



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Caroline Le Couteur MLA (Chair), John Hargreaves MLA (Deputy Chair), Brendan Smyth MLA

Ms Amanda Bresnan MLA
Chair
Select Committee on Privileges 2011
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Dear Ms Bresnan

Appointment of next ACT Auditor-General—request for authorised documents

I refer to correspondence from you to the Secretary of the Standing Committee on Public Accounts (the Committee), dated 24 October 2011, in relation to the Committee's consideration of the appointment of the next Auditor-General.

Specifically, on behalf of the Select Committee on Privileges 2011, you request that copies of documents relating to the appointment authorised by the Committee be made available to the Select Committee.

Please find enclosed copies of the correspondence authorised by the Committee relating to the appointment.

Yours sincerely

A handwritten signature in black ink that reads 'Caroline Le Couteur'.

Caroline Le Couteur MLA
Chair

27 October 2011



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Caroline Le Couteur MLA (Chair), John Hargreaves MLA (Deputy Chair), Brendan Smyth MLA

CONSIDERATION OF APPOINTMENT OF NEXT ACT AUDITOR-GENERAL
AUTHORISED CORRESPONDENCE

| No | Details | Document date | Authorised by Committee |
|----|--|---------------|-------------------------|
| 1 | Mr Smyth's resignation letter to PAC Chair | 5 July 2011 | 5 August 2011 |
| 2 | Clerk's replacement advice to Mr Smyth (dated 7 July 2011) | 7 July 2011 | 9 August 2011 |
| 3 | Correspondence from the Chief Minister to the Committee—proposing a nominee for consideration as appointment as the next Auditor-General [attachment not authorised] | 31 May 2011 | 12 August 2011 |
| 4 | Correspondence from the Committee to the Chief Minister—Proposed nominee to be appointed as to the next ACT Auditor-General | 31 May 2011 | 12 August 2011 |
| 5 | Correspondence from the Chief Minister to the Committee—responding to the Committee's correspondence of 31 May 2011 | 3 June 2011 | 12 August 2011 |

Civic Square, London Circuit, Canberra ACT 2600
GPO Box 1020, Canberra ACT 2601

Secretary: Telephone: (02) 620 50127 Facsimile: (02) 620 50432

Email: committees@parliament.act.gov.au

| No | Details | Document date | Authorised by Committee |
|----|--|---------------|-------------------------|
| 6 | Correspondence from the Committee to the Chief Minister (signed by Deputy Chair) — (i) requesting extension of time; and (ii) request for further information | 8 June 2011 | 12 August 2011 |
| 7 | Correspondence from the Chief Minister to the Committee responding to the Committee's correspondence of 8 June 2011 — includes offer to brief the Committee and agreement to provide an extension of time | 9 June 2011 | 12 August 2011 |
| 8 | Correspondence from the Committee to the Clerk (signed by Deputy Chair) — seeking authorisation to view the Assembly Secretariat file—relating to the 5 th Assembly PAC's consideration of the proposed nominee for appointment as Auditor-General (2004) | 9 June 2011 | 12 August 2011 |
| 9 | Correspondence from the Clerk to the Committee providing agreement for the Committee to view the Assembly Secretariat file—relating to the 5 th Assembly PAC's consideration of the proposed nominee for appointment as Auditor-General (2004) | 10 June 2011 | 12 August 2011 |
| 10 | Correspondence from the Committee to the Chief Minister: (i) confirming private briefing date and time; and (ii) renewing its request for further information | 10 June 2011 | 12 August 2011 |
| 11 | Correspondence from the Chief Minister to the Committee responding to the Committee's correspondence of 10 June 2011 | 14 June 2011 | 12 August 2011 |
| 12 | Correspondence from the Committee to the Chief Minister advising of the outcome of its consideration of the proposed appointment | 24 June 2011 | 12 August 2011 |
| 13 | Correspondence from the Chief Minister to the Committee responding to the Committee's correspondence of 24 June 2011 | 28 June 2011 | 12 August 2011 |

| No | Details | Document date | Authorised by Committee |
|-----------|---|----------------------|--------------------------------|
| 14 | Correspondence from the Committee to the Chief Minister re private briefing (15 June 2011) on specifics of the selection process—seeking any objection to authorisation of three points as discussed at that briefing and detailed in the correspondence. | 12 August 2011 | 15 August 2011 |
| 15 | Correspondence from the Chief Minister to the Committee responding to the Committee's correspondence of 12 August 2011 re authorisation of three points as discussed at the private briefing (15 June 2011) on the specifics of the selection process. | 15 August 2011 | 15 August 2011 |



Katy Gallagher MLA

CHIEF MINISTER

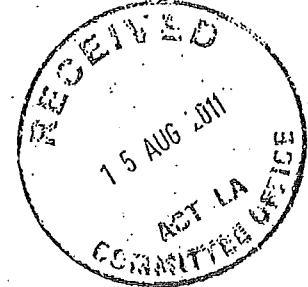
MINISTER FOR HEALTH

MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

Authorised for publication

15.8.11



Ms Caroline Le Couteur MLA
 Chair
 Standing Committee on Public Accounts
 GPO Box 1020
 CANBERRA ACT 2601

Dear Ms *Caroline* Le Couteur

I refer to your letter seeking release of information provided to the Standing Committee for Public Accounts (the Committee) resulting from the private briefing on the appointment process for the Auditor General (AG).

