

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**REPORT ON
CONSULTATION WITH ASSEMBLY COMMITTEES
ON
APPOINTMENTS TO TERRITORY OWNED CORPORATIONS**

STANDING COMMITTEE ON PUBLIC ACCOUNTS
Report Number 13

April 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

1.1. The committee's terms of reference provide *inter alia* for it to report to the Assembly, with such comments as it thinks fit, any items or matters in the accounts, statements and reports of the financial affairs of authorities of the Australian Capital Territory (ACT), or any circumstances connected with them, to which the committee is of the opinion that the attention of the Assembly should be directed.

1.2. Territory owned corporations (TOC) are authorities of the ACT and their financial affairs, and TOC boards of management responsibility for their financial affairs, are clearly matters which fall within the scope of the committee's terms of reference.

1.3. The Statutory Appointments Act which came into effect on 28 June 1994 provides *inter alia* that where a Minister has power to appoint a person to a statutory office, the Minister shall, before making the appointment, consult with:

- (i) a standing committee of the Assembly nominated by the Speaker for that purpose; or
- (ii) if no committee has been nominated, the Public Accounts Committee.

1.4. The Act provides that a Minister, in making a statutory appointment, have regard to any recommendation made by an Assembly committee following consultation.

1.5. The Act further provides that an instrument by which a relevant appointment is made is a disallowable instrument for the purposes of section 10 of the Subordinate Laws Act 1989.

1.6. Appointments to the boards of management of TOCs are not statutory appointments and, thus, do not fall within the ambit of the Statutory Appointments Act. However, as with statutory appointments, appointments to TOC boards of management are the preserve of Ministers. The Territory Owned Corporations Act 1990 provides that a person eligible for appointment as a director of a TOC must have expertise and skills which satisfy the voting shareholders. Under the Act, a voting shareholder of a TOC is a Minister.

1.7. At present ACTEW and Totalcare Industries are the only TOCs. However, the committee understands that the Government intends to introduce legislation to corporatise ACTAB, and the Chief Minister has been quoted recently in the media to the effect that the Government holds the view that the Australian International Hotel School at the Kurrajong Hotel should be corporatised.

2. CONSULTATION ON TOC APPOINTMENTS

2.1. The committee considers that the appointment of directors of TOCs should be subject to the same consultation procedures as provided for in the Statutory Appointments Act in relation to statutory appointments, and that the relevant Ministers should be required to have regard to any recommendation made by an Assembly committee following such consultation.

2.2. The committee considers that appointments to the boards of TOCs are of equal importance to statutory appointments and, therefore, should be subject to review by Assembly committees.

2.3. Propositions put to the Assembly in 1994 in support of the Statutory Appointments Bill included that:¹

- the short and simple committee process would avoid controversy in appointments and ensure an appropriate process for preventing the development of corrupt practices in government
- the consultative process would be an entirely appropriate way for the Assembly to exercise its powers
- the prerogative for making an appointment would still lie with the Minister but before an appointment is made the Minister would have a non-partisan committee view
- a Minister proceeding with an appointment which a committee considered inappropriate would risk a disallowance in the Assembly, and
- the process should ensure that appointments are made on merit rather than mateship

2.4. The Assembly accepted the thrust of these propositions which the committee sees as applying with equal force and logic to the appointment of directors to TOC boards. The committee can see no commercial or other argument which could be advanced with any conviction or authority so as to counter the need for consultation with Assembly committees on such appointments.

2.5. The Government appears to have adopted the principle of consultation on TOC board appointments. In January this year, the Minister for Urban Services notified the committee of an appointment to the board of ACTEW made by the Chief Minister and himself as the voting shareholders.

¹ Debates of the Legislative Assembly for the ACT, Weekly Hansard, 23 February 1994, pp142-145

2.6. On that occasion, as there was no statutory need for the Minister to advise the committee of the appointment, the committee had no statutory role in the matter and took no action other than to note the appointment. Indeed, it is of some concern to the committee that, in the absence of any statutory obligation for it to do anything in respect to such appointments, the committee could be seen as tacitly agreeing with an appointment advised to it on this basis. Therefore, while the committee was not aware of any reason to question the appropriateness of the ACTEW Board appointment, no statutory avenue was available for the committee to express to the Minister any views it might have held about the appointment.

2.7. There is as much opportunity for the public interest to be subsumed to its detriment by appointments to TOC boards as there is for it to be adversely affected by inappropriate statutory appointments. As the Assembly has acknowledged this potential in relation to statutory appointments, by requiring them to be subject to scrutiny by Assembly committees, it follows that appointments to TOC boards should be subject to the same level of scrutiny by the Assembly.

3. RECOMMENDATION

3.1. The committee recommends that the Government introduce legislation to amend the Statutory Appointments Act to provide that:

- (i) Ministers be required to consult with the relevant Assembly committee before making an appointment to the board of a Territory Owned Corporation;
- (ii) Ministers, in making an appointment to the board of a Territory Owned Corporation have regard to any recommendation made by an Assembly committee following consultation; and
- (iii) an instrument by which an appointment to the board of a Territory Owned Corporation is made be a disallowable instrument for the purposes of the Subordinate Laws Act 1989.



Bill Wood MLA
Chair

