

[165] Ms Katy Gallagher MLA *Transcript of evidence*, 3 November 2011, pp. 3-4.

[166] Ms Meg Brighton, *Transcript of evidence*, 3 November 2011, pp. 4-5.

to the preparation of this document and the higher level analysis undertaken in previous years had not been publicly released.[167]

4.63 The Committee was also informed that the release of greater amounts of information on the Scheme, including the suggested reasonable premium rates document, had led to a decrease in premiums in recent years:

> The premium peaked in about 2003-04 at 3.68 and in the 2009-10 year it was around 2.43 per cent. So we have seen quite a substantial drop over the years. We are further supporting that by publishing more and more information about the performance of the scheme, the data drivers in the scheme and the number of claims. All of those elements together are increasing the transparency around the costs but also equipping businesses in terms of their own buying power.[168]

4.64 In response to a question regarding this actuarial assessment, the Committee was told that between 2005 and 2010 the ACT Scheme had the third highest average premium rates as a percentage of payroll among all Australian jurisdictions, and that the ACT's scheme differed from those available to the private sector in other jurisdictions with regard to: (i) the quantum and payment of incapacity benefits; (ii) access to common law related damages; (iii) regulation of third party providers; and (iv) claim and injury management.[169]

Harmonisation of work health and safety and workers' compensation laws

4.65 The Committee discussed progress on harmonisation of national work health and safety legislation. Under the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety, all jurisdictions were required to enact legislation that reflected the model work health and safety laws by the end of December 2011.[170] The Minister for Industrial Relations told the Committee that the ACT had already passed the required legislation but some other jurisdictions had not.

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[167] Dr Chris Bourke MLA, Response to supplementary question No. 6, 3 November 2011, p. 1.

[168] Ms Meg Brighton, *Transcript of evidence*, 3 November 2011, p. 5.

[169] Dr Chris Bourke MLA, Response to supplementary question No. 6, 3 November 2011, pp. 1-2.

[170] Safe Work Australia, 'Frequently Asked Questions: General questions on the model work health and safety laws', viewed 12 April 2012, http://www.safeworkaustralia.gov.au/Legislation/FAQ/Pages/FAQ%20-%20General-model-WHS-laws.aspx .

4.66 As all jurisdictions had agreed to implement the model legislation, the Minister stated that she did not believe those jurisdictions that had not yet passed the necessary laws were backing away from the project; rather there appeared to be some concern about meeting the 1 January 2012 deadline that had not yet been resolved.[171]

4.67 The Committee notes that only the Commonwealth, the ACT, the Northern Territory, Queensland and NSW met the 1 January 2012 deadline. A bill was introduced in the South Australian (SA) Parliament on 19 May 2011, but debate on it has been adjourned until further notice. The Tasmanian Parliament passed legislation on 13 March 2012 but has revised its implementation date to 1 January 2013. No legislation has yet been introduced in the Victorian and Western Australian (WA) Parliaments and governments in both jurisdictions have announced that the harmonisation process will be delayed.[172]

4.68 Although implementation of harmonised work health and safety laws has been delayed in Victoria, WA, Tasmania and SA, the Committee understands that governments in these jurisdictions remain committed to implementing the model laws wholly or in part.[173]

Social and community sector equal remuneration case

4.69 The Committee sought an update on what preparations had been undertaken to ensure the ACT would comply with the outcome of Fair Work Australia's decision in the equal remuneration case concerning the social and community services sector. The Minister informed the Committee that, at the time of the public hearing, the case had been adjourned and further hearings were envisaged before a final decision would be reached. However, the Government had undertaken an audit of the community sector and determined that the SACS award did not set the level of wages in the ACT as

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[171] Ms Katy Gallagher MLA, *Transcript of evidence*, 3 November 2011, pp. 7-8.

[172] Safe Work Australia, 'Model WHS Legislation', viewed 12 April 2012, http://www.safeworkaustralia.gov.au/LEGISLATION/Pages/ModelWHSLegislation.aspx.

[173] ibid.

the vast majority of those employed in the area are paid above the award rate.[174]

4.70 In response to a question taken on notice, the Minister for Industrial Relations provided more details of the expected exposure of the ACT to the social and community sector wage case. The Committee understands that these details were provided in the ACT Government submission to Fair Work Australia:

> The ACT submission provided three impact estimates. These estimates were based on the Full Bench agreeing one or other of the following scenarios:
>
> 1. 100% of the application for an equal remuneration order;
> 2. 85% of the application; or
> 3. 66.6% of the application.
>
> The estimated full exposure of the ACT over the anticipated five year phase in period for each of the three scenarios is as follows:
>
> 1. $41.03m;
> 2. $25.98m; and
> 3. $15.37m
>
> The figures that the previous Minister for Industrial Relations was referring to were the anticipated total annual cost once the equal remuneration order was fully implemented at the end of five years. The estimated final year cost for each of the three scenarios is as follows:
>
> 1. $22.74m;
> 2. $14.4m; and
> 3. $8.15m.
>
> These figures are an estimate and the final impact of the equal remuneration case cannot be known until the Full Bench makes a ruling.[175]

4.71 Subsequent to the public hearing, Fair Work Australia handed down its decision, which included pay rises of between 19 and 41 per cent over a phase-in period of eight years.[176] In response to this decision, the Community

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[174] Ms Katy Gallagher MLA, *Transcript of Evidence*, 3 November 2011, p. 9.

[175] Dr Chris Bourke MLA, Response to question taken on notice No. 4, 3 November 2011, pp. 1-2.

[176] Ewin Hannan, 'Big rises awarded to social and community sector workers in equal pay ruling', *The Australian*, 1 February 2012, viewed 12 April 2012, http://www.theaustralian.com.au/national-affairs/industrial-relations/big-rises-awarded-to-social-and-community-sector-workers-in-equal-pay-ruling/story-fn59noo3-1226259398301.

Services Minister announced that the Government would fully fund these pay rises as they applied in the ACT social and community sector.[177]

Asbestos management

4.72 The Committee sought further details on what the ACT Government was doing to create a register of people who had been exposed to asbestos so that they would be able to receive compensation should they later develop illnesses as a result.

4.73 The Committee heard that, in the context of harmonisation of the work health and safety legislation, the ACT differed from other jurisdictions in that it had introduced higher standards for regulating asbestos. However, the harmonised laws did contain improvements that require employers to maintain records on asbestos exposure for 40 years and to obtain baseline testing for workers who were exposed.[178]

4.74 Although there is no government maintained register of asbestos exposure in the ACT, there are mesothelioma registers maintained by a private organisation and the Health Directorate. There is also a register of contaminated sites managed by the Environment Protection Unit within the Environment and Sustainability Directorate.

4.75 The Committee expressed concern that, in the absence of a central government-run register, there will be a proliferation of smaller registers across public and private organisations and that, despite the duty placed on employers to maintain their records for 40 years, information will be lost. The Committee was informed that the Asbestos Regulators Forum is looking at the merits of establishing a central register; however, at this stage the Government does not intend to undertake this task.[179]

4.76 The Committee notes that the subject of asbestos management in Canberra's school buildings was recently debated in the Legislative Assembly following

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[177] Joy Burch MLA, 'ACT Government commits to fully fund Equal Remuneration case for community workers', ACT Government, 1 February 2010, viewed 12 April 2012, http://info.cmcd.act.gov.au/archived-media-releases/mediaee04.html?v=11339&s=9 .

[178] Ms Fiona Barbaro, *Transcript of evidence*, 3 November 2011, p. 10.

[179] Ms Fiona Barbaro and Ms Katy Gallagher MLA, *Transcript of evidence*, 3 November 2011, pp. 10-11.

the closure of Taylor Primary School. Heavy rain in March 2012 caused structural damage to the school, which in turn had the potential to expose asbestos at the site.

4.77 As part of a response to questions without notice from Ms Hunter, Mr Doszpot and Mr Hanson, the Minister for Education and Training provided the following information on how asbestos in ACT school buildings is managed:

> The Education and Training Directorate arranges for inspections and the preparation of survey reports, hazardous materials survey and a management plan for all schools built prior to 2003. These are undertaken by licensed assessors engaged by the directorate. Where necessary, these reports include an asbestos register. Some 68 public schools in the ACT have specific hazardous material survey and management plans which contain sitemaps that identify asbestos material onsite. These surveys are reviewed annually and, where required, the asbestos register is updated. The reports and maps are displayed prominently at school entryways and are made available for inspection by staff, parents and other visitors.
>
> Tradespeople undertaking repairs, maintenance and other works are required to be inducted to the school site, which includes their sighting and acknowledgement of the hazardous materials survey and management plans prior to work being undertaken. I will table copies of the 68 hazardous materials survey and management plans by close of business today, as agreed.
> The ACT government has to date allocated funding for two stages for the removal of asbestos materials from ACT public schools: $3.2 million for the asbestos removal program in the 2008-09 appropriation No 3, and $3.4 million for the hazardous materials removal program stage 2 in the 2011-12 ACT budget.[180]

4.78 Notwithstanding that the Asbestos Regulators Forum is considering the merits of establishing a centralised asbestos register, the Committee is of the view that the Government should independently commence work to examine the feasibility of establishing a central government-run register.

RECOMMENDATION 5

4.79 **The Committee recommends that the ACT Government should examine the feasibility of establishing a centralised government-run asbestos register.**

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[180] Dr Chris Bourke MLA, 'Schools—asbestos', Legislative Assembly for the ACT, *Debates*, 27 March 2012, p. 1318.

4.80 To the extent that work is not already taking place, the Committee also believes that there is merit in establishing a public register of all buildings, structures and sites in the Territory which contain asbestos.

RECOMMENDATION 6

4.81 **The Committee recommends that the ACT Government examine the feasibility of establishing a public register of all buildings, structures and sites in the Australian Capital Territory which contain asbestos.**

4.82 The Committee also discussed:

- proposed changes to the workers compensation scheme[181], and
- the timetable for tabling of the proposed bill to amend the workers compensation scheme.[182]

ACT Insurance Authority

4.83 The Committee was interested in an update on the changes to the management plan for the Default Insurance Fund, a matter discussed at the Committee's previous inquiry into annual reports. The General Manager of the Authority commented:

> We implemented a new fund management model on 1 July last year. It involves a model that looks to put the fund into a position to be an accumulation fund within five years. The levy for last year was 1.7 per cent on gross written premium for licensed insurers and for self-insurers. We put together a protocol that was discussed with insurers so that they understood the process they needed to go through.
>
> The process has worked well in the first year. We have just completed or are in the process of completing a review of the implementation of that process. The draft report that I have seen from our actuary is that the level of compliance is very high in terms of the obligations of insurers—things like they had to separately identify the levy on premium notices to their clients so that there was a clear message to those out there that that was the cost of not carrying workers comp insurance.