In the first instance, I must say that I find it extra-ordinary that the Committee would be seeking to summarise a briefing that exceeded one hour to three dot points. However, in the interest of being helpful, it is important to place the information in the context in which it was given. This is essential as there is no formal record of the private briefing and selective material provided does not do justice to the importance of the selection process. In this regard your letter rightly reinforces the importance of mutual trust that underpins the operation of and willingness to provide private briefings to the Committee.

I would agree to the public release of the following statements in relation to the three matters you mentioned:

- 'Appropriate tertiary qualifications are a prerequisite.'
 The public advertisement and role specification for the position contained the prerequisite for appropriate tertiary qualifications. The Committee sought clarification of this prerequisite and its interpretation. In response it was pointed out to the Committee that the role of Auditors-General continues to evolve and that performance auditing is an increasing part of the functions of and Auditor-General. Consequently no specific field of qualification was included in the prerequisite. As was mentioned to the Committee, Auditors-General around Australia have a variety of qualifications. The Committee was informed that in relation to a position of this importance the level of qualification was taken into account and that qualifications of a level greater than a bachelors degree was appropriate.

ACT LEGISLATIVE ASSEMBLY

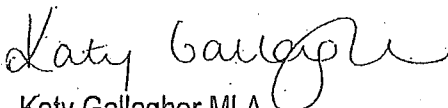
- Interview format and questions
The selection process following the extensive search undertaken by the recruitment consultants involved the interviewing of six highly qualified candidates. As is normal in these circumstances, the Selection Committee undertook a detailed question and answer interview. A series of guiding questions had been developed by the interview committee and were used as a means of drawing out the capacity and capabilities of the candidates. As can be expected from jobs of this level, the varied experience, qualifications and skills of the candidates, it is not suited to a 'tick a box' interview and recruitment process. The decision of the interview committee was based on the written application, curriculum vitae, interview and references.
- I do not recall using the term 'fireside chat' in relation to the interview part of the appointment process.
- All the interviewees were aware of the Public Accounts Committee's role in the selection process.

I cannot help but question why the Committee is taking this step post its decision to endorse the proposed appointment of Dr. Maxine Cooper as Auditor-General. By endorsing her nomination for the position of Auditor-General following the private briefing and provision of all the information requested, the Committee has undertaken due process and exercised its responsibilities. Following the Committee's deliberations and endorsement of the Executive's nomination the appointment was confirmed. The Auditor-General has now commenced her duties.

By wishing to revisit the appointment process, it could be interpreted that the Committee's processes were either deficient or there is intent to undermine the credibility and standing of the Auditor-General. Either of these is concerning.

I seek the Committee's agreement that this letter in its entirety be made publically available.

Yours sincerely



Katy Gallagher MLA
Chief Minister

15 AUG 2011



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Caroline Le Couteur MLA (Chair), John Hargreaves MLA (Deputy Chair), Brendan Smyth MLA

Ms Katy Gallagher MLA
Chief Minister
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

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Authorised for publication
15.8.11

Dear Chief Minister

Appointment of next Auditor-General—Private briefing—Wednesday 15 June 2011

I refer to the above private briefing to the Standing Committee on Public Accounts (the Committee) as provided by you and the Chair of the Selection Committee, Mr Andrew Cappie-Wood, on the specifics of the selection process. As noted previously, the Committee thanked you and Mr Cappie-Wood for making yourselves available to brief the Committee.

As you would be aware, that briefing was a private briefing to the Committee. In accordance with procedural practice, if the Committee wanted to refer to any information given by you or Mr Cappie-Wood at that private briefing, it first needs to approach you and Mr Cappie-Wood and consider any objection raised. The Committee is very mindful of the importance of respecting the mutual trust that underpins the operation of and willingness to provide private briefings to committees.

The Committee is therefore writing to ascertain whether either you or Mr Cappie-Wood would have any objection to the authorisation of the following evidence, as provided, in the context of the specifics of the selection process for the Auditor-General, at the private briefing on 15 June 2011:

- in relation to the public advertisement and role specification for the position—'Appropriate tertiary qualifications are a pre-requisite'—that appropriate tertiary qualifications were considered to be a qualification greater than a bachelor degree

- the interview format was a fireside chat with guiding questions to commence discussion, and
- that all interviewees were told that the Standing Committee on Public Accounts had a power of veto over the appointment of the Auditor-General.

The Committee requests that you please advise of any objections to the authorisation of the specific evidence, as outlined above, by 3:00pm, Monday 15 August 2011. The Committee asks that any correspondence be provided directly to the Committee Secretary.

