

# REPORT ON ANNUAL AND FINANCIAL REPORTS 2016-2017

STANDING COMMITTEE ON PUBLIC ACCOUNTS

MARCH 2018

REPORT 2



## COMMITTEE MEMBERSHIP

Vicki Dunne MLA	Chair
Michael Pettersson MLA	Deputy Chair
Alistair Coe MLA	
Bec Cody MLA	

## SECRETARIAT

Dr Brian Lloyd	Secretary
Lydia Chung	Administrative Assistant

## CONTACT INFORMATION

Telephone	02 6205 0137
Post	GPO Box 1020, CANBERRA ACT 2601
Email	<a href="mailto:committees@parliament.act.gov.au">committees@parliament.act.gov.au</a>
Website	<a href="http://www.parliament.act.gov.au">www.parliament.act.gov.au</a>

## RESOLUTION OF APPOINTMENT

At its meeting of 13 December 2016 the Legislative Assembly resolved to create ‘a Standing Committee on Public Accounts to:

(i) examine:

(A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and

(B) all reports of the Auditor-General which have been presented to the Assembly;

(ii) report to the Assembly 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; and

(iii) 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’.<sup>1</sup>

On 26 October 2017 the Legislative Assembly resolved to amend the above resolution as follows:

“Insert after (e)(i)(A), the words:

(AA) matters relating to market and regulatory reform (excluding Access Canberra), public sector management, taxation and revenue.”<sup>2</sup>

---

<sup>1</sup> Legislative Assembly for the ACT, Minutes of Proceedings No. 2, 13 December 2016, p.13, available at: [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0008/1017980/MoP002F1.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0008/1017980/MoP002F1.pdf)

<sup>2</sup> Legislative Assembly for the ACT, Minutes of Proceedings No. 37, 26 October 2017, p.489, available at: [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0003/1122285/MOP037F.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0003/1122285/MOP037F.pdf)

## TERMS OF REFERENCE

On 26 October 2017 Mr Gentleman MLA, as Manager of Government Business, moved that:

- (1) the annual and financial reports for the financial year 2016-2017 and for the calendar year 2016 presented to the Assembly pursuant to the *Annual Reports (Government Agencies) Act 2004* stand referred to the standing committees, on presentation, in accordance with the schedule below;
- (2) the annual report of ACT Policing stands referred to the Standing Committee on Justice and Community Safety;
- (3) notwithstanding standing order 229, only one standing committee may meet for the consideration of the inquiry into the calendar year 2016 and financial year 2016-2017 annual and financial reports at any given time;
- (4) standing committees are to report to the Assembly on financial year reports by the last sitting day in March 2018, and on calendar year reports for 2016 by the last sitting day in March 2018;
- (5) if the Assembly is not sitting when a standing committee has completed its inquiry, a committee may send its report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publishing and circulation; and
- (6) the forgoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

The Minutes of Proceedings provide a table of agencies and the committees of the Assembly to which their annual reports were referred.<sup>3</sup>

The following is a summary, taken from that table, of the agencies of which annual reports for 2016-17 were referred to the Standing Committee on Public Accounts.

---

<sup>3</sup> Legislative Assembly for the ACT, *Minutes of Proceedings* No.2, 13 December 2016, p.13 ff.

STANDING COMMITTEE ON PUBLIC ACCOUNTS

<b>Annual Report (in alphabetical order)</b>	<b>Reporting area</b>	<b>Portfolio</b>	<b>Standing Committee</b>
ACT Auditor-General		Officer of the Legislative Assembly	Public Accounts
ACT Insurance Authority		Treasurer	Public Accounts
ACT Ombudsman		Officer of the Legislative Assembly	Public Accounts
Chief Minister, Treasury and Economic Development Directorate	ACT Compulsory Third Party Insurance Regulator	Treasurer	Public Accounts
Chief Minister, Treasury and Economic Development Directorate	Lifetime Care and Support Fund	Treasurer	Public Accounts
Chief Minister, Treasury and Economic Development Directorate	Office of the Nominal Defendant of the ACT	Treasurer	Public Accounts
Chief Minister, Treasury and Economic Development Directorate	Public Sector Management	Chief Minister	Public Accounts
Chief Minister, Treasury and Economic Development Directorate	Superannuation Provision Account	Treasurer	Public Accounts
Chief Minister, Treasury and Economic Development Directorate	Territory Banking Account	Treasurer	Public Accounts

<b>Annual Report (in alphabetical order)</b>	<b>Reporting area</b>	<b>Portfolio</b>	<b>Standing Committee</b>
Chief Minister, Treasury and Economic Development Directorate	Revenue Management	Treasurer	Public Accounts
Chief Minister, Treasury and Economic Development Directorate	Shared Services	Treasurer	Public Accounts
Icon Water Limited		Treasurer	Public Accounts
Independent Competition and Regulatory Commission		Treasurer	Public Accounts
Office of the Legislative Assembly		Speaker of the Legislative Assembly for the ACT	Public Accounts
State of the Service Report	Chief Minister	State of the Service Report	Public Accounts

## TABLE OF CONTENTS

Committee membership.....	i
Resolution of appointment.....	ii
Terms of reference .....	iii
<b>RECOMMENDATIONS.....</b>	<b>IX</b>
<b>1 — INTRODUCTION.....</b>	<b>1</b>
Conduct of the inquiry.....	1
Structure of the report .....	1
<b>2 — REVENUE MANAGEMENT.....</b>	<b>3</b>
Introduction.....	3
Rates objections and appeals.....	3
Impact of Mr Fluffy sales on rates for affected and surrounding blocks.....	6
Rates hardship .....	10
Stamp duty concessions .....	11
Debt collection.....	12
Debate on changes to rates and stamp duty.....	14
Committee comment .....	20
<b>3 — SUPERANNUATION PROVISION ACCOUNT.....</b>	<b>23</b>
Introduction.....	23
Discount rate assumptions for the superannuation provision account .....	24
Investment strategy to meet superannuation liability .....	26
Reduction of return outlook from five to 4.75 .....	27
Modification of investment portfolio.....	29
Who provides advice, and who invests.....	31
Current investment weightings.....	32
Numbers of people in schemes and duration of liability .....	33
Tender processes for fund managers and the Custodian .....	34
Committee comment .....	35
<b>4 — COMPULSORY THIRD-PARTY INSURANCE REGULATOR.....</b>	<b>39</b>
Introduction.....	39
Citizens' jury on Compulsory Third-party Insurance.....	39



	Committee comment .....	41
<b>5</b>	<b>— INDEPENDENT COMPETITION AND REGULATORY COMMISSION ...</b>	<b>43</b>
	Introduction.....	43
	Scope of investigation and evaluation of Icon Water’s operating costs.....	44
	Electricity supply liability .....	46
	Measures to reduce energy prices or limit increases.....	49
	Committee comment .....	50
<b>6</b>	<b>— SPEAKER AND OFFICE OF THE LEGISLATIVE ASSEMBLY.....</b>	<b>53</b>
	Introduction.....	53
	Levels of satisfaction with the provision of IT and other services .....	54
	Learning and development .....	55
	Committee comment .....	57
<b>7</b>	<b>— LIFETIME CARE AND SUPPORT.....</b>	<b>59</b>
	Introduction.....	59
	Effect of intergovernmental cooperation group agreement with New South Wales.....	59
	Significance of ‘registerable’ vehicles for scheme .....	61
	Average cost per participant per year .....	61
	Committee comment .....	63
<b>8</b>	<b>— ACT INSURANCE AUTHORITY (ACTIA) .....</b>	<b>65</b>
	Introduction.....	65
	ACTIA funding ratio and variance.....	65
	Insurance premiums.....	67
	Is ACTIA the best means to achieve value for money for the ACT’s insurance? .....	68
	Tender processes .....	70
	Internal audit .....	72
	Committee comment .....	73
<b>9</b>	<b>— SHARED SERVICES.....</b>	<b>75</b>
	Introduction.....	75
	Benchmarking and KPIs for Shared Services .....	75
	Management of software licences .....	77
	Committee comment .....	81
<b>10</b>	<b>— PUBLIC SECTOR MANAGEMENT.....</b>	<b>83</b>
	Introduction.....	83

<b>Employees who ‘follow different religions’</b> .....	<b>83</b>
<b>Trainees and apprentices</b> .....	<b>85</b>
<b>Attraction and Retention Incentive payments</b> .....	<b>86</b>
<b>Committee comment</b> .....	<b>89</b>
<b>11 — ICON WATER</b> .....	<b>91</b>
<b>Introduction</b> .....	<b>91</b>
<b>Icon Water infrastructure and capital works program</b> .....	<b>91</b>
<b>Water storage as percentage of dams capacity</b> .....	<b>94</b>
<b>Shared services agreement with ActewAGL</b> .....	<b>94</b>
<b>Committee comment</b> .....	<b>96</b>
<b>12 — ACT OMBUDSMAN</b> .....	<b>99</b>
<b>Introduction</b> .....	<b>99</b>
<b>Oath of office</b> .....	<b>99</b>
<b>Reportable conduct scheme</b> .....	<b>99</b>
<b>Responsibilities under new Freedom of Information laws</b> .....	<b>103</b>
<b>Complaint handling</b> .....	<b>105</b>
<b>Committee comment</b> .....	<b>106</b>
<b>13 — ACT AUDITOR-GENERAL</b> .....	<b>107</b>
<b>Introduction</b> .....	<b>107</b>
<b>Interaction with auditees during the audit process</b> .....	<b>108</b>
<b>Auditees’ access to draft audit reports</b> .....	<b>112</b>
<b>Restrictions on use of information provided in draft reports</b> .....	<b>112</b>
<b>Options for referral</b> .....	<b>113</b>
<b>Committee comment</b> .....	<b>114</b>
<b>APPENDIX A</b> .....	<b>117</b>
<b>Witnesses</b> .....	<b>117</b>
<b>APPENDIX B</b> .....	<b>119</b>
<b>Questions Taken on Notice</b> .....	<b>119</b>
<b>APPENDIX C</b> .....	<b>123</b>
<b>Questions on Notice</b> .....	<b>123</b>

## RECOMMENDATIONS

### RECOMMENDATION 1

**2.89** The Committee recommends that the ACT Government conduct data collection and analysis on changes to stamp duty and rates in the ACT, and that the resulting data be provided to the Committee in 2018.

### RECOMMENDATION 2

**2.90** The Committee recommends that if further data collection and analysis on changes to stamp duty and rates were to demonstrate inequality in the overall burden on tax payers in the ACT, the ACT Government act to remediate or reverse such effects.

### RECOMMENDATION 3

**3.73** The Committee recommends that the ACT Government increase the membership of the independent advisory board for the Superannuation Liability Fund from two to three members by the end of the 2017-18 financial year.

### RECOMMENDATION 4

**5.39** The Committee recommends that the ACT Government ensure that the consumer protection code administered by the Independent Competition and Regulatory Commission (ICRC) be amended so that compensation is paid to electricity consumers in instances where there are multiple interruptions to electricity supply over a nominated period of time.

### RECOMMENDATION 5

**5.40** The Committee recommends that the ACT Government ensure that the consumer protection code administered by the Independent Competition and Regulatory Commission (ICRC) be amended so that compensation is automatically paid to electricity consumers by electricity suppliers in instances where interruptions to supply meet criteria for compensable interruptions to supply.

### RECOMMENDATION 6

**7.29** The Committee recommends that the ACT Government ensure that appropriate measures are used regarding management of—and information on—the Lifetime Care and Support scheme, in view of small numbers of participants in the scheme.

**RECOMMENDATION 7**

**8.52** The Committee recommends that the ACT government ensure that premiums paid by ACT government agencies are such that they are sufficient to cover those agencies' insurance costs and allow ACTIA to maintain a prudent capital base. The practice of ACTIA making capital returns to government would in such circumstances be unnecessary and should be discontinued.

**RECOMMENDATION 8**

**9.33** The Committee recommends that the ACT government progress work on the Shared Services software asset management system as a matter of urgency. The Committee recommends that the ACT government advise the Legislative Assembly of progress on the project by the end of the 2017-18 financial year.

**RECOMMENDATION 9**

**10.33** The Committee recommends that the ACT government dispense with the term 'different religions' in characterising its workforce, and instead use terms which accept and presuppose workforce diversity.

**RECOMMENDATION 10**

**10.36** The Committee recommends that the ACT government provide sufficient support to apprenticeships and traineeships in the ACT to prevent further decreases, and to stabilise and increase participation in apprenticeships and traineeships in the future. The Committee recommends that the ACT government report on this to the Legislative Assembly the end of the 2017-18 financial year.

**RECOMMENDATION 11**

**10.39** The Committee recommends that the ACT government report on the use of Attraction and Retention Incentives (ARIs), and the principles used as a basis to negotiate ARIs, to the Legislative Assembly by the end of the 2017-18.

**RECOMMENDATION 12**

**11.37** The Committee recommends that the shared services agreement between Icon Water and ActewAGL be open to public scrutiny, and that the ACT government therefore table the current agreement in the Assembly by the end of the 2017-18 financial year.

**RECOMMENDATION 13**

**12.38** The Committee recommends that the Speaker of the Legislative Assembly for the ACT swear in the ACT Ombudsman as soon as practicable after the publication of the present report.

**RECOMMENDATION 14**

**13.39** The Committee recommends that the Auditor-General give wider publicity on the web-page of the Audit Office on her capacity to refer matters to the Australian Securities and Investments Commission under Section 311 of the *Corporations Act 2001* (Cth), including further detail on the two instances where referrals have been made.



# 1 — INTRODUCTION

- 1.1 The *Annual Reports (Government Agencies) Act 2004* provides that directors-general of ACT government agencies, public sector bodies, territory entities, officers of the Legislative Assembly, and the Office of the Legislative Assembly must publish annual reports for each financial year.<sup>4</sup>
- 1.2 Section 8 of the Act obliges the relevant Minister to make an annual report direction which sets out more detailed requirements for the content of annual reports.<sup>5</sup> Current directions were issued by the Chief Minister for the ACT and are set out in the Annual Reports (Government Agencies) Notice 2017.<sup>6</sup>

## CONDUCT OF THE INQUIRY

- 1.3 Public hearings were conducted by the Committee on 10 November 2017 for all agencies considered in this report except for the Auditor-General.
- 1.4 The Auditor-General appeared before the Committee in hearings of 14 November 2017.

## STRUCTURE OF THE REPORT

- 1.5 Agencies and areas of responsibility are considered in this report in the order in which they were considered by the Committee in public hearings of 10 and 14 November 2017.

---

<sup>4</sup> See *Annual Reports (Government Agencies) Act 2004*, Sections 6, 7, 7A, 7B, 7C and 7D respectively. Viewed 28 November 2017, available at: <http://www.legislation.act.gov.au/a/2004-8/current/pdf/2004-8.pdf>

<sup>5</sup> *Annual Reports (Government Agencies) Act 2004*, Section 8.

<sup>6</sup> Annual Reports (Government Agencies) Notice 2017 (NI2017-280, viewed 28 November 2017, available at: <http://www.legislation.act.gov.au/ni/2017-280/current/pdf/2017-280.pdf>





## 2 — REVENUE MANAGEMENT

### INTRODUCTION

- 2.1 The Chief Minister, Treasury and Economic Development Directorate (CMTEDD) *Annual Report 2016-17* stated that Revenue Management ‘was responsible for administering the Territory’s property, duty and payroll tax laws’ and ‘also administered a number of concessions schemes’.<sup>7</sup>
- 2.2 An ‘overview’ elsewhere in the annual report provided further detail of the activities of Revenue Management in the 2016-17 financial year.<sup>8</sup>
- 2.3 The Committee considered Revenue Management in hearings of 10 November 2017.

### RATES OBJECTIONS AND APPEALS

- 2.4 In hearings, the Committee asked how many objections had been received in connection with rates assessments in the previous year and year to date.<sup>9</sup>
- 2.5 In responding, the Executive Director, Revenue Management, told the Committee that:
- Last year, for 2016-17, we received 49 objections related to rates and 28 objections related to commercial rates. This year, year to date, we have received 38 in the residential category, and 30 in the commercial category.<sup>10</sup>
- 2.6 When asked how many of the objections related to units and apartments, the Executive Director was not able to provide details, but took the question as a Question Taken on Notice.<sup>11</sup>

---

<sup>7</sup> CMTEDD, *Annual Report 2016-17*, Volume 1, p.18, viewed 23 November 2017, available at:

[http://www.cmd.act.gov.au/data/assets/pdf\\_file/0003/1112997/Volume-1-CMTEDD-Annual-Report-2016-17-3.pdf](http://www.cmd.act.gov.au/data/assets/pdf_file/0003/1112997/Volume-1-CMTEDD-Annual-Report-2016-17-3.pdf)

<sup>8</sup> CMTEDD, *Annual Report 2016-17*, Volume 1, p.55.

<sup>9</sup> *Proof Transcript of Evidence*, 10 November 2017, p.2.

<sup>10</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.3.

<sup>11</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.3.

- 2.7 The Committee asked questions as to what grounds objections could be raised regarding rates assessments.<sup>12</sup>
- 2.8 In responding, the Executive Director told the Committee that there were ‘two bases on which you can object to your rates’, that is: that ‘the application of the rating factor is incorrect’ or that ‘the average unimproved value is not correct’.<sup>13</sup>
- 2.9 He went on to tell the Committee that where objections are raised in relation to the application of the rating factor, ‘we will make sure that the calculations are correct in terms of processing that objection’.<sup>14</sup>
- 2.10 Where there was an objection on grounds of valuation, he told the Committee, ‘we will ask for a report from the ACT valuation office and we will get a report on that property’.<sup>15</sup>

Typically, that report will be quite comprehensive, a number of pages. It will look at the values of properties around that property and it will also look at comparative sales in that locality to determine whether there is a strong case to support the valuation that has been used.<sup>16</sup>

- 2.11 Following this, the Executive Director told the Committee:

An officer in the revenue office would make a determination based on the advice from the valuation office. That would be independent of the valuation office, an independent review of the valuation and the process. A decision would then be made and the taxpayer would be advised of the outcome of that objection. The taxpayer would then be advised of their rights in terms of taking that objection to an appeal stage, and that is typically at ACAT.<sup>17</sup>

- 2.12 At this point the Committee asked what methodology would be used to ensure accuracy of rates assessments in established suburbs where vacant land may not have been sold for a considerable period of time.<sup>18</sup>

---

<sup>12</sup> *Proof Transcript of Evidence*, 10 November 2017, p.3.

<sup>13</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.3. The meaning of ‘unimproved value’ is specified in Section 6 of the *Rates Act 2004* (ACT), viewed 23 November 2017, available at: <http://www.legislation.act.gov.au/a/2004-3/current/pdf/2004-3.pdf>

<sup>14</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.3.

<sup>15</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.3.

<sup>16</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.3.

<sup>17</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.3.

<sup>18</sup> *Proof Transcript of Evidence*, 10 November 2017, p.3.

2.13 In responding, the Executive Director told the Committee that:

In terms of establishing the valuation in the first instance, a mass appraisal process is used. The way that works is that, for each locality, suburbs are broken down into localities, and a locality is typically a place where the area was developed at the same time, it has a similar aspect, similar views and similar-type properties. Typically, there is a benchmark property that is used to determine a base and, through the annual assessment process, various property transactions that take place within that locality that relate to that benchmark property are assessed for the changes in the unimproved value that would impact on that benchmark property.<sup>19</sup>

2.14 He went on to say that in order to calculate unimproved value:

You would look at a sale at market price and then you would reduce that value by the improvements on the land. You would estimate the value of the house, you would estimate the value of the garage, the swimming pool—whatever is on that property—to bring it back to an unimproved value. There would be various measures, like Rawlinsons, the construction manual, that would inform what the deductions would be to get from the market value back to the unimproved value. That is the methodology for getting down to the unimproved value. Once that unimproved value is established, from year to year the sales around that property would be analysed to determine whether the value of that property changes at all, increases or reduces, from year to year.<sup>20</sup>

2.15 When dealing with an objection, the Executive Director told the Committee that the:

process would be considered that was gone through in the first instance to establish the value; they would then look at any subsequent information outside the valuation period. The valuation period is 1 January each year. Generally, the analysis goes three months before that and three months after that, to determine the value for 1 January. The objection would come in probably in August or September of that year. That initial analysis would be reviewed and any other sales that may have happened in that locality would be examined to determine whether that valuation was appropriate.<sup>21</sup>

2.16 At this point, the Committee asked about how determinations of UCV (Unimproved Capital Value) would be dealt with in suburbs being redeveloped, where dwellings were being purchased, demolished, and rebuilt.<sup>22</sup>

---

<sup>19</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.3.

<sup>20</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, pp.3-4.

<sup>21</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.4.

<sup>22</sup> *Proof Transcript of Evidence*, 10 November 2017, p.4.

- 2.17 In responding, the Executive Director told the Committee that in this case ‘there would be a sale price’ on the basis of which an Unimproved Value could be calculated:

If it is a knockdown and rebuild there would still be a sale price. The question would be: what are the development rights associated with that property and do they link back to the benchmark property? Is that something you would include or is that something you would take out of the calculation?<sup>23</sup>

## ANSWERS ON NOTICE

- 2.18 Question Taken on Notice No.2A related to rates objections. The Committee received an answer from the Treasurer on 24 November 2017.<sup>24</sup>
- 2.19 Question Taken on Notice No.13 related to average rates increases. The Committee received an answer from the Treasurer on 24 November 2017.<sup>25</sup>
- 2.20 Question on Notice No.7 related to objections and appeals. The Committee received an answer from the Treasurer on 6 December 2017.<sup>26</sup>

## IMPACT OF MR FLUFFY SALES ON RATES FOR AFFECTED AND SURROUNDING BLOCKS

- 2.21 In hearings, the Committee asked questions on whether sales of ‘Mr Fluffy’ blocks (that is, of blocks affected by loose-fill asbestos contamination) would increase the value of those and surrounding blocks, and thus increase rates liabilities overall.<sup>27</sup>

---

<sup>23</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.4.

<sup>24</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>25</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>26</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>27</sup> *Proof Transcript of Evidence*, 10 November 2017, p.4.

2.22 In responding to initial questions, the Executive Director, Revenue Management, told the Committee that:

With the Mr Fluffy blocks, there was obviously a sale price. Part of that sale price included a premium for scarcity. Typically, with a Mr Fluffy block, the unimproved value will be somewhat lower than the market value. Although it may be an unimproved block, there would have been a scarcity premium and that would be deducted. You would expect that, for a Mr Fluffy block, the unimproved value of that would be somewhat lower than the market value that was paid for the block.<sup>28</sup>

2.23 He went on to say that:

That sale would be analysed in terms of one of a number of sales that took place in that locality. The value of that would be considered as evidence of one particular sale in that locality, and that would then be considered against the benchmark property to determine whether that benchmark is appropriate for the suburb. That would be one of the number of sales taken into consideration in that locality over that period from three months before 1 January to three months after 1 January.<sup>29</sup>

#### DEFINITION OF UNIMPROVED CAPITAL VALUE IN THE CONTEXT OF THE MR FLUFFY BLOCKS

2.24 At this point the Committee asked further questions regarding calculations of Unimproved Capital Value in the context of Mr Fluffy blocks, where improvements had been removed.<sup>30</sup>

2.25 In responding, the Executive Director, Revenue Management, told the Committee that:

In a newly developed suburb you would expect that the market value is the unimproved value. That is pretty straightforward. One of the concepts of unimproved value is that it has to be an arms-length transaction from willing parties. There are a number of court cases that talk specifically about scarcity.<sup>31</sup>

2.26 He told the Committee that:

When we determined the unimproved values for Mr Fluffy properties we did make a deduction for scarcity value, given that there just are not a lot of similar properties available on the market. There is a premium that is being paid for a vacant property in a well-established and desirable location. It was trying to reflect the premium that was

---

<sup>28</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.4.

<sup>29</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.4.

<sup>30</sup> *Proof Transcript of Evidence*, 10 November 2017, p.5.

<sup>31</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.5.

paid for that block to ensure that those Mr Fluffy blocks were not out of alignment with other properties in the general locality.<sup>32</sup>

2.27 At this point, the Under-Treasurer also responded to the question. He told the Committee that:

The unimproved value is not an observed market value unless it is a greenfields, old block site where you can get it. It is an imputed value, in a sense.<sup>33</sup>

2.28 He told the Committee that:

In economic terms, it is interesting. People are willing to pay different prices for different products, depending on locality, depending on what is on the block. I think we have observed some behaviour where people are willing, in a very established, desirable suburb with a clean block, to pay more than even for a knock-down rebuild in gross terms.<sup>34</sup>

2.29 The Under-Treasurer went on to speak about why this was so. He told the Committee that a 'clean block' was 'simpler', and that demolition involved 'uncertainty and risk'. In any case, he told the Committee, it was understood that 'people will bid up more' for vacant blocks and that there was 'essentially a market price beyond the unimproved value for a vacant block in an established suburb'.<sup>35</sup>

#### WHETHER SALES OF MR FLUFFY BLOCKS WOULD LEAD TO BROADER REVALUATIONS

2.30 In hearings, the Committee noted that some Mr Fluffy blocks had sold for multiples of Average Unimproved Value, and asked whether valuations arising from such sales could lead to a broader revaluation of properties in the area, and thus an increase in rates assessments.<sup>36</sup>

2.31 The Under-Treasurer gave an undertaking to respond in detail through a response to a Question Taken on Notice, but also responded to the question in the hearing.<sup>37</sup>

---

<sup>32</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, pp.5-6.

<sup>33</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.6.

<sup>34</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.6.

<sup>35</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.6.

<sup>36</sup> *Proof Transcript of Evidence*, 10 November 2017, p.6.

<sup>37</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.6.

2.32 He told the Committee that the thrust of the question was correct, and that:

If there is a sale and the valuers determine that this reflects an increase in average unimproved value beyond the premiums paid for a vacant block then that would be treated like any other sale that showed an increase in unimproved value in a suburb.<sup>38</sup>

2.33 He told the Committee that in relation to 'any sale', Treasury works 'back from a market price to an unimproved value price' on which to make a rates assessment:<sup>39</sup>

We do in each sale ... try to work back to what the unimproved value of that transaction is and then make an assessment about whether that reflects the latest market information about the unimproved value in the locality. We do make an assessment about whether that sale means that the unimproved values elsewhere in that locality should be changed.<sup>40</sup>

2.34 He told the Committee that this 'in one sense', was 'no different from a Mr Fluffy block transaction or a non-Mr Fluffy, an established house transaction'. The difference for Mr Fluffy blocks was there was 'a slightly different way to work out what the value is because it is a vacant block and the scarcity values'.<sup>41</sup>

2.35 The Committee asked again whether the the sale of a Mr Fluffy block which resulted in an increase in the unimproved value of that block, would have wider effects on unimproved values in the locality, the Under-Treasurer told the Committee that this was 'likely', but that detailed calculations of the size of this effect would be provided in his response to the Question Taken on Notice.<sup>42</sup>

## ANSWERS ON NOTICE

2.36 Questions Taken on Notice Nos. 3, 4 and 5 related to the impact of sales of Mr Fluffy properties on particular and surrounding blocks, and unimproved and market values of Mr Fluffy blocks. The Committee received answers from the Treasurer on 27, 24, and 27 November 2017 respectively.<sup>43</sup>

---

<sup>38</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.6.

