LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

REVIEW OF AUDITOR-GENERAL'S REPORT NUMBER 2, 1995

Whistleblower Investigations Completed to 30 June 1995

STANDING COMMITTEE ON PUBLIC ACCOUNTS
Report Number 7

November 1995

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

Ms Rosemary Follett MLA (Committee Chair)

Mr Trevor Kaine MLA (Deputy Committee Chair)

Ms Lucy Horodny MLA

Secretary: Bill Symington

1. INTRODUCTION

Background

1.1. Auditor-General's Report No 2, 1995 was presented to the Assembly on 21 June 1995. The audit dealt with three disclosures received after 1 July 1994 by the Auditor-General under Section 237 of the Public Sector Management Act 1994. The disclosures related to:

(1) Department of Health - Mismanagement of certain voluntary redundancy payments;

(2) ACT Fleet - Mismanagement of certain hires and purchases of heavy equipment

(3) Attorney-General's Department - Allegations related to Personnel Management within the Corrective Services operations of the Department.

1.2. Disclosure (3) was still under consideration by the Attorney-General's Department and the Auditor-General at the time of the audit report. The results of the audit review of disclosures (1) and (2) form the basis of Auditor-General's Report No 2, 1995.[1]

1.3. Section 237 of Part XII of the Public Sector Management Act specifically provided that "Whistleblower" allegations could be made to the Auditor-General, and the Act elsewhere provided that persons making Section 237 allegations would be protected.

1.4. Part XII was repealed on 22 June 1995 and replaced by the Public Interest Disclosure Act 1995 which provides for each Government agency to be a "Proper Authority" to receive public interest disclosures in relation to the conduct of a person or a matter which the agency has a function or power to investigate.

Approach to the Inquiry

1.5. The Committee sought comment from the Chief Minister and the Minister for Urban Services, and their responses form part of this report.

2. AUDIT SCOPE AND FINDINGS DISCLOSURE (1) - DEPARTMENT OF HEALTH AND COMMUNITY CARE

2.1. The allegation was that mismanagement and/or waste of public funds had occurred in relation to voluntary redundancy payments paid to four officers which aggregated $66,700.

[1] Audit Report, p3

2.2. The allegation covered two perceived failings:[2]

(i) that adequate steps were not taken to properly determine whether the officers were surplus to requirements or to determine whether they could be readily redeployed elsewhere in the ACT Government Service; and

(ii) some of the officers did not satisfy the requirements of the Australian Public Service Redeployment and Retirement (Redundancy) Award 1987 and the Public Sector Management Act with regard to being surplus to the requirements of the Department.

2.3. With regard to (i), the four excess officers were at the ASO2 to ASO4 levels, and the audit review found that many positions were advertised at these levels at the time of the redundancies. The audit found no documentation to indicate that the officers were considered for any of the vacancies. The audit concluded that no systematic efforts were made to match the officers with the vacancies and that the redundancies were made primarily because the Department's senior management considered that commitments made to the officers had to be honoured. The audit found the allegation to be well founded.[3]

2.4. With regard to (ii), the audit found there were clear grounds for one officer to be made surplus. The audit found that valid reasons did not exist for the other four positions to be made "surplus", and situations were effectively contrived to satisfy the officers' expectations that they would receive voluntary redundancies. The audit found the allegation to be well founded.[4]

2.5. The Auditor-General sought the views of relevant departments on its draft findings and the correspondence is reproduced in the audit report.[5] The audit commented on the Department of Health response by observing that it implied a lack of efficiency and/or skill base as a contributing factor, but this implication was not borne out by the facts which showed that the officers were regarded as having performed their duties efficiently. The audit concluded that claimed ongoing full year savings of $133,300 could have been achieved without the need for the redundancy payments.[6]

3. COMMITTEE APPROACH AND COMMENT

3.1. The committee sought comment from the Chief Minister on the specific cases and the generality of voluntary redundancies. The committee also raised with the Chief Minister a concern expressed by the Auditor-General[7] that under the Public Interest Disclosure (PID) Act, very few, if any, public interest disclosures would be received by the Auditor-General under that Act.