Yours sincerely

Caroline Le Couteur

Caroline Le Couteur MLA
Chair

12 August 2011



Authorised for publication
12.8.11

Katy Gallagher MLA
CHIEF MINISTER
TREASURER
MINISTER FOR HEALTH
MINISTER FOR INDUSTRIAL RELATIONS
MEMBER FOR MOLONGLO



Ms Caroline Le Couteur MLA
Chair
Standing Committee on Public Accounts
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Ms Le Couteur *Caroline*

I am writing in response to your letter of 24 June 2011 regarding the Standing Committee on Public Accounts' (the Committee) consideration of the proposed appointment of Dr Maxine Cooper as the ACT Auditor-General.

I note the Committee's agreement to the appointment of Dr Cooper and I thank the Committee for their consideration and timely response in relation to this matter.

For your information, Dr Cooper's appointment to the role of the ACT Auditor-General will commence on 8 August 2011 for a seven year term ending on 7 August 2018.

Yours sincerely

Katy Gallagher
Katy Gallagher MLA
Chief Minister

2 8 JUN 2011

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0840 Fax (02) 6205 3030 Email: gallagher@act.gov.au



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
 STANDING COMMITTEE ON PUBLIC ACCOUNTS

Caroline Le Couteur MLA (Chair), Brendan Smyth MLA (Deputy Chair), John Hargreaves MLA

Ms Katy Gallagher MLA
 Chief Minister
 Legislative Assembly for the ACT
 GPO Box 1020
 CANBERRA ACT 2601

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(2.9.11)

Dear Chief Minister

Proposed nominee for appointment as the next ACT Auditor-General

I refer to your letter dated 31 May 2011 to the Standing Committee on Public Accounts (the Committee) in relation to the proposed appointment of Dr Maxine Cooper as the next ACT Auditor-General.

I also refer to your subsequent correspondence dated 9 June 2011 agreeing to an extension of 30 days for the Committee to consider the proposed appointment.

In accordance with section 8 of the *Auditor-General Act 1996*, sub paragraph b(ii), the majority of the Committee advises that it 'agrees with the proposal'.

Yours sincerely

Caroline Le Couteur

Caroline Le Couteur MLA
 Chair

24 June 2011



Katy Gallagher MLA

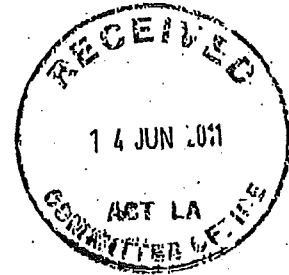
CHIEF MINISTER

TREASURER

MINISTER FOR HEALTH

MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO



Ms Caroline Le Couteur MLA
Chair
Standing Committee on Public Accounts
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

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Caroline
Dear Ms Le Couteur

Thank you for your letter of 10 June 2011 regarding the proposed appointment of the next ACT Auditor-General.

As noted in your letter, Mr Andrew Cappie-Wood and I will be meeting with the Committee on Wednesday, 15 June 2011, and we will be happy to discuss the selection process for the Auditor-General in further detail at that time.

Yours sincerely

Katy Gallagher MLA
Chief Minister

14 JUN 2011

ACT LEGISLATIVE ASSEMBLY



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Caroline Le Couteur MLA (Chair), Brendan Smyth MLA (Deputy Chair), John Hargreaves MLA

Ms Katy Gallagher MLA
Chief Minister
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

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12.8.11

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Dear Chief Minister

Proposed appointment of the next ACT Auditor-General

I refer to your letter dated 9 June 2011 to the Standing Committee on Public Accounts (the Committee) in relation to the proposed nominee for appointment as the next ACT Auditor-General.

Firstly, thank you for your agreement to an extension of 30 days for the Committee to consider the proposed appointment. Secondly, thank you for your offer to make yourself available, along with the Chair of the Selection Committee, to brief the Committee with regard to the specifics of the selection process. You have kindly agreed to be available for the private briefing on:

- Wednesday 15 June 2011, 4:30pm to 5:00pm. The private briefing will be held in Committee room 1.

Notwithstanding your offer to provide a briefing as above, the Committee renews its request for further information it has previously requested in relation to the advertisement and role specification for the position. The Committee therefore asks that it be provided with the following information:

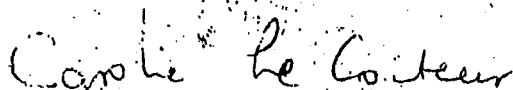
- under capabilities, job specific and general capabilities are detailed. The Committee seeks clarification as to the specific selection criteria actually used by the selection committee to assess each applicant's claims
- the weighting the selection committee apportioned to each of the above selection criteria, and
- in relation to 'Appropriate tertiary qualifications are a pre-requisite'—the criteria, that the Government approved to determine what tertiary qualifications were considered as an appropriate pre-requisite.

Civic Square, London Circuit, Canberra ACT 2600
GPO Box 1020, Canberra ACT 2601
Secretary: Telephone: (02) 620 50127 Facsimile: (02) 620 50432
Email: committees@parliament.act.gov.au

The Committee requests that this information be provided to the Committee Secretary—Andréa Cullen—by COB Tuesday 14 June 2011. On behalf of the Committee, I would appreciate your cooperation in this matter.

