LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

REVIEW OF AUDITOR-GENERAL'S REPORT NUMBER 1, 1996

Legislative Assembly Members - Superannuation Payments
Members Staff - Allowances and Severance Payments

STANDING COMMITTEE ON PUBLIC ACCOUNTS
Report Number 15

June 1996

RESOLUTION OF APPOINTMENT

The Standing Committee on Public Accounts was appointed by the Legislative Assembly on 9 March 1995 with the following terms of reference:

(a) examine:

(i) the accounts of the receipts and expenditure of the Australian Capital Territory;

(ii) the financial affairs of authorities of the Australian Capital Territory; and

(iii) all reports of the Auditor-General which have been laid before the Assembly;

(b) report to the Assembly, with such comments as it thinks fit, 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;

(c) 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

(d) inquire into and report on the implementation of the *Public Sector Management Act 1994* with particular reference to:

(i) the public interest; and

(ii) any other related matter.

MEMBERSHIP OF THE COMMITTEE

Mr Bill Wood MLA (From 26 March 1996. Elected Committee Chair 3 April 1996)

Mr Trevor Kaine MLA (Deputy Committee Chair)

Ms Lucy Horodny MLA

Ms Rosemary Follett MLA (To 26 March 1996. Former Committee Chair)

Secretary: Bill Symington

1. INTRODUCTION

Background

1.1. Auditor-General's report No 1, 1996 was presented to the Assembly on 29 February 1996.

1.2. The purpose of the audit was to provide an independent opinion on whether superannuation payments made to Members of the Legislative Assembly were in accordance with applicable legislation, guidelines and policies; whether severance payments made in terminating staff of Members were in accordance with entitlements; and whether allowances paid to Member's staff were in accordance with applicable legislation, guidelines and policies.

1.3. All superannuation payments to Members resulting from the February 1995 election were reviewed in accordance with the Superannuation (Legislative Assembly Members) Act 1991. All severance payments to Member's staff following the election were reviewed in accordance with the Legislative Assembly (Members' Staff) Act 1989 [LAMS Act], and relevant Determinations by the Chief Minister under Sections 6 (2) and 11(2) of that Act.

1.4. All allowances paid to Member's staff were reviewed for the period 1 July 1994 to 30 June 1995 to ensure they were in accordance with relevant ACT Government Public Sector Management Standards and Guidelines.

2. AUDIT FINDINGS

Superannuation Payments

2.1. With regard to superannuation payments to Assembly Members the audit found that all such payments were correctly calculated and were in accordance with relevant legislation.[1]

Severance Payments

2.2. With regard to severance payments to Members' staff, the audit found that two of eight such payments were incorrect and were not managed effectively.

2.3. One officer received severance pay of $2,321 on ceasing employment with a Member but was re-employed by another Member within one working day. The audit noted the relevant Chief Minister's Determination states that officers are not entitled to severance pay if they are "immediately" re-employed by another Member, and observed that the Chief Minister's

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[1] Audit Report, pp3,9

Department did not adequately investigate whether or not the officer was entitled to the payment.[2]

2.4. A legal opinion on the matter obtained by the Audit Office stated that the officer should not have been paid the severance pay. The legal opinion noted that it would be highly desirable to amend the Chief Minister's Determination so as to ensure that the "immediately" requirement of the Determination takes account of the legal mechanics of a Member and/or Minister/Office-Holder ceasing to be a Member or Office-Holder. The opinion further noted that it would also remove the argument that the word "immediately" should be given its literal interpretation and the [ACT] would not be exposed to claims for severance pay based on this interpretation.[3] The Audit Office suggested that the Determination be amended to remove the word "immediately" altogether and that time period be the criterion in assessing whether or not an officer should be entitled to severance pay if re-employed by another Member[4].

2.5. The audit noted that following its recommendation the officer had been asked to repay the $2,321 but had not made a commitment to repay the amount at the time of finalising the audit report.[5]

2.6. A second officer received severance payment based on the Australian Public Service Redeployment and Retirement (Redundancy) Award [RRR Award] rather than the relevant Chief Minister's Determination.

2.7. Legal opinion received by the Audit Office on this matter was that the RRR Award does not apply to Members' staff and that all severance payments should be calculated in accordance with the relevant Chief Minister's Determination. The resulting overpayment was $951 and although the officer had been asked to repay the amount a reply had not been received.[6]

2.8. In a third case, an officer was given a substantial promotion just over a fortnight before the election. The officer's employing Member was not re-elected and the officer's severance payment was calculated at the new salary level, having the effect of increasing the payment by $3,486. The Audit Office pursued this matter with the former Member who gave detailed reasons for the promotion. The explanations were accepted by the Audit Office as reasonable and the audit conclusion was that the motivation for the promotion was other than to increase the value of the severance payment.[7]

Allowances Paid to Members' Staff

2.9. The audit noted that all documentation supporting 1994-95 expenditure incurred by the Executive could not be produced for the audit by the Chief Minister's Department and that confidence of the audit conclusion is therefore significantly reduced.[8]

[2] ibid, pp3,14
[3] ibid
[4] ibid, p15
[5] ibid, p4
[6] ibid
[7] ibid, pp13,18
[8] ibid, p5

2.10. The audit found that, with the exception of meal allowances, the amount of allowances paid appeared reasonable. However, due to the lack of supporting documentation not being available the audit could not test in detail the validity of this expenditure.[9]

Meal Allowances

2.11. Three officers employed by Ministers claimed meal allowances on a very regular basis to March 1995, two claiming the allowance on 100% of working days and the third for 60% of working days. These three officers' claims totalled $6,566 out of total meal allowances of paid of $6,927.[10]

2.12. The audit noted that meal allowance payments were often authorised by officers who did not have delegated authority and who would also not have been able to determine whether or not the claimants did in fact work in excess of normal hours and thus be entitled to meal allowances.[11]

2.13. The audit sought and received written explanations from the officers concerned and written confirmations from their employing Ministers that the officers had actually worked the required hours to entitle payments and that the pattern of attendance was in accordance with the Minister's requirements.[12]

Use of Taxis

2.14. The audit noted lack of supporting documentation for taxi use in 1994-95 and therefore reviewed 1993-94 documentation.