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[181] *Transcript of evidence*, 3 November 2011, p. 4.
[182] ibid., p. 7.

4.84 The Committee also sought clarification on the process of restoring the Default Insurance Fund to its original purpose, as mentioned in the Chief Minister and Cabinet Directorate's annual report.[183] The Committee was informed:

> When the fund was created there was an unintended consequence of the statute that meant that with entities that had avoided their obligations at law the principals of those companies could access compensation through the Default Insurance Fund. So if I was principal of an entity and I elected not to take out insurance, I could still claim on the fund. The fund is intended to protect the interests of workers whose employers do not do the right thing. That was an amendment we made to the act in 2009 in order to restore the fund to that focus of in effect protecting the innocent …[184]

4.85 The Committee also discussed:

- the relationship between the Default Insurance Fund, the Uninsured Employer Fund and the Collapsed Insurer Fund[185]
- claims against the National Employers Mutual General Insurance Association[186], and
- claims relating to the collapse of HIH.[187]

ACT Long Service Leave Authority

Portability of long service leave

4.86 The Committee heard that the Government was in discussions with stakeholders concerning the introduction of portable long service leave arrangements in the security industry. The Committee understands that the arrangements in the cleaning industry are being used as a model and it is hoped that a scheme for the security industry will be in place by 1 July 2012.[188]

4.87 The Committee discussed the merits of implementing a more comprehensive scheme to cover all employees in the ACT, in particular to permit transfer of long service leave entitlements between industries. The Minister for Industrial

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[183] Chief Minister and Cabinet Directorate, *Annual Report 2010-11*, p. 30.

[184] Ms Meg Brighton, *Transcript of evidence*, 3 November 2011, pp. 14-15.

[185] *Transcript of evidence*, 3 November 2011, p. 12.

[186] ibid., p. 13.

[187] ibid.

[188] Ms Katy Gallagher MLA, *Transcript of evidence*, 3 November 2011, p. 18.

Relations argued that it was originally intended that long service leave accrue to employees who remain within a single industry for a long period of time and that merely having a job did not entitle an employee to long service leave.[189]

4.88 Long service leave portability schemes have been established where employees moved between employers regularly but remained within a single industry—the childcare, construction, cleaning and security industries. The Minister added that employees in the retail industry also meet these criteria; however, the implementation of a portable leave scheme for retail workers was not yet on the Government's agenda.[190]

4.89 Given the Government is progressing the introduction of portable long service leave arrangements in the security industry, the Committee is of the view, as employees in the retail industry also fall within a single industry, that the introduction of portable long service leave arrangements for retail employees warrants consideration.[191] However, this should be examined after the proposed arrangements in the security services industry have been implemented and sufficient time has lapsed to evaluate their effectiveness.

Reimbursement of employers

4.90 The Committee sought clarification as to whether employers were obliged to pay for long service leave entitlements when they fall due as well as paying the long service leave contribution to the Long Service Leave Authority. The Authority confirmed that employers must pay for the long service leave entitlements of a worker when they are taken in their entirety, regardless of how much of the entitlement was accrued with that particular employer. The employer then applies to the Authority for reimbursement of the portion of the entitlement accrued with other employers. The reimbursement process takes a maximum of 14 days to complete on the proviso that the payment has been made correctly.

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189 ibid., p. 19.

190 ibid.

191 The ACT Legislative Assembly passed the *Long Service Leave (Portable Schemes) (Security Industry) Amendment Bill 2012* on 8 May 2012 (ACT Legislative Assembly, Minutes of Proceedings No. 148, 8 May 2012).

4.91 The Committee expressed concern that this arrangement would generate cash flow problems for community sector organisations. Representatives of the Authority stated that the potential for this arrangement to generate such problems had been recognised and that the Authority attempts to process the reimbursement claims as quickly as possible. In cases of genuine hardship, the Authority is able to make a payment as soon as the matter is finalised.[192]

Leave Track system

4.92 The Authority's annual report outlined the successful implementation of its new IT system—Leave Track—in its community sector, construction and cleaning schemes. The Report states:

> As a result of the change-over to Leave Track most employers have ceased using paper-based returns and converted to electronic web-based returns. There were very few complaints by employers regarding the transition to Leave Track and it is considered that overall the new system and procedures have been well accepted by stakeholders and have resulted in time savings/efficiency gains for employers and the Authority as well as substantial savings in paper.[193]

4.93 The Committee was told that the Leave Track system was being leased to the NSW Long Service Corporation.[194] The Registrar provided the following details:

> …New South Wales have just commenced a cleaning scheme from 1 July. They had a look around the country to see what would be the most appropriate system. They obviously have the system that they use for their construction scheme. They had a look at a number of systems. They liked Leave Track for its simplicity, I guess its comprehensiveness. It is well suited to a cleaning scheme, which is different from a construction scheme in a number of processes. So, yes, they decided that they would lease Leave Track, and we are very happy with that. We retain the intellectual property. Also any improvements that are made to Leave Track by New South Wales in terms of upscaling, because obviously their numbers are a great deal higher than ours, we have the use of any of those improvements as well. So it is a good deal for us and it is a good deal for them. I think it is a reflection that Leave Track has worked well and has been a pretty good project and is doing what is required of it.[195]

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[192] Mr Phil Collins, *Transcript of evidence*, 3 November 2011, p. 26.

[193] ACT Long Service Leave Authority, *Annual Report 2010-2011*, p. 11.

[194] ibid.

[195] Mr Phil Collins, *Transcript of evidence*, 3 November 2011, p. 22.

4.94 The Committee noted with approval that the Long Service Leave Authority will receive $50,000 per year for three years from this leasing arrangement. These funds will be returned to the construction scheme as it was this scheme that funded its original development.[196]

Treasury Directorate reimbursement of staff entitlements

4.95 The Committee noted with interest the following passage in the Long Service Leave Authority's annual report:

> The Authority received a reimbursement from the Treasury Directorate for part of a termination payment to a staff member which included long service leave and annual leave accrued before the staff member commenced employment at the Authority.[197]

4.96 The Registrar of the Authority confirmed that the staff member in question was the same staff member who had been discussed in the Committee's previous inquiries into annual and financial reports and that the Authority had received payment from Treasury Directorate for the part of the staff member's entitlements that were accrued before he joined the authority.[198]

4.97 The Committee recommended in its *Report on Annual and Financial Reports 2009-2010* that Treasury give urgent attention to resolving this matter and was pleased that this matter had finally been resolved in a manner that did not adversely affect the Authority's budget. [199]

4.98 The Committee notes that it discussed the issue of how the current transfer arrangements for employee entitlements can impact on the budgets of small agencies with the Auditor-General. Detail on a new Government policy on this matter can be found at paragraph 4.13.

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[196] ibid.

[197] ACT Long Service Leave Authority, *Annual Report 2010-2011*, p. 42.

[198] Mr Phil Collins, *Transcript of evidence*, 3 November 2011, p. 23.

[199] Standing Committee on Public Accounts, *Report on Annual and Financial Reports 2009-2010*, April 2011, p. 56.

4.99 The Committee also discussed:

- details of the operation of the levy for portable long service leave[200]
- representation of investments in the annual report[201]
- dispute resolution processes between the authority and employers[202], and
- funds collected by the Authority to cover entitlements never claimed.[203]

Gaming and Racing portfolio

ACT Gambling and Racing Commission

Wilkie reforms

4.100 With regard to the proposed 'Wilkie reforms', the annual report of the Gambling and Racing Commission observes that:

> The implications of the Gillard-Wilkie Agreement and the outcomes of the Select Council on Gambling Reform will be a significant focus during 2011-2012. It is expected that the Federal Government will legislate to ensure that mandatory pre-commitment will be implemented by budget 2012. Communication with other jurisdictions and Federal officials will continue as will advice to Government.[204]

4.101 The Committee was interested to know who would be providing the resources to implement the trial of a mandatory pre-commitment scheme in the ACT—the Federal Government or the ACT Government? The Committee was told that, although the Government was engaging with the Federal Government on the issue, it would not be contributing any additional financial resources to running a trial. The Minister expressed the view that, as this was a federal issue, the provision of resources required to run a trial was also a matter for the Federal Government.[205]

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[200] *Transcript of evidence*, 3 November 2011, p. 21.

[201] ibid., p. 24.

[202] ibid., p. 26.

[203] ibid., p. 27.

[204] ACT Gambling and Racing Commission, *Annual Report 2010-11*, p. 5.

[205] Mr Andrew Barr MLA, *Transcript of evidence*, 21 November 2011, pp. 53-54.

4.102 The Committee expressed concern about the effect the proposed trial would have on clubs in the ACT, in particular single-site clubs. The Minister advised that the proposed scheme included an exemption for clubs with fewer than 15 poker machines. The Committee heard that the treatment of clubs with between 15 and approximately 60 machines had been the subject of detailed discussion and lobbying at the Select Council on Gambling Reform. Whilst the ACT Government had been pushing to extend the exemption for small clubs from fewer than 15 machines to fewer than 20 machines, the Minister emphasised that the final form of the federal legislation was beyond the control of the Government.

4.103 The Committee also expressed concern that the trial would have the effect of eliminating small club groups and increasing the dominance of large club groups, which would be an anticompetitive outcome. The Minister responded by stating that the Government was willing to work with clubs to diversify their sources of income and to make, in his view, the inevitable move away from poker machine revenue. The ACT Government has brought the *Gaming Machine Amendment Bill 2011* forward, to prevent, in part, large clubs taking over existing licences from small clubs and to ensure that social impact assessments are undertaken when transferring machines between sites and establishing new club venues.[206]

Gaming Machine Amendment Bill 2011

4.104 The Committee discussed the reforms contained in the *Gaming Machine Amendment Bill 2011*, which was presented to the Legislative Assembly on 17 November 2011. The Bill contains reforms which are intended to reduce the number of machines in the ACT, allow clubs to move machines between venues and introduce a $250 per card per day withdrawal limit for automatic teller machines (ATMs) in gaming venues.[207]

4.105 The Committee sought information on how the $250 per card per day withdrawal limit would work and what evidence existed to suggest this

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[206] ibid., p. 61.