The Secretary to the Committee is Andréa Cullen who can be contacted on—(02) 6205 0142 or andrea.cullen@parliament.act.gov.au—should you have any questions in relation to this matter.

Yours sincerely

A handwritten signature in cursive script that reads "Caroline Le Couteur".

Caroline Le Couteur MLA
Chair

10 June 2011



Mr Brendan Smyth MLA
Deputy Chair
Standing Committee on Public Accounts
Legislative Assembly for the ACT
CANBERRA ACT 2605

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12.8.11

Dear Mr Smyth

Disclosure of documents—5th Assembly—Standing Committee on Public Accounts

I am writing in response to your request of 9 June 2011 seeking authorisation to view Secretariat file no 04/0048—*Statutory Appointments (Part 3) 2004* which contains correspondence and attachments from the then Chief Minister to the respective Standing Committee on Public Accounts concerning the proposed nominee for appointment as the ACT Auditor-General (2004).

Pursuant to standing order 26, I have consulted with the Speaker and it has been agreed to allow the committee to examine the above correspondence.

If you require any further assistance with this matter please do not hesitate to contact me on 620 50191.

Yours sincerely

Tom Duncan
Clerk of the Legislative Assembly

10 June 2011



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Caroline Le Couteur MLA (Chair), Brendan Smyth MLA (Deputy Chair), John Hargreaves MLA

Mr Tom Duncan
Clerk
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Dear Mr Duncan

COPY

Disclosure of documents—5th Assembly—Standing Committee on Public Accounts

I am writing on behalf of the Standing Committee on Public Accounts (the Committee) to seek your authorisation for the Committee to examine documents in the custody of the Legislative Assembly pertaining to the proceedings of the 5th Assembly Standing Committee on Public Accounts.

Specifically, the Committee seeks your authorisation to view correspondence (and attachments) from the then Chief Minister, Mr Jon Stanhope MLA, to the respective Public Accounts Committee concerning the proposed nominee for appointment as the ACT Auditor-General (2004). These documents would be located on:

- file no. 04/0048—Statutory Appointments (Part 3) 2004

The Committee wishes to examine these documents to assist with its consideration of the appointment of the next ACT Auditor-General pursuant to the *Auditor-General Act 1996*.

It would greatly assist the Committee to receive your advice to permit it to consider the material requested at its private meeting scheduled for Friday 10 June 2011, 2:00pm to 3:00pm.

Yours sincerely

Brendan Smyth MLA
Deputy Chair

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(2.8.11)

9 June 2011

Civic Square, London Circuit, Canberra ACT 2600
GPO Box 1020, Canberra ACT 2601
Secretary: Telephone: (02) 620 50127 Facsimile: (02) 620 50432
Email: committees@parliament.act.gov.au

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12.8.11



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Katy Gallagher MLA

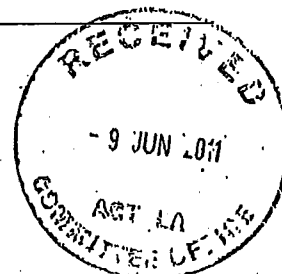
CHIEF MINISTER

TREASURER

MINISTER FOR HEALTH

MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO



Ms Caroline Le Couteur MLA
Chair
Standing Committee on Public Accounts
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Caroline

Dear Ms Le Couteur

I am writing in response to a letter from Mr Brendan Smyth MLA, Deputy Chair of the Standing Committee on Public Accounts of 8 June 2011, requesting an extension of time for consideration of the proposed appointment of Dr Maxine Cooper as Auditor-General, and further information in relation to the Selection Committee's assessment of applicants for this position.

In accordance with section 8 of the *Auditor-General Act 1996*, I agree to an extension of 30 days to allow the Committee to consider this important appointment. Given the significance of the position I urge the Committee to finalise its consideration of this matter in a timely manner to allow the appointment of a new Auditor-General to proceed.

A rigorous selection process has been undertaken and I have full confidence in the ability of the nominated candidate to undertake this role. In relation to the Mr Smyth's request on behalf of the Committee for more information on the specifics of the selection process I believe these questions would best be answered through a briefing from the Chair of the Selection Committee, Mr Andrew Cappie-Wood, and myself. I would be happy to schedule this briefing at the Committee's earliest convenience.

For further information please contact Ms Sharon Scrivener in my office on 6205 0287.

Yours sincerely

Katy Gallagher

Katy Gallagher MLA
Chief Minister

9 JUN 2011

ACT LEGISLATIVE ASSEMBLY

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LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Caroline Le Couteur MLA (Chair), Brendan Smyth MLA (Deputy Chair), John Hargreaves MLA

Ms Katy Gallagher MLA
Chief Minister
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Authorised for publication
12.8.11

Authorised for publication

Dear Chief Minister 

Proposed nominee for appointment as the next ACT Auditor-General

I refer to your letter dated 31 May 2011 to the Standing Committee on Public Accounts (the Committee) in relation to the proposed nominee for appointment as the next ACT Auditor-General and subsequent correspondence to the: (i) Committee Secretary (dated 2 June 2011) providing further information as requested by the Committee; and (ii) Committee (dated 3 June 2011) responding to its correspondence dated 31 May 2011.