<sup>39</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.7.

<sup>40</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.7.

<sup>41</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.7.

<sup>42</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.7.

<sup>43</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at:

<https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

- 2.37 Questions Taken on Notice Nos. 6 and 7 related to Asbestos Response Taskforce purchases and the Unimproved Value of purchased blocks. The Committee received answers to these questions 24 November 2017.<sup>44</sup>

## RATES HARDSHIP

- 2.38 In hearings, the Committee asked questions regarding rates hardship, and in particular as to what arrangements were available to people who make representations that they are unable to pay rates due to hardship.<sup>45</sup>
- 2.39 In responding, the Executive Director, Revenue Management, told the Committee that:
- Initially we would try to come up with a repayment arrangement with people. We have a number of people who are on repayment arrangements. The other thing that we try to do is get people on to regular payment plans. Rather than once a year or once a quarter being faced with a bill, they are making regular payments; a regular payment plan.<sup>46</sup>
- 2.40 He told the Committee that there was also 'a deferred rates scheme' that was available to 'pensioners', and 'people who are over 65', and was 'also available in particular hardship cases as well'. He told the Committee that there were 'a number of offerings available to people who are doing it a bit tough'.<sup>47</sup>
- 2.41 In response to further questions, the Executive Director confirmed that rates could be paid by regular direct debits, as distinct from the yearly or quarterly arrangements made available on rates notices, and such arrangements were available to any rate payer in the Territory.<sup>48</sup>

---

<sup>44</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>45</sup> *Proof Transcript of Evidence*, 10 November 2017, p.14.

<sup>46</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.14.

<sup>47</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.15.

<sup>48</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.15.



## ANSWERS ON NOTICE

- 2.42 Questions Taken on Notice Nos. 10 and 14 related to hardship claims in connection with rates, and monitoring of levels of hardship claims. The Committee received answers from the Treasurer on 24 November 2017.<sup>49</sup>
- 2.43 Question Taken on Notice No.11A related to tracking of hardship claims. The Committee received an answer from the Treasurer on 6 December 2017.<sup>50</sup>
- 2.44 Question on Notice No.27 related to late payments of rates. The Committee received an answer from the Treasurer on 4 December 2017.<sup>51</sup>
- 2.45 Question on Notice No.28 related to deferred rates. The Committee received an answer from the Treasurer on 13 December 2017.<sup>52</sup>

## STAMP DUTY CONCESSIONS

- 2.46 In hearings, the Committee asked questions regarding stamp duty and rates concessions.<sup>53</sup>
- 2.47 With regard to pensioner stamp duty concessions, the Executive Director, Revenue Management, told the Committee that:

The pensioner duty concession scheme assists eligible pensioners to move to accommodation more suited to their needs, including a new or established home, or vacant residential land, by charging duty at the concessional rate. An eligible person would be a pensioner in receipt of an Australian age pension or who holds a pensioner

---

<sup>49</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>50</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>51</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>52</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>53</sup> *Proof Transcript of Evidence*, 10 November 2017, p.17.

concession card, is on a disability support pension or a Department of Veterans' Affairs gold card.<sup>54</sup>

2.48 The Under-Treasurer also responded to the question. He told the Committee that:

We also have a concession scheme on stamp duty for people with disabilities, where parents are purchasing a property, particularly parents who purchase a property for a child, for a lifetime care situation.<sup>55</sup>

2.49 Under this scheme, he told the Committee, 'under certain circumstances', people 'who were providing a property for a relative could purchase it without paying stamp duty'.<sup>56</sup>

## ANSWERS ON NOTICE

2.50 Questions Taken on Notice No. 12 related to details for concession schemes for stamp duty. The Committee received an answer from the Treasurer on 27 November 2017.<sup>57</sup>

## DEBT COLLECTION

2.51 In hearings, the Committee asked questions regarding the approach the Revenue Office takes to collection of debts owed to it.<sup>58</sup>

2.52 In responding, the Executive Director, Revenue Management, told the Committee that:

There are a number of ways we go about collecting debts. I will run through the process and we can talk about some of those. Initially, if we have an outstanding debt we would send an arrears notice. Typically, an arrears notice would be followed by a letter of demand. If the taxpayer contacted us about that, we might try to negotiate some sort of repayment arrangement. But if that is not where we landed, for different tax lines we would probably use different types of approaches. For payroll tax that is not paid by a corporate, we would move pretty quickly into a legal process that would

---

<sup>54</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.17.

<sup>55</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.17.

<sup>56</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, pp.17-18.

<sup>57</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>58</sup> *Proof Transcript of Evidence*, 10 November 2017, p.11.

flag with that corporate that we may take action to wind up the company. That typically gets a pretty swift response.<sup>59</sup>

- 2.53 When asked whether the Revenue Office had ever taken steps to instigate the winding-up of a company in order to recover debts, the Executive Director confirmed that it had, although he stated that this was a 'risky strategy' because in such cases the Revenue Office 'just becomes one of many creditors'.<sup>60</sup>
- 2.54 The Executive Director told the Committee that such matters were 'complex and difficult', and that this was 'not our preferred approach' because 'we may not recover the money'.<sup>61</sup>
- 2.55 This approach was discussed in the context of payroll tax.<sup>62</sup> When debts were owed in relation to rates or land tax, the Executive Director agreed that there was more 'leverage' available to the Revenue Office to recover monies owed.<sup>63</sup>
- 2.56 When asked about specific means to recover such monies, the Executive Director told the Committee that, in relation to rental properties, 'again it would be the same process: arrears notices, letters of demand and then legal letters'. He told the Committee that in 'a number of cases', the Revenue Office had 'listed properties for sale' and 'moved on selling properties', and that this was a strategy that had been used when rates or land tax was outstanding in connection with investment properties.<sup>64</sup>
- 2.57 When asked whether the Revenue Office had sold properties 'underneath someone', the Executive Director told the Committee that:

We have not sold it; we have pursued that process. We have not got to the final point where we have had to sell the property. Typically, when we get close to pulling that trigger we generally come to some arrangement with the taxpayer.<sup>65</sup>

---

<sup>59</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.11.

<sup>60</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.11.

<sup>61</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.12.

<sup>62</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.12.

<sup>63</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.12.

<sup>64</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.12.

<sup>65</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.12.

2.58 In response to further questions as to interest charged on outstanding monies, the Executive Director told the Committee that:

Typically there is a penalty interest of around eight per cent plus the 90-day bank bill which I think is 1.73 per cent. We are charging just under 10 per cent on any outstanding amounts.<sup>66</sup>

## ANSWERS ON NOTICE

2.59 Question Taken on Notice No. 8 related to collectable debt arising from payroll, rates and land tax. The Committee received an answer from the Treasurer on 6 December 2017.<sup>67</sup>

2.60 Question Taken on Notice No. 9 related to debts that had been written off. The Committee received an answer from the Treasurer on 6 December 2017.<sup>68</sup>

2.61 Question Taken on Notice No. 3 related to land tax. The Committee received an answer from the Treasurer on 28 November 2017.<sup>69</sup>

## DEBATE ON CHANGES TO RATES AND STAMP DUTY

2.62 The Committee notes that discussion, described above—regarding rates objections and appeals; the influence of Mr Fluffy sales on unimproved value of housing properties; rates hardship; stamp duty concessions; and debt collection—occur within the context of rates increases for property owners in the ACT. Such increases have been considered in the media and elsewhere, some of which are considered below.

### ABC NEWS ARTICLE

2.63 An article in ABC News of 6 June 2017, 'ACT budget rates calculator — how much more will you pay?' reported increases in rates provided for in the 2017-18 Budget, particularly for owners of units and apartments who would, the article stated, experience 'rates rising as much

---

<sup>66</sup> Mr Kim Salisbury, *Proof Transcript of Evidence*, 10 November 2017, p.12.

<sup>67</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>68</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>69</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

as 33 per cent next financial year as the Government changes the way it calculates rates'. Rates for houses would rise 'at a steadier average of 7 per cent', but rates would 'continue to rise as the Government's plan to abolish stamp duty' continued.<sup>70</sup>

2.64 The article also noted that:

Ratepayers who have been looking to minimise their bill by paying early are also in for some bad news — from July the available discount will be halved to 1 per cent.<sup>71</sup>

#### CANBERRA TIMES ARTICLE

2.65 An article in the *Canberra Times* of 5 September 2017, 'ACT unit owners face 31 per cent rate hike over two years, on top of existing annual seven per cent rises', stated that:

Canberra's unit owners are facing a 31 per cent jump in their average annual rates bill over two years, on top of the annual seven per cent rise to all residential rates mooted in this year's ACT budget.<sup>72</sup>

2.66 The article stated that this increase arose from 'a change to the way unit rates are calculated that took effect in July', and that this change had 'increased the average annual rates bill for unit owners by \$250 this financial year, with a further average \$115 rise expected from July next year'.<sup>73</sup>

2.67 While the article stated that a 'one-off \$100 rates rebate has insulated ratepayers from the full effects of the \$250 average increase this year', increases to rates would have the effect that 'an "average" unit owner who paid \$1156 in rates in 2015-16, will pay on average an extra \$365 - or 31 per cent - on their annual rates bill from July next year. However, the article stated, for unit owners this would be combined with an 'additional two years of seven per cent rises', applicable to all properties, were 'added to their bills'.<sup>74</sup>

---

<sup>70</sup> ABC News, 'ACT budget rates calculator — how much more will you pay?', 6 June 2017, viewed 13 December 2017, available at: <http://www.abc.net.au/news/2017-06-06/act-budget-rates-calculator-canberra-suburbs/8594648>

<sup>71</sup> ABC News, 'ACT budget rates calculator — how much more will you pay?', 6 June 2017.

<sup>72</sup> Daniel Burdon, 'ACT unit owners face 31 per cent rate hike over two years, on top of existing annual seven per cent rises', *Canberra Times*, 5 September 2017, viewed 13 December 2017, available at: <http://www.canberratimes.com.au/act-news/act-unit-owners-face-31-per-cent-rate-hike-over-two-years-on-top-of-existing-annual-seven-per-cent-rises-20170905-gyazaa.html>

<sup>73</sup> Daniel Burdon, 'ACT unit owners face 31 per cent rate hike over two years, on top of existing annual seven per cent rises', *Canberra Times*, 5 September 2017.

<sup>74</sup> Daniel Burdon, 'ACT unit owners face 31 per cent rate hike over two years, on top of existing annual seven per cent rises', *Canberra Times*, 5 September 2017.

2.68 The article stated that changes in rates levied on units and apartments stemmed from the fact that:

ACT Treasury is now calculating unit rates based on the land value, then dividing that total by the number of units, replacing the previous formula that divided the land value by number of units, then calculated individual rates.<sup>75</sup>

2.69 The article described the rationale for these changes provided by the ACT Government:

A Treasury spokeswoman said the changes aim to ensure unit owners, who hold 29 per cent of all rateable properties in the ACT, are paying a more proportional share of the territory's rates revenue, compared with owners of freestanding homes.

"The intention of the change is to ensure that rates on units are better aligned with those on freestanding homes," she said.

"Under the previous approach, there were instances of rates being lower for million-dollar apartments in Kingston than they were for average-priced houses in Tuggeranong, and this was not fair."<sup>76</sup>

#### ACT BUDGET PAPERS

2.70 An ACT Budget 2017-18 document, entitled *General Rates Increases: Moderated & More Equitable*, addressed increases in rates:

The tax reform program will ensure that we have an adequate and ongoing revenue source into the future to ensure Canberra remains the world's most liveable city.

To rebalance the general rates system, a change in methodology for calculating general rates paid by units will make payments more equitable between units and houses.

Houses typically have relatively higher AUVs than units – despite often having similar market values. Table 10 below shows the difference in rates paid by a house in Charnwood and a unit in the City with the same market values.<sup>77</sup>

2.71 It stated that:

From 1 July 2017, the Government will change the general rates calculation for multi-unit dwellings to base it on the total AUV of the land rather than the individual AUV of

---

<sup>75</sup> Daniel Burdon, 'ACT unit owners face 31 per cent rate hike over two years, on top of existing annual seven per cent rises', Canberra Times, 5 September 2017.

<sup>76</sup> Daniel Burdon, 'ACT unit owners face 31 per cent rate hike over two years, on top of existing annual seven per cent rises', Canberra Times, 5 September 2017.

<sup>77</sup> ACT Treasury, *General Rates Increases: Moderated & More Equitable*, viewed 13 December 2017, available at: <https://apps.treasury.act.gov.au/budget/budget-2016-2017/budget-booklets/taxreform/general-rates-increases-moderated-And-more-equitable>

the unit (consistent with changes to Land Tax). This will make the increase in general rates for units higher than houses in 2017-18 and 2018-19 as the transition takes effect.<sup>78</sup>

2.72 The document also stated that:

For houses, the annual increases for the next five years of Stage Two tax reform will be 7 per cent on average. For units only, the change in the rates methodology will also add about \$150 on average in 2017-18, and \$115 on average in 2018-19. The increases will then revert to an average of 7 per cent from 2019-20 to 2021-22.

Overall, general rates for commercial properties will increase by an average of 6 per cent in each year from 2017-18 to 2021-22. This will provide certainty to the sector.

The actual increase for a particular property will depend on that property's AUV.<sup>79</sup>

2.73 The purpose of these changes, the document stated, was to achieve an '[e]fficient and stable revenue base'. Under the changes, by 2019-20 'conveyance duty revenue is estimated to decline to about 14 per cent of total tax revenue, a decrease from 20 per cent in 2011-12, and general rates is estimated to increase to about 29 per cent of tax revenue.'<sup>80</sup>

2.74 This 'transition to an efficient broad based land tax', the document stated, would put in place 'a stable revenue base into the future which will allow the Government to plan for the future with greater certainty for spending on services and infrastructure'.<sup>81</sup>

2.75 The document also noted concessions provided 'to assist with cost of living pressures', including a Pensioner Rates Rebate; a Rates Deferral Scheme; a Pensioner Duty Concession Scheme; and an Over 60s Home Bonus Scheme.<sup>82</sup>

---

<sup>78</sup> ACT Treasury, *General Rates Increases: Moderated & More Equitable*, viewed 13 December 2017, available at: <https://apps.treasury.act.gov.au/budget/budget-2016-2017/budget-booklets/taxreform/general-rates-increases-moderated-And-more-equitable>

<sup>79</sup> ACT Treasury, *General Rates Increases: Moderated & More Equitable*, viewed 13 December 2017, available at: <https://apps.treasury.act.gov.au/budget/budget-2016-2017/budget-booklets/taxreform/general-rates-increases-moderated-And-more-equitable>

<sup>80</sup> ACT Treasury, *General Rates Increases: Moderated & More Equitable*, viewed 13 December 2017, available at: <https://apps.treasury.act.gov.au/budget/budget-2016-2017/budget-booklets/taxreform/general-rates-increases-moderated-And-more-equitable>

<sup>81</sup> ACT Treasury, *General Rates Increases: Moderated & More Equitable*, viewed 13 December 2017, available at: <https://apps.treasury.act.gov.au/budget/budget-2016-2017/budget-booklets/taxreform/general-rates-increases-moderated-And-more-equitable>

<sup>82</sup> ACT Treasury, *General Rates Increases: Moderated & More Equitable*, viewed 13 December 2017, available at: <https://apps.treasury.act.gov.au/budget/budget-2016-2017/budget-booklets/taxreform/general-rates-increases-moderated-And-more-equitable>

## SYDNEY MORNING HERALD ARTICLE

2.76 An article in the Sydney Morning Herald of 9 September 2017, 'Has the ACT government kept its word on historic tax reform?', made comment on changes to the ACT taxation regime.<sup>83</sup>

2.77 The article stated that:

The policy landscape in Australia, especially on taxation, has been short on reform for some time, albeit with some exceptions. One such exception was the tax reform that the ACT Stanhope government embarked on in 2010 following the Henry review, and which was later implemented by chief minister Katy Gallagher.

The plan adopted in the 2012-13 ACT budget aimed to transition to a fairer and more efficient tax system by abolishing taxes on transactions, which are universally recognised as having economic costs. Duty on conveyances (i.e. stamp duty) was singled out for abolition, being the least efficient tax, as it imposes a burden of 43 cents in compliance, administration and economic efficiency costs for every dollar of the tax collected. It was decided that, to maintain the ACT's revenue base, stamp duty would be replaced by an increase in general rates over a 20-year transition period.<sup>84</sup>

2.78 The article stated that:

This was undoubtedly a difficult change that required Gallagher to enter into an implied compact with the people of Canberra. The compact was that the people would, for the sake of ensuring a secure future for the ACT's finances, accept the burden of a massive increase in rates as a quid pro quo for abolishing stamp duty.

The government would, for its part, ensure that the change was supported by coherent policy and that the government would be fiscally responsible; it would not, other than through the rates increase, impose extra taxes or charges on residents to support the ordinary business of government.<sup>85</sup>

2.79 In considering the result of subsequent changes to stamp duty and rates, the article stated that:

Five years on, *The Canberra Times* reported last month the government was collecting \$80 million (or 32 per cent) more in stamp duty than it did in 2012. The government's

---

<sup>83</sup> Jon Stanhope, Khalid Ahmed, 'Has the ACT government kept its word on historic tax reform?', Sydney Morning Herald, 9 September 2017, viewed 13 December 2017, available at: <http://www.smh.com.au/comment/has-the-act-government-kept-its-word-on-historic-tax-reform-20170828-gy5g0w.html>

<sup>84</sup> Jon Stanhope, Khalid Ahmed, 'Has the ACT government kept its word on historic tax reform?', Sydney Morning Herald, 9 September 2017.

<sup>85</sup> Jon Stanhope, Khalid Ahmed, 'Has the ACT government kept its word on historic tax reform?', Sydney Morning Herald, 9 September 2017.



explanation is that the share of stamp duty as a proportion of total taxation has fallen from 24 per cent to 16 per cent.<sup>86</sup>

2.80 However, the article stated:

That explanation does not bear scrutiny because overall taxation has also increased well beyond the revenue replacement required, with general rates increasing from \$209 million in 2011-12 to \$452 million, and significant increases additionally in levies on households (e.g. the fire and emergency services levy, and the lifetime care levy) and charges (e.g. drivers licences, water and electricity). Indeed, analysis of Bureau of Statistics data indicates that stamp duty as a share of total taxation would be more in 2015-16 than in 2011-12 if the tax level relative to the economy was maintained.<sup>87</sup>

2.81 Commenting on trends in increases, the article stated that:

It's interesting to compare the tax growth rates before and after the start of tax reform in the ACT. ABS data shows that over the four years from 2007-08 to 2011-12, total taxation increased at an average of 3.5 per cent a year. From 2011-12 to 2015-16, on the other hand, taxation growth was at more than double the earlier annual rate, at 7.3 per cent. Over this period, general rates increased by 19.3 per cent a year compared with 7.1 per cent a year over the earlier period, and stamp duty increased by 4.6 per cent a year.<sup>88</sup>

2.82 Reflecting on the results of the changes, the article stated that:

Setting out to abolish an inefficient tax and ending up collecting more of it unfortunately does more than raise questions about the genuineness of the government's stated objective in undertaking the reform. To actually increase an inefficient tax, as has been done in the ACT inevitably has a suppressive effect on the economy.<sup>89</sup>

2.83 Evidence of this last effect was, the article stated, that:

Economic growth in the ACT, as measured by an increase in state final demand has been well below trend. Over the period, 2001-02 to 2011-12, the territory's economic

---

<sup>86</sup> Jon Stanhope, Khalid Ahmed, 'Has the ACT government kept its word on historic tax reform?', Sydney Morning Herald, 9 September 2017.

<sup>87</sup> Jon Stanhope, Khalid Ahmed, 'Has the ACT government kept its word on historic tax reform?', Sydney Morning Herald, 9 September 2017.

<sup>88</sup> Jon Stanhope, Khalid Ahmed, 'Has the ACT government kept its word on historic tax reform?', Sydney Morning Herald, 9 September 2017.

<sup>89</sup> Jon Stanhope, Khalid Ahmed, 'Has the ACT government kept its word on historic tax reform?', Sydney Morning Herald, 9 September 2017.

growth averaged a strong 5.7 per cent a year. However, over 2011-12 to 2015-16, the territory's economic growth rate dropped to a mere 1.1 per cent a year on average.<sup>90</sup>

- 2.84 As a result, the article stated, 'household consumption, considered to be the engine of the economy, has also been below the long-run trend', falling from an average of 3 per cent a year in the period from 2001-02 to 2011-12, to an average of 2.1 per cent a year in the period from 2011-12 to 2015-16.<sup>91</sup>

## COMMITTEE COMMENT

- 2.85 The Committee notes the differing views put forward with respect to changes to rates and stamp duty in the ACT.
- 2.86 A number of questions are posed by the changes, and were implicit in the Committee's line of questioning in hearings. These included questions as to whether:
- the changes were equitable;
  - the changes had resulted in a redistribution of the tax burden, as originally stated, or have they resulted in an increase in the overall tax burden on property owners;
  - owners who purchased properties before the changes bore an undue tax burden by being obliged to pay stamp duty at the former rate and in addition to rates at the increased current rate; and
  - the new settings in fact produced the effects claimed for them when they were introduced.
- 2.87 The Committee, in its own right, has no special access to information on the outcomes of these changes to the ACT's tax regime, but considers that the questions raised in discussion about the changes warrant further consideration, and in particular warrant further collection of analysis of data on these outcomes.
- 2.88 In light of this, the Committee makes the following recommendations.

---

<sup>90</sup> Jon Stanhope, Khalid Ahmed, 'Has the ACT government kept its word on historic tax reform?', Sydney Morning Herald, 9 September 2017.

<sup>91</sup> Jon Stanhope, Khalid Ahmed, 'Has the ACT government kept its word on historic tax reform?', Sydney Morning Herald, 9 September 2017.

## Recommendation 1

- 2.89** The Committee recommends that the ACT Government conduct data collection and analysis on changes to stamp duty and rates in the ACT, and that the resulting data be provided to the Committee in 2018.

## Recommendation 2

- 2.90** The Committee recommends that if further data collection and analysis on changes to stamp duty and rates were to demonstrate inequality in the overall burden on tax payers in the ACT, the ACT Government act to remediate or reverse such effects.



## 3 — SUPERANNUATION PROVISION ACCOUNT

### INTRODUCTION

3.1 Following the advent of Self-Government in 1989 some Commonwealth public servants with duties relevant to the Territory were transferred to the ACT public sector, along with their superannuation entitlements. This led to the ACT holding liability for superannuation payments for these public servants. This liability was increased because superannuation schemes for these staff were 'defined benefit' schemes rather than the later 'accumulation' schemes.<sup>92</sup>

3.2 This created a significant superannuation liability for the Territory, which the ACT government manages by way of the Superannuation Provision Account. The *CMTEDD Annual Report 2016-17* states that:

The Superannuation Provision Account (SPA) was established to recognise the investment assets and defined benefit employer superannuation liabilities of the Territory which includes past and current ACT employees who are members of the Australian Government's Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation Scheme (PSS) and Members of the Legislative Assembly Defined Benefit Superannuation Scheme.

The directorate, through the financial operations of the SPA, assists the Government to effectively manage the defined benefit employer superannuation liabilities of the Territory. This includes the responsibility for the management of the financial investment assets set aside to fund those liabilities.<sup>93</sup>

3.3 Officers appeared before the Committee in hearings of 10 November 2017 to respond to questions regard the Superannuation Provision Account.

---

<sup>92</sup> See Australian Securities & Investments Commission, 'Types of super funds', viewed 24 November 2017, available at: <https://www.moneysmart.gov.au/superannuation-and-retirement/how-super-works/choosing-a-super-fund/types-of-super-funds>

<sup>93</sup> CMTEDD, Annual Report 2016-17, Vol.1, p.92.

## DISCOUNT RATE ASSUMPTIONS FOR THE SUPERANNUATION PROVISION ACCOUNT

- 3.4 In hearings, the Committee asked the Chief Minister about discount rate assumptions in the budget and forward estimates for the superannuation provision account. In asking the question, it noted that long-term average for bond yields had previously been six percent, had changed over time, but that this figure was still being quoted for the Superannuation Provision Account.<sup>94</sup> The Committee also asked whether there were accounting standards which determined the way liabilities were estimated for the Superannuation Provision Account.<sup>95</sup>
- 3.5 In responding, the Under-Treasurer told the Committee that there was an accounting standard which stipulated the use of the spot rate on 30 June each year. But this accounting standard did not specify what should be used to estimate a forward budget: the accounting standard dealt with ‘financial statements, not forward budgets’.<sup>96</sup>
- 3.6 He told the Committee that this was an issue which had been discussed internally and with the commonwealth for a number of years, and ‘was an issue that was on my mind when I was in the commonwealth five-plus years ago’.<sup>97</sup>
- 3.7 However, he told the Committee, a factor that was ‘desirable’ was that the Commonwealth and ACT governments used ‘the same discount rate’—six percent—because ‘it is the same scheme’.<sup>98</sup>
- 3.8 The Under-Treasurer told the Committee that:

The question goes to, I think, what time horizon you look at for what you use in terms of estimation. This is a very long-term liability profile for the territory, 50-plus years. So one or two years of lower interest rates, or even three or four, should not necessarily lead to a change in our views about the long-term discount rate. Our view is that six per cent remains the 30-plus-year long-term average of a discount rate. That is the benchmark we are aiming for in terms of ensuring that we fully fund our liability. That is the sort of indication we are looking at.<sup>99</sup>

---

<sup>94</sup> *Proof Transcript of Evidence*, 10 November 2017, p.18.

<sup>95</sup> *Proof Transcript of Evidence*, 10 November 2017, p.18.

<sup>96</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.19.

<sup>97</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.19.

<sup>98</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.19.

<sup>99</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.19.

3.9 He told the Committee that:

We do use, as the accounting standards require, the spot rate on 30 June each year. Whatever that is, that is the liability we use. Whilst interest rates have been low, they have been fairly volatile. I think in 2016-17 the spot rate went up by almost a percentage point over the last four months of that year. That led to a significant reduction in the measured liability at 30 June from the previous year. So it is a very volatile series. Part of our strategy here is to be as transparent as possible on what our liabilities are, what discount rates we are using and what the effect of using a different discount rate is on the liability.<sup>100</sup>

3.10 At this point, the Director, Asset Liability Management, also responded to the question. He told the Committee that:

AAS 119, the accounting standard, determines the whole valuation of the liability. It requires that we use a spot rate on a long-term commonwealth government bond rate, a risk-free rate. We try to find the bond that is equivalent to the duration of the liability. For 30 June just gone, the commonwealth bond rate was the commonwealth 2047 maturity bond, and the spot rate on that at 30 June annualised was 3.51 per cent. It has not got a long history; it is hard to get a 20 or 30-year history of that bond. But we look at the 10-year commonwealth bond index. Over 20 years the average of that is around five per cent. The current gap in the 2047 bond and the 10-year bond at the moment is around one per cent. So at the moment we would still be relatively comfortable that we are within those long-term averages for that rate.<sup>101</sup>

3.11 In responding to further questions, the Director, Asset Liability Management, told the Committee that the current bond rate was for bonds maturing in 2047, and that this was 'the rate we use to value the liability as at a valuation date'. However, he told the Committee, 'for budget we revert to a long-term average', and that six per cent was being used as a long-term average.<sup>102</sup>

3.12 He told the Committee that:

We will reconsider all of that, as well as all of our other assumptions, this year. We are doing a major triennial review of the entire superannuation liability this year. That looks at all the financial assumptions as well as all the demographic assumptions. We will look at the history of what has happened over the past couple of years, things like

---

<sup>100</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.19.