[207] Mr Barr, 'Gaming Machine Amendment Bill 2011', Legislative Assembly for the ACT, *Debates*, 17 November 2011, p. 5520.

reform would reduce problem gambling. The Minister responded that ATMs are banned from gambling venues in some states and not restricted at all in others. The position adopted by the Government was consistent with the Productivity Commission's recommendations contained in its 2010 report on gambling.[208] Furthermore, evidence from gambling prevalence studies commissioned by the Gambling and Racing Commission, and conducted by the Australian National University (ANU) suggest that increasing opportunities for problem gamblers to take a break decreases the likelihood of them gambling excessively.[209]

4.106 The Committee sought information beyond that contained in the Productivity Commission's report that also supported restrictions on ATM withdrawals at gambling venues and was provided with a list of reports.[210]

4.107 The Committee is currently considering the *Gaming Machine Amendment Bill 2011* which was referred by the Legislative Assembly for inquiry and report on 17 November 2011. Further information is available from the Inquiry homepage.[211]

Community contributions

4.108 The Committee discussed at length the contents of the Commission's *Community contributions made by gaming machine licensees* report for 2010–11. The Committee established that the gross gaming machine revenue figure for the ACT, which is derived by subtracting the amount returned to players in the form of prizes from the amount they put in, was $179 million. The total turnover figure for gaming machines in the ACT—the money originally put into machines by players added to the money they win and put back into the

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[208] See recommendation 13.2 in Productivity Commission, *Gambling: Productivity Commission inquiry report*, vol. 1, 26 February 2010, p. 58.

[209] Mr Andrew Barr MLA, *Transcript of evidence*, 21 November 2011, pp. 54-55; the ACT Gambling Prevalence Study can be found at: http://www.gamblingandracing.act.gov.au/Research.htm

[210] Ms Joy Burch MLA, Response to question taken on notice No. 13, 21 November 2011.

[211] Inquiry into the Gaming Machine Amendment Bill 2011—
http://www.parliament.act.gov.au/committees/index1.asp?committee=116&inquiry=1039

machines—is estimated to be six to seven times the gross gaming machine revenue figure, or approximately $1 billion.[212]

4.109 The Committee also discussed the derivation of the net gaming machine revenue figure, which is produced from the gross gaming machine revenue figure by subtracting both payable gaming machine tax and 24 per cent of gross gaming machine revenue. The 24 per cent reduction is in recognition of expenses incurred by licensees in operating gaming machines, including purchase price, electricity, staff and depreciation.[213] The Committee was informed that, although this figure was arrived at some time ago, the Commission still believed it to be a reasonably accurate reflection of the costs of operating gaming machines.[214]

4.110 The Committee discussed the following passage in the *Community contributions made by gaming machine licensees* report:

> One licensee claimed $5,251,700.99 in community contributions for the purchase of a club venue and associated leased commercial outlets that were part of that venue. This claim was not eligible under the legislative requirements and was therefore rejected.[215]

4.111 The Commission informed the Committee that no penalties are levied against clubs who make applications for expenses to be considered as community contributions which are deemed not to be eligible.[216] However, the Commission does conduct a random compliance audit program to ensure that evidence exists to substantiate community contribution claims.[217]

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[212] Mr Greg Jones, *Transcript of evidence*, 21 November 2011, pp. 55-56; ACT Gambling and Racing Commission, *Community contributions made by gaming machine licensees*, October 2011, p. 21.

[213] Mr Greg Jones, *Transcript of evidence*, 21 November 2011, p. 56; ACT Gambling and Racing Commission, *Community contributions made by gaming machine licensees*, October 2011, p. 1.

[214] Mr Greg Jones, *Transcript of evidence*, 21 November 2011, p. 56.

[215] ACT Gambling and Racing Commission, *Community contributions made by gaming machine licensees*, October 2011, p. 2.

[216] Mr Greg Jones, *Transcript of evidence*, 21 November 2011, p. 57.

[217] ibid., p. 58.

4.112 The Committee also discussed:

- the increase in gaming machine revenue in 2010–11[218]
- the collapse of Sports Alive[219], and
- failures to comply with approved cash desk procedures in casinos.[220]

Tourism, Sport and Recreation Portfolio

Economic Development Directorate

Enlighten festival

4.113 The Committee was interested to know what lessons had been learned from the inaugural *Enlighten* festival and what changes would be made for subsequent years. The Minister for Tourism, Sport and Recreation informed the Committee that changes in 2013 would include greater integration with the Canberra Festival and Canberra's centenary celebrations. Furthermore, the marketing budget for subsequent years will be smaller as compared to the inaugural event.[221]

4.114 The Committee sought information on the public service staff resources dedicated to the Festival. The Minister told the Committee that:

> Australian Capital Tourism currently has one staff member on a temporary contract dedicated to the delivery of Enlighten. The position's main role is the co-ordination of Enlighten program activities and equates to approximately 0.75 FTE.
>
> The position reports to a Project Manager who has overall responsibility for the delivery of Enlighten. The position spends approximately 0.45 FTE on the event. In addition, Australian Capital Tourism staff assist with event operations and the promotion of Enlighten in the lead up to and during the delivery of the event.[222]

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[218] *Transcript of evidence*, 21 November 2011, p. 57.

[219] ibid., p. 62.

[220] ibid., p. 58.

[221] Mr Andrew Barr MLA, *Transcript of evidence*, 21 November 2011, pp. 31-32.

[222] Mr Andrew Barr MLA, Response to question taken on notice No. 1, 21 November 2011.

4.115 The Committee is of the view that an event of the scale of the *Enlighten* festival should be more appropriately resourced.

4.116 The Committee also sought an explanation as to why interstate visitors to the Festival stayed on average for 1.6 nights as compared with 2.7 nights, which is the long-term average for interstate visitors. The Minister indicated that it appeared visitors attended to see particular artists rather than the whole festival.[223] The Committee also queried how many people attended to see the concerts rather than the light shows; but was told that the data collected on festival attendance did not allow for such disaggregation.[224]

Floriade

4.117 The Committee discussed the statistics regarding the 2010 Floriade and NightFest.[225] Of particular interest to the Committee was the impact of charging for NightFest and whether this had been met with a positive or negative reaction.[226]

4.118 The Minister reported that, given the additional level of activities during NightFest, people were willing to pay an entry fee. He also reported that, in general, NightFest appeared to attract a younger demographic in contrast to the older and family demographics that were attracted by Floriade.[227] The Minister also noted that attendance levels at outdoor events such as Floriade and NightFest can be strongly influenced by weather.[228]

4.119 The Committee discussed the contribution of volunteers to the success of Floriade and asked what arrangements were in place to gather feedback from them. Australian Capital Tourism responded:

> There are daily briefings to the volunteers. There is a major briefing done prior to the event and then there is a major debrief done post event. There is also the volunteer thankyou function. So there is a raft of opportunities, two-way, between event management and the volunteers themselves. I think the uptake of

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[223] Mr Andrew Barr MLA, *Transcript of evidence*, 21 November 2011, p. 32.

[224] Mr Andrew Barr MLA, Response to question taken on notice No. 2, 21 November 2011

[225] Economic Development Directorate, *Annual Report 2010-11*, pp. 33-35.

[226] *Transcript of evidence*, 21 November 2011, pp. 33–34.

[227] Mr Andrew Barr MLA, *Transcript of evidence*, 21 November 2011, p. 34.

[228] ibid.

> repeat volunteers is testament to a pretty solid process in there. There is daily contact around some of that volunteer feedback.[229]

4.120 The Committee raised the issue of uniform policy for volunteers at the 2011 Floriade and was informed that returning volunteers were asked to re-use their shirts from 2010. This advice generated some confusion among volunteers and the matter was later clarified during volunteer briefings. Volunteers were also provided with refillable water bottles and access to fresh potable water instead of the bottled water that had been provided in previous years.[230]

Special Events Unit and community events

4.121 The Committee discussed the movement of the Special Events Unit from the Chief Minister's Department to the Economic Development Directorate during the transition to the new directorate structure. In particular, the Committee was concerned to establish whether this move had affected the delivery of smaller community-level events such as the Woden and Tuggeranong community festivals. The Committee was informed:

> The integration of that particular events unit with the tourism events unit has actually enabled us to have additional resources to contribute towards the staging of events across the ACT. Staff formerly with the Chief Minister's Department unit did work on Floriade and will work on the Canberra Festival and Enlighten activities next autumn.
>
> In terms of the community events, they have maintained their focus on running those events, most recently the Nara Candle Festival. So the challenge has been, as you point out, to integrate two teams that formerly had focus on two sets of responsibilities into one particular team. What has happened to date over the several months since the Hawke review findings have been implemented is that the teams have come together to work on specific projects. But to a large extent they have still retained the focus that they formerly did have. So expertise has been retained, but support through additional resources has been the result of the integration of the two teams.[231]

4.122 The Minister further informed the Committee that public servants were not directly involved in running community-level events such as the Tuggeranong

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[229] Mr Ian Hill, *Transcript of evidence*, 21 November 2011, p. 37.

[230] Mr Andrew Barr MLA, Response to question taken on notice No. 5, 21 November 2011.

[231] Mr Shane O'Leary, *Transcript of evidence*, 21 November 2011, pp 39-40.

and Woden community festivals; however, they do support such events through the ACT Festivals Fund. Should such community-based events develop to the extent that they attract tourists to Canberra, they would also be eligible for assistance under the Events Assistance Program.[232]

4.123 The Committee also discussed:

- nature based tourism at Tidbinbilla[233]
- the ACT Government's motorsport strategy[234]
- the Balloon Festival[235], and
- the reporting of tourism expenditure in the Chief Minister and Cabinet Directorate annual report.[236]

Exhibition Park Corporation

Low-budget tourist accommodation on block 799

4.124 In order to provide an additional ongoing revenue stream, Exhibition Park Corporation (EPC) has proposed the development of low-budget tourist accommodation on block 799. In 2010–11, EPC developed a business case and draft expression of interest for the development and sought a direct land sale for the block. EPC also sought, and was issued, a development control plan from the National Capital Authority.[237]

4.125 The Committee discussed the progress of the proposal through the assessment process under the *Environment Protection and Biodiversity Conservation Act (Cwth)*. The Committee was informed that a draft assessment had been received from the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC) that specified a land offset ratio of three or four to one, preferably on adjoining land.[238] The Committee

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[232] Mr Andrew Barr, MLA, *Transcript of evidence*, 21 November 2011, pp. 40-41.
[233] *Transcript of evidence*, 21 November 2011, p. 38.
[234] ibid., p. 42.
[235] ibid.
[236] ibid., p. 43
[237] Exhibition Park Corporation, *Annual Report 2010-11*, p. 8.
[238] Mr Ian Thomson, *Transcript of evidence*, 21 November 2011, pp. 45-46.

understands that the Commonwealth's proposed approval decision suggests that approximately 14 hectares will need to be offset.[239]

4.126 The Committee was further informed that a working group had been established to work through this issue with the Environment and Sustainable Development Directorate and SEWPaC as quickly as possible. No definite time frame for finalising this assessment had been established, but the Economic Development Directorate was hopeful of completing the process in early 2012.[240]

4.127 During its inquiry into 2009–10 annual and financial reports, the Committee expressed concern about the length of time it had taken to progress the low-budget tourist accommodation project.[241] The Committee remains concerned about the lack of progress on this project and notes that any further development remains on hold pending the outcome of the current environmental assessment process. Given the issues raised by the draft environmental assessment, in particular the land offset ratio, there may be merit in the Government reassessing the location of the low-budget tourist accommodation.