2.15. One officer regularly used taxis from home to Civic but as taxi dockets were rarely fully completed it was not possible to ascertain when the taxis were used. The officer's explanation, which was supported by the employing former Minister was that taxis were used for attending to work outside normal hours, work related tasks and attending work related venues. The officer also advised that the Minister had urged the use of taxis for safety reasons after hours.[13]

3. AUDIT CONCLUSIONS

3.1. The audit proposed that the findings of the audit would be addressed by the following actions:[14]

(I) by ensuring that officers responsible for assessing Members' staff entitlements to severance pay have a good knowledge of the

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[9] ibid, pp19,20,21
[10] ibid
[11] ibid, p24
[12] ibid, p22
[13] ibid, pp24,25
[14] ibid, pp,6,7

circumstances under which such payments may be made, and that they obtain further information and clarification and, if necessary, legal opinion where there is any doubt about an officer's entitlement;

(ii) implementation of procedures in the Chief Minister's Department to ensure secure storage of financial documentation; and

(iii) the validity of meal allowance claims be verified by authorising officers prior to the claims being authorised or, alternatively, there be periodic review by an independent officer of claims paid and the verification of large and frequent claims.

3.2. The audit also noted that a Task Force is currently reviewing the LAMS Act and observed that hopefully this review will make the task of applying the Act simpler.[15]

4. COMMITTEE'S APPROACH

4.1. The committee sought comment from the Chief Minister on the audit findings. Mindful that the Speaker too has certain administrative responsibilities in relation to Members' staff the committee also invited the Speaker to offer any comment which would assist the committee in developing its position on the audit findings.

4.2. The Chief Minister advised that procedures have now been put in place to prevent a recurrence of the loss of records identified by the audit and to ensure the proper authorisation of meal and other allowances to LAMS Act staff.[16]

4.3. The Chief Minister was not in a position to comment on the high level of meal allowances by Ministerial staff in the previous Government, but reacted favourably to the audit suggestion that a system of detecting abnormal or very frequent claims be introduced and advised the Government will look at this.[17]

4.4. With regard to severance payments the Chief Minister advised that the staff responsible for making the payments had made decisions in good faith based on their knowledge of the situation and that they had, in fact, been aware of an earlier legal advice [acknowledged by the audit as having been obtained] which did address the meaning of "immediately". Nevertheless, the Chief Minister advised that the Government accepted the audit conclusions and has begun recovery action.[18]

4.5. The Chief Minister acknowledged that current arrangements relating to Members' staff are to some extent uncertain and that the potential for errors is real. The committee was advised that the current review of the LAMS Act and the administrative arrangements which flow from it is timely and should avoid similar problems in the future.[19]

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[15] ibid, p6
[16] Chief Minister, letter to committee dated 19 April 1996
[17] ibid
[18] ibid
[19] ibid

4.6. The Speaker informed the committee that while the audit findings are of interest to the Legislative Assembly Secretariat the Secretariat is not directly responsible for the matters raised by the audit.

4.7. Nevertheless, the Speaker assured the committee that Secretariat procedures are in place for secure storage of financial documentation.[20]

4.8. With regard to meal allowances, the Speaker noted that there are procedures for the authorisation of claims which must be accompanied by an overtime form signed or endorsed by the Member. The Speaker further noted that [LAMS Act] staff must maintain a record of attendance in a form approved by their employer [the Member] but these records are not sighted or controlled by the Secretariat.[21]

4.9. The Speaker proffered the view that there are recurring problems associated with the employment framework for Members' staff, that the deficiencies have been recognised for some time but they are not diminishing. The Speaker advised that there are systemic difficulties associated with the regulatory superstructure surrounding the LAMS Act that necessitate the continual seeking of legal advice and which tie up considerable administrative resources. These difficulties, grey areas and intricacies and the lack of a clear and familiar regulatory framework coupled with an administrative apparatus geared to serve and focussed on public servants means that mistakes and delays occur.[22]

4.10. The Speaker advised that the LAMS Act review and possibly the legislative changes foreshadowed in the Government's legislative program will be critical to the avoidance of the problems outlined.[23]

5. CONCLUSION AND RECOMMENDATION

5.1. The committee supports the audit findings as outlined in paragraph 3.1 above and notes that the Government has taken action in relation to effective storage of documents and procedures for authorising meal and other allowances.

5.2. The committee notes that the Government has begun action to recover the incorrect severance payments.

5.3. The committee has a particular interest in progress with the review of the LAMS Act, the need for which was mooted some three years ago and which has demonstrably now become an urgent necessity.

[20] Speaker, letter to the committee dated 4 June 1996
[21] ibid
[22] ibid
[23] ibid

5.4. The committee recommends that the Government report to the Assembly at an early date on progress with:

(i) the recovery of incorrect severance payments identified by the audit; and

(ii) the review of the Legislative Assembly (Members Staff) Act 1989.

Bill Wood

Bill Wood MLA
Chair