<sup>101</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.19.

<sup>102</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.19.

the rates of take-up of pensions versus lump sum and of mortality. All those factors will come into this year's valuation.<sup>103</sup>

## INVESTMENT STRATEGY TO MEET SUPERANNUATION LIABILITY

3.13 In hearings, the Committee asked the Chief Minister questions regarding the investment strategy framed to meet the Territory's superannuation liability, and whether this represented a high- or low-risk strategy.<sup>104</sup>

3.14 In responding, the Director, Asset Liability Management, told the Committee that the Superannuation Provision Account was 'a growth orientated fund':<sup>105</sup>

A balanced fund is generally 50/50: you have got 50 per cent of your exposure to growth assets like equities. Ours at the moment is around a 65/35 strategic asset allocation. It is more on the growth side; we have got a higher weighting to equities, basically, to try to get the returns that we need. One is to maintain the funding level that we have currently got, as well as to make up the past unfunded liability.<sup>106</sup>

3.15 The Under-Treasurer also responded to the question. He told the Committee that the ACT government had reduced 'the target for the long-term expected return to its investment fund last budget from five per cent to 4.75'.<sup>107</sup>

3.16 He told the Committee that:

The way I sometimes explain it is that what we try to do is target that return over the long-term while minimising risk as far as we can to achieve it. So if we can structure a portfolio that lowers risk but guarantees, to the extent that you can with expert advice et cetera, to get that target, we will lower risk.<sup>108</sup>

3.17 He also told the Committee that:

The other factor we take into account is that this is a 50 to 70-year potential time horizon. Unlike, potentially, other funds, we know with a high degree of accuracy when we need the cash, so we do not need to maintain liquidity for an unexpected cash withdrawal event, so we can invest with much more surety on the time horizon. That

---

<sup>103</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, pp.19-20.

<sup>104</sup> *Proof Transcript of Evidence*, 10 November 2017, p.20.

<sup>105</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.20.

<sup>106</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.20.

<sup>107</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.20.

<sup>108</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.20.



allows us to have a slightly different risk profile than perhaps a market managed fund where investors can withdraw and deposit money more flexibly.<sup>109</sup>

## ANSWERS ON NOTICE

- 3.18 Question Taken on Notice No. 15 related to superannuation portfolio investment. The Committee received an answer from the Treasurer on 24 November 2017.<sup>110</sup>
- 3.19 Question Taken on Notice No. 16 related to ethical considerations on the supply chain in investment processes. The Committee received an answer from the Treasurer on 24 November 2017.<sup>111</sup>
- 3.20 Question on Notice No.18 related to reduction of a long term investment return of CPI plus 4.75 per annum, from CPI plus 5% in the last financial year. The Committee received an answer from the Treasurer on 29 November 2017.<sup>112</sup>

## REDUCTION OF RETURN OUTLOOK FROM FIVE TO 4.75

- 3.21 In hearings, the Committee asked the Chief Minister and Treasurer to inform the Committee as to the government's motivation for reducing the return outlook from five to 4.75.<sup>113</sup>
- 3.22 The Chief Minister and Treasurer asked the Under-Treasurer to respond to the question.<sup>114</sup>
- 3.23 In responding, the Under-Treasurer told the Committee that:

We have an investment advisory committee and we have advisors who advise us on risk and return profiles. Their advice was that returns are probably going to be lower in the medium term than they have been for the last 10 to 15 years. Price inflation was

---

<sup>109</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.20.

<sup>110</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>111</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>112</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>113</sup> *Proof Transcript of Evidence*, 10 November 2017, p.20.

<sup>114</sup> *Proof Transcript of Evidence*, 10 November 2017, p.20.

also a little bit lower. I took advice from the committee and provided advice to the government that a modest reduction in that target was appropriate.<sup>115</sup>

3.24 He told the Committee that:

In a lower return environment, at least in the short to medium term, maintaining a higher target pushes you into a higher risk category to try to keep those returns up. A lower return target means you can be a little bit more comfortable in the risk profile. That was the essential reason for that change.<sup>116</sup>

3.25 The Director, Asset Liability Management, also responded to the question. He told the Committee that:

There has been a lot of evidence around for the past couple of years with the lower interest rate environment that we are in, with low CPI and low wages growth, that over the longer term these higher returns that we have been seeing may not be achievable. We have been looking at that and we provided the recommendation to review the return based on that longer term outlook. It was not the immediate return, because last financial year we actually returned 10.2 per cent for the year. We have been trying to balance out what we have been getting. The year before that was another high, double-digit return, and this was on the back of the longer term outlook. So we thought this was the appropriate step to take now and then we will keep watching this over time.<sup>117</sup>

3.26 At this point, the Committee asked the Under-Treasurer whether the adjustment to 4.7 to five maintained the risk range already established.<sup>118</sup>

3.27 In responding, the Under-Treasurer told the Committee that he thought this was 'a factor'. He told the Committee that:

My comment was that rather than focus on the particular change from five to 4.75, it was more of a general comment that if you have a higher target rate than is realistic in the market, you have to take more risk to get there. In that sense, this is a conservative step, but it will lower risk. It has not led to an immediate change in the structure of our portfolio by any means; we have not reflected that. That was just a general comment that a lower rate generally involves lower risk.<sup>119</sup>

---

<sup>115</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.20.

<sup>116</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, pp.20-21.

<sup>117</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.21.

<sup>118</sup> *Proof Transcript of Evidence*, 10 November 2017, p.21.

<sup>119</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.21.

3.28 However, he told the Committee:

The main driving factor for the change was a general view amongst our advisers, and I agree with them, that market rates for the next five to 10 years are likely to be lower than they have been for the past 20 years.<sup>120</sup>

## MODIFICATION OF INVESTMENT PORTFOLIO

3.29 In hearings, the Committee asked questions as to the degree to which the government was active in modifying the investment portfolio for the Superannuation Provision Account; how regularly officers responsible for the Account it met with investment advisers; and who was responsible, ultimately, for changes in the structure of the portfolio.<sup>121</sup>

3.30 In responding, the Director, Asset Liability Management, told the Committee that:

It is difficult to try to get into tactical or dynamic asset allocation changes; we steer away from those. We really are taking a long-term position. We do not make active, massive changes to the allocations all the time; we have rebalance ranges, so we keep an eye on those. If we end up being overexposed to a particular asset class because the markets have moved a particular way, if we are still comfortable with that strategic asset location we will rebalance back to those points.<sup>122</sup>

3.31 He told the Committee that:

Probably the most active decision we have taken over the past 12 to 18 months is to maintain a lot higher cash. That is recognising the outlook for returns. As we have built up more cash, we have not just gone and allocated that more to equities, for example; we have held that cash up. And again we have a full strategic asset allocation review that is going to commence later this year, going into ... [this] financial year...<sup>123</sup>

3.32 He told the Committee that:

we use an independent external advisory board for advice and we also have an asset consultant funded under a contract. We get regular updates from the asset consultant on market outlooks; whatever research we want, we can seek from them. And we have our advisory board, which we aim to meet quarterly, and we discuss the whole range

---

<sup>120</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.21.

<sup>121</sup> *Proof Transcript of Evidence*, 10 November 2017, p.21.

<sup>122</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.21.

<sup>123</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, pp.21-22.

of issues from the current strategy to looking at new strategy and all those sorts of things.<sup>124</sup>

3.33 At this point, the Committee asked a question as to governance structure for the Superannuation Provision Account, and whether there was an independent advisory board.<sup>125</sup>

3.34 In responding, the Director told the Committee that:

We have just been through a process and appointed a new board. Their appointments have just commenced. There is a lady by the name of Carol Austin; she is a former guardian of the future fund. She was interested in this position. And there is another lady called Sandy Orlow. She is an interesting sort of professional involved in superannuation consulting.<sup>126</sup>

3.35 In responding to a further question, the Director confirmed that it was a two-person board.<sup>127</sup>

3.36 The Under-Treasurer also responded to these questions. He told the Committee that this was ‘an advisory board’:

Formally, under the administrative arrangements, I am the senior responsible officer to the Treasurer. We do ... have an asset allocation strategy, which is approved: I endorse it and it is approved by the Treasurer. [The Director’s] team is responsible for managing and implementing that strategy. The board advises us on the strategy, which we have to accept. They do not take decisions; it is not a management board in that sense. And the asset consulting adviser advises the board and us on the structures and profile of the funds we have.<sup>128</sup>

---

<sup>124</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.22.

<sup>125</sup> *Proof Transcript of Evidence*, 10 November 2017, p.22.

<sup>126</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.22.

<sup>127</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.22.

<sup>128</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.22.

## WHO PROVIDES ADVICE, AND WHO INVESTS

3.37 In hearings, the Committee asked questions as to the identity of the asset consulting adviser, and entities which conducted investing for the Superannuation Liability Account.<sup>129</sup>

3.38 In responding, the Director, Asset Liability Management, told the Committee that the asset consulting adviser was Willis Towers Watson, which he described as ‘one of the major global asset consultants in the world’.<sup>130</sup>

3.39 In responding to the question about conduct of investing, the Director told the Committee that:

The broad implementation framework is that we have specialist managers in place. I do not invest a dollar. We go through all the managers for the particular strategy. We do that with the advice and support of our asset consultant. We will go through a process: look for the manager, look for the strategy, [and] put in place the necessary contracts ...<sup>131</sup>

3.40 At this point the Committee sought confirmation that investing was not done under an overarching investment contract, and that investment was divided up by sector.<sup>132</sup>

3.41 In responding, the Director told the Committee that it was ‘divided up by different strategies and different managers’, ‘then, over the top of that, we have what is called a master custodian arrangement’:

Effectively, that custodian holds all of our investments in custody to keep them separate from the investment managers. The managers make the decisions and the assets are held by a custodian. They provide us with independent performance reporting [and] accounting reporting...<sup>133</sup>

3.42 In response to further questions, the Director told the Committee that the custodian was Northern Trust, and agreed that it was a complex structure.<sup>134</sup>

---

<sup>129</sup> *Proof Transcript of Evidence*, 10 November 2017, p.22.

<sup>130</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.22.

<sup>131</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.22.

<sup>132</sup> *Proof Transcript of Evidence*, 10 November 2017, pp.22-23.

<sup>133</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.23.

<sup>134</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.23.

- 3.43 In responding to the Committee's observation that investments under the Superannuation Liability Account represented 'a large amount of money', the Under-Treasurer told the Committee that it was and that:

We take a significant degree of care with its custody and its monitoring. We make a lot of effort to manage the strategy, not only developing the strategy but also deploying it. As [the Director] said, if a particular segment of a market grows very strongly, that might push it outside the strict targets in the strategy, but we then make decisions about when and how we get it back to the strategy. When we have a change in the strategy, there are processes for how we move from the current weightings to the new weightings. That depends on a range of factors, including our views on market conditions, risk and opportunities in markets.<sup>135</sup>

## CURRENT INVESTMENT WEIGHTINGS

- 3.44 In hearings, the Committee asked a question regarding current investment weightings for the Superannuation Provision Account.<sup>136</sup>

- 3.45 In responding, the Director, Asset Liability Management, told the Committee that:

As at 30 June, at the highest level, our international equity exposure was 33 per cent; Australian bonds, seven per cent; domestic inflation bonds, five per cent; international bonds, four per cent; cash, 18 per cent; domestic property, seven per cent; and domestic private equity, four per cent. And domestic equity, 21 per cent.<sup>137</sup>

- 3.46 When asked whether eighteen per cent cash was a lot, the Under-Treasurer told the Committee that it was, and that this had arisen because 'we had a change to the asset strategy...so we moved some money into our cash holdings until opportunities arose in that new line'.<sup>138</sup>

- 3.47 The Director confirmed this, and told the Committee that:

We used it as a proxy for some other asset classes. We have to weigh it up. At the moment we are sitting just above our strategy on equities. The thing is to try to find somewhere else to go. If you look at fixed interest markets and bonds, with interest

---

<sup>135</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.23.

<sup>136</sup> *Proof Transcript of Evidence*, 10 November 2017, p.23.

<sup>137</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.23.

<sup>138</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.23.

rates at lows, if you were to put that money into bonds now, as interest rates go up, you lose value on those. So there is a timing issue around that.<sup>139</sup>

- 3.48 He went on to say that when he said 'sitting in cash', it was 'not just sitting in cash getting a straight 11 am rate', and was 'in a cash fund that is getting better rates than just overnight cash', although he agreed that this was still 'fairly liquid'.<sup>140</sup>

## NUMBERS OF PEOPLE IN SCHEMES AND DURATION OF LIABILITY

- 3.49 In hearings, the Committee asked a question as to how many people there were in the CSS (Commonwealth Superannuation Scheme), the PSS (the Public Sector Superannuation Scheme) and the Public Sector Superannuation Accumulation Plan (PSSap) for which the Territory held liability. It also asked what were the 'tails' for those schemes: that is the length of time until all liabilities would be paid out and extinguished under the schemes.<sup>141</sup>
- 3.50 In responding, the Director, Asset Liability Management, and the Under-Treasurer, told the Committee that the Superannuation Provision Account did not 'look after' persons covered by the PSSap scheme because this was an accumulation scheme; and that the Superannuation Provision Account only held liability for defined benefit schemes.<sup>142</sup>
- 3.51 In a further question, the Committee asked how many people were receiving benefits under the CSS scheme, and in responding the Director told the Committee that there were currently 'about' 5,600 pensioners in this scheme being paid from the Superannuation Liability Account.<sup>143</sup>
- 3.52 The Committee asked a question as to the duration of the lifetime liability, or 'tail' of the CSS and PSS schemes administered under the Superannuation Liability Account.<sup>144</sup>
- 3.53 In responding, the Director told the Committee that the lifetime liability was projected to expire in 2077, and agreed that this was 'a very long tail'.<sup>145</sup>

---

<sup>139</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.23.

<sup>140</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.24.

<sup>141</sup> *Proof Transcript of Evidence*, 10 November 2017, p.24.

<sup>142</sup> Mr Patrick McAuliffe and Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.24.

<sup>143</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.24.

<sup>144</sup> *Proof Transcript of Evidence*, 10 November 2017, p.24.

<sup>145</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.24.

3.54 When asked whether this would 'peak' in 2033, the Director told the Committee:

That is the actual liability, yes. With the liability, it is going to peak. That is where we think most of our contributors will sort of cease. But the actual cash flows that we pay will still build up; they should peak around 2043 or something like that.<sup>146</sup>

3.55 At this point the Under-Treasurer also responded to the question. He told the Committee that there was also a 'third group', which comprised 'members who we have a liability for who are not receiving a pension but are not in our employment', and agreed that these were people who had 'moved on' but retained 'a preserved benefit'.<sup>147</sup>

3.56 The Director told the Committee that 'total contributors', including 'deferred beneficiaries' and 'current beneficiaries', amounted to 'about 33,000 members' in total in schemes administered under the Superannuation Liability Account.<sup>148</sup>

## TENDER PROCESSES FOR FUND MANAGERS AND THE CUSTODIAN

3.57 In hearings, the Committee asked questions regarding tender processes for fund managers and the Custodian. In particular the Committee asked how often these functions were put out to tender.<sup>149</sup>

3.58 In responding, the Director, Asset Liability Management, told the Committee that there were 'two different ways of looking at this':

Where we have an investment management agreement in place, where I have engaged management A to manage a particular strategy for me, they will tend to have expiry terms on those contracts, and they will vary.<sup>150</sup>

3.59 He told the Committee that:

We are not running a tender as with a normal tender here. We have a strategic procurement plan in place that has been endorsed by the government procurement board, which says that we will take a shortlist—if we are looking at a particular strategy, we will get a shortlist of managers from our asset consultant based on their

---

<sup>146</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.24.

<sup>147</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.25.

<sup>148</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.25.

<sup>149</sup> *Proof Transcript of Evidence*, 10 November 2017, p.26.

<sup>150</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.26.



process of their high rated managers, and we will then put out a short form, a tender, to those recommended managers, and it goes from an evaluation process to selecting a manager.<sup>151</sup>

3.60 At this point the Committee asked how the asset consultant and the Custodian were chosen.<sup>152</sup>

3.61 In responding, the Director told the Committee that the Custodian was 'different' in that 'we will run a public tender for that'.<sup>153</sup>

3.62 When the Committee asked as to the frequency of this, he told the Committee that:

We have just done one. We have another one coming up at the end of next year, I think, which is when the contract matures.<sup>154</sup>

3.63 In relation to asset consultants, he told the Committee that 'that tends to be a five-year contract, which will be put out as a public tender'.<sup>155</sup>

3.64 Selection of fund managers was 'a little bit different' because 'you are picking up global managers' who would 'not put in a tender'. These would not 'not see an ad in the Canberra Times or on a procurement website', so 'we have to go through a targeted approach'.<sup>156</sup>

3.65 The Under-Treasurer stated that '[we] do an evaluation process to assess their integrity, their abilities, all of the things that you would normally do, and the Director agreed that this amounted to seeking expressions of interest from 'a shortlist of people in a particular area' when this was made necessary by the expiry of a contract'.<sup>157</sup>

## COMMITTEE COMMENT

3.66 The Committee notes that the Specialist Budget Advisor's report for the Estimates Committee's *Inquiry into Appropriation Bill 2015-2016 and the Appropriation (Office of the*

---

<sup>151</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.26.

<sup>152</sup> *Proof Transcript of Evidence*, 10 November 2017, p.26.

<sup>153</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.27.

<sup>154</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.27.

<sup>155</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.27.

<sup>156</sup> Mr Patrick McAuliffe and Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.27.

<sup>157</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.27.

*Legislative Assembly) Bill 2015-2016*<sup>158</sup> stated that the ACT's superannuation liability made up '50 per cent of the total liabilities of the ACT Government'.<sup>159</sup>

3.67 This made superannuation the biggest single item in the Territories' liabilities overall. As a consequence, the Committee regards the management of the superannuation liability as a matter of great importance. The gravity of this is underscored by evidence provided in hearings that the ACT's superannuation liability was projected 'peak' in 2033', and to expire in 2077.<sup>160</sup>

3.68 In view of these characteristics, the Committee would expect to see, in management of the Superannuation Liability Fund:

- diversity in investments, in order to off-set risk in any particular investment or class of investments;
- as correct as possible a basis for valuing the liability;
- a governance regime exhibiting effective checks and balances and clear lines of accountability; and
- a reasonable rate of return on monies invested, compared with similar funds and approaches.

3.69 In the course of its consideration of these matters, evidence tendered to the Committee suggested:

- that there was diversity in investments made on behalf of the Superannuation Liability Fund;<sup>161</sup>
- that methodology consistent with accepted standards was used to evaluate the Territory' superannuation liability.<sup>162</sup>
- that, in connection with governance structure and practice for the Fund, arrangements included included the use of an 'investment advisory committee' and advisors on 'risk and

---

<sup>158</sup> Select Committee on Estimates 2015-2016, *Inquiry into Appropriation Bill 2015-2016 and the Appropriation (Office of the Legislative Assembly) Bill 2015-2016*. The inquiry web-page is available at: <https://www.parliament.act.gov.au/in-committees/previous-assemblies/select-committees-seventh-assembly/template4>

<sup>159</sup> The CIE, *Review of the 2015-16 ACT Budget*, viewed 15 December 2017, available at: [https://www.parliament.act.gov.au/data/assets/pdf\\_file/0007/739888/CIE-Final-Report\\_Review-of-the-2015-16-ACT-Budget-15062015.pdf](https://www.parliament.act.gov.au/data/assets/pdf_file/0007/739888/CIE-Final-Report_Review-of-the-2015-16-ACT-Budget-15062015.pdf)

<sup>160</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.24

<sup>161</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, pp.20 & 23.

<sup>162</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.19.

return profiles';<sup>163</sup> an independent advisory board;<sup>164</sup> an asset consulting advisor;<sup>165</sup> an externally-engaged 'master custodian';<sup>166</sup> and formal processes for engaging fund managers and the Custodian:<sup>167</sup> and

- that returns for investments made on behalf of the Fund appeared to be consonant with returns generally available for similar investments, for present economic conditions.<sup>168</sup>

3.70 Based on evidence provided, the Committee regards these arrangements as appropriate to the intended purpose of the Superannuation Liability Fund.

3.71 The one area where, in the view of the Committee, a useful modification could be made to governance arrangements would be to increase the membership of the independent advisory board which, it was told, currently consists of two appointees.<sup>169</sup> The Committee takes the view that this is not an appropriate membership for such a body, and that membership should be increased to three.

3.72 In light of this, the Committee makes the following recommendation.

### Recommendation 3

**3.73 The Committee recommends that the ACT Government increase the membership of the independent advisory board for the Superannuation Liability Fund from two to three members by the end of the 2017-18 financial year.**

---

<sup>163</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.20.

<sup>164</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.22.

<sup>165</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.22.

<sup>166</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.23.

<sup>167</sup> Mr Patrick McAuliffe, *Proof Transcript of Evidence*, 10 November 2017, p.27.

<sup>168</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, pp.20-21.

<sup>169</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.22.



## 4 — COMPULSORY THIRD-PARTY INSURANCE REGULATOR

### INTRODUCTION

4.1 In relation to the Compulsory Third-Party Insurance Regulator, the CMTEDD Annual Report 2016-17 states that:

The functions of the CTP regulator are specified in section 14A of the CTP Act [the *Road Transport (Third-Party Insurance) Act 2008*] and include:

- regulating the licensing of CTP insurers;
- monitoring the behaviour of licensed CTP insurers in relation to their obligations under the Act;
- improving health outcomes for claimants;
- monitoring the efficiency of the CTP scheme under the Act and identifying areas for amendment; and
- ensuring that all premiums meet the fully funded test and are not excessive.<sup>170</sup>

### CITIZENS' JURY ON COMPULSORY THIRD-PARTY INSURANCE

4.2 In hearings, the Committee asked questions of the Compulsory Third-Party Insurance Regulator regarding the use of a citizens' jury to consider settings and policy on Compulsory Third-Party Insurance (CTP).<sup>171</sup>

4.3 In responding to questions, the CTP Regulator told the Committee that:

In relation to the citizens jury, we have approximately 50 people who are part of the jury. They have been deliberating on the issue of what objectives should we have for the scheme to improve the scheme, to balance the interest of all road users.<sup>172</sup>

4.4 Regarding progress by the citizens jury, the CTP Regulator told the Committee that at the time of the hearing the jury had met for 'four full days' over 'two full weekends', and that by the

---

<sup>170</sup> CMTEDD, *Annual Report 2016-17*, Vol. 1, pp.252-253.

<sup>171</sup> *Proof Transcript of Evidence*, 10 November 2017, p.30.

<sup>172</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.30.

end of the fourth day they had ‘come up with their report on what the objectives are for the CTP scheme’.<sup>173</sup>

4.5 Regarding these, she told the Committee:

There are six objectives that they have come up with. The two particular objectives which they ranked the most important, in terms of the highest percentage of the jurors who rated it eight out of 10 for importance, are, firstly, early access to medical treatment, economic support and rehabilitation services. The other one is equitable cover for all people injured in a motor vehicle accident. As I said, there are actually six. The other four, which they did not rank as highly, relate to value for money, inefficient systems; promoting broader knowledge of the scheme and safer driving practices; implementing a support system to better navigate the claims process; and a system that strengthens integrity and reduces fraudulent behaviour.<sup>174</sup>

4.6 When asked how these compared with objectives under present arrangements for CTP, the Regulator told the Committee that:

Some align, some do not. The current scheme, as an objective, does have an objective about trying to get rehabilitation services to people as soon as possible. However, with the objectives, particularly when you look at the report and what is the substance behind that, there is a change from what the scheme, in practice, is providing at the moment, particularly the second objective that I was talking about, the equitable cover. You do not have a similar objective under the existing legislation.<sup>175</sup>

4.7 She went on to say that this was:

quite a change from what we currently have with our scheme, which means you have to be able to prove someone else was at fault in order to receive benefits under the scheme. When I say “benefits”, that is a full claim. Most people have the ability to receive up to \$5,000 at the moment for medical treatment for six months after an accident.<sup>176</sup>

4.8 When asked as to the ‘next step’ in the citizens’ jury process, the CTP Regulator told the Committee that:

The next step is that the stakeholder reference group—there are 10 on the stakeholder reference group, which includes people such as the insurers, the legal profession, health experts, scheme designer, the actuaries; there are 10 on the group; I am also on

---

<sup>173</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, pp.30-31.

<sup>174</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.31.

<sup>175</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.31.

<sup>176</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.31.

that group—will now be coming up with up to four models which meet those objectives which were set by the jury and are within the limitations set by the government, one of which was that premiums cannot increase. We are coming up with up to four models which meet those things. It then goes back to the jury in March. They then select which is their preferred model.<sup>177</sup>

## ANSWERS ON NOTICE

- 4.9 Question Taken on Notice No. 17 related to the CTP Regulator and the CTP citizens' jury. The Committee received an answer from the Treasurer on 27 November 2017.<sup>178</sup>
- 4.10 Questions on Notice Nos.33 and 34 related to the citizens' jury on CTP. The Committee received answers from the Treasurer on 29 November 2017.<sup>179</sup>

## COMMITTEE COMMENT

- 4.11 The Committee acknowledges that Compulsory Third-Party Insurance is an important feature of protections afforded to residents of the ACT, as it is for residents of other jurisdictions.
- 4.12 In the Committee's view, there are some questions about the value of conducting a citizens' jury in this area.
- 4.13 While, on one hand, it may be seen as a test case for citizens' juries in other areas of government practice and policy, in this instance there are a comparatively limited number of variables that could be determined by the jury, and even fewer practical proposals that could emerge from such deliberations.
- 4.14 It may be argued that a more useful test of the citizens' jury model would occur if such an exercise were conducted in an area of government practice and policy where there was a greater diversity of opinion, and even passions, involved.
- 4.15 The present exercise has the unfortunate appearance of giving apparent latitude to the views of citizens in a context where those views can effectively be constrained by government. In

---

<sup>177</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.31.

<sup>178</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>179</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

view of this, the citizens' jury on Compulsory Third-Party Insurance cannot be said to make a substantive contribution to open government in the ACT, and may indicate the opposite.