I am writing on behalf of the Committee in relation to two further matters concerning the current appointment process for the next ACT Auditor-General. Each of these matters is set out below for your consideration.

(1) Request for extension of time

In accordance with section 8 of the *Auditor-General Act 1996*, the Committee requests an extension of time to consider the proposal. Whilst the Committee is seeking an extension time pursuant with the Act, that is 30 days after the end of the 14 days, it is endeavouring to finalise its consideration of this matter before the next sitting period.

The Committee would appreciate your earliest advice with regard its request for an extension of time.

(2) Request for further information

In relation to the advertisement and role specification for the position, the Committee requests the following additional information:

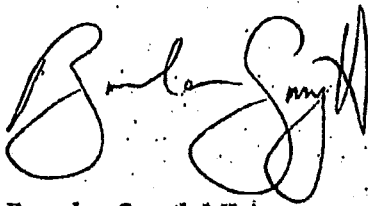
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- under capabilities, job specific and general capabilities are detailed. The Committee seeks clarification as to the specific selection criteria actually used by the selection committee to assess each applicant's claims
- the weighting the selection committee apportioned to each of the above selection criteria, and
- in relation to 'Appropriate tertiary qualifications are a pre-requisite'—the criteria, that the Government approved to determine what tertiary qualifications were considered as an appropriate pre-requisite.

To assist the Committee with its timely consideration of this matter it requests that this information be provided to the Committee Secretary—**Andréa Cullen—by no later than COB Thursday 9 June 2011**. On behalf of the Committee, I would appreciate your cooperation in this matter.

The Secretary to the Committee is Andréa Cullen who can be contacted on—(02) 6205 0142 or andrea.cullen@parliament.act.gov.au—should you have any questions in relation to this matter.

Yours sincerely



Brendan Smyth MLA
Deputy Chair

8 June 2011



Katy Gallagher MLA

CHIEF MINISTER
TREASURER
MINISTER FOR HEALTH
MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO

Ms Caroline Le Couteur MLA
Chair
Standing Committee on Public Accounts
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601



Dear Ms Le Couteur *Caroline*

Authorised for publication
12.8.11

Thank you for your letter of 31 May 2011 about the proposed appointment of Dr Maxine Cooper as Auditor-General.

I am fully aware of the appointment provisions of the *Auditor-General Act 1996* (the Act) including the capacity of the Public Accounts Committee to veto the selection. This was evident in my media release on 31 May 2011 which made clear that confirmation of the proposed appointment of Dr Cooper was subject to consultation with the Committee.

No discourtesy towards the Committee was intended, and if any was taken, I do unreservedly apologise. I should mention, however, that there is no legislative requirement for confidentiality in respect of the consultation process. On the contrary, it is a legislative requirement for the Minister to notify the Committee of the proposed appointment that the Executive intends to make.

It is equally in accordance with the principles of accountability and transparency that the Government's selection be on the public record. If the Committee disagrees with the proposal then it may do so and would presumably wish its arguments to be subject to the scrutiny of the community.

I also believe it would not be appropriate for the selected applicant or for the other applicants, to be uncertain about the status of the selection process for, potentially, a further 44 days. Making the announcement of who the selected applicant is resolves this situation and is consistent with the approach adopted for other Territory appointments. Having said that, Dr Cooper is fully aware that her appointment must be agreed to by the Committee.

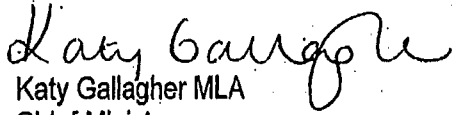
I have separately forwarded the material you have sought on the selection criteria and on Dr Cooper's curriculum vitae to the Committee Secretary, in accordance with your request. I have attached a copy for your information.

ACT LEGISLATIVE ASSEMBLY

London Circuit, Canberra ACT 2601 GPO Box 1020, Canberra ACT 2601
Phone (02) 6205 0840 Fax (02) 6205 3030 Email: gallagher@act.gov.au

I look forward to the timely outcome of the Committee's deliberation on the proposed appointment of Dr Cooper.

Yours sincerely

A handwritten signature in cursive script that reads "Katy Gallagher".

Katy Gallagher MLA
Chief Minister

3. 6. 11



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY
STANDING COMMITTEE ON PUBLIC ACCOUNTS

Caroline Le Couteur MLA (Chair), Brendan Smyth MLA (Deputy Chair), John Hargreaves MLA

Ms Katy Gallagher MLA
Chief Minister
ACT Legislative Assembly
PO Box 1020
Canberra ACT 2601

COPY

Dear Chief Minister

Authorised for publication
12.8.11

Proposed nominee to be appointed to the next ACT Auditor-General

I am writing on behalf of the Assembly's Standing Committee on Public Accounts (the Committee) in relation to two matters concerning the current appointment process for the next ACT Auditor-General. Each of these matters is set out below for your consideration.