RECOMMENDATION 7

4.128 **The Committee recommends that given the issues raised by the draft environmental assessment, in particular the land offset ratio, the ACT Government may wish to reassess the location of the low-budget tourist accommodation.**

Rejuvenation program

4.129 The Committee sought to clarify whether the rejuvenation program mentioned in the EPC annual report was the new master plan for Exhibition Park in Canberra (EPIC). The Committee was informed that the rejuvenation plan was indeed the new master plan, but that it was a provisional version and did not

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[239] Mr Andrew Barr MLA, Response to question on notice No. 11, 21 November 2011.

[240] Mr Ian Thompson, *Transcript of evidence*, 21 November 2011, p. 47.

[241] Standing Committee on Public Accounts, *Report on annual and financial reports 2009-2010*, April 2011, p. 72.

contain all the details that the final master plan would provide.

A representative of the EPC board explained:

> The master plan will be finalised over the next six months. The board have decided that, instead of doing a straight master plan, it was better to actually gauge the market, as well as the community, on what types of things should be put in place at EPIC. That is why we did the rejuvenation program, which is, in essence, the beginning of the master plan.[242]

4.130 The EPC advised that it had undertaken consultation on the rejuvenation program via its community advisory group and on-site tenants, and it will also be seeking feedback from the community in 2012. The community advisory group, which had been meeting quarterly, has since been disbanded in favour of developing an online community engagement tool. The EPC felt that this approach would capture feedback from a broader range of stakeholders as many members of the community advisory group were already on-site tenants.[243]

Financial performance

4.131 The Committee also discussed the fact that EPC's revenue in 2010–11 was 28 per cent higher than expected, yet its deficit was also significantly higher than expected. The Committee was informed that the cost of demolishing the service station at EPIC had contributed to this situation.

4.132 The Committee was further informed that returning EPC to surplus depended upon the outcome of several projects, including the completion of the service station project, for which a development application has been approved and construction should commence in the first half of 2012, and the subleasing of various areas of the site to commercial ventures that are ancillary and complementary to EPC's core functions.[244]

4.133 With regard to the service station project, EPC's annual report states:

> The EPC Board and management acknowledge that the demolition and remediation of the service site became a more complex project due to the contamination of soil and delays from weather. However, this work was required

[242] Ms Liz Clarke, *Transcript of evidence*, 21 November 2011, p. 48.

[243] ibid., p. 47-48; 52.

[244] ibid., p. 50

prior to the construction of the new infrastructure and the operation of a new business.[245]

4.134 In its previous inquiry into annual and financial reports, the Committee queried whether the cost of remediating the service station site should be borne by the previous long-term lessee, who was responsible for the contamination. The Committee was informed that EPC had received advice that it was not possible to recover the costs from the previous lessee.[246]

4.135 The Committee also discussed:

- EPC greenhouse gas emissions[247]
- changes in the structure of the EPC board[248], and
- community service obligation payments.[249]

Treasury Portfolio

Treasury Directorate

ACT Taxation Review

4.136 The Committee inquired as to the status of the ACT Taxation Review being undertaken by former ACT Treasurer Ted Quinlan, which was originally due to be completed in August 2011. The Committee was informed by the Treasurer:

> In August I outlined that I wanted to see what emerged from the commonwealth tax forum, so I asked for a delay post that forum. Obviously, given the issues that were raised there and the subsequent changes to the terms of reference that Treasurer Swan has announced, I felt it was appropriate to wait and see what emerged from that process. I anticipate, as I say, getting the final report in the next few weeks. I think you would understand that, as that will be approaching Christmas, I think it is best for the government to—and I would like some time—

[245] Exhibition Park Corporation, *Annual Report 2010-2011*, p. 8

[246] Standing Committee on Public Accounts, *Report on annual and financial reports 2009-2010*, April 2011, p. 71

[247] *Transcript of evidence*, 21 November 2011, p. 52

[248] ibid., p. 47

[249] ibid., p. 50

> consider the detail of what is recommended and then I will provide the review and a government response early in 2012.[250]

4.137 The Committee notes that, subsequent to the public hearing, the Review, which was commissioned in 2010, was released by the Government on 7 May 2012 together with its response to the 28 recommendations.

ACT submission to the GST Distribution Review

4.138 The Committee discussed at length the Goods and Services Tax (GST) grants regime and the ACT's submission to the GST Distribution Review. The Treasurer informed the Committee that changes to the terms of reference of the review had been announced in November 2011 such that the review would now also examine the relationship between the horizontal fiscal equalisation process and incentives for state tax reform. The Treasurer noted that the outcomes of this review would have implications for the Government's response to the Quinlan review.[251]

4.139 In response to the Committee's request for an outline of the ACT's submission in layman's terms, the Treasurer responded:

> In short, the fundamental question that is being considered at a national level is the capacity for all Australian jurisdictions, regardless of their size or their location, to be able to offer an equivalent level of service and that we have some disadvantages in relation to larger jurisdictions on economies of scale questions. We have some disadvantages as a result of our tax base being much narrower, and the commonwealth playing such a major role in our economy but not being able to be captured within our revenue base. We have a number of obligations as the national capital that mean additional expenses that other jurisdictions simply do not face.
>
> In my view, it certainly is appropriate that there is an adjustment for the ACT in recognition of this. However, we must as a community also acknowledge, in the context of the national distribution, that we have higher levels of income and relatively less disadvantage than jurisdictions like, say, the Northern Territory. So the GST relativities reflect some pretty unique circumstances for the Northern Territory. Of the four jurisdictions that receive an additional amount through the

[250] Mr Andrew Barr MLA, *Transcript of evidence*, 24 November 2011, p. 147.
[251] ibid., p. 144.

> GST distribution process, we receive the least in relativities of those four jurisdictions.[252]

4.140 The Committee asked the Treasurer whether information being developed within the Chief Minister and Cabinet Directorate on levels of disadvantage within specific populations in the ACT had been used in the ACT's submission as a means of supporting the case for horizontal fiscal equalisation and was advised that those issues had been raised in relation to fine-tuning the horizontal fiscal equalisation review.[253]

4.141 The Committee notes that in February 2012 the Commonwealth Grants Commission issued its *Report on GST revenue sharing relativities: 2012 update*, which recommended that the ACT receive an increased share of GST revenue. The Commission recommended that the relativity by which the ACT's GST revenue is calculated be increased from 1.11647 in 2011–12 to 1.18058 in 2012–13. This proposed increase would provide the Territory with an additional $116 million in 2012–13 compared with the current financial year.[254] The *Canberra Times* reported that the Treasurer:

> …welcomed the proposed funding increase and said he would lobby his state and federal colleagues to ensure the commission's recommendations were adopted and the ACT "gets its fair share" of GST revenue.[255]

Environment, social and governance principles and investment strategy

4.142 The Committee discussed two aspects of Treasury's use of environment, social and governance (ESG) principles—first, the provision of advice to other agencies on social and environmental impacts of proposals and, second, the consideration of ESG principles in the Territory's investment strategies.

4.143 The Committee noted that the annual report states that the Economics Branch is the Treasury Directorate's:

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[252] ibid., p. 145.

[253] Mr Andrew Barr MLA, *Transcript of evidence*, 24 November 2011, p. 144; for discussion of ABS locational disadvantage project by the Chief Minister and Cabinet Directorate see: Ms Pam Davoren, *Transcript of evidence*, 24 November 2011, p. 120.

[254] Commonwealth Grants Commission. (2012) Report on GST Sharing Relativities—2012 update, 27 February; Cox, L. (2012) 'ACT wins in GST carve-up', *Canberra Times*, 25 February 2012.

[255] Cox, L., 'ACT wins in GST carve-up', *Canberra Times*, 25 February 2012, viewed 2 May 2012, http://www.canberratimes.com.au/act-news/act-wins-in-gst-carveup-20120224-1tua8.html

> …main source of economic analysis and advice, and deals with issues such as efficiency in public finances and economic development, together with providing advice on community issues, including social and environmental well-being.[256]

4.144 Treasury representatives informed the Committee that, although the Economics Branch did not employ staff with any particular expertise in environmental science, it relied upon experience to provide advice on these matters.[257] The Committee was also informed that:

> …the role of Treasury is around providing economic and financial advice and being the premier department to advise the Treasurer on those issues. In doing that, you need to be aware and take account of all those social impacts, impacts on government policy, environment impacts, et cetera. You talk about it in terms of a triple bottom line.
>
> Certainly, through the budget process and those major policy proposals that come to government, in our advising role, we will look at a number of things that are put to us around claims that are made by departments or proponents in relation to how something contributes to economic growth, how something contributes to social welfare, how something contributes to the policy aims or outcomes around government, how something contributes to a reduction in greenhouse gas emissions, et cetera. If the proposal is put to us, we will look at it and analyse it.[258]

4.145 The Committee also questioned Treasury Directorate representatives on the role ESG principles play in the Government's investment strategies and in exercising its voting rights as a shareholder. In particular, the Committee wanted to know whether the Government had divested itself of any stock in the last financial year specifically because of ESG issues. The Committee was informed:

> Our instruction to our managers is that they consider all issues when they make investment decisions and they include environmental, social and governance issues. There is not one particular stock that I could put my finger on and say, "It's been divested because it's demonstrating a particular risk or issue from one of those particular aspects." It will be a combination of the entire assessment of an investment and they will make that decision on that holistic basis.[259]

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256 Treasury Directorate, *Annual Report 2010-2011*, vol. 1, p. 8.