- 4.16 In this way it may be seen as a gesture to fulfil the wording, but not the intent, of the *Parliamentary Agreement for the 9<sup>th</sup> Legislative Assembly for the Australian Capital Territory*, Section 5, Subsection 2, regarding 'deliberative democracy'.<sup>180</sup>

---

<sup>180</sup> Mr Andrew Barr MLA, Mr Shane Rattenbury MLA, Ms Caroline Le Couteur MLA, *Parliamentary Agreement for the 9th Legislative Assembly for the Australian Capital Territory*, p. 5, viewed 15 December 2017, available at: [http://www.cmd.act.gov.au/\\_data/assets/pdf\\_file/0005/1013792/Parliamentary-Agreement-for-the-9th-Legislative-Assembly.pdf](http://www.cmd.act.gov.au/_data/assets/pdf_file/0005/1013792/Parliamentary-Agreement-for-the-9th-Legislative-Assembly.pdf)



## 5 — INDEPENDENT COMPETITION AND REGULATORY COMMISSION

### INTRODUCTION

- 5.1 The Independent Competition and Regulatory Commission (ICRC) *Annual Report 2016-17* states, in relation to the statutory underpinnings and composition of the ICRC, that:

The Independent Competition and Regulatory Commission (Commission) is a Territory Authority established under the *Independent Competition and Regulatory Commission Act 1997* (ICRC Act). The Commission is constituted under the ICRC Act by one or more standing commissioners and any associated commissioners appointed for particular purposes. Commissioners are statutory appointments. Joe Dimasi is the current Senior Commissioner who constitutes the Commission and takes direct responsibility for delivery of the outcomes of the Commission.<sup>181</sup>

- 5.2 The Annual Report also states, in relation to the functions and responsibilities of the ICRC, that:

The Commission has responsibilities for a broad range of regulatory and utility administrative matters. The Commission has responsibility under the ICRC Act for regulating and advising government about pricing and other matters for monopoly, near-monopoly and ministerially declared regulated industries, and providing advice on competitive neutrality complaints and government-regulated activities. The Commission also has responsibility for arbitrating infrastructure access disputes under the ICRC Act. In discharging its objectives and functions, the Commission provides independent, robust analysis and advice.<sup>182</sup>

---

<sup>181</sup> ICRC, *Annual Report 2016-17*, p.i, viewed 27 November 2017, available at: <http://www.icrc.act.gov.au/wp-content/uploads/2017/10/ICRC-Annual-Report-2016-17.pdf>

<sup>182</sup> ICRC, *Annual Report 2016-17*, p.i.

## SCOPE OF INVESTIGATION AND EVALUATION OF ICON WATER'S OPERATING COSTS

5.3 In hearings, the Committee asked the ICRC questions as to the scope of its investigations and evaluation of the operating costs of Icon Water.<sup>183</sup>

5.4 In responding, the Senior Commissioner of the ICRC told the Committee that:

As part of our investigations into the setting of prices for the ICRC over the next five-year period, our job is basically to look at efficient costs, operating costs, as well as capital expenditure. We are in the process of doing that at the moment. We have had external consultancies who have been asked to have a look at the capital expenditure as well as the operating expenditure. Those reports, the work done by them, are fed into our own analysis. They are an important part of the determination. Going back a step, what we are trying to do is to determine what the efficient costs should be so that charges are no higher than they need to be for the community, whilst providing enough revenue to the business so that it provides the services that it is required to provide at the standards that are needed.<sup>184</sup>

5.5 When asked whether the ICRC benchmarked the business costs of Icon Water, the Senior Commissioner told the Committee that the ICRC did not 'formally' benchmark Icon Water's costs, but did an analysis using 'what is called a building block model, which is basically the components of those costs'.<sup>185</sup> He told the Committee that:

Part of doing that is that we look at other costs in other jurisdictions. That is what we ask our consultants to do in making their recommendations to us. Benchmarking is a much more formal process.<sup>186</sup>

5.6 In responding to further questions, the Senior Commissioner told the Committee that the ICRC compared Icon Water's spending in particular areas with utilities in other jurisdictions, although without conducting 'formal benchmarking'. He told the Committee that:

Benchmarking means ... that you base your price determination on benchmark costs of other like businesses. It is a bit more direct and a bit more formal. We certainly take it into account in reaching that decision, but there is not a formal link.<sup>187</sup>

---

<sup>183</sup> *Proof Transcript of Evidence*, 10 November 2017, p.33.

<sup>184</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.33.

<sup>185</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, pp.33-34.

<sup>186</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.33.

<sup>187</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.34.

5.7 The Senior Commissioner told the Committee that formal benchmarking raised ‘all sorts of questions’ as to ‘whether it is comparable’: ‘the size of the market, the topography, the costs and a whole range of reasons’. He told the Committee that there was no question that ‘looking at other jurisdictions and looking at what their costs are is an important part and should not be ignored’, but that complexities raised by benchmarking led the the ICRC to stop short of conducting formal benchmarking on its own behalf.<sup>188</sup>

5.8 At this point, the Chief Executive Officer of the ICRC also responded to questions. He told the Committee that:

Our engineering consultants do look at the benchmark work that has been done around Australia. For example, we will look at how Icon compares to, say, Hunter Water. We look at some of the Victorian water utilities, et cetera. We can look at the raw numbers. We can know, for example, the number of breaks and chokes in the network, the number of infestations in the sewer network, and compare Icon’s numbers against what is happening in the Hunter and what is happening in Victoria, but they are not like for like, because they are not exactly the same utilities, they are not exactly in the same climate. So you have got to be very careful about that. But it does give you a bit of an indication about where their costs sit in the scheme of things.<sup>189</sup>

5.9 He also told the Committee that in his view:

Benchmarking works really well—I think back to what Victoria used to do—when you have multiple utilities you regulate. In years gone by, when they were regulating electricity prices in Victoria they had five utilities, and the same regulator regulated all five, so you could actually compare company A, company B, company C, company D and company E and have a good feeling about how they were sitting in respect of each other. But we have a single utility. Certainly we can look at what others around Australia are doing but we also have to recognise they do have some unique aspects they face. So we take those things into account but our process is not a benchmarking process.<sup>190</sup>

5.10 At this point, the Committee asked further questions regarding the assessment of Icon Water’s. In particular it asked whether Icon Water had provided the ICRC with a copy of its shared services agreement with ACTewAGL.<sup>191</sup>

---

<sup>188</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.34.

<sup>189</sup> Mr Michael Rawstron, *Proof Transcript of Evidence*, 10 November 2017, p.34.

<sup>190</sup> Mr Michael Rawstron, *Proof Transcript of Evidence*, 10 November 2017, pp.34-35.

<sup>191</sup> *Proof Transcript of Evidence*, 10 November 2017, p.35.

5.11 In responding, the Chief Executive Officer told the Committee that:

We received it this current determination. We have previously received the old utilities management agreement, which went back prior to the water assets being spun out back to Icon. We had a copy of that agreement. But they provided a copy of the current version during this determination.<sup>192</sup>

5.12 When asked if the ICRC had been able to judge whether these costs set out in the agreement were reasonable, the Senior Commissioner told the Committee:

We are in the process of assessing their opex costs at the moment. As a result of looking at the agreement, we have had some further questions for Icon, and that will be part of the determination we will make as to what are efficient costs and what the implications might be of any changes. We have been fully conscious of the fact that this is an issue that has been raised. We have looked at it, and we will take that into account when we make our draft decision and then our final decision, but we have not made that decision just yet.<sup>193</sup>

## ELECTRICITY SUPPLY LIABILITY

5.13 In hearings, the Committee asked questions regarding the liability of electricity providers where there have been interruptions to electricity supply, and the role of the ICRC in providing oversight in this regard.<sup>194</sup>

5.14 In responding to questions, the Senior Commissioner told the Committee that:

There is a consumer protection code that we are responsible for. We report in the annual report—our report is in there—on interruptions and the like. That is something we have been looking at to see whether in fact we can do more in getting more reliable numbers, and also whether the incentives are adequate for ActewAGL Distribution, whether compensation is adequate for interruptions. So it is something that is on our mind right now.<sup>195</sup>

5.15 The Senior Manager also responded to the question. He told the Committee that:

A lot of what happens with reliability of supply is governed by other jurisdictions as well, primarily the AER. There is the technical regulator in the ACT, which has a large

---

<sup>192</sup> Mr Michael Rawstron, *Proof Transcript of Evidence*, 10 November 2017, p.35.

<sup>193</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.35.

<sup>194</sup> *Proof Transcript of Evidence*, 10 November 2017, p.35.

<sup>195</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.35.

influence in the service and installation of the network as well.<sup>196</sup>

5.16 He told the Committee that:

Our primary coverage or jurisdiction relating to ActewAGL Distribution relates mainly to licensing. As Senior Commissioner Dimasi noted, we are currently going through a process of looking at our consumer protection code. Within that, we have some protections relating to reliability of supply. For example, a payment is made in the event that the supply is out for a certain period of time. At the moment it is 12 hours. In looking at that, we look at other jurisdictions in relation to what they have got for similar situations with things such as blackouts.<sup>197</sup>

5.17 In addition, he told the Committee:

We also work with the technical regulator directly. They deal with the technical side of it. A lot of those figures, though, are reported directly to the AER, because energy within the ACT is primarily regulated at the national level.<sup>198</sup>

5.18 The Senior Manager went on to say that:

They do not report, as such, those figures to us, but we will get figures relating to complaints. Most of the material that we get would generally be consumer-related complaints, for example, which we get each year, which we report on in the back of the annual report in our utility licence annual report.<sup>199</sup>

5.19 At this point the Committee asked whether the threshold or trigger for compensation was 12 hours of interrupted supply.<sup>200</sup> The Senior Manager confirmed that this was so, stating that it was a '\$20 payment rebate after 12 hours downtime'.<sup>201</sup>

5.20 The Committee asked whether there was provision for multiple interruptions to supply,<sup>202</sup> to which the Senior Commissioner responded:

I see what is implicit in your question. My feeling is that the code needs review and those issues need to be addressed. I do not think it is adequate, to be honest, and that is why we are reviewing it.<sup>203</sup>

---

<sup>196</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.35.

<sup>197</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, pp.35-36.

<sup>198</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>199</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>200</sup> *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>201</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>202</sup> *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>203</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.36.

5.21 The Committee asked whether the onus lay with the consumer to apply for compensation where supply had been interrupted.<sup>204</sup>

5.22 In response, the Senior Manager told the Committee that:

Within the ACT, the current system is that ActewAGL Distribution do not provide that rebate back automatically. You apply for it ...<sup>205</sup>

5.23 In some other jurisdictions, he told the Committee, such compensation was paid out automatically. Rates of compensation also varied between jurisdictions.<sup>206</sup>

5.24 In further questions, the Committee asked by what means the ICRC ascertained that electricity providers were meeting reliability targets.<sup>207</sup>

5.25 In response, the Senior Manager and Senior Commissioner told the Committee that it received information on such matters from the AER (the Australian Energy Regulator) regarding 'downtime periods within certain numbers of households and those sorts of things', and received specific information on complaints and numbers of complaints from the utility in question.<sup>208</sup>

5.26 He told the Committee:

We will deal with the complaints. We will have recourse relating to complaints but not relating to the reliability targets. They do not come through to us. That is an area that we are potentially looking at. As I said, ActewAGL is regulated at the commonwealth level as well as the state or ACT level. We are always looking at what they are covering and what we are covering as well.<sup>209</sup>

5.27 In response to further questions on information used by the ICRC to gauge whether reliability targets were being met, the Senior Manager told the Committee that the ICRC relied upon information collated in AER reports. These consisted of reports published quarterly, and an annual report which 'covers more detail', in addition to state of the energy market reports and other publications.<sup>210</sup>

---

<sup>204</sup> *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>205</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>206</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>207</sup> *Proof Transcript of Evidence*, 10 November 2017, pp.36-37.

<sup>208</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.37.

<sup>209</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.37.

<sup>210</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.37.

## MEASURES TO REDUCE ENERGY PRICES OR LIMIT INCREASES

5.28 In hearings, the Committee asked what the ICRC was doing to reduce energy prices or limit increases.<sup>211</sup>

5.29 In responding, the Senior Commissioner told the Committee that:

This is a very significant issue across the community, and we are, of course, very conscious of that. We regulate the retail component of electricity prices in the ACT. We made a determination where prices increased significantly. That was driven largely by the wholesale prices, which have more than doubled over the year.<sup>212</sup>

5.30 He told the Committee:

We do a number of things. We look at the costs of ActewAGL retail to keep them to a minimum. We also look at the best way of dealing with wholesale costs. What we have in our model is a 23-month average, a rolling average, so that the full brunt of that big spike in wholesale prices that we saw was not pushed onto consumers straightaway; otherwise you would have seen a much bigger price increase than we did see. We reduced costs where we could in our determination for ActewAGL retail. As a result of that, we kept it down as low as we could.<sup>213</sup>

5.31 The Senior Commissioner told the Committee that:

The determination allows us to focus on those areas where we can, but a lot of the cost components are external to us. The network costs and the wholesale electricity costs are largely driven from outside our jurisdiction, so there was not a huge amount we could do about those, including the commonwealth RET costs, which formed a reasonable component of those price increases.<sup>214</sup>

5.32 He went on to say that:

We work very hard to keep prices down within the area of jurisdiction that we have, but we cannot control areas that are outside our domain.<sup>215</sup>

---

<sup>211</sup> *Proof Transcript of Evidence*, 10 November 2017, p.38.

<sup>212</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.38.

<sup>213</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.38.

<sup>214</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.38.

<sup>215</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.38.

## ANSWERS ON NOTICE

- 5.33 Question on Notice No.20 related to the ICRC and energy prices. The Committee received an answer from the Treasurer on 4 December 2017.<sup>216</sup>

## COMMITTEE COMMENT

- 5.34 The Committee acknowledges the important work of the ICRC.
- 5.35 Witnesses' answers to questions indicated a situation that was consistent with what the Committee expected of the ICRC.
- 5.36 However, it was notable that the Committee's line of questioning on penalties for interruptions to power supply revealed that when interruptions met thresholds which triggered compensation, that it consumers' responsibility to apply for compensation, in contrast with other jurisdictions.<sup>217</sup>
- 5.37 The Committee was also concerned to be told, in response to questions, that present arrangements triggered compensation after 12 hours continuous downtime, and did not provide for situations where there were multiple shorter interruptions to electricity supply.<sup>218</sup> It was notable that the Senior Commissioner acknowledged this as an 'inadequate' feature of present arrangements; stated that in his view the 'the code needs review and those issues need to be addressed'; and that it was presently under review by the ICRC.<sup>219</sup>
- 5.38 In light of this the Committee makes the following recommendations.

## Recommendation 4

- 5.39 The Committee recommends that the ACT Government ensure that the consumer protection code administered by the Independent Competition and Regulatory Commission (ICRC) be amended so that compensation is paid to electricity consumers in instances where there are multiple interruptions to electricity supply over a nominated period of time.**

---

<sup>216</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>217</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>218</sup> Mr Ian Phillips, *Proof Transcript of Evidence*, 10 November 2017, p.36.

<sup>219</sup> Mr Joe Dimasi, *Proof Transcript of Evidence*, 10 November 2017, p.36.



## Recommendation 5

- 5.40** The Committee recommends that the ACT Government ensure that the consumer protection code administered by the Independent Competition and Regulatory Commission (ICRC) be amended so that compensation is automatically paid to electricity consumers by electricity suppliers in instances where interruptions to supply meet criteria for compensable interruptions to supply.



## 6 —SPEAKER AND OFFICE OF THE LEGISLATIVE ASSEMBLY

### INTRODUCTION

6.1 Section 6 of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012* provides that:

(1) The office's function is to provide impartial advice and support to the Legislative Assembly and committees and members of the Assembly, including by—

(a) providing advice on parliamentary practice and procedure and the functions of the Assembly and committees; and

(b) reporting proceedings of the Assembly and meetings of committees; and

(c) maintaining an official record of proceedings of the Assembly; and

(d) providing library and information facilities and services for members; and

(e) providing staff to enable the Assembly and committees to operate efficiently; and

(f) providing business support functions, including administering the entitlements of members who are not part of the Executive; and

(g) maintaining the Assembly precincts.

(2) The office also has the function of providing public education about the functions of the Assembly and committees.

(3) The office may exercise any other function given to it under this Act or another territory law.<sup>220</sup>

---

<sup>220</sup> *Legislative Assembly (Office of the Legislative Assembly) Act 2012*, Section 6.

## LEVELS OF SATISFACTION WITH THE PROVISION OF IT AND OTHER SERVICES

6.2 In hearings, the Committee asked questions regarding levels of satisfaction with Shared Services for the provision of IT and other services at the Legislative Assembly.<sup>221</sup>

6.3 In responding to the question, the General Manager, Business Support Branch, told the Committee that:

Apart from, I think, the fact that we all in a modern office place encounter IT issues from time to time, I am certainly not aware of any underlying concern about access. I understand from time to time there are periods where the internet might be slow. I think more recently there were some episodes where Outlook has crashed momentarily and had to be restored.<sup>222</sup>

6.4 The Committee asked whether further consideration had been given to whether the Assembly should provide such services in-house.<sup>223</sup>

6.5 In responding, the Speaker of the Assembly told the Committee that:

Certainly not that I am aware of and not that I am considering. The other new initiative out of OLA as far as ICT support is concerned is the email that went out a week or so ago that follows on the ongoing discussion about committee members and how they access committee work. If we have got to go paperless, how do we access in the chamber all the necessary papers involving committees? We will be issuing a standard format for an iPad that provides remote access in and out of committees, secure drives and Assembly work.<sup>224</sup>

6.6 The General Manager, Business Support Branch, also responded to the question. He told the Committee that:

Certainly ... some thoughts that were, I guess, exercising people's mind perhaps a decade or so ago about whether or not the Assembly should go it alone, I think at the time the view was that you may have performance problems with whichever ICT provider you partnered with and, whilst it is never problem free, the very robust gateway I think that the ACT government maintains in terms of virus protection and so

---

<sup>221</sup> *Proof Transcript of Evidence*, 10 November 2017, p.45.

<sup>222</sup> Mr Ian Duckworth, *Proof Transcript of Evidence*, 10 November 2017, p.45.

<sup>223</sup> *Proof Transcript of Evidence*, 10 November 2017, p.45.

<sup>224</sup> Ms Joy Burch MLA, *Proof Transcript of Evidence*, 10 November 2017, p.45.

on is a valuable environment and quite a protected environment to operate within. Certainly there are no plans to revisit that.<sup>225</sup>

## LEARNING AND DEVELOPMENT

6.7 In hearings, the Committee asked questions regarding learning and development budgets, noting that there were separate budgets for staff of the Office of the Legislative Assembly and for staff of non-executive Members of the Assembly, and asking the size of those budgets and the amount per capita these represented.<sup>226</sup>

6.8 In responding, the General Manager, Business Support Branch, told the Committee:

The easier one for me to talk to, because it is sort of indelibly stamped in my brain, is the members' allocation, which has sat at \$20,000 for quite a number of years. It is undersubscribed just about every year, and that is probably the reason why it is not a larger sum of money. There could be various reasons for that, but we find that just about every year, year on year, in this annual report we have expenditure of \$11,000. Going back to the earlier remarks about an election year being a bit unusual, you would expect it to be even lower than normal in this particular year. But there has never been any pressure on that budget.<sup>227</sup>

6.9 The Speaker of the Assembly also responded. She told the Committee that:

The majority of requests are supported or supported in part. Out of the members' allocation, it is almost as though it is divided up by the number of members as an indicative. If members or party rooms wanted to use a more collective approach, that would be a reasonable way of doing it as well. It has not been put; not a lot of members would know that there is the capacity to do that.<sup>228</sup>

6.10 The General Manager, Business Support Branch, also told the Committee that:

Typically, members' staff proposals that are approved include attending conferences and often IT training or social media training. The training that members' staff get includes what we provide, corporately, at no cost to this budget: training for people dealing with difficult clients, people threatening self-harm on the phone and those sorts of things where you need to be able to deal with things. By and large, as I said, it

---

<sup>225</sup> Mr Ian Duckworth, *Proof Transcript of Evidence*, 10 November 2017, p.45.

<sup>226</sup> *Proof Transcript of Evidence*, 10 November 2017, p.47.

<sup>227</sup> Mr Ian Duckworth, *Proof Transcript of Evidence*, 10 November 2017, p.47.

<sup>228</sup> Ms Joy Burch MLA, *Proof Transcript of Evidence*, 10 November 2017, p.47.

is certainly something that I would be happy to take on board, to produce a publication encouraging members to contemplate coming forward with training proposals.<sup>229</sup>

6.11 He also told the Committee that he did not 'have an exact figure for the OLA budget, but I understand it is in the order of about \$50,000 to \$60,000'.<sup>230</sup>

6.12 At this point, the Committee noted that \$30,000 was recorded as being allocated for learning and development for OLA staff, and asked whether this was spent on Australian Study of Parliament Group (ASPG) and similar conferences.<sup>231</sup>

6.13 In responding, the Clerk of the Assembly told the Committee:

Exactly. The three parliamentary ones are the ANZACATT conference, which is held every January. That is the Australia and New Zealand Association of Clerks-at-the-Table. That is a three-day professional development seminar. ASPG is held once a year; it is open to all members and members' staff. There is another course called the parliamentary law and practice course, which is an actual course through the University of Tasmania. It is an accredited course, and we usually send at least one officer to that every year. That is in July each year. They are the three.<sup>232</sup>

6.14 The Committee noted the Parliamentary Law and Practice course offered by the University of Tasmania; asked about numbers of OLA staff who had undertaken the course; and whether similar opportunities were available for staff of Members of the Assembly.<sup>233</sup>

6.15 In responding, the Clerk of the Assembly told the Committee:

I do not know of a tailored course specifically for members' staff that runs in Australia or internationally.<sup>234</sup>

6.16 The General Manager, Business Support Branch, also responded. He told the Committee that:

I think the Australasian Study of Parliament Group, ASPG, is an event, when it has been held, where we have had members' staff. I think there were two members' staff who attended this year. Possibly that was not the case last year—there was something else going on—but it was in previous years, I think.<sup>235</sup>

---

<sup>229</sup> Ms Joy Burch MLA, *Proof Transcript of Evidence*, 10 November 2017, p.47.

<sup>230</sup> Ms Joy Burch MLA, *Proof Transcript of Evidence*, 10 November 2017, p.47.

<sup>231</sup> *Proof Transcript of Evidence*, 10 November 2017, p.49.

<sup>232</sup> Mr Tom Duncan, *Proof Transcript of Evidence*, 10 November 2017, p.49.

<sup>233</sup> *Proof Transcript of Evidence*, 10 November 2017, p.49.

<sup>234</sup> Mr Tom Duncan, *Proof Transcript of Evidence*, 10 November 2017, p.49.

<sup>235</sup> Mr Ian Duckworth, *Proof Transcript of Evidence*, 10 November 2017, p.49.

6.17 However, he told the Committee, 'ANZACATT, because it is pitched at parliamentary officers, by definition excludes members' staff'.<sup>236</sup>

## COMMITTEE COMMENT

6.18 The Committee acknowledges the important work of the Speaker and the Office of the Legislative Assembly in supporting the Legislative Assembly for the ACT and its Members.

---

<sup>236</sup> Mr Ian Duckworth, *Proof Transcript of Evidence*, 10 November 2017, p.49.





## 7 — LIFETIME CARE AND SUPPORT

### INTRODUCTION

7.1 The CMTEDD *Annual Report 2016-17* states that:

The Lifetime Care and Support Scheme (LTCSS) was established under the Lifetime Care and Support (Catastrophic Injuries) Act 2014 (LTCS Act) and commenced operation on 1 July 2014. The LTCSS provides reasonable and necessary on-going treatment and care to people who have been catastrophically injured as a result of a motor accident in the Australian Capital Territory, on or after 1 July 2014.

The scheme covers pedestrians, cyclists, motor bikes and motor vehicles so long as there is at least one registrable vehicle involved in the motor accident, regardless of where fault is attributable for the accident. As a result, it extends motor vehicle accident coverage for catastrophic injuries beyond what was previously available under Compulsory-third Party (CTP) Insurance to include those persons who may be considered to be at-fault, or someone who is involved in a single vehicle accident, or even a blameless accident.<sup>237</sup>

### EFFECT OF INTERGOVERNMENTAL COOPERATION GROUP AGREEMENT WITH NEW SOUTH WALES

7.2 In hearings, the Committee asked questions regarding the effect of an intergovernmental cooperation group agreement with New South Wales on the operation of Lifetime Care and Support in the ACT, and whether it had led to more efficient support services for ACT residents.<sup>238</sup>

7.3 In responding, the Acting Lifetime Care and Support Commissioner of the ACT told the Committee that:

New South Wales has had almost an identical scheme in place for some 10-odd years and, as you can appreciate, being a bigger jurisdiction it has a lot more participants than we have. It means that, by having the arrangement with New South Wales, we are

---

<sup>237</sup> CMTEDD, *Annual Report 2016-17*, Vol.1, p.333.

<sup>238</sup> *Proof Transcript of Evidence*, 10 November 2017, p.51.

able to leverage off the expertise of New South Wales, the larger staff that they have and the programs and specialties that they have within their staff.<sup>239</sup>

7.4 She told the Committee that it was:

certainly very advantageous for us, as a small jurisdiction with a very small number of participants in our lifetime care scheme, to be able to leverage off New South Wales in that way, not only from being able to tap into those skill sets that they have got but also from an efficiency perspective as well.<sup>240</sup>

7.5 When asked how many participants there were currently in the ACT scheme, the Acting Commissioner told the Committee that there were six at the time of the hearing, and a further application was being assessed.<sup>241</sup>

7.6 The Committee asked as to how participants were recruited when the scheme commenced in 2014.<sup>242</sup>

7.7 In responding, the Acting Commissioner told the Committee that:

At the time when the scheme commenced there was an advertising campaign which occurred, there were radio ads which occurred, and we also did flyers which were mailed out as part of the registration renewal process to let people know about the scheme. In addition, we have spoken to the hospitals to let them know about the scheme, because often when it comes to these types of injuries it is the hospital staff and the support staff in the hospital who help facilitate people filling in forms for that lifetime care scheme.<sup>243</sup>

## ANSWERS ON NOTICE

7.8 Question on Notice No.22 related to an intergovernmental agreement between the ACT and NSW on providing care to patients in the ACT. The Committee received an answer from the Treasurer on 1 December 2017.<sup>244</sup>

---

<sup>239</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.51.

<sup>240</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.51.

<sup>241</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.51.

<sup>242</sup> *Proof Transcript of Evidence*, 10 November 2017, p.51.

<sup>243</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.52.

