ACT
GOVERNMENT

Tabling Statement

Government Response to Report No. 9 of the Standing Committee on Public Accounts

Review of Auditor General's Report No. 7 of 2005 – 2004-05 Financial Audits

13/3/07

TABLING STATEMENT

Government Response to Report No. 9 of the Standing Committee on Public Accounts 'Review of Auditor- General's Report No.7 of 2005: 2004-05 Financial Audits'

Mr Speaker, I present to the Assembly the Government Response to the Standing Committee on Public Accounts Report No.9, titled: *'Review of Auditor General's Report No.7 of 2005: "2004-05 Financial Audits"'*.

The recommendations contained in the Public Accounts Committee's Report primarily relate to:

- the electronic publication of agency financial reports;
- the annual reporting arrangements for Joint Ventures; and
- the review into superannuation contributions owing to former Totalcare Industries Limited and Australian International Hotel School employees.

The Government's response reiterates its commitment to ensuring agencies comply with the Chief Minister's Annual Report Directions.

To this end, the 2005-06 Annual Report Directions were further developed to emphasise the importance of making annual financial reports electronically available on the same day of distribution to the Assembly members.

In relation to financial reporting arrangements for Joint Ventures, the Government's response confirms that, where appropriate, it is currently standard practice for Joint Venture financial reports to be published within the financial reports of their related Territory entity.

Finally, the Government's response provides an update on the progress and status of the Territory's review into superannuation contributions owing to eligible former Totalcare Industries Limited and Australian International Hotel School employees.

The Government will continue to provide routine updates to the Assembly on the status of this review.

Mr Speaker, I commend these papers to the Assembly.

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

GOVERNMENT RESPONSE TO THE STANDING COMMITTEE ON PUBLIC ACCOUNTS

IN RESPONSE TO THE STANDING COMMITTEE ON PUBLIC ACCOUNTS REPORT NO. 9, REVIEW OF AUDITOR GENERAL'S REPORT NO. 7 OF 2005 – 2004-05 FINANCIAL AUDITS

13 / 3/07

INTRODUCTION

The Chair of the Standing Committee on Public Accounts presented the Report No.9 of 2006, *Review of Auditor-General's Report No.7 of 2005: 2004-05 Financial Audits* to the Legislative Assembly on 14 December 2006.

The Report included five recommendations.

GOVERNMENT RESPONSE TO RECOMMENDATIONS

Recommendation 1

Chief Minister's Department ensures that ACT Government agencies comply with sections 1.9 (*Presentation of Annual Reports*) and 1.10 (*Access and Distribution*) of the *Chief Minister's Annual Report Directions.*

Government Response

Noted. The Section 1 (*Guidelines*) of the 2005-06 Annual Report Directions were further developed to emphasise that Annual Reports must be electronically available on the same day of distribution to the Assembly members. As stated in Section 1.10 (*Access and Distribution*), the Auditor-General's Office is responsible for monitoring compliance with this requirement. It should be also noted that the current Annual Report Act is being reviewed.

Recommendation 2

As a matter of standard practice, joint venture agreements with a Territory entity in which the Territory has a 'controlling interest' should include a provision that requires the audited financial statements to be provided to the Territory entity.

Government Response

Agreed-in-Principle. Consistent with current practice, to the extent that a Government entity has an involvement in a JV and its financial reports are required to be prepared by either the *Corporations Act 2001* or accounting standards, the financial reports of the JVs will be audited and provided to the relevant Territory entity in a timely manner.

It should, however, be noted that there are two types of joint ventures.

A jointly controlled entity is a joint venture (JV) that involves the establishment of a corporation, partnership or other interest where the contractual agreement between the venturers establishes joint control over the economic activity of the entity. In this instance a financial report is prepared for the JV entity (in line with either the *Corporations Act 2001*, or accounting standards).

The current practice is for these financial reports to be audited and provided to the relevant Territory entity in a timely manner. Noting, of course, that the timing of the provision of the audited financial report will depend on the circumstances of the JV. Examples of this include the Land Development Agency and ACTEW, which include in their annual financial reports an audited financial report for each of the jointly controlled entities they are associated with.

The second type of JV is a jointly controlled operation, where each venturer uses its own property, plant and equipment and inventories and raises its own financing. Each venturer bears its own costs and takes a share of the revenue from the sale of the output of the jointly controlled operation. In this instance there is no JV reporting entity, and therefore no separate financial report is prepared for the JV.

The recommendation, however, seems to be made largely in response to ACTEW having a 'significant influence' over TransACT. TransACT is not a JV. TransACT Capital Communications is a private company owned by several major shareholders of which ACTEW Corporation, with a shareholding of just 24.9 per cent (at the time of the 2004-05 audit), is just one. ACTEW is not the largest shareholder in TransACT.