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[2] ibid, pp8,9
[3] ibid, p9
[4] ibid, p11
[5] ibid, pp11 -19
[6] ibid, p13
[7] ibid, p4

3.2. The Chief Minister advised that the circumstances arose largely as a result of general uncertainty about the roles of the Commissioner and Chief Executives on voluntary redundancies. However, the situation had been clarified, and more stringent processes put in place following enactment of the ACT Public Sector (Enterprise Bargaining) Agreement in November 1994. The Chief Minister further advised that separately the Office of Public Administration and Management is ensuring that existing policy is being assessed and enhanced in line with the audit report, and noted that the audit had commented favourably on procedures subsequently put in place by the Department of Health and Community Care to ensure the appropriate requirements are observed.[8]

3.3. With regard to the Auditor-General's role under the PID Act, the Chief Minister advised that the Auditor-General was a proper authority with respect to anything within that Office's power to investigate which, in the light of Part II Division 3 of the Audit Act 1989, is a broad range of matters. Nevertheless, the Chief Minister advised that the Auditor-General's point was appreciated and the Government is committed to monitoring the operation of the PID Act and making appropriate enhancements in the light of experience. Accordingly, the Chief Minister advised, the PID Act would be amended to make specific reference to the Auditor-General.[9]

3.4. The committee notes and accepts the Chief Minister's response. The committee is satisfied that the allegations were well founded and that appropriate steps have been taken to ensure that proper processes are now followed by ACT Government agencies in relation to voluntary redundancy arrangements.

3.5. The committee also welcomes the Chief Minister's intention to amend the PID Act to include the Auditor-General as a specific proper authority to whom allegations of inappropriate and improper activities by and within agencies can be disclosed.

4. AUDIT SCOPE AND FINDINGS DISCLOSURE (2) - ACT FLEET

4.1. This notification contained several allegations concerning the management of certain heavy equipment hired by ACT Fleet and also the purchase of certain equipment. The incidents occurred several years ago and, having regard to advice to the Auditor-General from the Department of Urban Services, the Auditor-General formed the opinion that under current management arrangements the types of "mismanagement" set out in the allegations should not recur.[10]

4.2. In essence, there were five allegations, namely:

(i) that tenders were not called for the long-term hire of a bulldozer and a scraper and as result the lowest achievable rates were probably not obtained.

[8] Chief Minister, letter to committee dated 17 August 1995
[9] ibid
[10] Audit report, p21

(ii) waste of public funds occurred as payments for a bulldozer and scraper were made for full utilisation although the machines were only partially utilised.

(iii) Waste of public funds arose from the unnecessary purchase of two Vibromax rollers.

(iv) Waste of public funds occurred through the early termination of the hire of a Bitelli self propelled soil compactor.

(v) Waste of public funds arose from a decision to hire rather than buy a Bitelli roller.

4.3. With regard to (i), the audit examination was inconclusive as relevant documentation was not available, but the audit considered the absence of documentation gave weight to an assumption that lower hire rates could have been achieved. The audit noted a Departmental claim that competitive tendering was not possible as the machines were only available from one source, but there was no documentary evidence of the accuracy of this statement. The audit noted that current Departmental procedures ensure that this type of occurrence will not recur.[11]

4.4. The audit found allegation (ii), to be well founded and that avoidable expenditure of about $50,000 occurred on the basis of actual utilisation of the machines for "medium load" hours. The over expenditure based upon hiring only when "high load" utilisation was necessary would have been some $177,000.[12] The Department did not dispute the possibility of overpayment, but believes it would have been marginal. Nevertheless, the department advised the auditor that a system of monitoring the utilisation of hired plant had been implemented and appropriate action is taken on any under utilisation of plant recognised by the monitoring process.[13]

4.5. The two rollers involved in allegation (iii) were purchased in 1990 at a combined cost of $63,280 and in five years have worked 910 and 970 hours respectively. On the basis of usage since purchase, the audit found that the expenditure to acquire the machines does not appear to have been justified. The audit noted that ACT Fleet is developing a program to assess the utilisation of its equipment and that leasing versus owning should eliminate the risks brought to light by this case.[14]

4.6. The audit found allegation (iv) to be soundly based, with the payment of some $15,000 for which no service was received. The roller was hired in 1990 for 12 months but terminated 12 weeks early although there was no contractual provision for early termination. The hire charge for the 12 weeks was $15,428 and the supplier offered a 25% discount which was not taken up. The Department was unable to account for this lapse. However, the Department advised the auditor that current conditions of such hiring include provision for termination on 24 hours notice and that this should eliminate any chance of the issues raised in the allegation being repeated.[15]

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[11] ibid, p23
[12] ibid, p28
[13] ibid, pp28,29
[14] ibid, p30
[15] ibid,pp30,31

4.7. The audit concluded that allegation (v) was well founded and that, in terms of value for money, the machine should have purchased. The hiring began in 1990 for a hire period of 12 months at a cost of $60,000 and the final cost of hiring was $75,000. A similar machine could have been purchased for $70,000 to $90,000. The Department contested the audit finding making the point that the equipment had not met the normal criteria of essentiality and high priority necessary for funding from limited resources.[16] However, the audit noted that, as with allegation (iii), ACT Fleet is developing a program to assess the utilisation of its equipment and that leasing versus owning should eliminate the risks brought to light by this case.[17]