<sup>244</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at:

<https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

## SIGNIFICANCE OF 'REGISTERABLE' VEHICLES FOR SCHEME

- 7.9 In hearings, the Committee asked about the requirement that at least one registerable vehicle be involved in an accident before the victim of that accident can be assessed for the scheme. In particular, the Committee asked as to the status of matters if an accident involved a vehicle which was not registered or not road-worthy.<sup>245</sup>
- 7.10 When advised that participation in the scheme requires that a 'registerable' vehicle was involved in the accident in question, the Committee asked as to the definition of 'registerable'.<sup>246</sup>
- 7.11 Both the Acting Commissioner and the Under-Treasurer responded to the question.<sup>247</sup>
- 7.12 The Under-Treasurer told the Committee that the key point of differentiation for registerable vehicles was where vehicles were 'clearly not intended to be or able to be used on the road, no matter what you do to get it there'.<sup>248</sup>
- 7.13 An example of this, he told the Committee, was:
- the home-built sort of motorbike, where someone has fixed an engine on a bicycle and drives off on it. That cannot be registrable under any circumstances, whereas as if a car has got bald tyres that is not a problem.<sup>249</sup>

## AVERAGE COST PER PARTICIPANT PER YEAR

- 7.14 In hearings, the Committee asked questions as to the average cost per participant per year for the scheme.<sup>250</sup>
- 7.15 In responding, the Acting Commissioner told the Committee that:
- Participant costs can vary substantially depending on the severity of the injury, the age of the person who has been injured and the type of injury as well. For example, if you have a child who has a care and needs assessment of level 7, then the sorts of dollars that you are talking about can be up to \$10 million-odd type of thing. They are very expensive cases. Conversely, you could have someone who is not at that same level of

---

<sup>245</sup> *Proof Transcript of Evidence*, 10 November 2017, p.52.

<sup>246</sup> *Proof Transcript of Evidence*, 10 November 2017, p.52.

<sup>247</sup> Ms Lisa Holmes and Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.52.

<sup>248</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, pp.52-53.

<sup>249</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.53.

<sup>250</sup> *Proof Transcript of Evidence*, 10 November 2017, p.53.

need, who might be an older person. You can have a substantial variance in terms of the costs of the scheme. The average, taking, as I said, that huge variance, is about \$2 million.<sup>251</sup>

7.16 The Acting Commissioner took this as a Question Taken on Notice.<sup>252</sup>

7.17 At this point, the Committee asked questions as to how downward pressure could be applied to costs under the scheme, in particular as to whether having more people take part in the scheme, or increased knowledge of the characteristics of the scheme, could have such an effect.<sup>253</sup>

7.18 In responding, the Under-Treasurer told the Committee:

I suspect it is more about, when a person is first injured, there is the actual trying to save their life, which is partly covered by the public health system, obviously, and the interventions to try to improve their situation to get them more able to participate in social and economic activities. But if they are a lifetime member, it might just get down to a period of maintenance of care and support services, and the medical might just come off onto a maintenance-type arrangement.<sup>254</sup>

7.19 The Acting Commissioner also responded. She told the Committee that it was difficult to make comment on 'averages' because costs could 'vary so substantially between age and the type of injury that they have had'.<sup>255</sup>

7.20 She told the Committee that:

In the first year of the scheme, for example, if you looked at the types of expenses which were incurred by the scheme, the majority was the hospital costs. These people go into hospital and actually are in hospital for a considerable number of months.<sup>256</sup>

7.21 She told the Committee that:

Once they move past particularly that first year then the costs that we incur tend to be more the rehabilitation costs. Depending on the severity, their attendant care costs can be quite significant. They are the types of costs which are more considerable as you go on in the number of years past the accident period. And those costs for an individual

---

<sup>251</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.53.

<sup>252</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.53.

<sup>253</sup> *Proof Transcript of Evidence*, 10 November 2017, p.54.

<sup>254</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.54.

<sup>255</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.54.

<sup>256</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.54.

can actually fluctuate year on year. Someone gets older perhaps; they might not have the family supports that they had; your attendant care might go up.<sup>257</sup>

- 7.22 As a result of these variables, she told the Committee, it was 'very hard' to generalise about cases managed under the scheme.<sup>258</sup>

## ANSWERS ON NOTICE

- 7.23 Question Taken on Notice No. 18 related to the average participant cost per year of being involved in the Lifetime Care and Support scheme. The Committee received an answer from the Treasurer on 24 November 2017.<sup>259</sup>

## COMMITTEE COMMENT

- 7.24 The Committee acknowledges the important work of Lifetime Care and Support.
- 7.25 However the Committee also considers it notable that, according to witnesses, the scheme commenced in 2014, and at time of hearings had a total of six participants with another being assessed for admission to the scheme.<sup>260</sup>
- 7.26 In the Committee's view this must prompt consideration, by government, of risks attendant upon operating a scheme with a small number of participants. For example, 'Undertake an annual client feedback process' is listed in the CMTEDD Annual Report 2016-17 a performance indicator for the scheme.<sup>261</sup> In this instance, in light of the small number of participants, the Committee considers it important to adopt appropriate methods of analysis to manage the risk that outcomes of such a process would not be misleading.
- 7.27 In the Committee's view, this principle should also be applied to other dimensions of the program so as to ensure good management of, and accurate information about, the scheme.
- 7.28 In light of this, the Committee makes the following recommendation.

---

<sup>257</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.54.

<sup>258</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.54.

<sup>259</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>260</sup> Ms Lisa Holmes, *Proof Transcript of Evidence*, 10 November 2017, p.51.

<sup>261</sup> Chief Minister, Treasury and Economic Development Directorate, *Annual Report 2016-17*, Vol.1, p.339.

## Recommendation 6

- 7.29** The Committee recommends that the ACT Government ensure that appropriate measures are used regarding management of—and information on—the Lifetime Care and Support scheme, in view of small numbers of participants in the scheme.

## 8 — ACT INSURANCE AUTHORITY (ACTIA)

### INTRODUCTION

8.1 The ACT Insurance Authority (ACTIA) *Annual Report 2016-17* states that:

The Australian Capital Territory Insurance Authority (the Authority) is established under Section 7 of the *ACT Insurance Authority Act 2005* (the Act).

The Act establishes the Authority as the ACT Government's captive insurer providing insurance services to all ACT Government directorates and statutory authorities, to meet the insurable claims and losses of ACT Government agencies.

The Authority's captive insurance model protects the ACT Government budget from a range of catastrophic and accumulated risk exposures through its reinsurance arrangements, and the accumulation of a fund reserve to meet the cost of future legal liabilities and asset losses generated through the activities of Government.<sup>262</sup>

### ACTIA FUNDING RATIO AND VARIANCE

8.2 In hearings, the Committee asked questions regarding ACTIA funding ratio and variance in relation to ACTIA's capital funding.<sup>263</sup>

8.3 In responding to the question, the General Manager, ACTIA, told the Committee that:

The authority has a capital management plan. The plan assists the authority in making decisions about how to manage its capital position; it has a target range between 100 and 110 per cent. Our legislation requires us to insure the territory's risks and to fully fund those risks.<sup>264</sup>

8.4 He told the Committee that:

We set the 100 to 110 range several years ago as part of a financial condition review that we completed on the authority. One of the outcomes of that financial condition review was to create the plan. Since then, the financial position of the authority has improved year on year as a result of the hard work of the staff in our office to reduce

---

<sup>262</sup> ACTIA, *Annual Report 2016-17*, p.8, viewed 28 November 2017, available at:

[https://apps.treasury.act.gov.au/\\_data/assets/pdf\\_file/0006/1113468/ACTIA-Annual-Report-2016-17.pdf](https://apps.treasury.act.gov.au/_data/assets/pdf_file/0006/1113468/ACTIA-Annual-Report-2016-17.pdf)

<sup>263</sup> *Proof Transcript of Evidence*, 10 November 2017, p.54.

<sup>264</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.55.

our running costs and also to improve and enhance our claims management activity. Over that period of time in particular, we have gained a lot of information about the fund's claims experience. That has enabled us to change our claims reserving practice and to really try to target the central estimate of our liabilities.<sup>265</sup>

8.5 He told the Committee that:

Over time, we have been able to pretty much flatline our revenue stream, so our premiums have decreased over the last five years and we have made a number of capital returns back to the budget. Every year we get to a midyear valuation process and then we get to the end of year valuation process. The outcome just keeps improving. At the moment, that funding ratio is fairly high. We make decisions, as part of the budget process, about that funding ratio. There is a forecast of that on page 15 of the report. You can see that there were two capital returns, one in 2016 of \$60 million and one in 2017 of 50. Then, hopefully, that funding ratio starts to tail off a bit, so our assets to liabilities ratio will get a lot closer.<sup>266</sup>

8.6 However, he told the Committee:

Just because we sit above that target does not necessarily mean we have to do anything dramatic to come back down to meet that target; that is not a number to be overly concerned about. But it is a number that needs to be managed, and we need to try to respond across the whole fund to improve our premium position. We do not want to unnecessarily burden agencies with costs they do not have to incur; they have money to spend on other things. So we want to manage it back down to a position that is closer to the target. In saying that, there is a range in the capital plan that is at 10 percentage points above and below that hundred, and we do not need to start worrying about it until we get way outside that range.<sup>267</sup>

8.7 When asked for how long the funding ratio had been in excess of 140 per cent, the General Manager told the Committee that the ratio was 'in excess of 100 and 110 in 2015-16', and was in fact 'at nearly 146' or thereabouts in that year.<sup>268</sup>

8.8 When asked why it had taken as long as it had before premiums were reduced, the General Manager told the Committee that:

The liability profile is something that we need to be cautious about. We are pretty sure about where we think it is heading now after some of those adjustments in previous

---

<sup>265</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.55.

<sup>266</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.55.

<sup>267</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.55.

<sup>268</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.55.



years, so we have started to respond on the revenue side of things. We rely on actuaries to advise us about decisions we should make in that space. Just on the revenue side of things in terms of our premiums, the 2013-14 premium was almost \$59 million; in 2014-15 it was 67; it was 67 in 2015-16; it was 51 in 2016-17; and for 2017-18 it is down to 50. I expect that next year it will probably continue on a downward trend.<sup>269</sup>

8.9 The Under-Treasurer also responded to the question. He noted the two capital returns to the ACT government that had already been mentioned in testimony, and told the Committee that if the capital ratio were to remain higher than stated targets, he would be recommending a further capital return.<sup>270</sup>

8.10 The Under-Treasurer also put the view, in relation to this higher than anticipated capital ratio, that 'from a whole-of-government point of view it is not a significant issue whether that capital sits in ACTIA as a subsidiary or on the main balance sheet', and that it was 'just a matter of where the capital sits'.<sup>271</sup>

8.11 In response to further questions, the General Manager told the Committee that the ACT government had made capital injections to ACTIA in its early years—in 2008-09, 2009-10 and 2010-11—and subsequently received capital returns, as noted above, commencing in 2015-16.<sup>272</sup>

## INSURANCE PREMIUMS

8.12 The Committee put further questions regarding insurance premiums under the scheme.<sup>273</sup>

8.13 In responding, the General Manager told the Committee that in 2016-17 there had been 'a reduction of \$300,000 in our reinsurance arrangements', and that ACTIA had 'done pretty well in ... prior years'.<sup>274</sup>

8.14 Regarding this, the General Manager told the Committee that:

In the 2014-15 year, our core policies cost us about \$11 million. In 2015-16 those core policies cost us \$8 million; we saved \$3 million in that year. In 2016-17, for the core

---

<sup>269</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.55.

<sup>270</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.55.

<sup>271</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.55.

<sup>272</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.57.

<sup>273</sup> *Proof Transcript of Evidence*, 10 November 2017, p.57.

<sup>274</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.57.

policies that we have, it is \$6.7 million. For 2017-18 that cost is \$6.4 million. So the market is starting to bottom out.<sup>275</sup>

8.15 The General Manager told the Committee that:

The hurricanes in the US did not really help the property market this year, so reinsurers are already starting to write, as they do, articles about how hard the market is, to prepare everyone for a potential increase. Certainly, the market is starting to bottom out. There have been a whole range of mergers and restructures within the reinsurance industry locally and internationally. I do not think they could merge and restructure any more, to save any more money.<sup>276</sup>

8.16 He went on to say that:

We are probably going to see things turn a little bit, which is where the hard work starts to come. We have positioned ourselves well with reinsurers who we do business with. They know our risk well. They will start to make decisions on a client by client basis as the market starts to get harder. Hopefully, we have positioned ourselves well to resist those increases.<sup>277</sup>

## ANSWERS ON NOTICE

8.17 Question Taken on Notice No. 19 related to liabilities for defamation claims. The Committee received an answer from the Treasurer on 24 November 2017.<sup>278</sup>

## IS ACTIA THE BEST MEANS TO ACHIEVE VALUE FOR MONEY FOR THE ACT'S INSURANCE?

8.18 In hearings, the Committee asked whether ACTIA, and the captive scheme it embodies, was the best way to get value for money for insurance on behalf of the ACT.<sup>279</sup>

---

<sup>275</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.57.

<sup>276</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.58.

<sup>277</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.58.

<sup>278</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>279</sup> *Proof Transcript of Evidence*, 10 November 2017, p.58.

8.19 In responding, the Under-Treasurer told the Committee that it was, 'with an explanation' which related to 'questions of risk management'.<sup>280</sup>

8.20 He told the Committee that:

The alternative to a centralised risk manager is decentralised arrangements where directorates would go off and purchase their own insurance cover or not, as they saw fit, perhaps under central guidance or guidelines.<sup>281</sup>

8.21 He told the Committee that:

In jurisdictions where that has occurred you get different coverage across directorates, and essentially the budget bears the risk if an agency is underinsured. So it is not only about getting the best price and best risk management; it is also about ensuring that the government as a whole is covered and ensuring that we know that, if an accident occurs out there, no matter which directorate is responsible, we have appropriate coverage so that we can meet all the costs.<sup>282</sup>

8.22 In his view, he told the Committee, 'centralising ... is the best way to go'. The ACT reinsured under the scheme:

Essentially, we go to the market and contract out for that insurance pool. With respect to where we set the limits and when that cuts in, it is a question of how much the private sector pays and how much we cover from the budget centrally.<sup>283</sup>

8.23 These, he told the Committee, included matters of 'retained risk', in connection with which, he told the Committee, depending on 'the insurance class', the 'first \$X million we cover from the budget and then we go to the insurer'. This resulted in an approach in which the ACT self-insured for smaller claims, outsourced 'big risk', and coordinated 'the management of that'.<sup>284</sup>

8.24 At this point the General Manager also responded. He told the Committee that this was 'a captive model that is typical of other state jurisdictions', and that the only jurisdictions which did not have such a program were Tasmania and the Northern Territory.<sup>285</sup>

---

<sup>280</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.58.

<sup>281</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.58.

<sup>282</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.58.

<sup>283</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.58.

<sup>284</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.58.

<sup>285</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.58.

8.25 These were, he told the Committee, all 'captive' programs:

It is called a captive insurance arrangement. We basically self-insure a large component of the risk. For example, on our property program, the overall self-insured retention is \$7½ million. So everything under \$7½ million, on an aggregate basis, the authority deals with out of its own funds. Once we exceed that aggregate, we head to the reinsurance market for the dollars. But within that is another excess whereby agencies have excesses. Depending on which agency it is, it might be \$5,000 or \$10,000 on liability claims.<sup>286</sup>

8.26 He told the Committee that:

The real value in that captive model ... is centralisation of those liabilities, consistency of process in terms of how we deal with claims in the courts and with the Government Solicitor's Office, a clear understanding of what our liabilities are, and that it is our core business ...<sup>287</sup>

8.27 He told the Committee that in 'the absence of an organisation like ACTIA', government agencies 'would need to have staff committed to trying to manage those types of claims'. Government agencies, when surveyed by ACTIA, 'say that they value about us is our claims management activity because they know they can rely on our staff, who are experienced', who worked 'in consultation with the Government Solicitor's Office', who 'also support us to get it right'.<sup>288</sup>

## TENDER PROCESSES

8.28 In hearings, the Committee asked questions as to how ACTIA managed tender processes for reinsurance, and whether they were done on a contract-by-contract basis, under a parent tender or a panel was employed.<sup>289</sup>

8.29 In responding, the General Manager told the Committee that:

Purchasing reinsurance arrangements is a process that has to involve an insurance broker. The way that our programs are structured, there are multiple participants on each program.<sup>290</sup>

---

<sup>286</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.59.

<sup>287</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.59.

<sup>288</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.59.

<sup>289</sup> *Proof Transcript of Evidence*, 10 November 2017, p.59.

<sup>290</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.59.

8.30 He told the Committee that:

Probably the easiest example is our property program. That is split across a range of different insurers and they take a percentage share of the risk. As I mentioned before, we have a self-insured retention of \$7½ million, and from that \$7½ million, up to a \$1 billion limit, there are a range of insurers involved. Their participation in that program ranges from a 10 per cent participation to the lead that has 25 per cent participation.<sup>291</sup>

8.31 With regard to how the program is marketed, he told the Committee:

every year we go to the market and ask them to price the risk. The way the process works is that a lead insurer takes the lead and the rest of the market follow that price. Every year, when we go to the London and Australian insurance markets, our broker basically brokers a deal. We basically get them all in the room and ask them to submit pricing on various components of the program, we broker that deal down and it is good for 12 months. It is a 12-month cycle.<sup>292</sup>

8.32 At this point the Committee asked how ACTIA procured the services of a broker.<sup>293</sup>

8.33 In responding, the General Manager told the Committee that:

We have a broker services contract. Our current insurance broker is Marsh. That broker service is currently out to tender. It was a five-year contract. It was a three-year contract with two one-year options. That is out to tender at the moment. Our requirement is for an international broker who can access markets in Australia and overseas to buy the levels of insurance that we are after. We assess their corporate capability, we assess the skills of the personnel that they put forward and their track record with like organisations.<sup>294</sup>

8.34 When asked if there were alternative arrangements in other jurisdictions, the Under-Treasurer told the Committee that:

I do not think you can access the reinsurance market directly. It is a peculiar market. They would not respond to a tender, very much like the funds management market. The process, as Mr Fletcher has gone through, does involve assessment of the merits, benefits and costs of each participant. It is a bit different from other services in that it is a consortium approach. We do not rely on one reinsurer for a whole line; we build a consortium. Part of that process is building relationships with consortium members

---

<sup>291</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, pp.59-60.

<sup>292</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.60.

<sup>293</sup> *Proof Transcript of Evidence*, 10 November 2017, p.60.

<sup>294</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.60.

over time, because we will fly them out here and get them to have a look at our biggest risks, to try to drive the price down. If they see we are good risk managers, they will be comfortable with offering a competitive price on the market.<sup>295</sup>

8.35 He went on to say that:

The broker does the bulk of that work, but we still assess the solution. We have an advisory board which meets about quarterly. That board makes a recommendation, essentially to me, as to what the program will be for the year. I look through the process that has been undertaken, as well as the price and the coverage. We sit in a room for three hours after [the General Manager] has done all of his work to go through and tick off that program.<sup>296</sup>

## INTERNAL AUDIT

8.36 In hearings, the Committee asked whether ACTIA had an internal audit process.<sup>297</sup>

8.37 In responding, the General Manager told the Committee that ACTIA was considered too small to have its own audit committee, and that it was under the scrutiny of the CMTEDD audit process.<sup>298</sup>

8.38 At this point the Committee asked to be provided with the internal audit program for CMTEDD, and the Under-Treasurer took this as a Question Taken on Notice.<sup>299</sup>

8.39 When asked whether ACTIA had been the subject of any internal audits in the reporting year, the General Manager said that:

They have—not in relation to the ACTIA fund but they have in relation to the default insurance fund and the nominal defendant fund. The internal auditors did an audit of those funds in relation to our reserving practice and meeting our obligations under the road transport act and the workers compensation arrangements. Obviously, as an insurer, we are required to respond to certain legislative outcomes, which was one part of the audit.<sup>300</sup>

---

<sup>295</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.60.

<sup>296</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.60.

<sup>297</sup> *Proof Transcript of Evidence*, 10 November 2017, p.60.

<sup>298</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, pp.60-61.

<sup>299</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.61.

<sup>300</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.61.

8.40 He went on to say that:

The other part of the audit was about looking at our database to see whether the data on the database reflected the file position in terms of the claims status. The data is used to run the actuarial process, so it is important that I feel comfortable that that data is accurate and as well maintained as it can be.<sup>301</sup>

## COMMITTEE COMMENT

8.41 The Committee acknowledges the important work of ACTIA.

8.42 Based on responses given by witnesses it is the Committee's view that the concept of ACTIA as a 'captive' insurance scheme<sup>302</sup> is sound and that, if conducted with appropriate care would reduce and manage risk to which the public purse is exposed in the course of the operations of government.<sup>303</sup>

8.43 However, the Committee notes that there are some anomalies in the operation of the scheme, in that premiums have been charges to ACT government agencies which have been excess to the levels actually required to provide insurance cover for those agencies.<sup>304</sup>

8.44 Receiving premiums from government agencies had resulted a capital position for the scheme at the upper end of statutory requirements and had, in fact, led to the return of monies to government of money that was excess to requirements as 'capital returns'.<sup>305</sup>

8.45 It was notable in the view of the Committee that witnesses commenting on the practice of making capital returns to government appeared to view this as a sign of the efficiency of ACTIA, and that the capital injections made to the Authority in its early years were no longer necessary.<sup>306</sup>

8.46 The Committee was also told that it was 'not a significant issue whether that capital sits in ACTIA as a subsidiary' or 'on the main balance sheet' for the ACT government.<sup>307</sup>

8.47 The Committee takes a different position from these views.

---

<sup>301</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.61.

<sup>302</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.59.

<sup>303</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.57.

<sup>304</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.55.

<sup>305</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.55

<sup>306</sup> Mr John Fletcher, *Proof Transcript of Evidence*, 10 November 2017, p.57.

<sup>307</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.55.

- 8.48 In the Committee's view, if the ACT is to have a captive insurance scheme it is important that the premiums levied on ACT government agencies are only those required to cover the agencies' insurance liability.
- 8.49 Capital returns to government, paid into consolidated revenue, are not a self-evident good. Among other things, such payments are inherently less transparent than the model presupposed by the existence of ACTIA, in two ways.
- 8.50 On one hand, this entails that the operation of a captive insurance scheme will reduce agencies' cost of insurance. On the other hand, it is better that funds used by government are justified on their merits in each year's budget rather than being funded by apparent 'windfalls' generated by higher than expected premium payments.
- 8.51 In light of this, the Committee makes the following recommendation.

## Recommendation 7

- 8.52 The Committee recommends that the ACT government ensure that premiums paid by ACT government agencies are such that they are sufficient to cover those agencies' insurance costs and allow ACTIA to maintain a prudent capital base. The practice of ACTIA making capital returns to government would in such circumstances be unnecessary and should be discontinued.**



## 9 — SHARED SERVICES

### INTRODUCTION

9.1 The CMTEDD Annual Report 2016-17 states that:

The directorate, through Shared Services, provided a range of ICT, human resources, financial, publishing, mailroom, and record services to the ACT Government including:

- accounts payable and receivable processing, asset register management, financial information systems, financial ledger management, financial statements, taxation management, budgeting,
- internal management reporting and salary packaging;
- payroll, executive engagement and contracts, HR support, recruitment, employee self-service and human resources reporting;
- service desk, records management, mail services, publishing services, front door for projects and strategic relationship managers;
- managed the ACT Government's infrastructure, data and communications network;
- developed and managed ICT operational policy (including security policies), project services and lifecycle management of the government's ICT asset fleet; and
- assisted directorates and agencies in relation to ICT security matters, including ICT investigations.<sup>308</sup>

### BENCHMARKING AND KPIS FOR SHARED SERVICES

9.2 In hearings, the Committee asked questions as to what benchmarking had been done and what Key Performance Indicators (KPIs) had been set in connection with Shared Services.<sup>309</sup>

9.3 In responding, the Executive Officer, Shared Services, told the Committee that

There is a range of benchmarking that we currently do. We do a benchmarking survey across shared services every two years, which is usually provided by an external provider. That will compare our shared services costing model against that of our peers

---

<sup>308</sup> CMTEDD, *Annual Report 2016-17*, Vol.1, p.57.

<sup>309</sup> *Proof Transcript of Evidence*, 10 November 2017, p.62.

and also peer groups in other states and jurisdictions. We also do an annual report looking at our ICT services, which is provided just by looking at the ICT. We have also subjected ourselves to benchmarking compared to the commonwealth agencies as part of the Department of Finance's benchmarking for the commonwealth.<sup>310</sup>

9.4 He told the Committee:

That gives us a guideline in regard to our performance against other agencies. There is not a specific KPI as such for all those services and the like. There are some base model KPIs around answering calls: 80 per cent of calls answered within 20 seconds is something for our service desks. They tend to adjust the KPIs depending on different agencies' capabilities and also the resourcing that they put in there. We have a range of KPIs that we report against in the annual report that have been set in discussions with the directorates and us. We report against those, but we do benchmark our services against other agencies.<sup>311</sup>

9.5 When asked how this compared with similar entities in other jurisdictions, the Executive Director told the Committee:

In our peer cohort, in our public office, we perform strongly. Compared to the commonwealth agencies, we probably rank in the top 10 to 15 per cent of performance ...<sup>312</sup>

9.6 This, he told the Committee, equated to the 'lower 10 to 15 per cent of cost', which was 'pretty much where you would like to be'. He told the Committee that Shared Services was 'working on that program to keep improving that, going forward, with the work of automation that we have going on at the moment and ... providing those services and improving that cost model that we have'.<sup>313</sup>

---

<sup>310</sup> Mr Graham Tanton, *Proof Transcript of Evidence*, 10 November 2017, p.62.

<sup>311</sup> Mr Graham Tanton, *Proof Transcript of Evidence*, 10 November 2017, p.62.

<sup>312</sup> Mr Graham Tanton, *Proof Transcript of Evidence*, 10 November 2017, p.63.

<sup>313</sup> Mr Graham Tanton, *Proof Transcript of Evidence*, 10 November 2017, p.63.

## MANAGEMENT OF SOFTWARE LICENCES

9.7 In hearings, the Committee asked questions as to software licences were managed within Shared Services.<sup>314</sup>

9.8 In responding, the Executive Director, Shared Services IT, told the Committee that:

We have a team. I have a team within SS ICT that looks after contracts and licensing. Many of the licences we have are whole-of-government. For example, there is Microsoft, the service agreement we have with those guys, and there would be a couple of others too. We are looking to try to move down the same path with Oracle, for example.<sup>315</sup>

9.9 He told the Committee that there were:

some instances, I would imagine, being the very large entity that we are, where there are software licences that are held and managed by the directorate that may not be known to us. I do not mean that in a pejorative sense; that is the nature of a sizeable organisation. But mainly we control and manage the software licences across government.<sup>316</sup>

9.10 When asked whether there were any 'known issues' with software licences, the Executive Director, Shared Services IT, told the Committee that:

We have a project underway at the moment called software asset management, which is a whole-of-government initiative. All the directorates are involved. We are doing exactly that: making sure we have a catalogue of all of our software licences, making sure they are being used correctly and that we are not overspending.<sup>317</sup>

9.11 In response to further questions as to how Shared Services kept track of licences and ensured that software used by the ACT public service was fully licenced and paid for, the Executive Director, Shared Services IT, told the Committee that:

the contract and licensing team that I mentioned catalogues and has a list of the contracts themselves as well as the number of licences associated with them. They work with directorates in that space too; there is a lot of give and take in that space.<sup>318</sup>

---

<sup>314</sup> *Proof Transcript of Evidence*, 10 November 2017, p.63.

<sup>315</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.63.

<sup>316</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.63.

<sup>317</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, pp.63-64.

<sup>318</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.64.