Firstly, I refer to your correspondence dated 31 May 2011 seeking the Committee's consideration of the nominee for appointment as the next ACT Auditor-General in accordance with section 8 of the *Auditor-General Act 1996*. To assist the Committee in its consideration of the nomination it requests that it be provided with the following information:

- the selection criteria (essential and desirable) used to assess applicants for the Office, and
- a full curriculum vitae for the proposed nominee.

The Committee requests that this information be provided to the Committee Secretary—Andrea Cullen—**by no later than 12 midday, Tuesday 7 June 2011**. On behalf of the Committee, I would appreciate your cooperation in this matter.

Secondly, I refer to your media release—'New Auditor-General for ACT'—issued today, Tuesday 31 May 2011. The Committee is of the view that it would have been courteous for you to have waited until its views had been received, in accordance with the *Auditor-General Act 1996*, prior to making a public announcement. Furthermore, the Committee notes there is also a discourtesy to the proposed nominee as it is yet to consider and provide its views in accordance with the *Auditor-General Act 1996*. Accordingly, the Committee strongly draws to your attention, the nature of the statutory role it has, on behalf of the Legislative Assembly, in the appointment process.

Civic Square, London Circuit, Canberra ACT 2601.
GPO Box 1020, Canberra ACT 2601
Secretary: Telephone: (02) 620 50127 Facsimile: (02) 620 50432
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In accordance with section 8 of the *Auditor-General Act 1996*, the Executive must not appoint a person to be the Auditor-General until the Committee has been given written notice of the proposed appointment and invited to respond to the proposal within the relevant period. The Committee can either concur with or veto the recommended applicant for the position. The Committee reiterates that a proposed nominee to the Office is not a foregone conclusion until it has considered and provided its views in accordance with the Act.

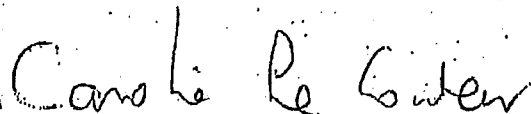
The Committee's statutory role provides for some degree of Parliamentary involvement in the appointment process of the Auditor-General. The involvement of the Committee in the process is important in safeguarding the independence of the Office and also emphasises the unique relationship the Auditor-General has with the Parliament.

The Committee received today—Tuesday 31 May 2011—your written correspondence seeking its views concerning the proposed nominee for appointment as the next ACT Auditor-General. As noted earlier, the *Auditor-General Act 1996* sets out the process for the appointment of the Auditor-General. The Committee will consider and deliberate on the proposed nominee in accordance with the Act and will respond to you within the relevant period.

The Committee is therefore of the view that your public announcement, prior to completion of the statutory process in accordance with section 8 of the *Auditor-General Act 1996*, was premature with regard to the process and a discourtesy to the important role played by the Committee, on behalf of the Assembly, in the appointment process.

The Secretary to the Committee is Andréa Cullen who can be contacted on—(02) 6205 0142 or andrea.cullen@parliament.act.gov.au—should you have any questions in relation to this matter.

Yours sincerely



Caroline Le Couteur MLA
Chair

31 May 2011



Katy Gallagher MLA

CHIEF MINISTER

TREASURER

MINISTER FOR HEALTH

MINISTER FOR INDUSTRIAL RELATIONS

MEMBER FOR MOLONGLO



Ms Caroline Le Couteur
Chair
Standing Committee on Public Accounts
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Authorised for publication

12.8.11

Dear Ms Le Couteur *Caroline*

In accordance with section 8 of the *Auditor-General's Act 1996* (the Act), I am seeking your consideration of the nominee for appointment as the next ACT Auditor-General.

The selection committee for the position comprised of Mr Andrew Cappie-Wood, Head of Service, Ms Megan Smithies, Director-General, Treasury Directorate and Mr Khalid Ahmed, Executive Director, Policy Coordination and Development Division, Treasury Directorate.

The committee has recommended Dr Maxine Cooper for the position. Dr Cooper has significant public sector management experience and currently occupies the office of the ACT Commissioner for Sustainability and the Environment. The committee considered that Dr Cooper demonstrated the capabilities required for this key public sector position in the Territory. A summary of the nominee's experience is at Attachment A.

I would appreciate your favourable consideration of the nomination and any written comments within the relevant period as stated under section 8 of the Act.

Yours sincerely

Katy Gallagher

Katy Gallagher MLA
Chief Minister

31 MAY 2011

ACT LEGISLATIVE ASSEMBLY

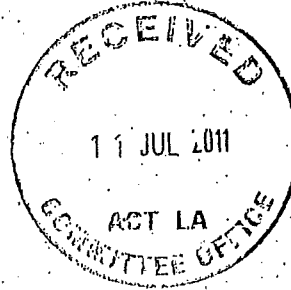


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7.8.11

COPY

Mr Brendan Smyth, MLA
Member for Brindabella
Legislative Assembly for the
Australian Capital Territory
Civic Square, London Circuit
CANBERRA ACT 2601



Dear Mr Smyth

I refer to your request for advice concerning the recent reference to the Standing Committee on Public Accounts (the committee) of the proposed appointment of the Auditor-General, pursuant to section 8 of the *Auditor-General Act 1996*.