257 Mr Roger Broughton, *Transcript of evidence*, 24 November 2011, p. 152.

258 Ms Megan Smithies, *Transcript of evidence*, 24 November 2011, p. 153.

259 Mr Roger Broughton, *Transcript of evidence*, 24 November 2011, p. 157.

4.146 This advice was subsequently complemented by a written response from the Treasurer that concluded:

> Whilst ESG factors do contribute to the investment decision-making process, we have found no evidence that they have been solely responsible for any total divestments during the 2010-11 financial year.[260]

4.147 After the hearings, the Committee tabled its report inquiring into the exposure draft of the *Financial Management (Ethical Investment) Legislation Amendment Bill 2010*. A copy of the report is available from the Inquiry homepage.[261]

Provision of loans to Community Housing Canberra

4.148 The Committee noted that a further $20 million loan had been provided to Community Housing Canberra (CHC) for the provision of 90 properties in Crace, Bonner and Bruce. This would be used to provide affordable rental accommodation to people on low to moderate incomes. This loan complements an earlier $50 million loan for the provision of affordable housing.[262]

4.149 The Committee understands that the conditions and arrangements applying to the new loan of $20 million are structured in much the same way as that which applied to the earlier loan of $50 million:

> …they will be paying a variable interest rate for that government borrowing rate. That gives them a bit of an advantage over the market. It is almost an implicit subsidy there for the government, and that is their intention. They pay on 90-day bank bills which operate on a quarterly basis. The principal repayments of this loan would commence in 2021, so they have got a 10-year period over which they will not pay any principal. Those are the terms and conditions. And the principal has to be repaid over a period of 25 years.[263]

4.150 CHC has committed to providing 1 000 new affordable properties by 2018 with 500 to be sold and 500 to retained and rented at 74.9 per cent of market rates. At the end of the 2010–11 reporting period, CHC had delivered

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[260] Mr Andrew Barr MLA, Response to question taken on notice No. 3, 24 November 2011.

[261] Inquiry into the exposure draft of the Financial Management (Ethical Investment) Legislation Amendment Bill 2010—
http://www.parliament.act.gov.au/committees/index1.asp?committee=116&inquiry=991

[262] Treasury Directorate, *Annual Report 2010-2011*, vol. 1, p. 11.

[263] Mr Khalid Ahmed, *Transcript of evidence*, 24 November 2011, p. 161.

157 affordable rental properties and 135 affordable sale properties, which is in line with delivery targets.[264]

4.151 The Committee sought further information on what level of security the ACT had with regard to its $20 million loan to CHC and was informed that:

> It is a floating charge. It is like with the earlier $50 million. We had a floating charge of $53 million over its assets. That has been extended to $75 million. So the charge that we have or the first right that we have is more than the loan that has been provided. That covers the public interest and makes sure that that interest is protected.[265]

ICT sustainability plan

4.152 The Committee discussed in detail the contents of the draft ICT sustainability plan and progress towards its finalisation. The Committee has discussed the development of the plan in previous inquiries.[266] The Committee was informed that the draft plan had been circulated to the nine directorates, the responses had been coordinated and the draft plan would soon be put before the Government for consideration.[267] The Treasurer told the Committee that, although he does not set the Cabinet agenda, he would endeavour to have the plan discussed and released as early as possible in 2012.[268]

4.153 The Committee notes that at the time of tabling its report, the ICT sustainability plan was yet to be released. The Committee is of the view that the plan is an important document that will underpin and align the Government's use of ICT as a means of promoting more sustainable practices. The release of the plan is critical to the Government's overarching sustainability credentials and agenda.

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[264] Mr Andrew Barr MLA, *Transcript of evidence*, 24 November 2011, pp. 161-162.

[265] Mr Khalid Ahmed, *Transcript of evidence*, 24 November 2011, p. 161.

[266] Standing Committee on Public Accounts, *Report on Annual and Financial Reports 2009-10*, April 2011, p. 86; *Transcript of evidence*, 25 November 2010, pp. 146; 154.

[267] Mr Ken Moore, *Transcript of evidence*, 24 November 2011, p. 167.

[268] Mr Andrew Barr MLA, *Transcript of evidence*, 24 November 2011, p. 169.

RECOMMENDATION 8

4.154 **The Committee recommends that the ACT Government table in the ACT Legislative Assembly, by the first sitting day in August 2012, the Government's ICT Sustainability Plan.**

4.155 The Committee was also advised that a variety of measures were being taken to improve ICT sustainability in parallel with the development of the plan, including:

- replacing Shared Services ICT's two current data centres with larger and more efficient commercial facilities
- moving from physical to virtual servers and making greater use of cloud computing technology
- reviewing the policy of refreshing desktops every four years, and
- conducting pilot trials on expanding the use of mobile technology.[269]

4.156 The Committee sought further information on the recycling of printer toner cartridges. A subsequent written response from the Treasurer explained that the current contractor offered recycling services for all toner cartridges and that bins are provided and cleared on the request of individual directorates. There are currently 56 toner recycling bins located across the Government's directorates and agencies. However, the Committee notes that ACT Government policy is to use new toner cartridges in printers and multifunction devices as recycled cartridges can cause damage and render the equipment warranty void in such cases.[270]

4.157 The Committee also discussed:

- encouraging local business, particularly manufacturing, through tax policy[271]
- the Community Insurance Scheme[272]
- the Government's statutory review of compulsory third party (CTP) insurance[273]

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[269] Mr Ken Moore, *Transcript of evidence*, 24 November 2011, pp. 167-168.

[270] Mr Andrew Barr MLA, Response to question taken on notice No. 7, 24 November 2011.

[271] *Transcript of evidence*, 24 November 2011, p. 146.

[272] ibid., p. 154.

- the Expenditure Review and Evaluation Committee's examination of the provision of social housing and services through TAMS[274]
- revenue raised by the lease variation charge[275]
- how revenue is received by Treasury and provision of appropriate information to the Committee[276]
- operation of the Territory Banking Account[277]
- the effect of the sale of TransACT on ICT services[278], and
- the interaction of the Chief Information Officer (CIO) position with the Government Information Officer (GIO) position.[279]

Government Procurement Board

4.158 The Committee discussed the extent to which the Government Procurement Board is involved in social procurement activities and was informed that its involvement includes:

> …training and talking to directorates with both Social Ventures and Social Traders. We have had a series of roundtables. We have been actively educating directorates on the benefits of social procurement and the value that that can add to the ACT government and the community in general. We have already got some ongoing activities but we have committed to some demonstration projects, as I am sure you are aware, in the 2011-12 year and we are still working with directorates to identify those.[280]

4.159 The Committee requested more details of these demonstration projects and was provided with the following information:

- Social procurement was incorporated as part of tender evaluation criteria for the provision of child care services and canteen service for Education and Training Directorate;
- Education and Training Directorate has put together a strategy to employ indigenous trainees on Franklin and Bonner school projects;

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[273] ibid., p. 155.
[274] ibid., p. 166.
[275] ibid., p. 164.
[276] ibid., p. 148.
[277] ibid., p. 165.
[278] ibid., p. 170.
[279] ibid., p. 176.
[280] Ms Jill Divorty, *Transcript of evidence*, 24 November 2011, p. 174.

- ACT Housing's Total Facilities Management contract has employment targets for specific categories (e.g. people with a disability, public housing tenants, indigenous Australians);
- Graffiti Removal contract for Territory and Municipal Services requires the employment of one long-term unemployed person for each of six regions;

- Several agencies use Cafe Ink to cater for meetings and events; and
- The ACT Human Rights Commission continues to use an Aboriginal and Torres Strait Islander catering service for a number of its community engagement and education events.[281]

4.160 The Committee also discussed proposed amendments to the *Government Procurement Act 2001*.[282]

ACTEW Corporation Limited

Enlarged Cotter Dam

4.161 The Committee discussed the safety record of the construction program at the Cotter Dam site, in particular, whether there had been any warnings, breaches or stop-work orders issued by WorkSafe ACT in relation to the site. The Committee was informed that as at 3 February 2012 WorkSafe ACT had issued a total of 14 prohibition notices and 19 improvement notices relating to the dam work site.[283] These notices related to two areas of the construction site—temporary works such as scaffolding, stairs and props, and crane operations.[284]

4.162 The Committee referred to media reports that a construction worker who had voiced safety concerns about the site had been threatened and asked whether ACTEW had been in contact with the worker.[285] The Managing Director of ACTEW informed the Committee:

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[281] Mr Andrew Barr MLA, Response to question taken on notice No. 9, 24 November 2011.

[282] *Transcript of evidence*, 24 November 2011, p. 175.

[283] Mr Andrew Barr MLA, Response to question taken on notice No. 1, 16 December 2011.

[284] Mr Mark Sullivan, *Transcript of evidence*, 16 December 2011, p. 214.

[285] 'Safety concerns halt crane at Cotter', *Canberra Times*, 20 November 2011, viewed 13 April 2012, http://www.canberratimes.com.au/act-news/safety-concerns-halt-crane-at-cotter-20111120-1v2pk.html; 'Safety worries shut down dam crane', *Canberra Times*, 24 November 2011, viewed 13 April 2011, http://www.canberratimes.com.au/act-news/safety-worries-shut-down-dam-crane-20111124-1v2vn.html.

> We are satisfied that no action has been taken against workers on the site for raising safety concerns on the site. Clearly there is a contention from the worker and his union that that may not be the case, and that is currently before Fair Work Australia, brought there by the CFMEU as an adverse action case. So Fair Work Australia will investigate, with the assistance of Comcare, whether there is an issue there for concern.
>
> Our role has been to ensure that the Bulk Water Alliance and the employers involved in the Bulk Water Alliance understand—and I think they understand fully—that no worker shall be disciplined for raising safety issues at the dam. In fact the raising of safety issues at the dam is something that we promote and are proactive in raising, and a number of safety issues are always raised.[286]

4.163 The Committee asked whether the new Cotter Dam remained on schedule and on budget. The Managing Director responded that, whilst progress had been significantly affected by weather:

> …at the moment, my budget is holding; my schedule is holding. They are both under extreme pressure and I suspect there will be movement, in at least schedule, in February.[287]

4.164 The Committee also raised the issue of the recent discovery of a large and unstable geological feature at the construction site. The Committee was assured that, although the geotechnical surveys that had been completed prior to construction commencing had not discovered this feature, they had been conducted competently and in accordance with best practice. The Committee understands that the discovery of this geological feature at this late stage will cost the owner and the constructor $5 million each to rectify.[288]

4.165 The Committee notes that heavy rain in early March 2012 caused flooding at the dam construction site and that the Treasurer made a statement to the Assembly on 27 March 2012 detailing the state of the budget for the enlargement project and delays in the construction schedule. The revised estimate for the total project cost presented to the ACTEW board on 4 March 2012, prior to the flooding at the construction site, was $396.8 million, an increase of $33.5 million over the then current budget of $363.3 million. The

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[286] Mr Mark Sullivan, *Transcript of evidence*, 16 December 2011, pp. 214-215.

[287] ibid., p. 217.