9.12 He told the Committee that:

The contract and licensing team are aware of how many licences are being used. Some of the technology space is able to garner that information from across the system simply by people's personal use; we are able to garner that information and capture it ourselves. We are then able to reconcile that against what we are using. That is how we get agreements with the vendors as well.<sup>319</sup>

9.13 He provided an example of this:

With Objective, for example, one of our records management systems, we know that there are 1,000 licences that are currently being utilised across government. If Objective themselves come into the various areas and say we need to buy more licences, we are able to prove that we do not need more licences.<sup>320</sup>

9.14 He told the Committee that:

The challenge for us is that when we are maintaining a whole-of-government agreement from the centre like we try to do, we are making sure we get the uptake from the directorates, because it is still a cost to government. We need to make sure that we are not going out and over-purchasing and then recovering on that. It is not the easiest process in the world. We have a system that tries to bring that together. The project I spoke of before, the software asset management system project we have running, is aimed at improving that even further.<sup>321</sup>

9.15 At this point the Committee asked questions as to whether the tracking of software licences currently used an automated or was done manually.<sup>322</sup>

9.16 In reply, the Executive Director, Shared Services IT, told the Committee that it was currently done by manual means, using 'a number of spreadsheets'.<sup>323</sup>

9.17 The Under-Treasurer also responded to these questions. He told the Committee that:

it is an ongoing challenge for any organisation of our size and complexity to optimise the number of licences we have. It will not be a one for one, because you will have periods where you surge up and down, and licence arrangements are not all the same.

---

<sup>319</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.64.

<sup>320</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.64-65.

<sup>321</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.65.

<sup>322</sup> *Proof Transcript of Evidence*, 10 November 2017, p.65.

<sup>323</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.65.

It is not like when you go and buy software and get a single use; the vendors now are getting very sophisticated in how they license software.<sup>324</sup>

9.18 An example of this, he told the Committee, was the revenue management system, where:

our licence fees are based on the amount of revenue we put through the system, not only on the number of users. This is an Oracle-based product; they are getting very sophisticated about how they charge. This is partly as a move to an online space. Rather than a single instance of having it on your desktop or your laptop, it will be how much you access the server, how many people access it and how big your organisation is.<sup>325</sup>

9.19 The Under-Treasurer went on to say that:

With those sorts of questions, particularly for specialised software, where it is project managed rather than us buying Microsoft off the shelf, it is very much part of the tender process and the assessment process. It is just another cost in acquiring the software. We make judgements. A small part goes into the tender assessment process.<sup>326</sup>

9.20 At this point in proceedings, the Committee asked whether Shared Services had had any disputes with software vendors regarding licencing, and whether Shared Services had been issued with further invoices, fees or fines in connection with such matters.<sup>327</sup>

9.21 In responding, the Executive Director, Shared Services IT, told the Committee that this had not occurred to the best of his knowledge.<sup>328</sup>

9.22 He told the Committee that:

We have a process—Microsoft is a good example—where every year we do something called a true-up, which is exactly as it sounds, which is exactly against that reconciliation, using the Under Treasurer’s language. Microsoft, for example, use our headcount in our annual report as a licence base. That is just the way they have chosen to do it and, as the Under Treasurer pointed out, different systems and different companies have different methods of applying those licences. No, there has certainly

---

<sup>324</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.65.

<sup>325</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.65.

<sup>326</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.65.

<sup>327</sup> *Proof Transcript of Evidence*, 10 November 2017, p.65.

<sup>328</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.66.

been nothing formal sent to me in the last 2½ years that has made an accusation or a complaint regarding the fees.<sup>329</sup>

9.23 The Under-Treasurer also responded to the question. He told the Committee that:

I think the only thing I can recall—and it is not quite in that space—is where we have actually cancelled licences. We have gone to companies and said, “Well, we actually don’t need as many as we have historically had.” Companies never like hearing that, of course, but I would not call that a dispute. In the context of the question, it is just a licence management process.<sup>330</sup>

9.24 When asked about demonstrating proof of licence, the Executive Director, Shared Services IT, told the Committee that:

That is part of our process. Under this particular project that is exactly what we are uncovering—making sure that we have that proof of entitlement. That is a very important part because that is where you could get caught out if you were to be audited, for example, by a software company. They are allowed to do that; they are private organisations. They will come in and if your numbers are different to their numbers then that is where the issue could be. The proof of entitlement is very important. We maintain that proof of entitlement with the directorates.<sup>331</sup>

9.25 The Executive Director, in response to further questions, told the Committee that Shared Services IT had not, in the 2 ½ years of his tenure in the position, had software licences audited by vendors, and that in the case of vendors with whom they had ‘the most dealings’, Oracle and Microsoft, ‘the relationship is solid enough that it is very open and transparent’.<sup>332</sup>

## ANSWERS ON NOTICE

9.26 Question Taken on Notice No. 21 related to the management of software licences. The Committee received an answer from the Treasurer on 24 November 2017.<sup>333</sup>

---

<sup>329</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.66.

<sup>330</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.66.

<sup>331</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.66.

<sup>332</sup> Mr David Nicol, *Proof Transcript of Evidence*, 10 November 2017, p.66.

<sup>333</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at:

<https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

## COMMITTEE COMMENT

- 9.27 The Committee notes the important work of Shared Services.
- 9.28 The Committee was concerned at the evidence provided to it regarding the management of software licences by Shared Services.
- 9.29 At present, the Committee was told, software licences were tracked and managed by manual methods, using 'a number of spreadsheets'.<sup>334</sup> A project, the 'software asset management system' had been initiated to address this, but the Committee was not advised as to when this project might reach operational capacity.<sup>335</sup>
- 9.30 In the Committee's view, present arrangements for managing software licences are surprisingly *ad hoc*, and there appears to be significant risk of reputational damage if it transpired that government had been using licences for which it had no agreement with vendors, and for which it had made no payment.
- 9.31 In considering this, the Committee is mindful that software is a principal tool for administrative work both in- and out-side of the public sector. In its view present arrangements as described by witnesses appear not to be consonant with the centrality of software to the contemporary workplace.
- 9.32 In light of this, the Committee makes the following recommendation.

## Recommendation 8

- 9.33 The Committee recommends that the ACT government progress work on the Shared Services software asset management system as a matter of urgency. The Committee recommends that the ACT government advise the Legislative Assembly of progress on the project by the end of the 2017-18 financial year.**

---

<sup>334</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.65.

<sup>335</sup> Mr Gary Davis, *Proof Transcript of Evidence*, 10 November 2017, p.65.





## 10 — PUBLIC SECTOR MANAGEMENT

### INTRODUCTION

10.1 The CMTEDD Annual Report 2017 states, in relation to Public Sector Management, that:

The directorate continued to provide strategic advice and support to the Head of Service as the central agency policy and advisory role for ACTPS employment. Areas of responsibility include activity based work, service-wide employment, industrial relations, human resources, organisational and learning and development, investigations, accountability and governance. The directorate also provided support to the statutory office of the Public Sector Standards Commissioner, the ACT Remuneration Tribunal, the ACTPS Joint Council, the People and Performance Council and the HR Directors' Group.<sup>336</sup>

### EMPLOYEES WHO 'FOLLOW DIFFERENT RELIGIONS'

10.2 The ACT Public Service *State of the Service Report 2017* states that:

A Culturally and Linguistically Diverse workforce is one that has employees who:

- are from different countries;
- have different cultural backgrounds;
- can speak languages other than English; and/or
- follow different religions.<sup>337</sup>

10.3 In hearings, the Committee asked questions regarding the last criterion listed, 'follow different religions'.<sup>338</sup>

---

<sup>336</sup> CMTEDD, *Annual Report 2016-17*, Vol. 1, p.33.

<sup>337</sup> ACT Public Service *State of the Service Report 2017*, p.77, viewed 29 November 2017, available at: [http://www.cmd.act.gov.au/\\_data/assets/pdf\\_file/0019/1113049/State-of-the-Service-2016-17.pdf](http://www.cmd.act.gov.au/_data/assets/pdf_file/0019/1113049/State-of-the-Service-2016-17.pdf)

<sup>338</sup> *Proof Transcript of Evidence*, 10 November 2017, p.72.

10.4 When asked as to the meaning of this phrase, and ‘different from what’,<sup>339</sup> the Deputy Director-General told the Committee:

Each other. If there are particular requirements for different religions, then we, as a supportive workplace, provide that. A prayer room might be one example. We do not actually monitor or track people’s religions.<sup>340</sup>

10.5 When asked how need would be determined for a prayer room, the Deputy Director-General responded by saying that it was ‘usually on demand’, and that demand was ascertained because people ‘come to us and ask’.<sup>341</sup>

10.6 When asked whether there was a KPI (Key Performance Indicator) for cultural and linguistic diversity, the Deputy Director-General responded by saying that:

We track people who nominate themselves as culturally and linguistically diverse. We do have statistics on it, but we ask them about that. We do not ask them about their religion. If they identify as culturally and linguistically diverse, it could mean any number of things.<sup>342</sup>

10.7 At this point the Head of Service also responded to questions. She told the Committee that:

There are a wide range of factors that go to making up our diverse workforce. Just like our community, it is important that our workforce reflects the diversity in our community. We would be concerned if we thought that employees felt that they were not treated fairly because of the various aspects that go to make up that diversity. Recognising all of that range of factors is important. It does not mean that we have to set targets for all of them and track them all, but we certainly need to be aware of them and aware of whether there are any issues, whether employees are concerned about how they are treated, and whether generally in the workforce there is an inclusive approach.<sup>343</sup>

10.8 She went on to say that:

We want to make sure that we attract the very best people to the ACT public service and that no group are disinclined to put themselves forward for positions in our service, so it is very important that we are aware of all of these aspects. But the extent

---

<sup>339</sup> *Proof Transcript of Evidence*, 10 November 2017, p.73.

<sup>340</sup> Ms Bronwen Overton-Clarke, *Proof Transcript of Evidence*, 10 November 2017, p.73.

<sup>341</sup> Ms Bronwen Overton-Clarke, *Proof Transcript of Evidence*, 10 November 2017, p.73.

<sup>342</sup> Ms Bronwen Overton-Clarke, *Proof Transcript of Evidence*, 10 November 2017, p.73.

<sup>343</sup> Ms Kathy Leigh, *Proof Transcript of Evidence*, 10 November 2017, p.73.

to which we need to set targets or track data will vary according to the indicators we get as to whether there is a particular area of concern.<sup>344</sup>

10.9 When asked as to criteria for being included in the headcount for cultural and linguistic diversity, the Deputy Director-General told the Committee that:

If they consider themselves to include all or one of those components—from a different country, having a different cultural background, speaking a language other than English and/or “follow a different religion”.<sup>345</sup>

10.10 Responding further to earlier questions about the definition and derivation of ‘follow a different religion’, the Deputy Director-General told the Committee that:

Probably it would have been taken, I would say, from an ABS definition. It probably means different from our usual, original religions of Anglican or Catholic Christian. It is probably in relation to other than a Christian religion, I daresay.<sup>346</sup>

## TRAINEES AND APPRENTICES

10.11 In hearings, the Committee asked questions regarding trainees and apprentices, noting that there had been a substantial decrease in numbers which had recently been reported in the *Canberra Times*, and asking whether there was a whole-of-government response.<sup>347</sup>

10.12 In response, the Deputy Director-General told the Committee that:

One of the areas that we have used for trainees and apprentices is in fact in our inclusion area. So we are taking on more inclusion trainees and apprentices than we used to.<sup>348</sup>

10.13 She also told the Committee that she could not ‘on the spot’ explain the decrease in trainees and apprenticeships over the previous two years, and took this as a Question Taken on Notice.<sup>349</sup>

---

<sup>344</sup> Ms Kathy Leigh, *Proof Transcript of Evidence*, 10 November 2017, p.73.

<sup>345</sup> Ms Bronwen Overton-Clarke, *Proof Transcript of Evidence*, 10 November 2017, p.73.

<sup>346</sup> Ms Bronwen Overton-Clarke, *Proof Transcript of Evidence*, 10 November 2017, p.73.

<sup>347</sup> *Proof Transcript of Evidence*, 10 November 2017, p.75. See Andrew Brown, ‘Trainee numbers decrease’, *Canberra Times*, 5 November 2017, p.10.

<sup>348</sup> Ms Bronwen Overton-Clarke, *Proof Transcript of Evidence*, 10 November 2017, p.75.

<sup>349</sup> Ms Bronwen Overton-Clarke, *Proof Transcript of Evidence*, 10 November 2017, p.75.

## ANSWERS ON NOTICE

10.14 Question Taken on Notice No.1 related to trainees and apprentices. The Committee received an answer from the Chief Minister on 10 November 2017.<sup>350</sup>

## ATTRACTION AND RETENTION INCENTIVE PAYMENTS

10.15 In hearings, the Committee asked questions regarding attraction and retention incentive payments ('ARIns').<sup>351</sup>

10.16 In asking the question the Committee noted that these had been 'a jump' in such payments, however the Deputy Director-General told the Committee that this was the product of 'misreport in last year's report', for which there had a corrigendum had been issued.<sup>352</sup>

10.17 At this point the Director, Public Sector Workplace Relations, also responded to the question to explain the purpose of the payments. He told the Committee that:

The ARIns, attraction and retention incentives, are used in a wide variety of circumstances across the service. When we do agreements periodically we cannot always forecast the wages and conditions that we will need to put in place for particular wage groups on every occasion. From time to time over the life of an agreement market rates will change or market conditions will change such that we cannot attract and retain key staff.<sup>353</sup>

10.18 He told the Committee that:

ARIns are built as the bridge between agreements to allow us to keep and attract key staff to our workforce. They are often used in project-based environments where we will need, for example, a top-class engineer to complete a project. They may be used in the medical areas. While our medical rates are attractive, to get a specialist in a particular field to the territory we will need to pay them a little bit more or package up an arrangement to attract or keep someone here.<sup>354</sup>

---

<sup>350</sup> See Inquiry into Annual and Financial Reports, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>351</sup> *Proof Transcript of Evidence*, 10 November 2017, p.75.

<sup>352</sup> Ms Bronwen Overton-Clarke, *Proof Transcript of Evidence*, 10 November 2017, p.75.

<sup>353</sup> Mr Russell Noud, *Proof Transcript of Evidence*, 10 November 2017, pp.75-76.

<sup>354</sup> Mr Russell Noud, *Proof Transcript of Evidence*, 10 November 2017, p.76.

10.19 He also told the Committee, regarding management of such arrangements, that:

Periodically, when the agreements are done, we will look at the ARIn stock that we have at that time to assess whether the ARIns are temporary and should be wrapped into agreements, to become a systemic wage, or whether they continue to be contingent such that we might remove them or change them. So we will assess that in each round.<sup>355</sup>

10.20 When asked whether the agreements were put in place for an entire workforce in a particular pay scale or on a person by person basis, the Director, Public Sector Workplace Relations, told the Committee that:

They could be either. There is a concept called a group ARIn which can apply to a cohort of workers where, for example, that cohort is in demand. That has been used, for example, with care and protection workers, historically. Equally, it could be to an individual where that individual has a skill set which we need to attract or retain.<sup>356</sup>

10.21 At this point, the Committee asked whether such agreements were similar to the Australian Workplace Agreements used under a previous federal government.<sup>357</sup>

10.22 In responding, the Deputy Director-General confirmed that the ARIn agreements were negotiated between individuals and employers, however the Director, Public Sector Workplace Relations, stated that they were 'an entirely different product than an AWA'.<sup>358</sup>

10.23 The Director told the Committee that:

The key difference ... is that the AWA replaced in entirety the certified agreement. The AWA was an instrument that completely replaced the employment relationship and took it out of the enterprise agreement. This is a statutory instrument done within the confines of the enterprise agreement and it cannot undermine the base terms and conditions in it. They are very different. The AWA was a substitute; this is a supplement.<sup>359</sup>

10.24 The Committee asked whether under the process for ARIns an individual could negotiate beyond remuneration provided for by the relevant Enterprise Bargaining Agreement (EBA).<sup>360</sup>

---

<sup>355</sup> Mr Russell Noud, *Proof Transcript of Evidence*, 10 November 2017, p.76.

<sup>356</sup> Mr Russell Noud, *Proof Transcript of Evidence*, 10 November 2017, p.76.

<sup>357</sup> *Proof Transcript of Evidence*, 10 November 2017, p.76.

<sup>358</sup> Ms Bronwen Overton-Clarke, Mr Russell Noud, *Proof Transcript of Evidence*, 10 November 2017, p.76.

<sup>359</sup> Mr Russell Noud, *Proof Transcript of Evidence*, 10 November 2017, p.76.

<sup>360</sup> *Proof Transcript of Evidence*, 10 November 2017, p.77.

10.25 In responding, the Deputy Director-General told the Committee that:

We have very strict monitoring processes in place. They are reviewed every year and they have a maximum life. There is a very whole-of-government, equitable, transparent approach to them across the service. We make sure that there is a strong monitoring approach to it and a consistency to it.<sup>361</sup>

10.26 The Committee asked whether it would be possible for an employee in the ASO (Administrative Service Officer) classifications to achieve a pay level equivalent to those of the executive classifications.<sup>362</sup>

10.27 In responding, the Director, Public Sector Workplace Relations, told the Committee that:

In the SOGA classifications it is not hard to go into executive money, simply because the difference is only a few thousand dollars. The answer to your question is yes, but they do not become executives because of that.<sup>363</sup>

10.28 The Committee asked whether it was possible that officers were receiving \$20,000 to \$40,000 additional pay per annum under these arrangements, to which the Director, Public Sector Workplace Relations, responded by saying that the agreements 'vary wildly', and taking the question as to maximum payments under these agreements as a Question Taken on Notice.<sup>364</sup>

## ANSWERS ON NOTICE

10.29 Questions Taken on Notice Nos.2 and 4A related to attraction and retention incentive payments (ARIns). The Committee received answers from the Chief Minister on 24 and 29 November 2017 respectively.<sup>365</sup>

10.30 Question on Notice No.11 related to attraction and retention incentive payments (ARIns). The Committee received an answer from the Chief Minister on 4 December 2017.<sup>366</sup>

---

<sup>361</sup> Ms Bronwen Overton-Clarke, *Proof Transcript of Evidence*, 10 November 2017, p.77.

<sup>362</sup> *Proof Transcript of Evidence*, 10 November 2017, p.77.

<sup>363</sup> Mr Russell Noud, *Proof Transcript of Evidence*, 10 November 2017, p.77.

<sup>364</sup> Mr Russell Noud, *Proof Transcript of Evidence*, 10 November 2017, p.77.

<sup>365</sup> See Inquiry into Annual and Financial Reports, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>366</sup> See Inquiry into Annual and Financial Reports, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

## COMMITTEE COMMENT

10.31 In relation to public-sector employees who follow 'different religions', the Committee considers that this is an example of unfounded generalisations in the context of diversity.

10.32 In light of this, the Committee makes the following recommendation.

### Recommendation 9

**10.33 The Committee recommends that the ACT government dispense with the term 'different religions' in characterising its workforce, and instead use terms which accept and presuppose workforce diversity.**

10.34 In relation to apprenticeships and traineeships in the ACT, the Committee views with concern reports that numbers had sharply decreased.<sup>367</sup> The Committee takes the view that apprenticeships and traineeships are an important component of education and training, and that they need to be strongly supported by government.

10.35 In light of this, the Committee makes the following recommendation.

### Recommendation 10

**10.36 The Committee recommends that the ACT government provide sufficient support to apprenticeships and traineeships in the ACT to prevent further decreases, and to stabilise and increase participation in apprenticeships and traineeships in the future. The Committee recommends that the ACT government report on this to the Legislative Assembly the end of the 2017-18 financial year.**

10.37 In relation to the use of Attraction and Retention Incentive Payments (ARIns), the Committee acknowledges the potential value of such payments in retaining employee skills which are both scarce and vital to the Territory. However, in hearings witnesses did not in every instance provide a sense that ARIns payments, as a whole, were a stable and known quantity within the ACT public sector. In addition, it was not made clear to the Committee as to whether there was a consistent and transparent methodology used to arrive at amounts for ARIns payments, either in each instance or as a class of payments.

10.38 In light of this, the Committee makes the following recommendation.

---

<sup>367</sup> See Andrew Brown, 'Trainee numbers decrease', Canberra Times, 5 November 2017, p.10.

## Recommendation 11

**10.39 The Committee recommends that the ACT government report on the use of Attraction and Retention Incentives (ARIs), and the principles used as a basis to negotiate ARIs, to the Legislative Assembly by the end of the 2017-18.**



# 11 — ICON WATER

## INTRODUCTION

11.1 The Icon Water *Annual Report 2016-17* states that:

Icon Water Limited (Icon Water) is an unlisted public company owned by the ACT Government. Icon Water has two Voting Shareholders: the ACT Chief Minister, Andrew Barr MLA and the Minister for the Environment and Heritage, Mick Gentleman MLA.<sup>368</sup>

The report states that Icon Water ‘supplies water and sewerage services to the ACT and bulk water to Queanbeyan’, and that it owns and operates ‘the ACT’s network of dams, water treatment plants, sewage treatment plants, reservoirs, water and sewage pumping stations, mains and other related infrastructure’.<sup>369</sup>

11.2 Icon Water appeared before the Committee in hearings of 10 November 2017.

## ICON WATER INFRASTRUCTURE AND CAPITAL WORKS PROGRAM

11.3 In hearings, the Committee asked representatives questions regarding Icon Water’s capital works program.<sup>370</sup>

11.4 In response to questions as to where Icon Water reported on its capital works program, the Chief Financial Officer told the Committee that details were reported in Icon Water’s *Statement of Corporate Intent*, ‘as well as ... ACT government budget papers’.<sup>371</sup>

---

<sup>368</sup> Icon Water, *Annual Report 2016-17*, p.7, viewed 29 November 2017, available at:

<https://www.iconwater.com.au/~media/Files/Icon%20Water/Annual%20Reports%20and%20SCI/2017/Icon%20Water%20Annual%20Report%202016-17%20Web%20small.ashx?dl=true>

<sup>369</sup> Icon Water, *Annual Report 2016-17*, p.7.

<sup>370</sup> *Proof Transcript of Evidence*, 10 November 2017, p.80.

<sup>371</sup> Mr Sam Sachse, *Proof Transcript of Evidence*, 10 November 2017, p.80. For the Icon Water *Statement of Corporate Intent*, see

<https://www.iconwater.com.au/~media/Files/Icon%20Water/Annual%20Reports%20and%20SCI/2017/Icon%20Water%20Statement%20of%20Corporate%20Intent%202017-18-%20web.ashx?la=en&hash=F64AD441ADD924AB4F310038AB73C90C2853BEB3>

11.5 In response to questions about 'headline figures' in Icon Water's capital works program, and details of its maintenance program, the General Manager, Project Delivery, told the Committee that:

The capital program for this year is predominantly focused on renewal and most of those projects are focused in our Lower Molonglo Water Quality Control Centre. Approximately 54 per cent of our program this year is focused on renewal. That is by far the largest portion of our programs.<sup>372</sup>

11.6 When asked about the distinction between capital works and maintenance, the General Manager, Project Delivery, told the Committee that:

The maintenance program is a separate program of work that we typically undertake and of course both of those occur concurrently. When I refer to capex programs, I am talking about renewing the infrastructure as opposed to maintaining it.<sup>373</sup>

11.7 At this point the Committee asked questions regarding works at the Lower Molonglo Water Quality Control Centre, which according to Icon Water is the 'main treatment facility for Canberra', which 'treats up to 80 to 90 million litres of Canberra's sewage each day'.<sup>374</sup>

11.8 In responding, the General Manager, Project Delivery, told the Committee that:

There are a number of large initiatives predominantly focused on improving the capacity of the plant and also on renewing infrastructure that is reaching the end of its service life. You would have to appreciate that most of the plant was built circa 1970s. There are large portions of work, predominantly at the head of the works, designed to regulate the flow into the plant and improve the efficiency of how we use our furnaces. There is also some work in the planning in terms of upgrading our filters. We have secondary clarifiers and tertiary filters that are also part of that programmed work.<sup>375</sup>

11.9 He also told the Committee that there had 'also been numerous projects in and around the plant to improve the operating efficiency of the plant or to improve safe access and operation for our staff', and that while there were 'a suite of programs', 'by far the largest, the lion's share of the program, is focused at lower Molonglo'.<sup>376</sup>

---

<sup>372</sup> Mr Ray Hezkial, *Proof Transcript of Evidence*, 10 November 2017, p.80.

<sup>373</sup> Mr Ray Hezkial, *Proof Transcript of Evidence*, 10 November 2017, p.81.

<sup>374</sup> ACT Government, 'Lower Molonglo Water Quality Control Centre', viewed 5 December 2017, available at: [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/791/~lower-molonglo-water-quality-control-centre](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/791/~lower-molonglo-water-quality-control-centre)

<sup>375</sup> ACT Government, 'Lower Molonglo Water Quality Control Centre', viewed 5 December 2017, available at: [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/791/~lower-molonglo-water-quality-control-centre](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/791/~lower-molonglo-water-quality-control-centre)

<sup>376</sup> ACT Government, 'Lower Molonglo Water Quality Control Centre', viewed 5 December 2017, available at: [https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/791/~lower-molonglo-water-quality-control-centre](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/791/~lower-molonglo-water-quality-control-centre)

11.10 The Committee noted that the Lower Molonglo Water Quality Control Centre had been built in the 1970s, and asked questions as to its expected lifespan and whether it was fit for purpose.<sup>377</sup>

11.11 In response, the General Manager, Project Delivery, told the Committee that:

It is absolutely fit for purpose. It is a very high performing plant. The quality of treated effluent that it produces is very high. We meet all our licence requirements. On the compliance end of the plant we are performing quite well. What we are really looking forward to now is what we need to do to upgrade the plant to make sure that we have sufficient capacity moving into the future. There are no immediate concerns around the capacity of the plant at all.<sup>378</sup>

11.12 He told the Committee that:

Most of the works that we are currently conducting, in addition to being renewal projects, are also factoring in what we have to do to improve the capacity of the plant to accommodate population projections in the ACT. There are not any concerns with the performance of the plant at the moment but of course, given its age, it stands to reason that many of the elements need upgrading. That is what we are doing.<sup>379</sup>

11.13 When asked whether this was a 'process of constant renewal', the General Manager, Project Delivery, told the Committee:

It is. It is quite a complex plant, but, again, given the age difference, we do not simply focus on replacing like with like. If there are opportunities with improvements in technology or better processes that we can adopt, we are incrementally building those into the plant as well. In effect, what we are doing is extending the longevity of the plant when we are undertaking those upgrades.<sup>380</sup>

11.14 When asked whether it was anticipated that the plant would need to be replaced at some point in the future, the General Manager, Project Delivery, told the Committee:

Yes. Of course if the population ever got large enough you would probably have to look at options, but the one thing that I would like to point out is that the plant was very well conceived when it was initially designed, in the sense that, in addition to the capacity that we are creating with the existing infrastructure in the plant, there is also available a footprint within the plant to augment the existing filters. We have got space for additional filters. That is a long way off, from our perspective, in terms of our

---

<sup>377</sup> *Proof Transcript of Evidence*, 10 November 2017, p.81.

