Katy Gallagher MLA

CHIEF MINISTER

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SPEAKER

Mr Shane Rattenbury MLA
Chair
Standing Committee on Administration and Procedure
GPO Box 1020
CANBERRA CITY ACT 2601

Dear Mr ~~Rattenbury~~ Shane

Thank you for the opportunity to provide an ACT Government Submission to the Standing Committee on Administration and Procedure inquiry into the feasibility of establishing the position of an Officer of the Parliament. I note the Committee's inquiry seeks to 'review the feasibility of establishing the position of Officer of the Parliament as it might relate to the Auditor-General, the Ombudsman, the Electoral Commissioner and other statutory office holders.'

A Framework for ACT Officer's of the Parliament

The Government welcomes this opportunity to work with the Legislative Assembly to examine how the Officer of Parliament concept might apply within the context of the ACT's parliament to enhance accountability arrangements in this jurisdiction.

The Government does not support the Public Accounts Committee's (PAC) definition and formulation of an Officer of Parliament as outlined in its Report No. 15, *Inquiry into the Auditor-General Act 1996*.

Given there is no consistently adopted Officer of Parliament model, either overseas or in Australia[1], the Government considers that it is necessary to develop a fit for purpose set of principles for future consideration by the Assembly. These should take into account the constitutional limitations of the Legislative Assembly and the Territory's governance arrangements.

Application to the ACT Auditor-General

As set out in the Government Response to the PAC Report No. 15, Inquiry into the *Auditor-General Act 1996*, designation of the Auditor-General as an Officer of Parliament is agreed, using an approach similar to that in the Commonwealth *Auditor-General Act 1997* (s8-1).

The Government does not support the PAC's definition and formulation of an Officer of Parliament as outlined in its Report 15. This was developed from the general characteristics of an Officer of Parliament as identified by the Victorian Public Accounts and Estimates Committee's (VICPAEC).

While, in the Government's view, general characteristics need to be developed in the context of our parliament, there are some elements of the VICPAEC work that could be usefully applied in the ACT.

[1] Victorian Public Accounts and Estimates Committee's (VICPAEC) *Report on a Legislative Framework for Independent Officers of Parliament* (2006).

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This includes principles such as:

- the Officer of the Parliament must discharge functions that only the parliament may itself discharge; and
- an Officer of the Parliament should be created only rarely.

The discussion below addresses in more detail characteristics that might be included in a fit for purpose framework for independent Officers of Parliament in the ACT Legislative Assembly. The arrangements for the Auditor-General are provided as an operating example.

Committee Oversight
The Government agrees that a Parliamentary Committee should have oversight of an Officer of Parliament. For example, this is provided for under current arrangements in the ACT with the PAC operating as the oversight committee of the ACT Auditor-General.

Appointment
The Government agrees that an Officer of Parliament should be appointed with parliamentary involvement as is current practice in the ACT.

The Government considers that, given the PAC's consultation and veto powers in regards to the position of the Auditor-General, the current process would suffice for selection and appointment of an Officer of the Parliament. The Government's Submission and its response (including legal advice) to the PAC Inquiry into the ACT *Auditor-General Act 1996* set out in more detail the reasoning for our view that the Legislative Assembly cannot appoint these statutory officials.

Budget
The Government does not agree that the Parliamentary oversight committee should be responsible for budget approval of an Officer of Parliament.

In its Submission and Response to the PAC inquiry, the ACT Government identified the constitutional limitations that would prevent the ACT Legislative Assembly setting the Auditor-General's budget. Such an arrangement runs contrary to section 65 of the *Australian Capital Territory (Self Government) Act (1988)*, which provides that appropriations can only be introduced by Ministers, and is beyond the constitutional capacity of the Assembly to direct the Executive. It is also a departure from the notion of cabinet responsibility and executive governance for the Legislature to assume responsibility for the distribution of public monies. As indicated above, this was set out in more detail in the Government Submission and its response to that Inquiry. Legal advice was provided with the Government response.

The Government considers that a framework for an Officer of Parliament in the ACT should not change existing budgetary or appointment arrangements but could usefully apply the existing process under the *Auditor-General Act 1996* to provide an opportunity for input by the relevant parliamentary committee.

Accountability
The Government believes accountability arrangements for Officers of Parliament should be carefully considered. There is a risk that creation of an Officer of the Parliament could bring with it unrealistic expectations about where the ultimate accountability for that function lies. It could result in a blurring of accountability for delivery of key oversight functions.

Application to the ACT Ombudsman
As noted above, the Government does not support the Ombudsman being designated as an Officer of the Parliament.

The Government considers that there are some functions – such as these administrative oversight and review functions – that governments themselves have implemented to promote transparency and accountability across the public service as well as effectiveness and responsiveness of government service delivery. These are elements of executive government oversight rather than an extension of the parliament's role.

The ACT Ombudsman is such a function. This is a complaint based role, with a community as well as within government education role. It is also is intended to work collaboratively within government to maintain standards of public administration. Given the nature of the role, it does require independence and it does need to report transparently to maintain public accountability. This is supported by the existing framework.

Application to the ACT Electoral Commissioner

Similarly, the Government does not support the Electoral Commissioner being designated as an Officer of Parliament.

It is crucial that the ACT Electoral Commissioner operates independently, without influence by any political party. The Government is not convinced that designation of the ACT Electoral Commissioner as an Officer of Parliament would promote stronger independence for the operation of the Commissioner.

In relation to the Electoral Commissioner, for example, it is crucial that there is independence from the executive. Equally, the role must be free of influence and politicisation which might come from a closer relationship to the parliament. Robust legislation with appropriate checks and balances and transparent reporting is the mechanism for achieving this outcome, not designation as an Officer of the Parliament.

Application to Other ACT Statutory Office Holders

In its Report No. 15, the PAC noted that while there is a range of independent statutory office holders in the ACT, the literature suggests that there are only three that could potentially be classed as Officers of the Parliament—the Auditor-General, the Ombudsman, and the Electoral Commissioner, who might be characterised as primarily serving the interests of the Assembly.[2]

The Government does not consider that the designation of Officer of the Parliament should be extended to any statutory office holders other than the Auditor-General. The Government acknowledges that these questions ultimately come down to a balancing of issues.

Conclusion

The ACT Government's position in relation to the Officer of the Parliament role is that:

- designation of the ACT Auditor-General as an Officer of Parliament, as outlined in this Submission, is supported;
- a fit for purpose set of principles for future consideration by the Assembly should be developed, but these should take into account the constitutional limitations of the Assembly and the Territory's governance arrangements;
- the Officer of the Parliament must discharge functions that only the parliament may itself discharge; and
- the framework should provide clear accountability arrangements for discharge of functions by Officers of the Parliament.

Based on this, the Government's suggested approach is:

- support amendments to the *Auditor-General Act 1996*, section 9 to incorporate passages which specifically recognise the Auditor-General as an independent Officer of Parliament, and related provisions reinforcing the position's impartiality, similar to amendments made to the Commonwealth *Auditor-General Act 1997* (s8-1);
- do not designate other statutory officers are established as Officers of the Parliament at this point; and

[2] PAC Report No. 15, pg. 36

- develop a fit for purpose framework for the ACT Legislative Assembly that reflects the Assembly's constitutional constraints as explained in the legal advice that has been provided as well as appropriate accountability arrangements.

I look forward to the outcomes of the Committee's inquiry and further debate on this important matter.

Yours sincerely

Katy Gallagher

Katy Gallagher MLA
Chief Minister

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