[288] ibid., pp. 217-18.

impact of the March 2012 flooding on both the budget and the schedule of the enlargement project were yet to be determined at that stage.[289]

4.166 The Committee further notes that ACTEW issued updated advice on the status of the Cotter Dam construction project on 27 April 2012, stating that work would recommence at the dam site on 5 May 2012 and that:

> As a result of the delays it is now expected that placement of the mass Roller Compacted Concrete for the dam will be completed by the end of the year, with final structural concrete and commissioning works to be finalised and completed in April 2013.
>
> …
>
> The full cost of the damage and delays caused by the March 2012 flooding have now been assessed and are estimated to be in the order of $17 million. After insurance claims are taken into account the impact of the flood on the project cost at completion will be approximately $7.8 million.[290]

Sale of TransACT

4.167 The Committee was interested in the impact on ACTEW of the recent sale of TransACT Communications Pty Limited to iiNet Limited. The Committee was informed that, as the then holder of 18 per cent of TransACT's shares, ACTEW received 18 per cent of the profits from the sale. In addition, ACTEW representatives were required to resign from the TransACT Board. At the time of the sale, ACTEW valued its stake in TransACT at $4.7 million and received $4.9 million from the sale. [291]

4.168 The Committee was also informed that the valuation of TransACT at $60 million was based on its income producing capacity, not on the intrinsic value of the communications network it owns, a network that cost several hundred million dollars to originally establish.[292] This relationship between profitability and valuation explains why ACTEW's stake in TransACT had been written down to zero before being revalued to $4.7 million in 2009.[293]

Murrumbidgee to Googong Water Transfer

4.169 The Committee sought to establish how much woodland would be affected by the construction of the Murrumbidgee to Googong Water Transfer and the

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[289] Mr Barr, 'Water—Cotter Dam, Statement by minister', Legislative Assembly for the ACT, *Debates*, pp. 1290–1292.

nature of ACTEW's plan to offset this impact. The Committee was provided with the following details:

- The project is estimated to affect 11.1 hectares of box gum woodland, of which 5 hectares have been identified as being in good to moderate condition and 6.1 hectares have been identified as being in poor condition.
- ACTEW's Murrumbidgee to Googong Water Transfer biodiversity management and offset plan contains offset ratios of eight to one for woodland in good to moderate condition and four to one for woodland in poor condition, providing a total offset area of 64.4 hectares.
- Any increases in the affected area of woodland will result in a commensurate increase in the offset area determined according to the aforementioned ratios.[294]

Murray-Darling Basin Plan

4.170 The Committee sought ACTEW's evaluation of the implications of the draft Basin Plan for the ACT. The Managing Director informed the Committee that he believed the ACT's diversion limit of 40.5 gigalitres per year to be:

> …a good short, medium-term solution. I think history says that 40.5 gigalitres will be sufficient for us in normal times for a considerable time. The issue with 40.5, and the fact that there would appear in the draft to be no growth parameters in terms of the water allocation, is that in the longer term 40.5 gigalitres of water will not be sufficient to service Canberra.[295]

4.171 The Committee was further informed that the ACT may reach this diversion limit by approximately 2040, depending on factors such as climate change, population growth and government policies on water use, and that:

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290 ACTEW Corporation, 'Full impacts of March flood at Enlarged Cotter Dam now known', 27 April 2012, viewed 2 May 2012, http://www.actew.com.au/News%20and%20Publications/News%20and%20Events/2012/April/27/Full%20impacts%20of%20March%20flood%20at%20Enlarged%20Cotter%20Dam%20now%20known.aspx .

291 Mr Mark Sullivan, *Transcript of evidence*, 16 December 2011, pp. 215-16.

292 ibid., pp. 216.

293 ibid., p. 217.

294 Mr Andrew Barr MLA, Response to question taken on notice No. 2, 16 December 2011.

295 Mr Mark Sullivan, *Transcript of evidence*, 16 December 2011, p. 222.

> The government will need to make policy decisions in respect of how much water it wishes Canberra to access. Having done that, there needs to be an operational mechanism to respond to it, and the operational mechanisms are clearly there.[296]

Non-potable water strategy

4.172 The Committee discussed the use of non-potable water, noting that use in 2010–11 was 16.7 per cent as compared with the *Think Water Act Water* target of 20 per cent by 2012. During discussions, the Committee inquired as to ACTEW's level of involvement in the Territory's non-potable water strategy and the Managing Director told the Committee:

> I am not involved in non-potable water; I should be, but I am not.[297]

4.173 The Committee understands that the Environment, Climate Change, Energy and Water Directorate has developed the ACT Non-potable Water Master Plan.[298] Notwithstanding that ACTEW, in the main is concerned with the security of potable water together with non-potable in the form of effluent, the Committee believes that there is merit in formalising the involvement of ACTEW—on the basis of expertise, strategic water experience and as a key stakeholder—in the development of the non-potable water strategy in the ACT.

RECOMMENDATION 9

4.174 **The Committee recommends that the ACT Government should ensure that a formal arrangement is in place to guarantee the involvement of ACTEW Corporation Limited in discussions about the development of the ACT's non-potable water strategy.**

4.175 The Committee also discussed:

- use of non-potable water[299]
- the fish management plan for the Cotter Reservoir[300]

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[296] ibid., p. 223.

[297] ibid., p. 223

[298] *Transcript of evidence*, 16 December 2011, pp. 223–224; http://www.environment.act.gov.au/water/non-potable_water_master_plan

[299] *Transcript of evidence*, 16 December 2011, p .223.

- the water restriction review[301]
- provision of water and sewerage services to Tharwa and Uriarra Village[302], and
- water skiing facilities in the ACT.[303]

ACTTAB Limited

Provision of responsible gambling services

4.176 The Committee was informed that a new problem gambling support program had been developed in 2011 and that the contract to deliver this program had been awarded to Mission Australia. The funds required to run the program are raised through contributions from gaming machine operators based on their gross revenues. Problem gambling services in the ACT had previously been provided by Lifeline Canberra under a different program.[304]

4.177 Regarding the new relationship between Mission Australia and ACTTAB, the Committee was informed:

> It is probably not at this stage at the same level that we had with Lifeline. We had a very good working relationship with Lifeline and the counsellors, a one on one relationship with those people and our own problem gambling officer. From what I am told by the people who are involved in that, that is starting to evolve and another meeting is scheduled shortly.[305]

4.178 The Committee inquired as to what impact the introduction of self-serve wagering terminals was likely to have on problem gambling and was informed that guidelines had been developed in consultation with the ACT Gambling and Racing Commission to ensure that the machines are installed in positions where their use can be supervised by staff. Furthermore,

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[300] ibid., p. 225.

[301] ibid., p. 220.

[302] ibid., p. 221.

[303] ibid., p. 226.

[304] ACTTAB Limited, *2010-11 Annual Report*, pp. 59-60; Mr Tony Curtis, *Transcript of evidence* 16 December 2011, p. 228.

[305] Mr Tony Curtis, *Transcript of evidence*, 16 December 2011, p. 228.

the Committee understands that the machines account for only seven or eight per cent of ACTTAB's retail turnover.[306]

4.179 The Committee was further informed by ACTTAB representatives that the slow take-up of the self-serve wagering terminals could be attributed to the difficulty of using them compared to placing bets over the counter and that they did not believe problem gamblers would be the main users of such terminals.[307]

Spectrum betting system

4.180 The Committee discussed the introduction of the Spectrum betting system to ACTTAB's retail network. The Spectrum system was purchased from an American company—AmTote International—and is used by ACTTAB's major partner in Australia—Tabcorp.[308]

4.181 The Committee queried whether the introduction of the Spectrum system would eliminate the possibilities for fraud that existed under the previous system and was told:

> The technology is such that the loopholes that were in the previous system have been removed. I do not want to go into the detail of that because those matters are still before the court and will likely go to hearing in the Supreme Court. But the prospects of anybody engaging in that sort of behaviour and being able to manipulate the systems are fairly remote now, I would say. The method that was used required some time delay in things occurring, and those delays are not present in this technology.[309]

Sponsorships

4.182 The Committee noted that page 81 of ACTTAB's annual report lists $817,714 of sponsorships and sought an explanation for why resources had been directed to sponsorships rather than to addressing problem gambling. The Chief Executive of ACTTAB informed the committee:

> I do not know that, as a board, the board were happy about having to spend this sort of money in sponsorships of sporting teams and engaging in advertising of sports betting, but we were forced into that situation by the activities of corporate

[306] ibid., pp. 228-229.

[307] ibid., p. 229.

[308] ibid.

> bookmakers who have advertised extensively nationally on television, free-to-air television in particular, and were eroding our business and that of the other traditional wagering operators, the TABs.[310]

Viability of ACTTAB

4.183 The Committee discussed the viability of ACTTAB given the emergence of a national wagering market. Representatives of ACTTAB told the Committee that, although recent technology upgrades had allowed them to offer the same level of service as their larger competitors, they would always face pressures that arise from being the smallest player in a national market and that:

> …the time will come when we will probably either be taken over partly or wholly by a bigger player. And I do not think that is a secret. I think the board would be all of that view, that the time will come when that will probably have to happen.[311]

4.184 The Committee sought to establish if the Government shared this view and whether it was actively considering selling ACTTAB. The Treasurer confirmed that:

> Those matters are under active consideration. But the time frame, I suspect, is not in the 2012 calendar year but may be in the not too distant future beyond that. But there is further work that obviously has to be done. And there needs to be an offer.[312]

4.185 The Committee was advised by ACTTAB representatives that, should ACTTAB be sold, the new holder of the licence would be required to comply with the *Gambling and Racing Control (Code of Practice) Regulation*, including with respect to the provisions covering problem gambling. The Treasurer informed the Committee that the sale of ACTTAB would require changes to the *Betting (ACTTAB Limited) Act* and this would be a matter for the Legislative Assembly.[313]

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[309] ibid., p. 230.

[310] ibid., p. 231.

[311] Mr Con Kourpanidis, *Transcript of evidence*, 16 December 2011, p. 232.

[312] Mr Andrew Barr MLA, *Transcript of evidence*, 16 December 2011, p. 233.