<sup>378</sup> Mr Ray Hezkial, *Proof Transcript of Evidence*, 10 November 2017, p.81.

<sup>379</sup> Mr Ray Hezkial, *Proof Transcript of Evidence*, 10 November 2017, p.81.

<sup>380</sup> Mr Ray Hezkial, *Proof Transcript of Evidence*, 10 November 2017, p.81.

forecast projections, but we are talking decades. Of course you would have to reassess that position.<sup>381</sup>

## WATER STORAGE AS PERCENTAGE OF DAMS CAPACITY

11.15 In hearings, the Committee asked questions regarding current holdings of water for the ACT.<sup>382</sup>

11.16 In responding to questions, the Managing Director told the Committee that, at time of hearings, holdings amounted to 78 per cent of total water storage capacity.<sup>383</sup>

11.17 The Committee asked questions as to the number of days of water use to which this equated.<sup>384</sup>

11.18 In responding, the Chief Financial Officer told the Committee that:

Our customers consume 42 gigalitres in Canberra and we also transport a bulk water supply to Queanbeyan of about four gigalitres per year, so a total of 46 gigalitres per annum is consumed. So there are a number of years of supply without any further rainfall.<sup>385</sup>

11.19 However, he told the Committee, Icon Water expected 'further rainfall that would further complement the existing supply we have'.<sup>386</sup>

## SHARED SERVICES AGREEMENT WITH ACTEWAGL

11.20 In hearings, the Committee asked questions regarding a shared services agreement in which ActewAGL provides services to Icon Water. In particular, the Committee asked whether there had been any review of the agreement since it was discussed in hearings for the Select Committee on Estimates 2017.<sup>387</sup>

---

<sup>381</sup> Mr Ray Hezkial, *Proof Transcript of Evidence*, 10 November 2017, p.82.

<sup>382</sup> *Proof Transcript of Evidence*, 10 November 2017, p.82.

<sup>383</sup> Mr John Knox, *Proof Transcript of Evidence*, 10 November 2017, p.83.

<sup>384</sup> *Proof Transcript of Evidence*, 10 November 2017, p.83.

<sup>385</sup> Mr Sam Sachse, *Proof Transcript of Evidence*, 10 November 2017, p.83.

<sup>386</sup> Mr Sam Sachse, *Proof Transcript of Evidence*, 10 November 2017, p.83.

<sup>387</sup> *Proof Transcript of Evidence*, 10 November 2017, p.83, and see Select Committee on Estimates 2017-18, Inquiry into Appropriation Bill 2017-2018 and Appropriation (Office of the Legislative Assembly) Bill 2017-2018, p.122 *ff.*, viewed 5 December 2017, available at: [https://www.parliament.act.gov.au/data/assets/pdf\\_file/0003/1090164/Estimates-2017-18-FINAL-REPORT.pdf](https://www.parliament.act.gov.au/data/assets/pdf_file/0003/1090164/Estimates-2017-18-FINAL-REPORT.pdf)

11.21 In responding, the General Manager told the Committee that:

We have put into our internal audit program an audit to be conducted around the governance arrangements on that. We have not had any in particular, other than the ongoing monitoring and governance arrangements that we have at the moment. But we are, as always, looking for further efficiencies in that area. I think it would be fair to say that if we can identify efficiencies that make sense in those areas we will be pursuing them, for sure.<sup>388</sup>

11.22 When asked whether any efficiencies achieved by ActewAGL, with respect to these services, were passed on to Icon Water, the General Manager told the Committee that they were, '[b]roadly speaking'.<sup>389</sup>

11.23 When asked to clarify this, he told the Committee that there was 'a methodology under which [ActewAGL] allocate some of their costs', and what was passed on to Icon Water was 'specific to whether those savings are unique to just the energy business or more broadly across the entire shared services platform'.<sup>390</sup>

11.24 At another point in hearings, the Committee asked further questions regarding the shared services agreement between Icon Water and ActewAGL. In particular, it asked the 'pass through' or dollar figure of the cost of the agreement per customer in the ACT.<sup>391</sup>

11.25 In responding, the General Manager told the Committee that the 'treatment of the expenditure incurred is subject to being in a subset of the pricing submission that goes to the ICRC'.<sup>392</sup>

11.26 The Committee asked whether the shared services agreement was provided to the ICRC along with other information on Icon Water's costs, so that the ICRC could make a determination on retail charges for water in the ACT.<sup>393</sup>

---

<sup>388</sup> Mr John Knox, *Proof Transcript of Evidence*, 10 November 2017, p.83.

<sup>389</sup> Mr John Knox, *Proof Transcript of Evidence*, 10 November 2017, p.83.

<sup>390</sup> Mr John Knox, *Proof Transcript of Evidence*, 10 November 2017, p.83.

<sup>391</sup> *Proof Transcript of Evidence*, 10 November 2017, p.88.

<sup>392</sup> Mr John Knox, *Proof Transcript of Evidence*, 10 November 2017, p.88.

<sup>393</sup> *Proof Transcript of Evidence*, 10 November 2017, p.88.

11.27 In responding, the General Manager told the Committee that:

We have provided the agreements to the ICRC on this. As well, the industry panel reviewed our operating expenditure in the previous period. Prior to the current commissioner, Mr Dimasi, we also provided the agreements.<sup>394</sup>

11.28 At this point, the Committee asked whether it was reasonable to calculate this on the basis of the \$27 Million annual cost of the agreement, apportioned to each of the approximately 170,000 Icon Water customers in the ACT.<sup>395</sup>

11.29 In responding, the General Manager told the Committee that there was 'a building block approach that is used to determine what the pricing structure is to the customers'.<sup>396</sup> This information was provided to the commissioner of the ICRC and 'then he determines the prudent and efficient nature of expenditure and sets the prices accordingly'.<sup>397</sup>

## ANSWERS ON NOTICE

11.30 Question on Notice No.21 related to rates objections. The Committee received an answer from the Treasurer on 4 December 2017.<sup>398</sup>

## COMMITTEE COMMENT

11.31 The *Icon Water Annual Report 2016-17* states that:

Icon Water Limited (Icon Water) is an unlisted public company owned by the ACT Government. Icon Water has two Voting Shareholders: the ACT Chief Minister, Andrew Barr MLA and the Minister for the Environment and Heritage, Mick Gentleman MLA.<sup>399</sup>

11.32 In the Committee's view, this arrangement has resulted in Icon Water occupying a grey area between being a public and a private organisation. Where entities do not solely belong to one

---

<sup>394</sup> Mr John Knox, *Proof Transcript of Evidence*, 10 November 2017, p.88.

<sup>395</sup> *Proof Transcript of Evidence*, 10 November 2017, p.88.

<sup>396</sup> Mr John Knox, *Proof Transcript of Evidence*, 10 November 2017, p.88.

<sup>397</sup> Mr John Knox, *Proof Transcript of Evidence*, 10 November 2017, p.88.

<sup>398</sup> Inquiry into Annual and Financial Reports 2016-17, Questions on Notice, available at: <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-public-accounts/inquiry-into-annual-and-financial-report-2016-2017#tab-1123475-3>

<sup>399</sup> Icon Water, *Annual Report 2016-17*, p.7, viewed 15 December 2017, available at: [https://www.iconwater.com.au/~/\\_media/Files/Icon%20Water/Annual%20Reports%20and%20SCI/2017/Icon%20Water%20Annual%20Report%202016-17%20Web%20small.ashx?dl=true](https://www.iconwater.com.au/~/_media/Files/Icon%20Water/Annual%20Reports%20and%20SCI/2017/Icon%20Water%20Annual%20Report%202016-17%20Web%20small.ashx?dl=true)

or the other of these categories, it can be more difficult to achieve scrutiny and accountability over their operations.

11.33 In the Committee's view, the shared services agreement between Icon Water and ActewAGL is a case in point. These were considered in detail in the Estimates Committee's report on its inquiry into the Appropriation Bill 2017- 2018 and Appropriation (Office of the Legislative Assembly) Bill 2017 – 2018, where questions were raised about the transparency of the agreement and whether it represented value for money for ACT residents.<sup>400</sup>

11.34 In the context of this inquiry, questions put to witnesses from Icon Water, regarding the passing on of costs or savings from ActewAGL to Icon Water, were not responded to with clear answers.<sup>401</sup> This makes it difficult to ascertain whether the shared services agreement is favourable to the people of the ACT.

11.35 It is the view of the Committee that the business arrangements of Icon Water should be open to scrutiny by the people of the ACT—including scrutiny by the Assembly—because:

- Icon Water is owned by the Chief Minister and another relevant Minister—in their ministerial capacities—and is therefore a public asset, owned by the people of the ACT; and
- Icon Water is the monopoly provider of products and services—water and sewerage—used by every person resident in the ACT.

11.36 In light of this, the Committee makes the following recommendation.

## Recommendation 12

**11.37 The Committee recommends that the shared services agreement between Icon Water and ActewAGL be open to public scrutiny, and that the ACT government therefore table the current agreement in the Assembly by the end of the 2017-18 financial year.**

---

<sup>400</sup> Select Committee on Estimates 2017-2018, Inquiry into the Appropriation Bill 2017- 2018 and Appropriation (Office of the Legislative Assembly) Bill 2017 – 2018, pp.121-136, viewed 15 December 2017, available at: [https://www.parliament.act.gov.au/\\_data/assets/pdf\\_file/0003/1090164/Estimates-2017-18-FINAL-REPORT.pdf](https://www.parliament.act.gov.au/_data/assets/pdf_file/0003/1090164/Estimates-2017-18-FINAL-REPORT.pdf)

<sup>401</sup> Mr John Knox, *Proof Transcript of Evidence*, 10 November 2017, pp.83 & 88.





## 12 — ACT OMBUDSMAN

### INTRODUCTION

12.1 The ACT Ombudsman Annual Report 2016-17 states that:

The ACT Ombudsman seeks to influence systemic improvements in public administration in the ACT and to provide assurance that ACT Government agencies will act with integrity and treat people fairly.

The Commonwealth Ombudsman is also the ACT Ombudsman. The ACT Ombudsman's role is delivered by the Office of the Commonwealth Ombudsman under a Service Agreement between the ACT Government and the Commonwealth Ombudsman. A Senior Assistant Ombudsman and a dedicated team has day-to-day responsibility for managing the relationship with ACT agencies and the ACT community. Our Operations Branch handles complaints about ACT Government agencies and ACT Policing and our National Assurance and Audit Team undertakes inspections of policing.<sup>402</sup>

### OATH OF OFFICE

12.2 In hearings, the Committee asked whether the Ombudsman had sworn his oath of office to the Speaker of the Legislative Assembly.<sup>403</sup>

12.3 In responding, the Ombudsman told the Committee that he had 'not had the opportunity to do that as yet', but would 'welcome the opportunity to do that were it presented to me'.<sup>404</sup>

### REPORTABLE CONDUCT SCHEME

12.4 In hearings, the Committee asked questions about the role of the ACT Ombudsman in the ACT's reportable conduct scheme. In particular, the Committee asked to what degree his office was prepared for responsibilities given to the Ombudsman under the provisions of the Reportable Conduct and Information Sharing Legislation Amendment Bill 2017—passed 30

---

<sup>402</sup> ACT Ombudsman, Annual Report 2016-17, p.6, viewed 5 December 2017, available at:

[http://www.ombudsman.act.gov.au/\\_data/assets/pdf\\_file/0016/51352/ACT-Ombudsman-AR-2016-17.pdf](http://www.ombudsman.act.gov.au/_data/assets/pdf_file/0016/51352/ACT-Ombudsman-AR-2016-17.pdf)

<sup>403</sup> *Proof Transcript of Evidence*, 10 November 2017, p.95.

<sup>404</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.95.

November 2017 and presently awaiting notification—and whether funding was adequate to support its acquittal of those responsibilities.<sup>405</sup>

12.5 In responding, the Ombudsman told the Committee:

I might start with the funding question first. The original funding for our office to conduct the scheme was a sum of \$282,000 for 2017-18 which, when you take into account all the overheads and corporate overheads and what have you, accounted for really just a couple of staff to work exclusively on the scheme. We came back to government shortly after the scheme commenced and sought additional funding and an additional amount has been made available of a further \$615,000 for this financial year. We are satisfied that that is an adequate amount of funding for our activities under the scheme.<sup>406</sup>

12.6 He told the Committee that funding amounted to ‘a total of about \$800,000 for this financial year’.<sup>407</sup>

12.7 When asked whether he considered this adequate, the Ombudsman told the Committee:

At this stage. Of course the scheme is still in its early stages and perhaps that is a way to segue into the first part of your question. The nature of the scheme is such that it is very hard to know in advance how many reports you are going to get, what they are going to be about, how much effort you are going to need to spend ensuring that those reports are adequately followed up, how much effort you are going to have to put into things like engaging with all the relevant agencies to ensure that they are in fact reporting to you and so on and so forth, educative activities and so on.<sup>408</sup>

12.8 He told the Committee:

With that, it is a little uncertain about how much you will need. So far, however, we have had roughly the number of reports that we, on a pro rata basis, thought we might get. We have had 39 reports to this point. They come from a variety of employers who fall within the jurisdiction of the scheme and we are working with the agencies to ensure that they are managing those reports appropriately.<sup>409</sup>

---

<sup>405</sup> *Proof Transcript of Evidence*, 10 November 2017, p.95, and see the Reportable Conduct and Information Sharing Legislation Amendment Bill 2017, viewed 5 December 2017, available at: [http://www.legislation.act.gov.au/b/db\\_57091/current/pdf/db\\_57091.pdf](http://www.legislation.act.gov.au/b/db_57091/current/pdf/db_57091.pdf)

<sup>406</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.95.

<sup>407</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.95.

<sup>408</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.95.

<sup>409</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, pp.95-96.

12.9 At this point, the Committee asked questions regarding expansions to the scheme which, it said, had not initially been ‘fully rolled out to all sectors’.<sup>410</sup>

12.10 In responding, the Ombudsman told the Committee:

I do not have a policy view about whether or not the scheme should be extended. That really is a matter for the Assembly and the government of the day in the Assembly to contemplate.<sup>411</sup>

12.11 However he told the Committee that:

What I would say is that if the scheme is broadened—and the public discussion is around whether the scheme will be broadened to encompass the major churches as well as schools and childcare centres and all of that—there will be a need to make sure that that happens at a speed that is manageable. It is potentially quite a large broadening of the scheme and could give rise to a considerable number of additional reports. Some of those could be very sensitive. We, and I suspect other players in the space, will need to do a lot of work to prepare for the successful implementation of the scheme if it is broadened in that way.<sup>412</sup>

12.12 When asked questions as to how the Ombudsman’s office had sought to inform and prepare service providers for the advent of the scheme, the Senior Assistant Ombudsman responded. She told the Committee that:

In the rollout of the scheme, we put on information sessions for entities. We had over 700 participants in those presentations. We still do present monthly to entities about the scheme and how they participate. We also have a website with extensive materials and guidance on how to report, what to report, how to engage with us. We have a dedicated line, and staff answer inquiries. We have actually had more inquiries than we have had reports; people ring us on how they report and whether something that has come to their attention is reportable conduct. We do that. We are also working very closely with the Chief Minister’s office and other directorates as they roll out their policies and start reporting to us.<sup>413</sup>

12.13 The Senior Assistant Ombudsman described this as a ‘multilateral’ approach.<sup>414</sup>

---

<sup>410</sup> *Proof Transcript of Evidence*, 10 November 2017, p.96.

<sup>411</sup> *Proof Transcript of Evidence*, 10 November 2017, p.96.

<sup>412</sup> *Proof Transcript of Evidence*, 10 November 2017, p.96.

<sup>413</sup> Ms Doris Gibb, *Proof Transcript of Evidence*, 10 November 2017, p.96.

<sup>414</sup> Ms Doris Gibb, *Proof Transcript of Evidence*, 10 November 2017, p.96.

12.14 When asked how many staff were assigned to the reportable conduct scheme, the Senior Assistant Ombudsman told the Committee that there were currently two staff for the scheme, 'but we are moving to four by the end of the year now that we have been given additional funding'. This did not include 'my time or the Ombudsman's time on the reportable conduct', and referred to staff that would be 'dedicated to the scheme'.<sup>415</sup>

12.15 At a later point in hearings the Committee asked questions regarding the 39 reports which the Ombudsman advised the Committee he had received under the scheme.<sup>416</sup>

12.16 In responding the Ombudsman told the Committee that it was:

very important ... to emphasise that they are reports of alleged conduct. One has to be careful not to jump to a conclusion that 39 terrible things have occurred.<sup>417</sup>

12.17 Responding to questions about the industry or sector from which these had arisen, the Ombudsman told the Committee that:

About a third of those have been reported with respect to schooling; about a third with respect to out of home care settings, foster and residential care; about 20 per cent in childcare; and about 10 per cent in directorates. The employees of ACT directorates are covered by the scheme, and there have been a small number of reports from there.<sup>418</sup>

12.18 When asked whether these had been filtered or checked, the Ombudsman told the Committee that:

It is the reports that come to us in, as it were, a raw form. A report that comes to us will be counted. In most instances, we will expect the agency that reported it to us or the employer that reported it to us to then undertake some form of investigation or some sort of formal assessment to determine whether the report stacks up. One can imagine that, over time, some of the reports will turn out to be unsubstantiated or wrong but others will not.<sup>419</sup>

12.19 When asked how many of these reports had been dismissed 'fairly quickly', the Ombudsman told the Committee that:

So far three have been deemed not to be reportable conduct, that is, not at the threshold the legislation sets. Another 11 have been closed; that is to say we have reached the view that the investigation activity that was done and the follow-up

---

<sup>415</sup> Ms Doris Gibb, *Proof Transcript of Evidence*, 10 November 2017, p.96.

<sup>416</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.96.

<sup>417</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.98.

<sup>418</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, pp.98-99.

<sup>419</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.99.

activity that was done by the relevant entity was satisfactory to deal with the matter.<sup>420</sup>

12.20 When asked whether this implied that the remaining 25 reports were 'more substantial', the Ombudsman told the Committee that these were 'still current':

We have not got to the end point. You will appreciate that it is a new scheme. It has been in place for only four months. Most of the cases will take a certain amount of time for an employer to investigate and get to the bottom of, so it will take a little time to get a picture of what the ratios are.<sup>421</sup>

12.21 However, he told the Committee, '[t]his early, you have got to be careful about how much you read into these tiny numbers' in terms of trends that may be perceived in the context of the reports.<sup>422</sup>

## RESPONSIBILITIES UNDER NEW FREEDOM OF INFORMATION LAWS

12.22 In hearings, the Committee asked questions regarding new responsibilities for the ACT Ombudsman under amended Freedom of Information (FOI) legislation.<sup>423</sup>

12.23 In the context of these changes, the Committee asked the Ombudsman questions as to work done by his office to develop guidelines and frameworks for its new functions, and whether his office would be providing training to ACT directorates prior to the commencement of the legislation on 1 January 2018.<sup>424</sup>

12.24 In responding to questions, the Ombudsman told the Committee:

We have staff who are working away at developing the processes and the procedures to put in place the new arrangements. We will be developing guidelines and refining guidelines in the context of the actual operation of the scheme once it is up and running. But, in the meantime, by way of shaping our thinking about how we are going

---

<sup>420</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.99.

<sup>421</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.99.

<sup>422</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.99.

<sup>423</sup> *Proof Transcript of Evidence*, 10 November 2017, p.100. The amending Act was the Freedom of Information Act 2016, viewed 5 December 2017, available at: <http://www.legislation.act.gov.au/a/2016-55/current/pdf/2016-55.pdf>

<sup>424</sup> *Proof Transcript of Evidence*, 10 November 2017, p.100. See also Kirsten Lawson, 'ACT government moves to delay start date for new freedom of information laws', *Canberra Times*, 7 April 2017, viewed 5 December 2017, available at: <http://www.canberratimes.com.au/act-news/act-government-moves-to-delay-start-date-for-new-freedom-of-information-laws-20170405-gvedoh.html>

to operate, we are using templates that exist for similar purposes in other jurisdictions: New South Wales, the commonwealth and so forth. We will be ready to go on 1 January and we will see where we go from there.<sup>425</sup>

12.25 The Committee asked a question regarding the number of staff in the Ombudsman's office dedicated to Freedom of Information responsibilities.<sup>426</sup>

12.26 In responding, the Ombudsman told the Committee that:

At the moment we have three or four people working specifically on the FOI piece. We anticipate that that will grow as we roll out the full scheme. Resourcing has been provided.<sup>427</sup>

12.27 The Ombudsman told the Committee that funding in relation to these responsibilities was '\$950,000 in 2017-18', and would be 'will be ramping up further from here'. He was not sure whether this would be 'in the form of staffing or some form of contractors or what', because 'because we are constrained as to the average staffing level we can have', however his office was 'working our way through that'.<sup>428</sup>

12.28 In response to further questions, the Ombudsman told the Committee that:

As a commonwealth agency, we are constrained as to how many staff we can have by what is called the average staffing level cap in the commonwealth.<sup>429</sup>

12.29 The Ombudsman confirmed that this was so even though his office was providing services outside of the immediate jurisdiction of the Commonwealth, and as a result he had to 'work out the extent to which I use contractors or other forms of help to get the work done in the ACT, in the commonwealth and elsewhere'.<sup>430</sup>

12.30 In answer to further questions about the adequacy of provision for these new responsibilities for his office, the Ombudsman told the Committee in the immediate-term resources were adequate; that there were considerable costs 'associated with the initial rollout';<sup>431</sup> and that he envisaged that:

as we come up to each budget round we will be informed by data about how many reviews we actually have to do and how resource intensive it actually is, and we will be

---

<sup>425</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.100.

<sup>426</sup> *Proof Transcript of Evidence*, 10 November 2017, p.100.

<sup>427</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.100.

<sup>428</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.100.

<sup>429</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.100.

<sup>430</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.101.

<sup>431</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.101.

in a discussion with our colleagues in the agencies in the ACT about how much we need to do that.<sup>432</sup>

## COMPLAINT HANDLING

12.31 The Committee asked questions regarding complaints handling by the Ombudsman. This included questions about the prevalence of complaints for different ACT government agencies.<sup>433</sup>

12.32 In responding to questions, the Ombudsman told the Committee that:

Our work is essentially driven by complaints. We have a bunch of different things we do but it all comes essentially of the base of a complaint workload. The pattern you see is that the agencies that deal one on one with individuals in the public the most are the agencies that generate the most complaints. Then within each of those agencies there are categories of issues that keep coming up which are more to do with the subject matter of those agencies than they are to do with whether the agencies are good or bad or anything like that.<sup>434</sup>

12.33 He told the Committee that:

There are complaints about housing around various housing disputes between tenants or between people and the directorate. There are complaints about a familiar array of themes in the AMC. There are complaints like, "The police did not come and help me quickly enough or did not do enough about my complaint or my issue." These are things that come up in policing, in prisons, in service delivery. We seek to work with the relevant agencies to ensure that their procedures, their policies and their approach are as good as they can be to deal with those issues.<sup>435</sup>

12.34 When asked about differences in the degree to which the Ombudsman inquired further into complaints, the Ombudsman told the Committee:

There is a bunch of reasons why an ombudsman does not investigate certain things. For one thing, we cannot investigate everything. We just do not have the resourcing or the capacity. More to the point, if you have a complaint about the ACT Revenue Office, the first thing we will say to you is, "Hey, have you taken this up with the ACT Revenue Office?" Some people will not have, so we will simply refer them back to the revenue

---

<sup>432</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.101.

<sup>433</sup> *Proof Transcript of Evidence*, 10 November 2017, p.101.

<sup>434</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.101.

<sup>435</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.101.

office, saying, “Look, go and take it up with this person. If you have got a problem you can come back to us.” That does in fact resolve a bunch of things. Similarly, sometimes we can provide a simple explanation of what it is that the person has experienced, based on our knowledge of whatever the issue might be. If you can do those things, in many cases you can get to a place where the complainant is basically satisfied that the matter has been clarified and so on, without needing to go through a deeper investigation. That is essentially the rationale.<sup>436</sup>

## COMMITTEE COMMENT

12.35 The Committee acknowledges the important work of the ACT Ombudsman and his officers.

12.36 The Committee was concerned to find, in the course of hearings, that the ACT Ombudsman had not been sworn by the Speaker of the Legislative Assembly for the ACT.

12.37 In light of this, the Committee makes the following recommendation.

### Recommendation 13

**12.38 The Committee recommends that the Speaker of the Legislative Assembly for the ACT swear in the ACT Ombudsman as soon as practicable after the publication of the present report.**

12.39 In relation to new responsibilities for the ACT Ombudsman in relation to reportable conduct and Freedom of Information, the Committee is concerned about the significant increase in work type and volume for the office of the Ombudsman, and the changes in resourcing requirements that these changes will inevitably entail.

12.40 Evidence provided by witnesses appeared to suggest that adequate resourcing had been provided in the near-term. The Committee will maintain an interest in the match between resourcing requirements and provision for the office of the Ombudsman as these changes come into law.

---

<sup>436</sup> Mr Michael Manthorpe, *Proof Transcript of Evidence*, 10 November 2017, p.101.



## 13 — ACT AUDITOR-GENERAL

### INTRODUCTION

13.1 The ACT Auditor-General's Annual Report 2016-17 states that:

The Auditor-General Act 1996 (A-G Act) outlines the functions and powers of the Auditor-General who is an Officer of the ACT Legislative Assembly. While this emphasises the important connection with the Legislative Assembly, the Auditor-General is an independent statutory position with complete discretion in how functions are undertaken.

The Auditor-General conducts independent financial and performance audits on ACT Government agencies and those entities in receipt of ACT Government funding or resources. The results of these audits are reported to the Legislative Assembly and ACT Community. Audits are, therefore, an important means of holding agencies and entities to account and encouraging them to continuously improve their activities.

Additionally, the Auditor-General receives representations and public interest disclosures under the Public Interest Disclosure Act 2012 (PID Act), with some issues raised being examined through performance audits. This allows these issues to be publically scrutinised without revealing the identity of those who made a representation or public interest disclosure.

The ACT Audit Office (Audit Office) supports the Auditor-General in performing her functions.<sup>437</sup>

13.2 The Auditor-General and her officers appeared before the Committee in hearings of 14 November 2017.

---

<sup>437</sup> ACT Auditor-General, Annual Report 2016-17 (Report No.9 of 2017), p.1, viewed 5 December 2017, available at: <http://www.audit.act.gov.au/docs2/Annual%20Report%202016-17.pdf>

## INTERACTION WITH AUDITEES DURING THE AUDIT PROCESS

13.3 In hearings, the Committee asked questions regarding interactions between the Audit Office and auditees during the audit process.<sup>438</sup>

13.4 In responding, the Auditor-General proposed that separate answers be given for financial and performance audits.<sup>439</sup>

### PROCESS FOR FINANCIAL AUDITS

13.5 With regard to financial audits, the Acting Director, Financial Audits, told the Committee that:

The first interaction starts from a debriefing in terms of the previous year's audit. We would go through and identify the matters that needed further discussion with the agencies. We would organise an exec meeting. There we would canvas the issues that we had in the prior year and then the next engagement would be in terms of providing a seminar.<sup>440</sup>

13.6 He told the Committee that:

Our financial audit seminar takes agencies through the key reporting issues for that calendar year and beyond. The things that the agencies would need to think about could be changes in the reporting requirements, changes in legislation. It could be lessons learned from the past and the whole-of-government reporting timetable.<sup>441</sup>

13.7 At this point the Committee asked whether some matters raised in audits were 'additional comments' that were 'not so significant' as to be included in audited statements.<sup>442</sup>

13.8 In response, the Acting Director, Financial Audits, told the Committee that this was the case for 'some', and that '[o]nly significant matters' were reported in audit reports.<sup>443</sup>

13.9 The Auditor-General agreed. She told the Committee that some issues were 'not reported publicly' and that it was 'for management to consider where we ... think that they are not that significant'.<sup>444</sup>

---

<sup>438</sup> *Proof Transcript of Evidence*, 14 November 2017, p.111.