You specifically asked for advice on two matters:

1. What options are available to you as a Member of the committee to highlight concerns you have with the process that was recently undertaken by the committee to consider the proposed nominee; and
2. Was there a breach of privilege committed when the Government advised the media of the proposed nominee only shortly after giving the presiding member of the Committee written notice of the proposed appointment and inviting the committee to respond to the proposal within the relevant period and prior to the committee's response?

1. Options available to you as a Member of the committee to highlight concerns

Background

Section 8 of the *Auditor-General Act 1996* states:

8 Veto by public accounts committee

(1) The Executive must not appoint a person to be the auditor-general unless—

(a) the Minister has given the presiding member of the public accounts committee written notice of the proposed appointment, inviting the committee to respond to the proposal within the relevant period; and

(b) either—

(i) the relevant period has ended without the presiding member having notified the Minister in writing that the committee objects to the proposal; or

(ii) before the end of that period, the presiding member gives the Minister written notice that the committee agrees with the proposal.

(2) The Minister's notice may be taken for all purposes to have been referred to the committee by the Legislative Assembly for inquiry and report to the presiding member.

(3) In subsection (1):

relevant period, in relation to the Minister's notice, means—

(a) 14 days after the notice is given to the presiding member; or

(b) if the presiding member notifies the Minister within the 14 days that the committee requires more time to consider the proposal—30 days after the end of the 14 days. **Public Accounts Committee procedure for adopting inquiries into reports of the Auditor-General.**

In accordance with the Committee's terms of resolution of establishment all reports of the Auditor-General presented to the Legislative Assembly for the ACT are referred to the Public Accounts Committee for review/examination.

The Committee has established procedures for its examination of these reports. In accordance with these procedures, where the Committee decides that a report warrants further inquiry either as a specific inquiry or as part of a periodic public hearing program, it formally resolves to inquire further into the report and advises the Assembly accordingly.

When undertaking its role as a committee of the Assembly, the committee is bound by the standing orders and its continuing resolutions. The relevant standing order that would apply to the way the committee deals with disclosure of committee proceedings and any evidence that the committee receives is standing order 241 which states:

Disclosure of proceedings, evidence and documents

241.

(a) A committee may receive and authorise publication of evidence given before it or documents presented to it;

(b) a committee's evidence, documents, proceedings and reports may not be disclosed or published to a person (other than a Member of the committee or Assembly employee if necessary in the course of their duties) unless they have been:

(i) reported to the Assembly; or

(ii) authorised by the Assembly or the committee;

(c) a committee may resolve to:

(i) publish press releases, discussion or other papers or preliminary findings; or

(ii) divulge evidence, documents, proceedings or reports on a confidential basis to persons for comment where it is clearly necessary to assist the committee in its inquiry;

(d) a committee may resolve to authorise a Member of the committee to give public briefings on matters related to an inquiry. An authorised Member may not disclose evidence, documents, proceedings or reports which have not been authorised for publication. The committee shall determine the limits of this authorisation.

It is normal for committees to conduct as much of its proceedings in public. This is emphasized in the *Companion to the Standing Orders of the Legislative Assembly for the Australian Capital Territory* (the Companion) where it is stated that:

16.117 Committees should conduct their business in public as far as is possible. Written submissions are normally authorised for publication by the committee as soon as is practicable after receipt.⁸¹ Hearings to gather evidence from witnesses are normally conducted in public.

However, the Companion also sets out the limitations of that public approach to its proceedings. At page 304 it is stated that:

16.121 A committee's deliberations on its draft report and the contents of that report should remain confidential until the report is tabled in the Assembly or presented to the Speaker and its publication authorised. Confidentiality allows a committee to reach conclusions and negotiate necessary compromises free from external pressure, particularly where a matter is politically sensitive. This underpins the trust and goodwill that must exist among members if a committee is to function effectively. Confidentiality prior to tabling is also a mark of respect to the Assembly, given that the committee is a creation of the Assembly, its powers are derived from the Assembly and its report is directed to the Assembly.

Also, Continuing resolution No 5 which provides for a code of conduct for Members also sets out some restrictions on the use of confidential information by Members, In particular paragraph 7 of that continuing resolution states:

(7) Use of confidential information

Members are reminded of their obligations pursuant to the standing orders concerning the publication of confidential information.

Members in the course of their duties often are also the recipients of information which is either confidential or unavailable to the general public. Members are privileged to receive this information, It is provided to assist them in their decision making for the benefit of the Territory. The status of this information should not be compromised.

Members are not to misuse any confidential information received, particularly for personal gain or the personal gain of others.

Issues

In discussing what information you may discuss publicly of the recent process that had the committee examine a proposed nominee of the Executive regard must be had to all of the background information listed above.