TransACT operates under the *Corporations Act 2001*, which allows a longer period of time for the completion of annual financial reports than is allowed for ACT Government reporting entities.

The Board of TransACT, comprising representatives of every substantial shareholder, including ACTEW, has consciously formed the view that the best interests of that company are appropriately met by an accounting and audit process that may take longer than sixty days.

ACTEW does not control TransACT or its Board, and has no statutory power to compel the preparation of audited accounts within a timeframe suited to the audit process of the ACT Government. The Government agrees with ACTEW's view that it is proper, as a minority shareholder, to have regard to the interests and views of other shareholders.

Recommendation 3

The Annual Reports of Territory entities be legally required to include the audited financial statements of all entities in which the Territory has a 'controlling interest'.

<u>Government Response</u>

Not Agreed. Accounting standards already require the inclusion of certain information commensurate with the level of influence / control being exerted over related entities. To include the audited financial reports of all entities in which a Territory entity has a 'controlling interest' has the potential to make the financial report of that entity quite unwieldy, with little or no additional value being added.

The discussion proffered in relation to this particular recommendation, however, largely relates to the audited financial report of TransACT. Note, that while the ACT Government has significant influence over the operations of TransACT, it does not have a controlling interest.

Recommendation 4

The Government inform the Assembly on the outcome of Treasury's review of superannuation contributions owing to eligible Totalcare Industries Limited and Australian International Hotel School employees.

Government Response

Agreed. The Government has periodically provided updates on the status of superannuation contributions owing to eligible Totalcare and Australian International Hotel School (AIHS) employees, and will continue to provide updates on the progress of the ongoing review into the outstanding superannuation liability as appropriate.

For the benefit of the Public Accounts Committee, Attachment A1 provides both the history of the review of superannuation contributions owing to eligible Totalcare and AIHS employees and an update of the progress of the review.

Recommendation 5

The Legislative Assembly for the ACT note the findings of Auditor-General's Report No 7 of 2005: 2004-05 Financial Audits.

Government Response

Noted.

Attachment A1

Review into Superannuation Contributions Owing to Eligible Totalcare and Australian International Hotel School employees

The following discussion provides both the history of the review of superannuation contributions owing to eligible Totalcare and AIHS employees and an update of the progress of the review.

Totalcare Industries Limited

Totalcare Industries Limited was incorporated in January 1991 with the intention that it would operate in a commercial manner, including having commercial superannuation arrangements for its staff. During the first 12 years of the company's existence, staff were permitted to join superannuation funds of their choice.

The shareholders announced in June 2003 that the activities of the company would be returned to the ACT Government. A new Board was appointed to oversee this process. During the Board's review of Totalcare's activities, which was undertaken as part of the return to government process, it was discovered that Totalcare had not carried out the legal processes required to exempt the Company from contributing to the Commonwealth Superannuation Scheme (CSS or PSS).

Consequently, many staff employed by the Company between 1992 and 2004 were either eligible or deemed as a matter of law to be members of the CSS or PSS Schemes, but they were not advised of this right. Totalcare has a legal obligation to make superannuation contributions to the schemes on behalf of all the eligible employees.

A national advertising campaign in the press and on radio was run in early 2004 to alert previous employees to the issue, and to provide an information hotline. Then current employees were made aware of the issue by Company management. The Board advised the shareholders and the Trustees of the Commonwealth Superannuation Schemes (CSS and PSS) of the issue and discussions were initiated (and are still under way) with ComSuper (the Scheme's administrators) about the best way to rectify the situation. In July 2004, an action team consisting of staff from the ACT Department of Treasury was established to carry out a two-part program. Firstly, to identify all past and present staff who were eligible to be a member of either the CSS or PSS, and secondly, to calculate the amount of superannuation contributions owing to the Schemes for each eligible employee.

The Australian Government Solicitor's (AGS) Office was retained as external special counsel. Lawyers from that office have completed reviewing nearly 2,000 employee files to determine which employees were eligible for CSS or PSS membership. They have identified approximately 1,200 employees that will require further action. The Treasury team has completed the task of reviewing individual employee files. Work by external bodies (AGEST/ComSuper/Russell Employee Benefits) is under way. The work has not progressed as quickly as originally planned. For instance, AGEST has experienced unavoidable delays (system integration) in relation to certain essential calculations, and there have been unrelated but consequential timing issues at ComSuper and AGS. However, AGEST and ComSuper advise that better progress can be expected in the next few months.

A method of calculating the amount of superannuation contributions owing to the Schemes for each eligible employee has been established and applied. The calculation method was most recently applied by the Chief Justice of the ACT Supreme Court in a non-Totalcare but factually analogous decision: Cornwell v the Commonwealth of Australia (5 March 2005).