<sup>439</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.111.

<sup>440</sup> Mr Ajay Sharma, *Proof Transcript of Evidence*, 14 November 2017, p.111.

<sup>441</sup> Mr Ajay Sharma, *Proof Transcript of Evidence*, 14 November 2017, pp.111-112.

<sup>442</sup> *Proof Transcript of Evidence*, 14 November 2017, p.112.

<sup>443</sup> Mr Ajay Sharma, *Proof Transcript of Evidence*, 14 November 2017, p.112.

<sup>444</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.112.

13.10 The Acting Director, Financial Audits, told the Committee that this could also occur in:

the categories where we recommend a number of changes to disclosures in the financial statements and statement of performance, which would help the reader better understand the results. Some of these areas are not reported in that much detail in our report because they are areas for improvement.<sup>445</sup>

13.11 At this point the Auditor-General told the Committee that 'if they do not improve, we keep on making the same comment in the hope that they will improve, even though we do not report them publicly'.<sup>446</sup>

13.12 The Acting Director, Financial Audits, then provided the Committee with a description of the process before, during and after the conduct of an audit:

Before the audit commences there is a planning meeting to go through the timetable and to discuss at the staff level the audit team and the team from the auditee's perspective in terms of the people that we will be liaising with during the audit. That is the planning meeting.<sup>447</sup>

During the audit, once we get the financial statements and statement of performance, we will get the working papers for it and then we will go through the audit and, as matters arise, there will be discussions with the auditee. If further advice is needed, if there are complex accounting treatments for example, then there will be further discussions involving the executives of the organisation. Shortly after we have finished the audit of the details, there is a summary report, which is a closed report, which informs the executive in terms of the key issues identified and how they were resolved in the audit.<sup>448</sup>

Then the audit report is issued. After that there is an exit meeting in terms of going through the audit process and key issues identified. During the process we also encourage agencies to discuss with us any matters from their side. Then there is a satisfaction survey that goes out to the agency, which provides us detailed comments ...<sup>449</sup>

---

<sup>445</sup> Mr Ajay Sharma, *Proof Transcript of Evidence*, 14 November 2017, p.112.

<sup>446</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.112.

<sup>447</sup> Mr Ajay Sharma, *Proof Transcript of Evidence*, 14 November 2017, p.112.

<sup>448</sup> Mr Ajay Sharma, *Proof Transcript of Evidence*, 14 November 2017, p.112.

<sup>449</sup> Mr Ajay Sharma, *Proof Transcript of Evidence*, 14 November 2017, p.112.

13.13 When asked whether this was by way of ‘informal communication’, the Auditor-General told the Committee that it was ‘all part of the process’, was not informal, but rather was ‘all quite a formal part of that process’ for the conduct of audits.<sup>450</sup>

13.14 She told the Committee that:

if we get a slamming survey result then I will meet with the executives and we will have the teams meet to say, “Well, what went on here? Was it an issue of substance around auditing or was this some kind of personal issue between staff?” We try to work on it. But mostly, no. The staff are quite instructed on that independence of the office. Everything has to be on the record as if they were sitting here. Whatever they are told they should be able to say quite frankly whatever has occurred.<sup>451</sup>

13.15 The Auditor-General then asked the Director, Performance Audits, to respond to the original question regarding interactions with auditees with respect to performance audits.<sup>452</sup>

#### PROCESS FOR PERFORMANCE AUDITS

13.16 The Director, Performance Audits, provided the Committee with a description of the approach taken before and during the conduct of performance audits.<sup>453</sup>

13.17 In describing the initial phase of the audit process, he told the Committee that:

In a performance audit we start with the concept of an audit that we are interested in doing. We will do what we can to identify key people, executives, managers within the agency who are likely to be influential or otherwise knowledgeable of the subject matter. We will engage with them for the purpose of scoping and planning the audit.

We will communicate with them and we will come up with our objective, criteria, scope and the like. We will formally engage with the director-general of the directorate, advise them of the objective, scope and criteria, offer the opportunity to have a meeting and then we will be into the audit process itself.<sup>454</sup>

13.18 In relation to communications with the auditee, he told the Committee:

What informs our communication or interaction with the agency is what we call a communications strategy or a communications plan. It sets out at the commencement of the audit who the key people from the audit office are and, if we use any

---

<sup>450</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.112.

<sup>451</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, pp.112-113.

<sup>452</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.113.

<sup>453</sup> Mr Brett Stanton, *Proof Transcript of Evidence*, 14 November 2017, p.113.

<sup>454</sup> Mr Brett Stanton, *Proof Transcript of Evidence*, 14 November 2017, p.113.

contractors or consultants, who they are. It sets out the key people from the agencies as well and it sets out basically the roles and responsibilities of those different parties. The key executive contact from the agency would be responsible for facilitating our communication and interaction with other areas of the directorate.<sup>455</sup>

13.19 In describing the approach taken during the conduct of the audit, he told the Committee that:

The engagement leader, with the support of the audit team, will be responsible for conducting the audit and collecting information for the purpose of the audit, and they will be doing that as widely as necessary across the agency or the directorate to satisfy themselves that they have got relevant information, appropriate information and evidence.<sup>456</sup>

13.20 The Director, Performance Audits, told the Committee that once the audit gets 'towards the end of the field work stage':

We will be communicating throughout this process with the agencies to identify issues of interest and issues of potential findings and the like before we get to the draft report. The draft report will be issued by the Auditor-General directly to the director-general or chief executive, and that commences basically that reporting consultation process.<sup>457</sup>

13.21 He told the Committee that:

Throughout that period, over the next few weeks or months if necessary, we will be talking to the director-general and key executives from the agency in relation to the findings in the draft report, with the next iteration of the draft report being a proposed report. We have got at least two iterations of the report that goes to the agency. For some audits, we have had more versions of the report in that reporting process, with a view to coming up with the final report to be presented to the Speaker.<sup>458</sup>

---

<sup>455</sup> Mr Brett Stanton, *Proof Transcript of Evidence*, 14 November 2017, p.113.

<sup>456</sup> Mr Brett Stanton, *Proof Transcript of Evidence*, 14 November 2017, p.113.

<sup>457</sup> Mr Brett Stanton, *Proof Transcript of Evidence*, 14 November 2017, p.113.

<sup>458</sup> Mr Brett Stanton, *Proof Transcript of Evidence*, 14 November 2017, p.113.

## AUDITEES' ACCESS TO DRAFT AUDIT REPORTS

13.22 At this point, the Committee asked if the auditee which was 'a significant private sector or non-government entity' would receive a draft audit report before its release.<sup>459</sup>

13.23 In responding, the Director, Performance Audits, told the Committee that this was '[a]bsolutely' the case,<sup>460</sup> and the Auditor-General told the Committee that under relevant legislative provisions it was a binding requirement on the Audit Office that the auditee had 'to get it first'.<sup>461</sup>

## RESTRICTIONS ON USE OF INFORMATION PROVIDED IN DRAFT REPORTS

13.24 The Committee asked whether there were restrictions placed on what audited entities could do with information provided in draft reports.<sup>462</sup>

13.25 In response, the Auditor-General told the Committee that:

We can put on section 35s under our legislation so that, when we give a report to someone, only they can look at it. If we give you a section 35, only you can look at it and only you can give us comments back. If we do not do that, we give it usually to the head of the agency, and they are in charge of making sure they manage it as protected information. We do not say specifically to whom information can or cannot go but Chief Minister's actually have some people there who are willing to give advice to the agencies as to how to communicate information.<sup>463</sup>

13.26 She told the Committee that:

Definitely the controversial ones will have section 35s and where you have got commercial in-confidence and things like or where they may be able to infer a staff name although we do not put the names in. But for others, for instance with credit cards, we do not. We rattle off a few where we give it to the head of the agency and it

---

<sup>459</sup> *Proof Transcript of Evidence*, 14 November 2017, p.113.

<sup>460</sup> Mr Brett Stanton, *Proof Transcript of Evidence*, 14 November 2017, p.113.

<sup>461</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.114. See *Auditor-General Act 1996 (ACT)*, Section 18, 'Comments on proposed reports', and particularly Section 18, Subsection (2). *Auditor-General Act 1996 (ACT)*, viewed 13 December 2017, available at: <http://www.legislation.act.gov.au/a/1996-23/current/pdf/1996-23.pdf>

<sup>462</sup> *Proof Transcript of Evidence*, 14 November 2017, p.114.

<sup>463</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.114. See *Auditor-General Act 1996 (ACT)*, Section 35, 'Directions about protected information'.

is their job to protect the information. Credit cards stick out as one because it is a systems issue. It is across agencies. They then take the protocols to talk to each other.<sup>464</sup>

13.27 However, the Director, Performance Audits, told the Committee such provisions were not frequently engaged, and that:

For the audit last year of the public housing renewal program there were no directions issued under section 35, neither was there for mental health services, maintenance of selected road infrastructure assets and the like.<sup>465</sup>

13.28 At this point, the Committee asked whether there were any restrictions on ministers being given access to draft audit reports.<sup>466</sup>

13.29 In responding, the Auditor-General told the Committee that:

It is generally not done but again I am not sure how the agencies brief. That is an issue for the agencies, how they brief, and we stay out of that. It would be, I think, inappropriate for us to comment or to get involved in giving them advice.<sup>467</sup>

## OPTIONS FOR REFERRAL

13.30 At a later point in hearings, the Committee asked questions regarding the referral of matters raised during the conduct of audits. In particular the Committee asked whether the Auditor-General made referrals to police where criminal matters were engaged, and whether there were other options for referral, over and beyond standard practice of asking the audited entity to implement recommendations made in the audit report.<sup>468</sup>

13.31 In responding, the Auditor-General told the Committee that:

We could bring it to the attention of the public standards commissioner if it were to do with culture and values; we would talk to that person about those kinds of issues, as I think we have in the past. That is one avenue. Also, apart from the agency, I would talk to the Head of Service, saying, "This came up. You may wish to consider the matter further, but we are not."<sup>469</sup>

---

<sup>464</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.114.

<sup>465</sup> Mr Brett Stanton, *Proof Transcript of Evidence*, 14 November 2017, p.114.

<sup>466</sup> *Proof Transcript of Evidence*, 14 November 2017, p.114.

<sup>467</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.114.

<sup>468</sup> *Proof Transcript of Evidence*, 14 November 2017, p.120.

<sup>469</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.114.

13.32 When the Committee asked how many times matters had been referred to police, the Auditor-General told the Committee that herself and her office she had ‘not referred an issue to police’, but were ‘aware that from our reports the police have been aware of things’.<sup>470</sup>

13.33 However, the Auditor-General and the Acting told the Committee, the Auditor-General had made referrals under Section 311 of the *Corporations Act 2001* (Cth), on two occasions, to the Australian Securities and Investments Commission (ASIC).<sup>471</sup>

13.34 In one instance this was done, the Director, Performance Audits, told the Committee, in relation to ‘a performance audit on Calvary hospital and its financial and performance reporting’.<sup>472</sup>

## COMMITTEE COMMENT

13.35 The Committee notes the important work of the Auditor-General and her officers.

13.36 The Committee was interested to hear, in hearings, about the capacity of the Auditor-General to refer matters for further investigation by the Australian Companies and Investments Commission (ASIC) under Section 311 of the *Corporations Act 2001* (Cth).<sup>473</sup>

13.37 It is the Committee’s view that it is important and useful for the community to be aware of the full spectrum of powers available to the Auditor-General in responding to matters which come to light in the course of audits conducted by herself and her officers.

13.38 In light of this, the Committee makes the following recommendation.

---

<sup>470</sup> Dr Maxine Cooper, *Proof Transcript of Evidence*, 14 November 2017, p.114.

<sup>471</sup> Dr Maxine Cooper and Mr Ajay Sharma, *Proof Transcript of Evidence*, 14 November 2017, p.114. Mr Brett Stanton of the Audit Office advised that the Office had made the referrals under Section 311, of the *Corporations Act 2001* (Cth) in an email of 15 December 2017. *Corporations Act 2001* (Cth), viewed 13 December 2017, available at: <https://www.legislation.gov.au/Details/C2017C00328>

<sup>472</sup> Mr Brett Stanton, *Proof Transcript of Evidence*, 14 November 2017, p.114.

<sup>473</sup> Dr Maxine Cooper and Mr Ajay Sharma, *Proof Transcript of Evidence*, 14 November 2017, p.114. Mr Brett Stanton of the Audit Office advised that the Office had made the referrals under Section 311, of the *Corporations Act 2001* (Cth) in an email of 15 December 2017. *Corporations Act 2001* (Cth), viewed 13 December 2017, available at: <https://www.legislation.gov.au/Details/C2017C00328>



## Recommendation 14

**13.39 The Committee recommends that the Auditor-General give wider publicity on the web-page of the Audit Office on her capacity to refer matters to the Australian Securities and Investments Commission under Section 311 of the *Corporations Act 2001* (Cth), including further detail on the two instances where referrals have been made.**

Mr Michael Pettersson MLA  
Deputy Chair



## Appendix A

### WITNESSES

Friday, 10 November 2017

#### Minister

- Mr Andrew Barr MLA, Chief Minister, Treasurer, Minister for Economic Development and Minister for Tourism and Major Events

#### Treasury

- Mr David Nicol, Under Treasurer
- Mr Kim Salisbury, Executive Director, Revenue Management
- Mr Stephen Miners, Deputy Under Treasurer, Economic Budget and Industrial Relations
- Mr Patrick McAuliffe, Director, Asset Liability Management
- Ms Lisa Holmes, Acting CTP Regulator

#### Chief Minister's

- Mr Graham Tanton, Executive Director, Shared Services
- Mr Gary Davis, Executive Director, Shared Services ICT
- Mr Ross Burton, Chief Finance Officer, Shared Services
- Ms Bronwen Overton-Clarke, Deputy Director-General and ACT Public Sector Standards Commissioner
- Ms Kathy Leigh, Head of Service and Director-General
- Noud, Mr Russell, Director, Public Sector Workplace Relations

#### Legislative Assembly for the ACT / Office of the Legislative Assembly

- Ms Joy Burch, Speaker of the Legislative Assembly for the Australian Capital Territory
- Mr Tom Duncan, Clerk, Office of the Legislative Assembly

- Mr Ian Duckworth, General Manager, Business Support Branch
- Mr David Skinner, Director, Office of the Clerk
- Mr Malcolm Prentice, Chief Finance Officer, Business Support Branch

Icon Water Ltd

- Mr John Knox, Managing Director
- Mr Sam Sachse, Chief Financial Officer
- Mr Ray Hezkial, General Manager, Project Delivery, Operations and Maintenance
- Ms Jane Breaden, General Manager, Business Services

Independent Competition and Regulatory Commission

- Mr Joe Dimasi, Senior Commissioner
- Mr Michael Rawstron, Chief Executive Officer
- Mr Ian Phillips, Senior Manager

ACT Ombudsman and Commonwealth Ombudsman

- Mr Michael Manthorpe, ACT Ombudsman
- Ms Doris Gibb, Senior Assistant Ombudsman
- Ms Erica Welton, Director, National Assurance and Audit, Integrity Branch

Tuesday, 14 November 2017

ACT Audit Office

- Dr Maxine Cooper, Auditor-General
- Mr Ajay Sharma, Acting Director, Financial Audit
- Mr Brett Stanton, Director, Performance Audits
- Ms Rosario San Miguel, Acting Principal, Professional Services

## APPENDIX B

## QUESTIONS TAKEN ON NOTICE

<b>No.</b>	<b>Asked</b>	<b>Subject</b>	<b>Minister / Agency</b>	<b>Received</b>
1	Ms Cody MLA	Trainees and apprentices	Mr Barr MLA, Chief Minister's	10/11/2017
1A	Mrs Dunne MLA	Variance in total costs for Public Sector Management	Mr Barr MLA, Chief Minister's	17/11/2017
1B	Mr Pettersson MLA	Additional information about ACT Policing's self- disclosed unlawful installation of a surveillance device in New South Wales	ACT Ombudsman	29/11/2017
1C	Mrs Dunne MLA	Slavery proofing the ACT supply chain	Mr Barr, MLA, Chief Minister's	19/12/2017
2	Mr Coe MLA	Break down of the numbers on page 44 of the annual report by group ARINs as opposed to individual ARINs	Mr Barr MLA, Chief Minister's	24/11/2017
2A	Mrs Dunne MLA	Rates objections received	Mr Barr MLA, Treasury	24/11/2017
3	Mr Coe MLA	How Mr Fluffy sales will impact the values of those particular blocks and surrounding blocks	Mr Barr MLA, Treasury	27/11/2017

<b>No.</b>	<b>Asked</b>	<b>Subject</b>	<b>Minister / Agency</b>	<b>Received</b>
4	Mrs Dunne MLA	Analysis of the unimproved value and market value of Mr Fluffy blocks	Mr Barr MLA, Treasury	24/11/2017
4A	Mr Coe MLA	ARINs	Mr Barr MLA, Chief Minister's	29/11/2017
5	Mr Coe MLA	Impact of Mr Fluffy Block on AUV	Mr Barr MLA, Treasury	27/11/2017
6	Mrs Dunne MLA	Asbestos Response Taskforce purchases	Mr Barr MLA, Treasury	24/11/2017
7	Mrs Dunne MLA	The UV of purchased blocks	Mr Barr MLA, Treasury	24/11/2017
10	Ms Le Couteur MLA	Hardship claims	Mr Barr MLA, Treasury	24/11/2017
12	Ms Cody MLA	Concession scheme details	Mr Barr MLA, Treasury	27/11/2017
13	Mrs Dunne MLA	Average rate rises	Mr Barr MLA, Treasury	24/11/2017
14	Ms Le Couteur MLA	Monitoring the levels of hardship claims	Mr Barr MLA, Treasury	24/11/2017

<b>No.</b>	<b>Asked</b>	<b>Subject</b>	<b>Minister / Agency</b>	<b>Received</b>
15	Mr Coe MLA	Superannuation portfolio investment	Mr Barr MLA, Treasury	24/11/2017
16	Ms Le Couteur MLA	Considering the supply chain in investment processes	Mr Barr MLA, Treasury	24/11/2017
17	Mrs Dunne MLA	The Regulator and the CTP Citizens Jury	Mr Barr MLA, Treasury	27/11/2017
18	Mrs Dunne MLA	The average participant cost per year of being involved in the scheme (Lifetime Care and Support)	Mr Barr MLA, Treasury	24/11/2017
19	Ms Cody MLA	Outstanding liabilities for defamation claims	Mr Barr MLA, Treasury	24/11/2017
20	Mrs Dunne MLA	Internal Audit Program for the Directorate (CMTEDD)	Mr Barr MLA, Treasury	17/11/2017
21	Mr Coe MLA	Licence management (software)	Mr Barr MLA, Treasury	24/11/2017
22	Mrs Dunne MLA	Estimated cost of managing the audit committee (Shared Services)	Mr Barr MLA, Treasury	24/11/2017
23	Mr Coe MLA	Quoting and invoicing procedure (Shared Services)	Mr Barr MLA, Treasury	24/11/2017

<b>No.</b>	<b>Asked</b>	<b>Subject</b>	<b>Minister / Agency</b>	<b>Received</b>
24	Ms Cody MLA	Percentage of water connections compared to sewer connections	Mr Barr MLA, Treasury	24/11/2017
25	Mrs Dunne MLA	Internal audit functions (Icon Water)	Mr Barr MLA, Treasury	24/11/2017
26	Mr Coe MLA	Icon Water community support program	Mr Barr MLA, Treasury	24/11/2017
27	Mr Coe MLA	Meter reading (Icon Water)	Mr Barr MLA, Treasury	24/11/2017
28	Mr Coe MLA	Penalties in the service agreement for faulty measure readings (Icon Water)	Mr Barr MLA, Treasury	24/11/2017
29	Mr Coe MLA	The developer charging policy (Icon Water)	Mr Barr MLA, Treasury	24/11/2017
30	Ms Cheyne MLA / Mrs Dunne MLA	- Fees per meeting charged by the Office's Audit and Review Committee Chair, Mr James Palmer.  - Whether the Winslade property is within the scope of the performance audit Land Development Agency's (LDAs) assembly of rural land in the ACT currently in progress.	Dr Cooper, ACT Auditor- General	27/11/2017
[End]				



## Appendix C

## QUESTIONS ON NOTICE

<b>No.</b>	<b>Asked</b>	<b>Subject</b>	<b>Minister / Agency</b>	<b>Received</b>
1	Mr Milligan MLA	State of the Service Report: Aboriginal and Torres Strait Islander Employment	Mr Barr MLA, Chief Minister's	01/12/2017
3	Ms Le Couteur MLA	Land Tax	Mr Barr MLA, Treasury	28/11/2017
4	Mrs Dunne MLA	Road safety initiatives	Mr Barr MLA, Treasury	01/12/2017
5	Mrs Dunne MLA	Chief Minister, Treasury and Economic Development Directorate 2016/17 Annual Report, Revenue Management, Output 6.1 (Financials)	Mr Barr MLA, Treasury	01/12/2017
6	Mrs Dunne MLA	Chief Minister, Treasury and Economic Development Directorate 2016/17 Annual Report, Revenue Management, Output 6.1: In relation to Future Workforce and New IT system:	Mr Barr MLA, Chief Minister's	19/02/2018
7	Mrs Dunne MLA	Chief Minister, Treasury and Economic Development Directorate 2016/17 Annual Report, Revenue Management, Output 6.1 (Objections and Appeals Unit)	Mr Barr MLA, Treasury	06/12/2017

<b>No.</b>	<b>Asked</b>	<b>Subject</b>	<b>Minister / Agency</b>	<b>Received</b>
8	Mr Coe MLA	A breakdown of collectable debt (payroll, rates, land tax et cetera)	Mr Barr MLA, Treasury	06/12/2017
8A	Mrs Dunne MLA	Accountability indicators and cost of services	Mr Barr MLA, Treasury	29/11/2017
9	Mr Coe MLA	Debt that has been written off	Mr Barr MLA, Treasury	06/12/2017
9A	Mrs Dunne MLA	Satisfaction survey and Payroll Process Review	Mr Barr MLA, Treasury	28/11/2017
10	Mrs Dunne MLA	ICT infrastructure	Mr Barr MLA, Treasury	01/12/2017
11	Mrs Dunne MLA	ARINs	Mr Barr MLA, Chief Minister's	04/12/2017
11A	Ms Le Couteur MLA	Hardship Claims	Mr Barr MLA, Treasury	06/12/2017
12	Mrs Dunne MLA	Bullying and harassment	Mr Barr MLA, Chief Minister's	29/11/2017
13	Mrs Dunne MLA	Complaints	Mr Barr MLA, Chief Minister's	30/11/2017

<b>No.</b>	<b>Asked</b>	<b>Subject</b>	<b>Minister / Agency</b>	<b>Received</b>
14	Mrs Dunne MLA	Fraud and risk	Mr Barr MLA, Chief Minister's	01/12/2017
15	Mrs Dunne MLA	Misconduct	Mr Barr MLA, Chief Minister's	30/11/2017
16	Mrs Dunne MLA	Public Interest Disclosures	Mr Barr MLA, Chief Minister's	01/12/2017
17	Mrs Dunne MLA	Staffing	Mr Barr MLA, Chief Minister's	12/12/2017
18	Mrs Dunne MLA	Superannuation Provision Account	Mr Barr MLA, Chief Minister's	29/11/2017
19	Mrs Dunne MLA	Territory Banking Account	Mr Barr MLA, Chief Minister's	29/11/2017
20	Mrs Dunne MLA	Energy (ICRC)	Mr Barr MLA, Treasury	04/12/2017
21	Mrs Dunne MLA	Shared Services agreements (Icon Water)	Mr Barr MLA, Treasury	04/12/2017
22	Mrs Dunne MLA	Lifetime Care and Support Fund	Mr Barr MLA, Treasury	01/12/2017

<b>No.</b>	<b>Asked</b>	<b>Subject</b>	<b>Minister / Agency</b>	<b>Received</b>
23	Mrs Dunne MLA	Public Sector Management	Mr Barr MLA, Chief Minister's	29/11/2017
24	Mrs Dunne MLA	Capped/Uncapped rebates and Community Feedback	Mr Barr MLA, Treasury	22/12/2017
25	Mrs Dunne MLA	Concession and Community assistance schemes	Mr Barr MLA, Treasury	13/12/2017
26	Mrs Dunne MLA	Debt/Compliance	Mr Barr MLA, Treasury	04/12/2017
27	Mrs Dunne MLA	Debt Management- Rates	Mr Barr MLA, Treasury	04/12/2017
28	Mrs Dunne MLA	Deferred duty/rates	Mr Barr MLA, Treasury	13/12/2017
29	Mrs Dunne MLA	Achievements (ACTIA)	Mr Barr MLA, Treasury	29/11/2017
30	Mrs Dunne MLA	Performance analysis (ACTIA)	Mr Barr MLA, Treasury	30/11/2017
31	Mrs Dunne MLA	Risk Management Profile Reports and Internal Audits (ACTIA)	Mr Barr MLA, Treasury	29/11/2017

<b>No.</b>	<b>Asked</b>	<b>Subject</b>	<b>Minister / Agency</b>	<b>Received</b>
32	Mrs Dunne MLA	Average Annual Risk Premium and automated vehicles (ACT Compulsory Third Party Insurance Regulator)	Mr Barr MLA, Treasury	29/11/2017
33	Mrs Dunne MLA	Citizens Jury/Reform (ACT Compulsory Third Party Insurance Regulator)	Mr Barr MLA, Treasury	29/11/2017
34	Mrs Dunne MLA	Claims (ACT Compulsory Third Party Insurance Regulator)	Mr Barr MLA, Treasury	04/12/2017
35	Mrs Dunne MLA	Streamlining CTP Filing Process (ACT Compulsory Third Party Insurance Regulator)	Mr Barr MLA, Treasury	04/12/2017
36	Mrs Dunne MLA	Peer to Peer (P2P) Car Sharing	Mr Barr MLA, Treasury	04/12/2017
37	Mrs Dunne MLA	Register/Fraud (ACT Compulsory Third Party Insurance Regulator)	Mr Barr MLA, Treasury	04/12/2017
38	Mrs Dunne MLA	Regulations and premiums (ACT Compulsory Third Party Insurance Regulator)	Mr Barr MLA, Treasury	01/12/2017
[End]				