[313] Mr Tony Curtis and Mr Andrew Barr MLA, *Transcript of evidence*, 16 December 2011, p. 234; *Gambling and Racing Control (Code of Practice) Regulation 2002*; *Betting (ACTTAB Limited) Act 1964.*

RECOMMENDATION 10

4.186 **The Committee recommends that, as further developments arise with regard to the viability of ACTTAB Limited, the Minister should make a statement informing the ACT Legislative Assembly.**

4.187 The Committee also discussed:

- ACTTAB's relationship with the South Australian Lotteries Commission[314]
- costs associated with the Spectrum betting system[315], and
- costs associated with the application for a Victorian licence.[316]

Rhodium Asset Solutions Limited

4.188 The Committee was informed that Rhodium was deregistered on 19 June 2011.[317] Rhodium's annual report lists the key actions taken to wind down the company as follows:

- The final transfer of the remaining novated leases to Toyota Fleet Management.
- The final transfer of the remaining operating leases to TAMS Management.
- The completion of three months financial statements and final audit in October 2010.
- The replacement of the former Board with a public service member Board on 29 October 2010.
- The transfer of several residual leases and the remaining debtors to be managed by ACT Treasury until finalisation.
- The completion of the business and administrative activities of Rhodium, including the cessation of all staff and contractors, the archiving of all files and the shut down of the premises at Mitchell on 3 November 2011.
- Removing Rhodium from the *Territory-owned Corporations Act 1990* on 12 December 2010.
- Following agreement by the Voting Shareholders on 22 March 2011, the company was formally deregistered by the Australian Securities and Investment Commission on 19 June 2011.[318]

4.189 The Committee was informed that the only matter that remains outstanding is the management of a number of debtors, which have been transferred to the

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[314] *Transcript of evidence*, 16 December 2011, p. 232.
[315] ibid., p. 230.
[316] ibid.
[317] Mr Tony Hays, *Transcript of evidence*, 16 December 2011, p. 235.
[318] Rhodium Asset Solutions Limited, *Annual Report 2010-11*, p. 411.

Treasury Directorate. The Committee was told that the Treasury Directorate has payment plans in place with 26 debtors and that seven are still being pursued.[319]

4.190 The Committee requested details as to how much Rhodium had finally cost the Government and was informed:

> When Rhodium existed, it existed as a territory-owned corporation, and its activities were recovered by those who leased equipment and cars from the company. In that case it did not cost the territory anything. It was wound up because of the risk, and those risks were crystallising, and, as I said, we did have to actually pay some money in terms of restructuring and the various sales processes. But, at the end of the day, it was the least cost or savings option, from memory.[320]

4.191 The following answer was subsequently provided to the Committee by the Treasurer:

> In order to enable Rhodium to meet a range of costs associated with winding the company down, $1.952 million was provided by the Government in 2009-10. This is the full extent of monies that have been paid to Rhodium by the Government. This amount has now been fully offset by the annual savings derived from outsourcing the ACT Government Fleet contract.[321]

4.192 The Committee discussed the $824,315 in fees that had been paid in this reporting period to MAXimusSolutions Australia to manage Rhodium between July and September and prepare completion accounts. In light of this fee and fees paid in previous reporting periods, the Committee sought to establish whether it had been worthwhile keeping Rhodium going until 19 June 2011. Treasury Directorate officials informed the Committee:

> Yes, we did some analysis around options for trying to either retain the company until all leases had matured or arranging for someone to manage the company on the territory's behalf, trying to dispose of the leases, and the upshot was that it was slightly beneficial to dispose of the leases. Some of them were transferred to TAMS and some of them were sold to Toyota Fleet Management, and some of the residual issues such as the debtors are being managed in house by Treasury.
> It is also the case that Rhodium, as a result of the fleet business that was transferred from Totalcare, was charging about $197 per vehicle per month compared to the market rate of about $25 per vehicle per month. That contract

[319] Mr Tony Hays, *Transcript of evidence*, 16 December 2011, p. 236.

[320] Ms Megan Smithies, *Transcript of evidence*, 16 December 2011, p. 236.

[321] Mr Andrew Barr MLA, Response to question taken on notice No. 3, 16 December 2012.

> has been outsourced, and the savings that have been achieved from that mean that we have now, if you like, overcome the losses that have been incurred by Rhodium.[322]

4.193 The Committee also discussed:

- capital redistributions listed in the annual report[323], and
- receivables listed as impaired in the annual report.[324]

Totalcare Industries Limited

4.194 The Committee notes that the process of winding up Totalcare, which has been in train for several years, is now approaching a conclusion. The Committee was informed during its inquiry into annual reports for 2009–10 that the process had been drawn out due to outstanding superannuation, tax and legal complications. In that report the Committee recommended that the Treasurer inform the Legislative Assembly in six months time of progress towards winding up Totalcare by the end of the 2010-11 financial year.[325] In response to this recommendation, the Treasurer made a statement to the Legislative Assembly on 7 December 2010.[326]

4.195 The Committee was provided with the following update by a representative of Totalcare:

> Effective next week we will be asking the board to approve a resolution to deregister the corporation. We are on the ASIC time clock now. We have resolved all outstanding superannuation matters. There are three which are in settlement rotation. That means the member, or the former employee, has signed the settlement deed, I have signed the settlement deed, and the deeds are circulating among superannuation funds ARIA and ComSuper.
> The total amount of money we will have paid out on these settlements will be $9,678,450.28 against an original estimate of $17.2 million. We expect the corporation's existence to end formally—when you are on the ASIC time clock you have to wait for them—in legal terms, two months, probably, from the early

322 Mr Tony Hays, *Transcript of evidence*, 16 December 2011, p. 237.

323 *Transcript of evidence*, 16 December 2011, p. 237.

324 ibid., p. 238.

325 See recommendation 13, Standing Committee on Public Accounts, *Report on Annual and Financial Reports 2009-10*, April 2011, p. 86.

326 Ms Gallagher, 'Totalcare Industries Ltd, statement by minister', Legislative Assembly for the ACT, *Debates*, 7 December 2010, p. 5796.

> part of next month. For all intents and purposes, once the shareholders accept the board's resolution then the time clock can start in earnest.[327]

4.196 The Committee also sought an explanation for the difference between the entry for reimbursements for superannuation settlements—$4,371,403—and the entry for payments for superannuation settlements—$4,122,589—on page 18 of Totalcare's annual report.[328] The Committee was told:

> It is to do with the nature of accounting in relation to the actuarial calculations on particular amounts that have to be paid, amounts that have to be transferred to ComSuper and amounts that have to sit in trust. It is merely a book entry.[329]

ACT Insurance Authority

2003 bushfires

4.197 The Committee noted that the Territory had reached a settlement on public liability claims arising from the 2003 bushfires with all but one of the plaintiffs—that is, a group known as the 'Stacks plaintiffs'—and that the matter had concluded in court several weeks before the public hearing.[330]

4.198 The Committee was informed that Justice Higgins had made it clear to the court that he was unlikely to reach a decision quickly and that, in the estimation of the ACT Insurance Authority (ACTIA) representatives, he could take up to a year to do so.[331]

4.199 Regarding the amounts involved in claims arising from the 2003 bushfires, the Committee was informed:

> I think the authority started with a reserve on the claim in our books of about $100 million when we kicked off. That has now reduced to about $70 million, I think. That is not my expectation of what the territory will end up paying if it is found liable to pay. Our assessment of quantum is a number way less than that, but it will still be—and I suppose it depends on the scale: what you think is large and what is small—a substantial settlement, perhaps.[332]

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327 Mr Tom McDonald, *Transcript of evidence*, 16 December 2011, p. 239.

328 Totalcare Industries Limited, *Annual Report 2011*, page 18.

329 Mr Tom McDonald, *Transcript of evidence*, 16 December 2011, p. 239.

330 Australian Capital Territory Insurance Authority, *Annual Report 2010-11*, p. 9; Mr John Fletcher, *Transcript of evidence*, 16 December 2011, p. 240.

331 Mr John Fletcher, *Transcript of evidence*, 16 December 2011, p. 240.

332 ibid.

Reinsurance market

4.200 The Committee noted that ACTIA's annual report states that it is almost certain that the costs of reinsurance will rise in coming years due to a hardening of the insurance market and the impact of natural disasters in Australia and New Zealand. These elements will need to be factored into property reinsurance premiums.[333] The Committee was advised further with regard to ACTIA's reinsurance position:

> For the 2010-11 period we managed to maintain our reinsurance premium for property. There was a slight increase in the premium we paid, but we also added assets to the property that we covered off, so the rate online was about the same. At the start of the process we started talking about increases—that they could be 20 or 25 per cent. At the end of the day I think we probably paid about 10 per cent, but a lot of that was because of additional assets. We basically maintained what we had the year before.
>
> I do not know that we are going to be that lucky next year. I think the market will start to shift. It is probably fair to say that the property market has been driven down for quite a few years and they would say they are pretty much at rock bottom. But we continue to put a program out there that encourages competition particularly between Australian insurers who like us as a client. We have a number of the large reinsurers who would quite happily lead our property program, which means they basically set the rate and the rest follow along. We will do our best again in April-May next year and see where we end up.[334]

Risk management

4.201 The Committee sought clarification from ACTIA representatives on the nature of ACTIA's risk management activities and the status of its liabilities claims in light of the following passage in the annual report:

> While improved claims and incident reporting practices by agencies has led to an increase in estimated liabilities, the number of claims reported is stabilizing. That said, the portfolio is extremely volatile given the heavy bias towards liability risks.[335]

4.202 The Committee was informed that the volatility of the portfolio arose from medical malpractice and public liability claims which, in contrast to property

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[333] Australian Capital Territory Insurance Authority, *Annual Report 2010-11*, p. 9; Mr John Fletcher, *Transcript of evidence*, , 16 December 2011, p. 241.

[334] Mr John Fletcher, *Transcript of evidence*, 16 December 2011, pp. 241-242.

[335] Australian Capital Territory Insurance Authority, *Annual Report 2010-11*, p. 9.

claims, take a long time to resolve and it is sometimes very difficult to approximate claims reserves for. Medical malpractice claims in particular:

> …can very quickly go from being classified as a small claim, which would be less than a million dollars, into the large claim category, depending on what you start to unearth as you go through that process with the plaintiff. That causes volatility.[336]

4.203 The Committee was also informed that ACTIA undertakes a variety of risk management activities with ACT Government agencies, in particular with those agencies that generate insurable risks—the Health Directorate, the Territory and Municipal Services Directorate, the Justice and Community Safety Directorate and the Education and Training Directorate. This work is:

> …to basically improve their work practices and their business arrangements to reduce the number of incidents that they might have as part of doing their business, and then obviously that leads to reducing the number of ultimate claims and claim costs.[337]

Investment strategy

4.204 The Committee sought an explanation for why 64 per cent of ACTIA's total assets as at 30 June 2011 were short-term investments and only 15 per cent were long-term assets.[338] The Treasurer advised:

> The short term fund had a higher rate of return in 2010-11.
> In addition, returns from the short term fund tend to be less volatile than long term funds due to lesser impacts on capital prices, providing greater budget certainty and better liquidity.[339]

4.205 The Committee also discussed:

- contract terms with reinsurers[340]
- actuarial assumptions provided by the Office of the Nominal Defendant[341], and
- compulsory third party insurance.[342]

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[336] Mr John Fletcher, *Transcript of evidence*, 16 December 2011, pp. 242.
[337] ibid, pp. 243.
[338] Australian Capital Territory Insurance Authority, *Annual Report 2010-11*, p. 12.
[339] Mr Andrew Barr MLA, Response to question taken on notice No. 5, 16 December 2011.
[340] *Transcript of evidence*, 16 December 2011, p. 243.
[341] ibid., p. 244.