On one view, it would appear that there is no information apart from what has been authorised specifically by the committee pursuant to standing order 241 that can be discussed publicly. That view is based on the assumption that the committee has not reported to the Assembly on the proposed appointment, but rather, in accordance with section 8 of the Auditor-General Act, it has reported to the Executive through the relevant Minister. That view is supported by the practice of statutory appointments that are considered by Assembly committees on a regular basis pursuant to the *Legislation Act 2001*. Apart from communicating any recommendation to the relevant Minister, no mention is usually made of the process. This is in part due to the fact that with proposed appointments there are sensitivities involved in terms of who has been considered and nominated, and also due to potential damage that may be done to reputations to potential nominees to statutory positions, as the fact that the Territory is a relatively small community with often very few skilled persons willing or able to undertake some of the roles on statutory boards.

An alternative view is that the inclusion of sub-section 8(2) makes the committee process of considering a proposed appointee to an Auditor-General the equivalent of a committee inquiry and report process. What is not clear is whether the reporting entity is the Minister or the Assembly itself. But in some sense I don't think that difference matters for the purposes of this issue, as long as it is clear that in reporting to either is seen, for the purposes of standing order 241 (b)(i), to have finalised the committee's process. If that view is taken, then the restriction on how the committee undertook its process, the evidence (other than confidential evidence) can all be discussed.

Having considered the matter, I think the common sense view is that, by reporting to the Minister, the committee has reported for the purposes of standing order 241 and section 8 of the *Audit Act* and that the limitation of discussing the committee's process that occurs prior to a committee reporting is lifted. This view is shared by New Zealand practice, where it is stated that:

While the House maintains restrictions on the disclosure of select committee (their equivalent to our standing committee) proceedings that are current, there is no value in maintaining such restrictions in respect of business that is no longer before the committee or is not under active consideration by the committee.¹

Of course, there is nothing preventing the committee from also reporting to the Assembly on the matter and in some senses that would be a more open and transparent way for the committee to conduct its business.

In the context of viewing this matter within an inquiry paradigm, however, a 246A Statement reporting objectively on the outcome of the committee's consideration of this matter would be in accordance with the committee's procedures for examining reports of the Auditor-General. The committee of course would have to agree to do this.

It is not clear however that the committee clearly adopted one or other of these views in their review of the proposed appointment and any retrospective clarity that this advice might serve to provide would need to be mindful of usual committee procedures on these issues – that is, normally the committee would formally resolve to adopt an inquiry, determine and agree on an approach to that inquiry. I understand that the committee received confidential briefings during the process, and the committee should determine how it wishes to treat such evidence. I am unsure whether such evidence was taken on an in-camera basis. If the committee determined that it wished to allow members to discuss such evidence it would be sensible to alert those witnesses to that possibility in order to assess what damage would be done to the committee process, to the nominating process that is undertaken when these types of appointments are discussed and to the reputation and good standing of the office concerned.

¹ David McGee, *Parliamentary Practice in New Zealand*, Third Edition, 2005, p 279.

Given the ambiguity that presently exists with regard to how the appointment process for the Auditor-General can be viewed – that is, whether the process is more akin to a statutory appointment or to an inquiry – the committee might contemplate the benefit of providing some clarity to the role of PAC for future reference. One option in this regard would be to make a 246A statement to the Assembly or provide a supplementary report as a follow up on the recent inquiry into the Auditor-General Act about best appointment practice and the significance of the committee's role in this process.

2. Was there a breach of privilege committed when the Government advised the media of the proposed nominee only shortly after giving the presiding member of the Committee written notice of the proposed appointment and inviting the committee to respond to the proposal within the relevant period and prior to the committee's response?

As discussed, should a matter of privilege be raised I think that the Speaker, consistent with the principles and practice established by standing order 242, would refer any such possible matter of privilege back to the Committee to first establish what damage and interference was made to the committee process. If the committee determined that the release of the name of the proposed nominee to the press by the Executive prior to the Committee concluding its consideration of the proposed nominee interfered with the Committee's work, then that would assist the Speaker in determining whether the matter merited precedence in accordance with standing order 276.

I would be happy to discuss further any aspect of this advice should you wish to do so.

Yours sincerely



Tom Duncan
Clerk of the Legislative Assembly
7 July 2011



Brendan Smyth MLA

Australian Capital Territory

Deputy Leader of the Opposition

Member for Brindabella

Shadow Treasurer, Shadow Minister for Economic Development,
Business and Tourism, Emergency Services, Territory Owned
Corporations and Gaming & Racing

Ms Caroline Le Couteur MLA
Chair
Standing Committee on Public Accounts
ACT Legislative Assembly
GPO Box 1020
CANBERRA ACT 2601



Dear Ms Le Couteur

It is with regret that I write to you to tender my resignation as the Deputy Chair of the ACT Legislative Assembly Standing Committee on Public Accounts.

I am disappointed at the process to select the Auditor-General and feel I cannot continue in the position of Deputy Chair.

I will, however, continue to be the Liberal Party's representative on the Public Accounts Committee.

Yours sincerely

Brendan Smyth MLA
Member for Brindabella

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5.8.11

5 July 2011