A provision has been raised in the financial report for the estimated amount of superannuation contributions outstanding. The amount of the provision was estimated in 2003-04. It was based on a number of averages such as average salary and average length of service. This is a management estimate based on the best information available at the time. The final liability may vary significantly from the estimated amount.

Totalcare does not have the resources available to meet this liability. The shareholders have provided a written assurance and the ACT Government has reinforced this undertaking by written agreement that the ACT Government will meet any of the Company's financial obligations that are in excess of its financial resources. Consequently, a receivable from the Territory has also been recognised in the financial accounts of Totalcare.

There has been significant progress throughout the year in relation to the superannuation issue, but for reasons set out below, the company is, as yet unable to quantify its liabilities beyond the original estimate. Two cash settlements have been made, totalling $16,219.75 and a further 260 former employees (out of a cohort of approximately 2,200) have been notified that the company carries no legal liability in relation to them.

A majority of those former employees have agreed with the company's position. However, there has been no response from 35 per cent of those approached. Two of this group of former employees have furnished evidence demonstrating that Totalcare is in fact liable to them and calculation of liabilities is now under way. Further, with regard to the cohort of approximately 320 former Totalcare employees who are now working with the ACT Government (to whom the company is liable), Totalcare has obtained preliminary actuarial information in respect of those employees. ComSuper is presently working on the preliminary actuarial data in order to validate it. AGEST, the default superannuation fund that received employer contributions has yet to provide any substantive information.

Totalcare's settlement template requires that actuarial information, ComSuper data and third party superannuation fund data must coincide before any settlement offer is made. Once Totalcare receives the required information from AGEST, it will, progressively, make offers to this cohort of employees and once those settlements are effected, the Board will take necessary advice on the efficacy of revising its liability estimate.

Finally, Totalcare's special counsel for superannuation matters, the Australian

Government Solicitor, recently advised that the High Court has granted the Commonwealth special leave to appeal the Cornwell decision on the limitations issue. That appeal was heard in November 2006 and the High Court's decision is pending. Depending upon the High Court's decision, Totalcare may be able to limit its legal liability with respect to some former employees. The extent of this is as yet unknown.

Australian International Hotel School
Following the identification of anomalies with Totalcare's compliance with Commonwealth superannuation legislation, Treasury investigated the superannuation policies of the other Government Business Enterprises and identified a similar compliance issue with the AIHS.

Treasury understands that the AIHS Board decided on 29 January 1997 to stop new employees accessing the Public Sector Superannuation Scheme. New AIHS staff were given access to either AGEST or HOSTPLUS superannuation funds. The Treasury action team, which had already been established for the Totalcare Superannuation issue, was tasked with the AIHS project in August 2004.

The Totalcare two-part program was followed, which identified all past and present staff who were eligible to be a member of CSS or PSS and to calculate the amount of superannuation contributions owing to the Schemes for each eligible employee.
After consultation with the Department of Finance and Administration and ComSuper, it was agreed that the Australian Government Solicitor (AGS) be appointed to provide legal advice to the ACT Department of Treasury and the AIHS on this issue.

The AGS was requested to start reviewing current and former employee's files but clarification of the status of employees employed under the Liquor Trades Hotels (Award) and the interpretation of the Superannuation (Productivity Benefit) Act 1988 (the PUB Act) delayed their start.

The review followed the same establishment criteria as Totalcare and the AGS finished reviewing AIHS current and former employee files, with over 900 personnel files requiring further action and only 253 files being classified as no further action.

The same time consuming procedure of reviewing individual files has begun. AIHS outsourced its payroll processes to Totalcare Industries Limited, so individual paper pay records are only available for the period 1997 to 1999. These are being reviewed and this data is added to the electronic details available from the AIHS. The major problem with this project is tracking down the ex-employees, as the nature of their workforce is itinerant and a large number have moved around Australia or overseas to work in the accommodation/food and beverage industry. The team will be requesting an exemption from the Minister, giving the team members the ability to review the electoral role so an up-dated crosschecking of details will be available.

The same procedural processes as the Totalcare project were followed, but although all further action files were reviewed, there were only a small number of people whose liability was calculated, due to most AIHS employees being employed under casual or temporary employment contracts. Their information was sent to our actuary for calculations. The details of these few employees will be forwarded to ComSuper as the second step in our calculation procedures. As with the Totalcare project a method of calculating the amount of superannuation contributions owing to the Schemes for each eligible employee has been established and applied. The calculation method was most recently applied by the Chief Justice of the ACT Supreme Court in a non-Totalcare but factually analogous decision: Cornwell v the Commonwealth of Australia (5 March 2005).

A provision has been raised in the financial report for the estimated amount of superannuation contributions outstanding. The amount of the provision was estimated in 2003-04. It was based on a number of averages such as average salary and average length of service. This is a management estimate based on the best information available at the time. The final liability may vary significantly from the estimated amount.