Independent Competition and Regulatory Commission

Water pricing

4.206 The Committee noted the following passage in the ICRC's annual report, which referred to the effects of the price adjustment made through the mid-term review of the ICRC's 2008–13 Water and Wastewater Determination:

> The Commission observed some community puzzlement with its decision to increase ACTEW's charges as a consequence of consumers using less water than had been forecast in the period up to December 2010.[343]

4.207 The ICRC explained that the community puzzlement may have arisen in part because the mid-term review of water prices did not involve a full consultation process or the production of an extensive report. However, the process of producing the 2013–18 Water and Wastewater Determination would involve both substantial engagement with the community and the production of a full report.

4.208 The ICRC also explained the process it followed to set water prices both in the original 2008-13 Water and Wastewater Determination and in its mid-term review:

> In simple terms, we set a revenue cap for Actew which is based on efficient cost within forecast of volume of water sales. We divide one by the other and that tells us what the prices are.[344]

4.209 Given this procedure, the Committee questioned whether the ICRC would suggest a reduction in water charges if consumption were to rise. ICRC representatives agreed that, given a set revenue cap, were their forecasts of water consumption to go up then water prices would go down.[345] However, ICRC representatives also stated that it had not yet been decided whether to include a mid-term review mechanism in the next water determination, which

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342 ibid., p. 245.

343 Independent Competition and Regulatory Commission, *Annual Report 2010-11*, p. x.

344 Mr Malcolm Gray, *Transcript of evidence*, 16 December 2011, p. 250.

345 ibid.

would allow the variation of prices should actual water consumption differ from what had been forecast.[346]

4.210 The Committee notes that, in light of the following summary in ACTEW's submission on the ICRC's *Issues paper: regulated water and sewerage services 2013-2018*, it appears water prices will rise significantly in coming years:

> The water prices set for the current regulatory period have been insufficient to cover the efficient costs determined by the Commission in 2008. Revenues have fallen short of the Commission's determined revenue requirement by around $190 million ($11/12) or 32% to date. This shortfall is primarily the result of the Commission's 2008 decision on the form of regulation. The Commission imposed a fixed price path in 2008, despite advice from the ACT Government and clear warning from ACTEW of the need for price flexibility as a consequence of the possibility of continuing drought and higher level water restrictions. This under recovery represents the largest single pressure on water prices in the next regulatory period arising from the current form of regulation.[347]

Measurement and monitoring of greenhouse gas emissions

4.211 The Committee inquired as to what work the ICRC would be undertaking and what outputs it would be producing when providing advice to the Government on the measurement and monitoring of greenhouse gas emissions in the ACT. The Committee was told:

> The work we have been given involves two separate tasks. One is to advise the minister on appropriate methodology for measuring greenhouse gas emissions in the ACT and the other is to then conduct the emissions inventory for four years starting with 2008-09. The initial advice to the minister on the inventory methodology went to him and he duly determined the methodology, and we have completed inventory for the first year for which we were asked to complete the inventory, and all those documents have been tabled in the Assembly. We now go on and do a subsequent three years under our service-level agreement with the department of environment and sustainable development. At the end of that period they will take a look at our performance and decide whether they want to use us more, I suppose.
>
> The methodology itself, though, is not a one-off exercise. We are going to keep the methodology under review because there are substantial changes occurring, in terms of both commonwealth and territory policy and technological

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[346] ibid.

[347] ACTEW Corporation, *ACTEW response to the Independent Competition and Regulatory Commission's issues paper: regulated water and sewerage services from July 2013*, 30 March 2012, p. 3.

> developments in the generating, distribution, transmission industries, which mean that a methodology which might be good in one year is not necessarily going to be equally apt in another year. So, as we commence the next inventory, which we propose to start in the early part of next year, the first task will be to review the methodological advice we gave the minister this year.[348]

4.212 The Committee also discussed:

- secondary water use[349]
- the ICRC's staffing structure[350], and
- ACTEW's capital costs.[351]

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[348] Mr Malcolm Gray, *Transcript of evidence*, 16 December 2011, pp. 247-248

[349] Independent Competition and Regulatory Commission, *Issues paper: secondary water use in the ACT*, Report No. 9/2011, November 2011; Mr Malcolm Gray, *Transcript of evidence*, 16 December 2011, pp. 249-250.

[350] *Transcript of evidence*, 16 December 2011, p. 248.

[351] ibid., p. 251.

5 CONCLUSION

5.1 The Committee has made **10** recommendations in relation to its inquiry into 2010–11 Annual and Financial reports. The Committee would like to thank Ministers and accompanying directorate and agency staff, and members of governing boards, for their time and cooperation during the course of the inquiry process.

Caroline Le Couteur MLA

Chair

31 May 2012

APPENDIX A: Annual reports referred to the Committee for inquiry by the Legislative Assembly for the ACT

- ACT Auditor-General's Office
- ACT Gambling and Racing Commission
- ACT Government Procurement Board
- ACT Insurance Authority
- ACT Legislative Assembly Secretariat
- ACT Long Service Leave Authority
- ACTEW Corporation Limited
- ACTTAB Limited
- Chief Minister and Cabinet Directorate
- Commissioner for Public Administration
- Economic Development Directorate
- Exhibition Park Corporation
- Independent Competition and Regulatory Commission
- Rhodium Asset Solutions
- Totalcare Industries
- Treasury Directorate

APPENDIX B: Witnesses who appeared before the Committee

Thursday 3 November 2011

Ms Katy Gallagher MLA

Minister for Industrial Relations

Ms Fiona Barbaro, Acting Director, Office of Industrial Relations

Mr Andrew Cappie-Wood, Head of Service and Director-General

Ms Liesl Centenera, Director, Public Sector Management Group

Mr Andrew Kefford, Acting Deputy Director-General and Commissioner for Public Administration

Mr John Fletcher, General Manager; Fund Manager, Default Insurance Fund, ACT Insurance Authority

Mr Phil Collins, Registrar, ACT Long Service Leave Authority

Monday 21 November 2011

Mr Andrew Barr MLA

Minister for Economic Development

Minister for Tourism, Sport and Recreation

Mr David Dawes, Director-General, Economic Development Directorate (EDD)

Ms Cathy Hudson, Deputy Director-General, Economic Development, Policy and Governance Division, EDD

Mr Ian Cox, Acting Executive Director, Business Industry and Development, EDD

Mr Shane O'Leary, Executive Director, Tourism, Events and Sport Division, EDD

Mr Ian Hill, Director of Marketing, Australian Capital Tourism, EDD

Mr Ian Thomson, Acting Executive Director, Land Strategy and Finance, EDD

Mr Greg Jones, Chief Executive, ACT Gambling and Racing Commission

Ms Liz Clarke, General Manager, Exhibition Park in Canberra

Thursday 24 November 2011

Ms Katy Gallagher MLA

Chief Minister

Mr Andrew Cappie-Wood, Head of Service and Director-General, Chief Minister and Cabinet Directorate (CMCD)

Ms Liesl Centenera, Director, Public Sector Management Group, Workforce Capability and Governance Division, CMCD

Mr Mick Chisnall, Interim Director, Government Information Office, Policy and Cabinet Division, CMCD

Ms Pam Davoren, Deputy Director-General, Policy and Cabinet Division, CMCD

Ms Sarah Hitchcock, Director, Centenary of Canberra Team, Culture and Communications Division, CMCD

Mr Andrew Kefford, Acting Deputy Director-General, Workforce Capability and Governance Division, CMCD and Commissioner for Public Administration

Mr Jeremy Lasek, Executive Director, Culture and Communications Division, CMCD

Mr Paul Ogden, Director, Strategic Finance, Policy and Cabinet Division, CMCD

Thursday 24 November 2011

Mr Andrew Barr MLA

Treasurer

Ms Megan Smithies, Under Treasurer, Treasury Directorate

Mr Khalid Ahmed, Executive Director, Policy Coordination and Development Division,

Mr Roger Broughton, Executive Director, Investment and Economics Division, Treasury Directorate

Ms Jill Divorty, Executive Director, Shared Services,

Mr Patrick McAuliffe, Director, Investment Branch, Treasury Directorate

Mr Ken Moore, General Manager, Shared Services ICT, Treasury Directorate

Mr David Read, Commissioner for Revenue, Revenue Management Division ACT Revenue Office, Treasury Directorate

Ms Sue Morrell, Chair, ACT Government Procurement Board

Tuesday 29 November 2011

Dr Maxine Cooper

ACT Auditor-General

Mr Bernie Sheville, Director, Financial Audits, ACT Auditor-General's Office

Mr Rod Nicholas, Director, Performance Audits and Corporate Services, ACT Auditor-General's Office

Mr Malcolm Prentice, Senior Audit Manager, Financial Audits, ACT Auditor-General's Office

Tuesday 29 November 2011

Mr Shane Rattenbury MLA

Speaker

Mr Tom Duncan, Clerk, ACT Legislative Assembly Secretariat

Mr Max Kiermaier, Deputy Clerk and Serjeant-at-Arms, ACT Legislative Assembly Secretariat

Mr Ian Duckworth, Manager, Corporate Services, ACT Legislative Assembly Secretariat

Ms Val Barrett, Manager, Hansard, Communications and Library, ACT Legislative Assembly Secretariat

Mr David Skinner, Manager, Strategy and Parliamentary Education, ACT Legislative Assembly Secretariat

Mr Andrew Snedden, Manager, Committees, ACT Legislative Assembly Secretariat

Friday 16 December 2011

Mr Andrew Barr MLA

Treasurer

Ms Megan Smithies, Under Treasurer, Treasury Directorate

Mr Tony Hays, Senior Manager, Project and Budget Management, Treasury Directorate and former Chief Executive Officer, Rhodium Asset Solutions

Mr Mark Sullivan, Managing Director, ACTEW Corporation

Mr Ian Carmody, Director, Water Security Projects, ACTEW Corporation

Mr Ross Knee, Executive Manager, Water, ACTEW Corporation

Mr Tony Curtis, Chief Executive, ACTTAB Limited

Mr Con Kourpanidis, Chairman, ACTTAB Limited Board

Ms Kayelene Snowden, Executive Manager, Finance and Business Services, ACTTAB Limited

Mr Tom McDonald, Deputy Chair, Totalcare Industries Board

Mr John Fletcher, General Manager, ACT Insurance Authority (ACTIA)

Mr Malcolm Gray, Senior Commissioner, Independent Competition and Regulatory Commission (ICRC)