5. COMMITTEE APPROACH AND COMMENT

5.1. The committee sought comment on the audit findings from the Minister for Urban Services. The Minister advised that the incidents referred to in the allegations occurred four to five years ago and before the ACT Fleet Trust Account was established. The Minister advised that ACT Fleet now operates on a commercial basis in which cost effectiveness of decisions on hiring and purchasing of plant is paramount, and that procedures covering the types of problems identified in the allegations have also minimised the possibility of such occurrences in the future.[18]

5.2. The Minister advised that in relation to allegation (i), the audit comment that the Department stated that competitive tendering was not possible as the machines were only available form one source was incorrect, that the Department had so advised the Auditor-General, and that the Department had, in fact, sought quotes from both the Canberra and Sydney regions which resulted in the hire of the only available equipment of the size required at that time. In these circumstances, the Department believed it unnecessary to go to full public tender. The Department confirmed, however, that its procedures now require tenders to be called for the hire of all earthmoving equipment and trucks and the situation should not arise in future.[19]

5.3. With regard to allegation (ii), the Minister advised that the Department did not dispute the possibility of an overpayment but that any overpayment would have been marginal given doubt as to accuracy of fuel records, that 70% productivity would have been the upper limit of utilisation of the plant and that the appropriate utilisation was generally at low load level.[20]

5.4. The Minister advised that in regard to allegation (iii),the purchases were to a client specification and for specific purposes in road repair work. Although the equipment is not used for extended periods, it is used frequently. However, the Minister confirmed that ACT Fleet is to review the cost effectiveness of owning versus hiring and the review will include the equipment involved in this allegation.[21]

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[16] ibid, pp33,34
[17] ibid, p30
[18] Minister for Urban Services, letter to committee dated 2 November 1995
[19] ibid
[20] ibid
[21] ibid

5.5. With regard to allegation (iv), the Minister advised that the Department has moved to recover the discount offered by the contractor, and that contracts now include termination of hire on 24 hours notice with procedures being developed to incorporate revised contract arrangements into ACT Fleet's Quality Assurance system.[22]

5.6. The Minister advised that with regard to allegation (v), the client had been unable to guarantee a minimum annual usage for the Bitelli roller sufficient to justify the purchase of the machine. In the event, usage had exceeded the minimum hours to make purchase financially viable. Nevertheless, the Minister advised that given competing priorities and doubts as to the financial viability of the purchase of the roller, the Department has not been able to justify the purchase.[23]

Mr Mizgalski

5.7. The committee also received correspondence from a former ACT Fleet Senior Mechanical Engineer (now retired), Mr R M Mizgalski who wrote to the Speaker of the Legislative Assembly to correct information supplied by the Department of Urban Services.[24]

5.8. Mr Mizgalski advised he was not the whistleblower, but because he was the ACT Fleet Senior Mechanical Engineer from 1987 to August 1994, he believed that the Department was ascribing to him responsibility for the purchase of the road rollers, the subject of allegation (iii), and the hiring of a Bitelli roller, the subject of allegation (v).

5.9. Mr Mizgalski provided documents to substantiate that he had recommended the purchase of one Vibromax roller to replace an older machine, but that a second purchase had been made without his knowledge; and that he had not been involved in the hiring of the Bitelli roller.

5.10. The committee sought informal comment from informed sources on the concerns raised by Mr Mizgalski. On the basis of this comment and from the material provided by Mr Mizgalski, the committee advises that there is no evidence which would indicate that the matters concerned in the above allegations can in any part be attributed to Mr Mizgalski's actions. The allegations were laid against "the management staff" and not the engineers.

[22] ibid

[23] ibid

[24] Mr R M Mizgalski, letter to the Speaker of the Legislative Assembly, dated 17 August 1995

6. CONCLUSION

6.1. The committee considers that the two cases dealt with by this audit exemplify the value to the community as a whole of the responsible disclosure of instances where there has been failure by public sector management to ensure that public funds are expended by proper authority and that appropriate economy is observed in the management of public funds and assets.

6.2. The committee commends the actions and motives of those who made the disclosures, which have directly resulted in improvements to public sector management procedures.

7. RECOMMENDATIONS

7.1. The committee recommends that the Government:

> **(1) amend the Public Interest Disclosure Act 1994 to provide for the Auditor-General to be specified as a proper authority for the receipt and investigation of disclosures made under the Act;**
>
> **(2) report to the Assembly within six months on the consolidated measures taken by the Department of Urban Services and by ACT Fleet to ensure that the situations which arose in relation to the disclosures about the purchasing and hiring procedures for heavy equipment do not recur; and**
>
> **(3) report to the Assembly on action taken to counsel those officers responsible for the mismanagement of the redundancies, the subject of disclosure (1), in the Department of Health and Community Care.**

Rosemary Follett

Rosemary Follett MLA
Chair